

Transnational Tax Network

Recent changes that impact the Non - U.S. Tax consequences of making U.S. Check the box elections

Jim Spencer
Vestal & Wiler
May 14, 2010

Form 8832

Type or Print	8832 Form (Rev. January 2006) Department of the Treasury Internal Revenue Service	Entity Classification Election	OMB No. 1545-1516
	Name of entity	EIN ▶	
	Number, street, and room or suite no. If a P.O. box, see instructions.		
	City or town, state, and ZIP code. If a foreign address, enter city, province or state, postal code and country.		

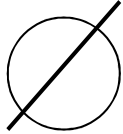
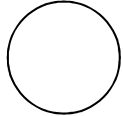
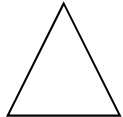
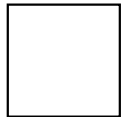
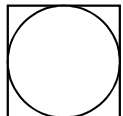
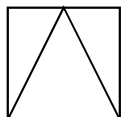
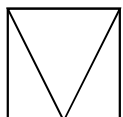
1 Type of election (see instructions):

- a Initial classification by a newly-formed entity.
- b Change in current classification.

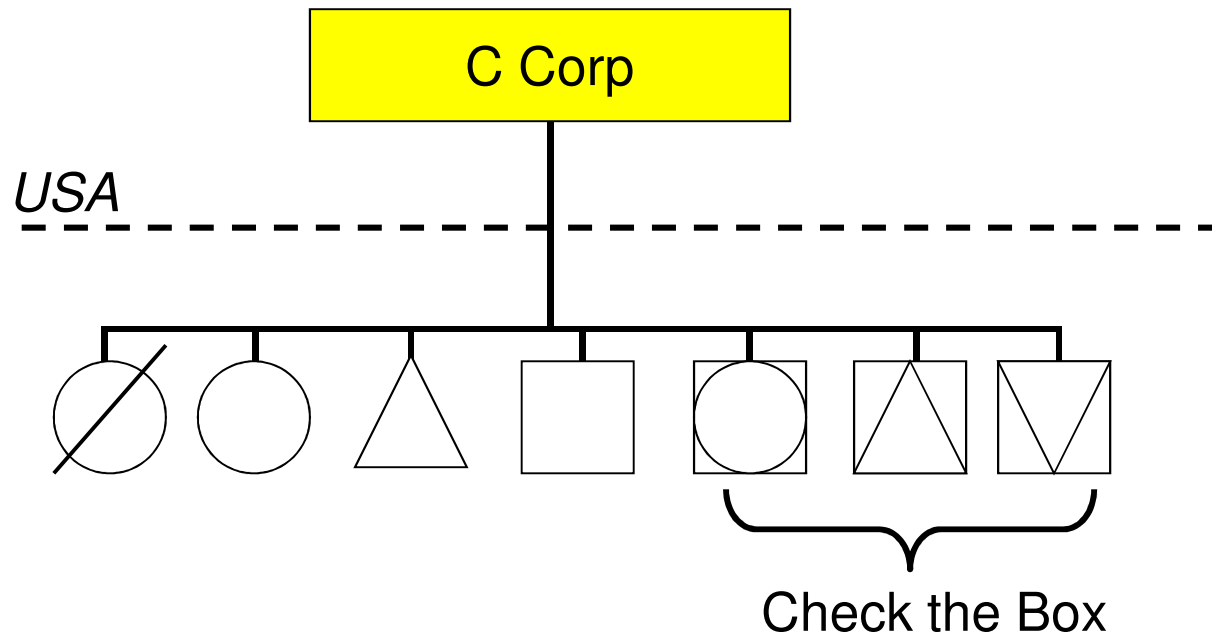
2 Form of entity (see instructions):

- a A domestic eligible entity electing to be classified as an association taxable as a corporation.
- b A domestic eligible entity electing to be classified as a partnership.
- c A domestic eligible entity with a single owner electing to be disregarded as a separate entity.
- d A foreign eligible entity electing to be classified as an association taxable as a corporation.
- e A foreign eligible entity electing to be classified as a partnership.
- f A foreign eligible entity with a single owner electing to be disregarded as a separate entity.

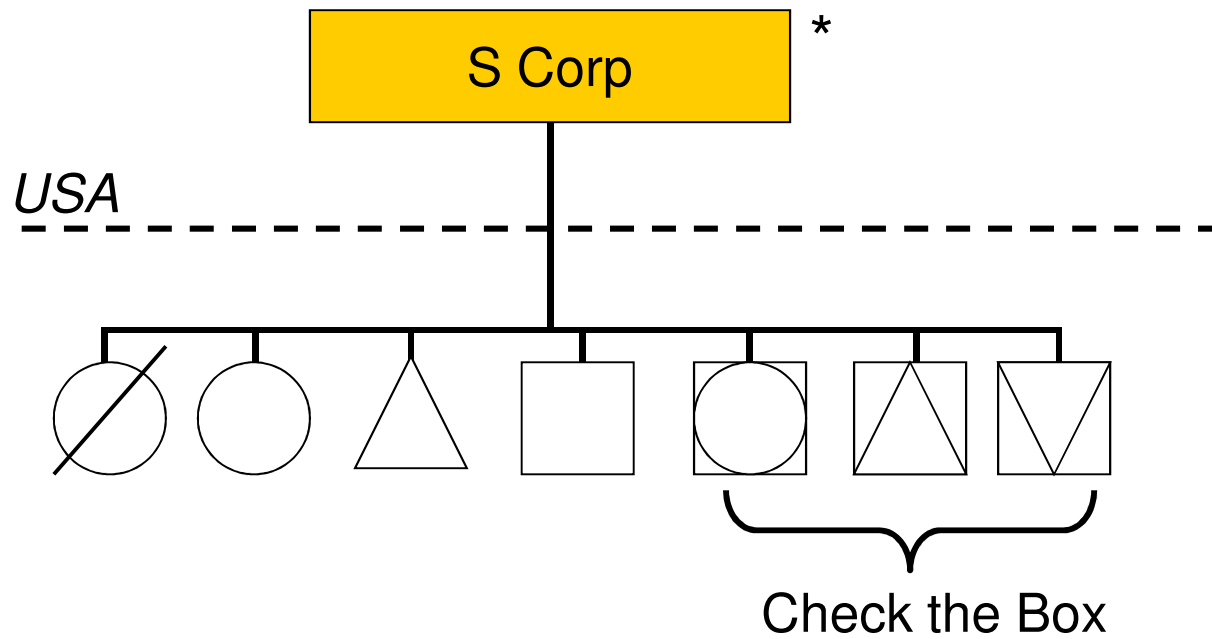
Structure options

-  = Tax exempt branch
-  = Taxable branch
-  = True partnership
-  = Corporation
-  = 100% DRE
-  = < 100% DRE
-  = Reverse hybrid

Structure options

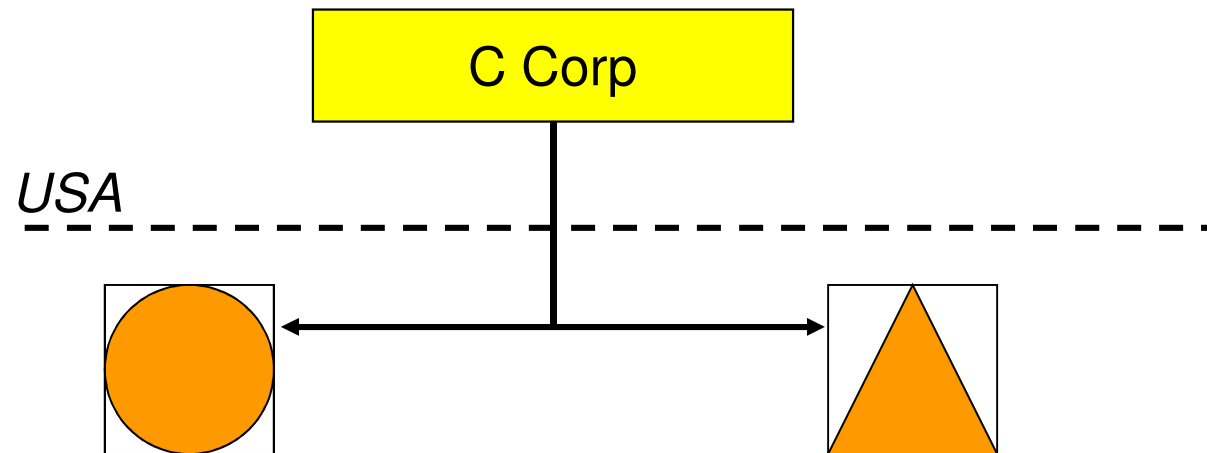


Structure options



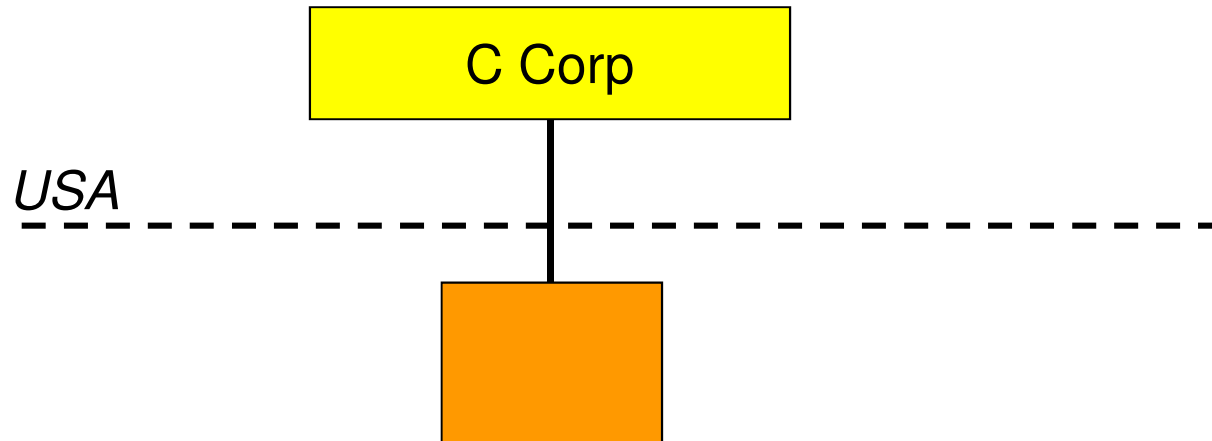
*Also LLC or partnership

C Corporation Wholly-owned Canadian ULC



- 31% Canadian Corporate tax rate in Ontario for 2010
- Consolidation for U.S. tax purposes
- Subpart F inapplicable
- 25% Canadian withholding tax upon repatriation effective 1/1/2010
- 25% Canadian withholding tax on interest/royalties to US Parent
- Direct and Indirect FTC
- C Corporation exposure to ULC liabilities

C Corporation Wholly-owned Canadian ULC



- 31% Canadian Corporate Tax Rate in Ontario
- Deferral for U.S. Tax Purposes/Subpart F can apply
- U.S. Corporate tax upon repatriation
- 5% Canadian withholding tax upon Repatriation continues post 1/1/2010
- 0% Canadian withholding tax on interest to US Parent effective 1/1/2010
- Direct and indirect FTC
- C Corporation exposure to ULC liabilities

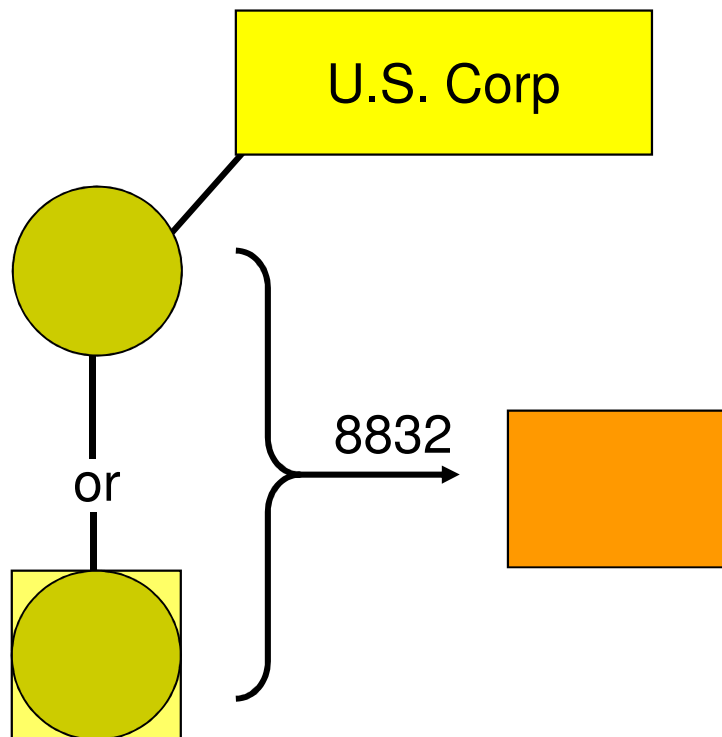
Late Entity classification election

Election under Rev Proc 2009-41

The Election

- Late election to elect Disregarded entity status and achieve flow through of losses may be available under the following conditions:
- The entity must have failed to obtain corporate status solely because it failed to timely file a Form 8832, either to request its preferred classification at formation or to change its initial classification.
- An eligible entity has not filed a federal tax or information return for the first year its election would take force because the due date has not passed for that year's return. Alternatively, the entity seeking an extension may meet the timing requirement by showing that it timely filed all required returns consistent with its requested classification for all years for which the entity intended the election to be effective and that no inconsistent returns have been filed during that period. For purposes of this requirement, returns are deemed timely if filed within six months of their due date, excluding extensions.
- The eligible entity must have reasonable cause for its failure to timely make its classification election.
- No more than 3 years and 75 days from the requested effective date of the entity's classification may have passed.

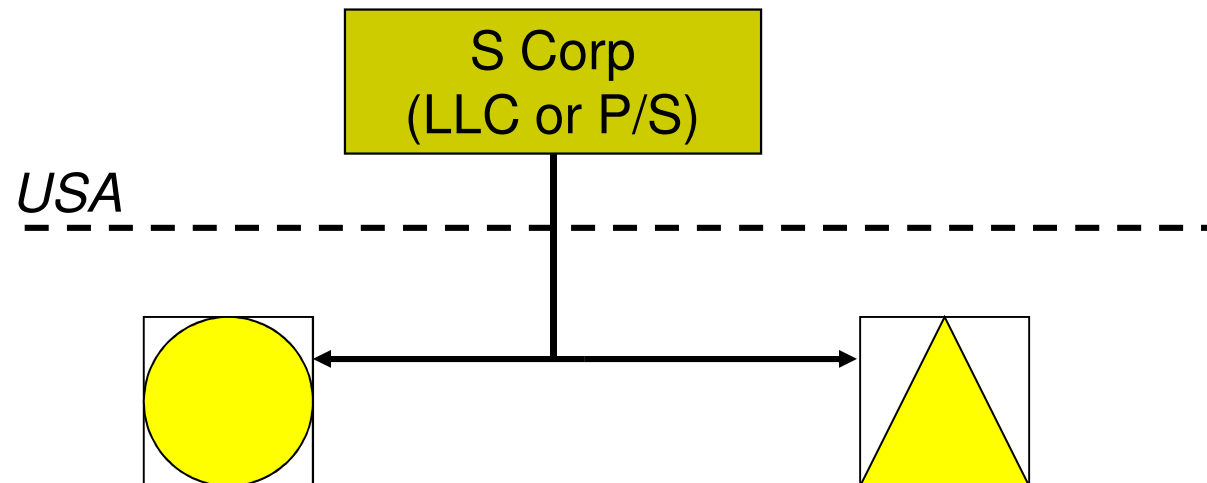
U.S. check the box regime Electing to regard the ULC



Deemed U.S. Tax Consequences

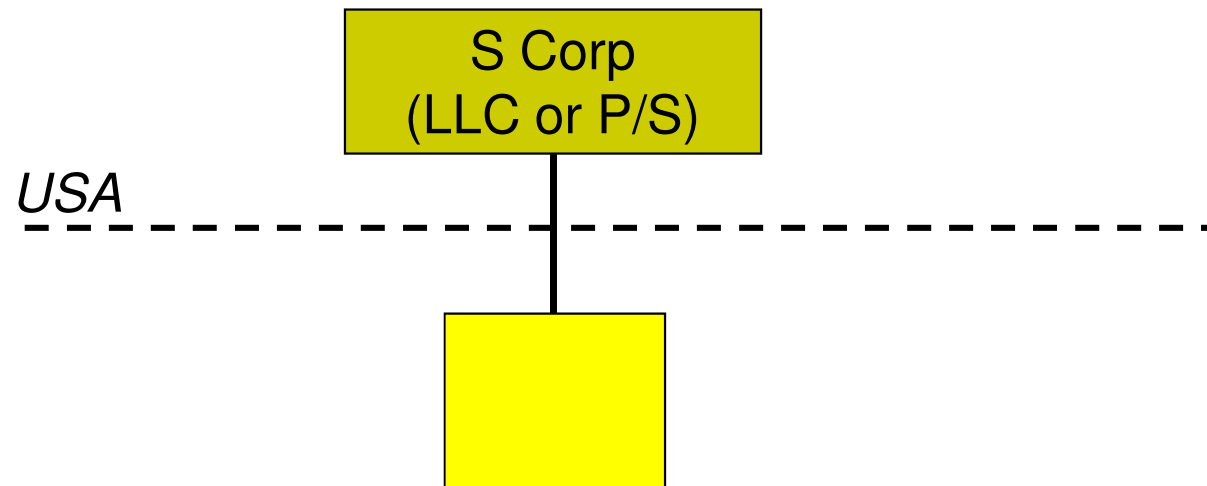
- Potential branch loss recapture
- Inventory gains deemed recognized
- Depreciation recaptured

S Corporation/LLC/Partnership Wholly-owned Canadian ULC



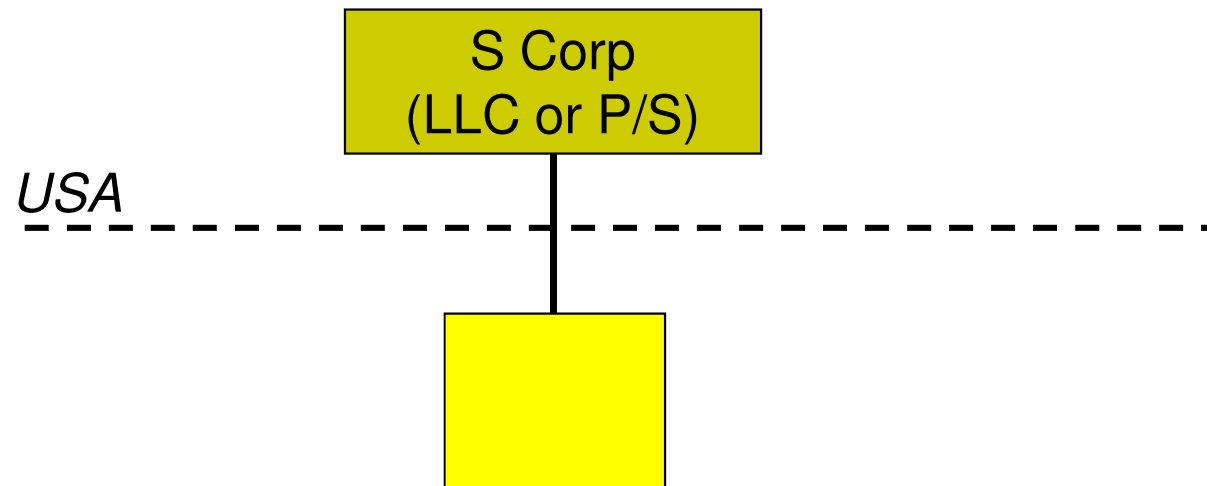
- 31% Canadian Corporate tax rate for Ontario in 2010
- Consolidation for U.S. tax purposes/Subpart F inapplicable
- 25% Canadian withholding tax rate upon repatriation
- 25% Canadian withholding tax on interest/royalties to US Parent
- Direct/Indirect FTC Available
- S Corp/LLC/Partnership exposure to ULC Liabilities

S Corporation/LLC/Partnership Wholly-owned Canadian ULC - 2010



- 31% Canadian Corporate tax rate for 2010 in Ontario
- Deferral for U.S. Tax Purposes/Subpart F can apply
- 5/15% Canadian withholding tax upon Repatriation
- 0% Canadian withholding tax on interest effective 1/1/2010
- U.S. Tax on qualified dividends; 15% for 2010
- Direct FTC only
- S Corp/LLC/Partnership exposure to ULC liabilities

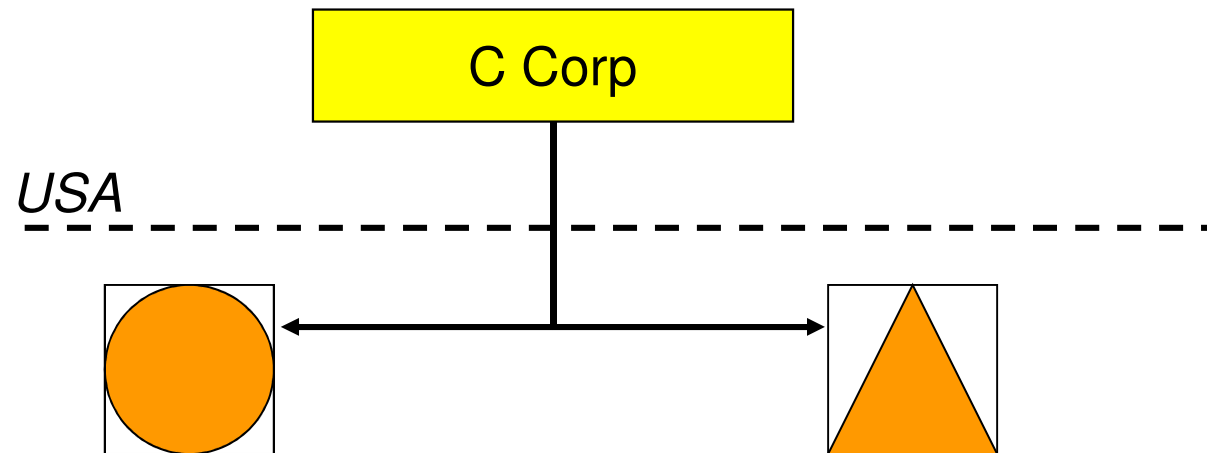
S Corporation/LLC/Partnership Wholly-owned Canadian ULC - 2011



- 28.25% Canadian Corporate tax rate for 2011 in Ontario
- Deferral for U.S. Tax Purposes/Subpart F can apply
- 5/15% Canadian withholding tax upon Repatriation
- 0% Canadian withholding tax on interest effective 1/1/2010
- U.S. Tax on qualified dividends; 39.6% for 2011; potentially 20%
- Direct FTC only
- S Corp/LLC/Partnership exposure to ULC liabilities

C Corporation

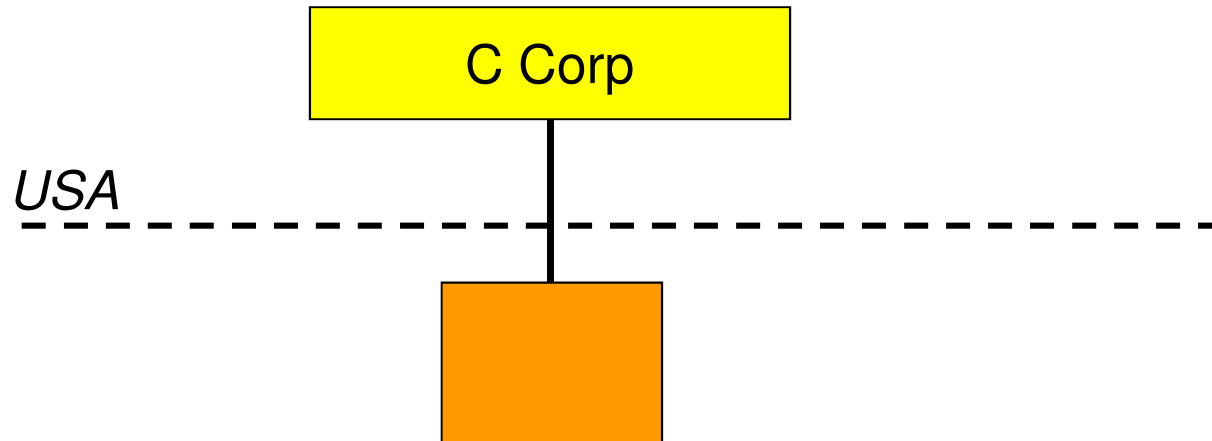
Danish Anti-check the box rules



- 25% Danish Corporate tax rate
- Consolidation for U.S. tax purposes/Subpart F inapplicable
- Treated as P.E. of U.S. Parent for Danish tax purposes/No DWT
- Interest paid by ApS to US Parent n/d in Denmark
- Royalties paid by ApS to US Parent n/d in Denmark
- Direct and Indirect FTC

C Corporation

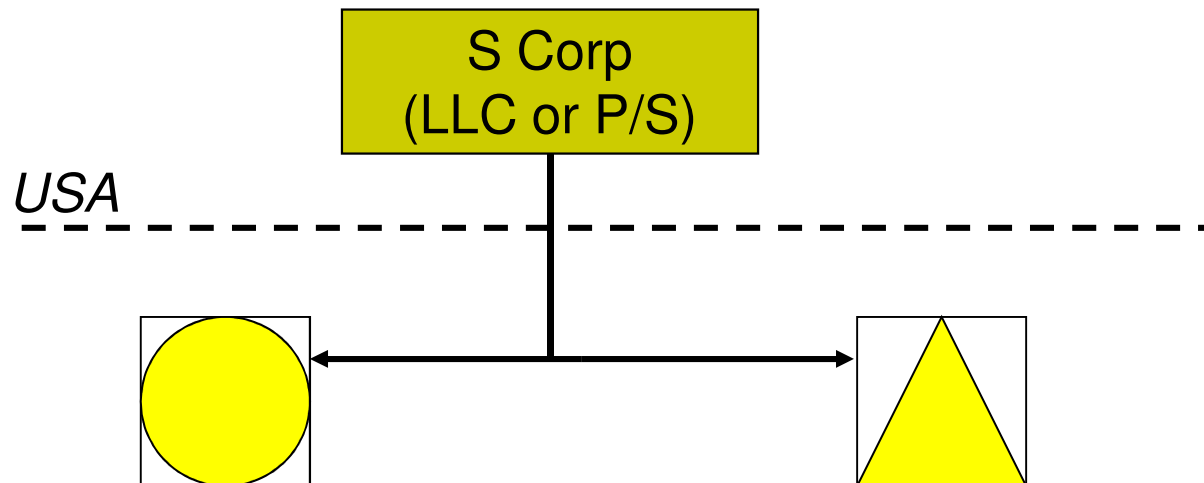
Wholly-owned Danish ApS



- 25% Danish Corporate Tax Rate
- Deferral for U.S. Tax Purposes/Subpart F can apply
- U.S. Corporate tax upon repatriation
- 0% Danish withholding tax upon Repatriation continues post 1/1/2010
- Interest/Royalties paid by ApS to USP deductible
- Direct and indirect FTC

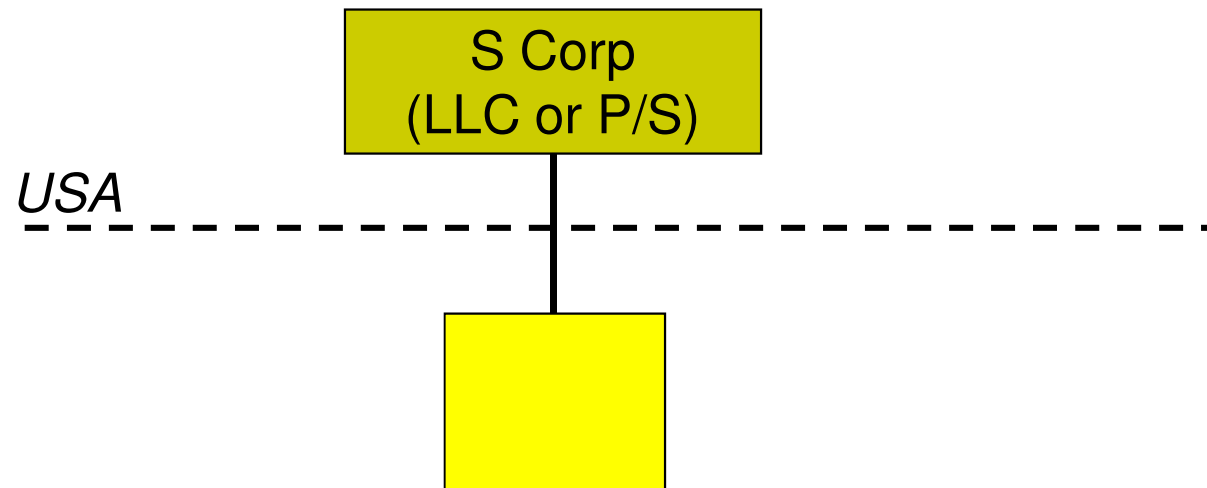
S Corporation/LLC/Partnership

Danish Anti-check the box rules



- 25% Danish Corporate tax rate
- Consolidation for U.S. tax purposes/Subpart F inapplicable
- Treated as P.E. of U.S. Parent for Danish tax purposes/No DWT
- Interest paid by ApS to US Parent n/d in Denmark
- Royalties paid by ApS to US Parent n/d in Denmark
- Direct/Indirect FTC Available

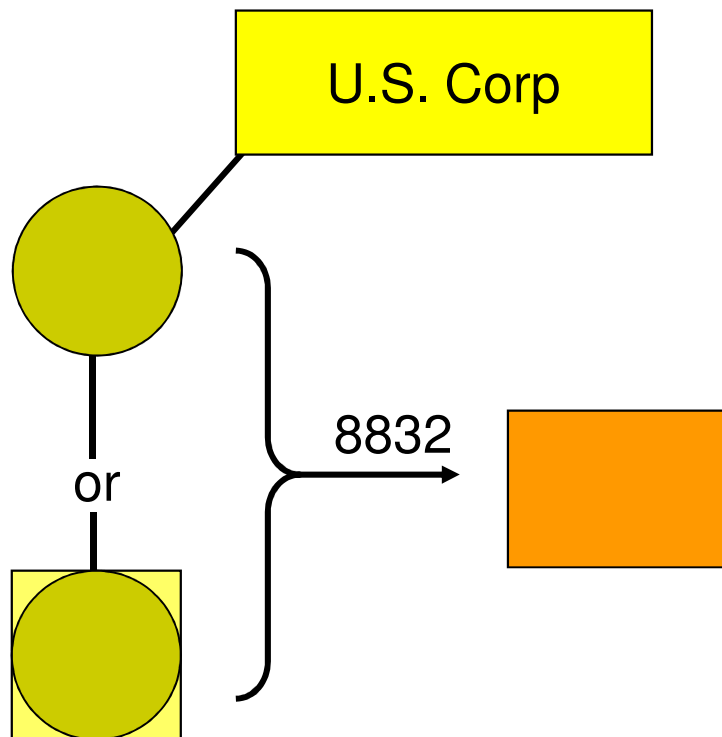
S Corporation/LLC/Partnership Wholly-owned Danish ApS



- 25% Danish Corporate tax rate
- Deferral for U.S. Tax Purposes/Subpart F can apply
- 0% Danish withholding tax upon Repatriation
- Interest/Royalties paid by ApS to USP deductible for Danish purposes
- U.S. Tax on qualified dividends; 15% for 2010; 39.6% for 2011
- Direct FTC only

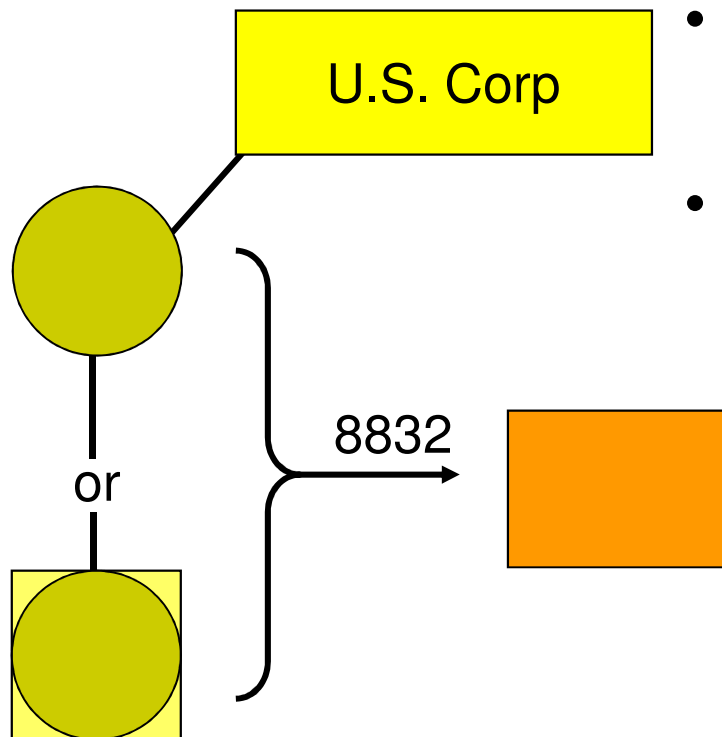
Danish Anti check the box regime

Electing to regard the ApS (Unchecking the ApS)



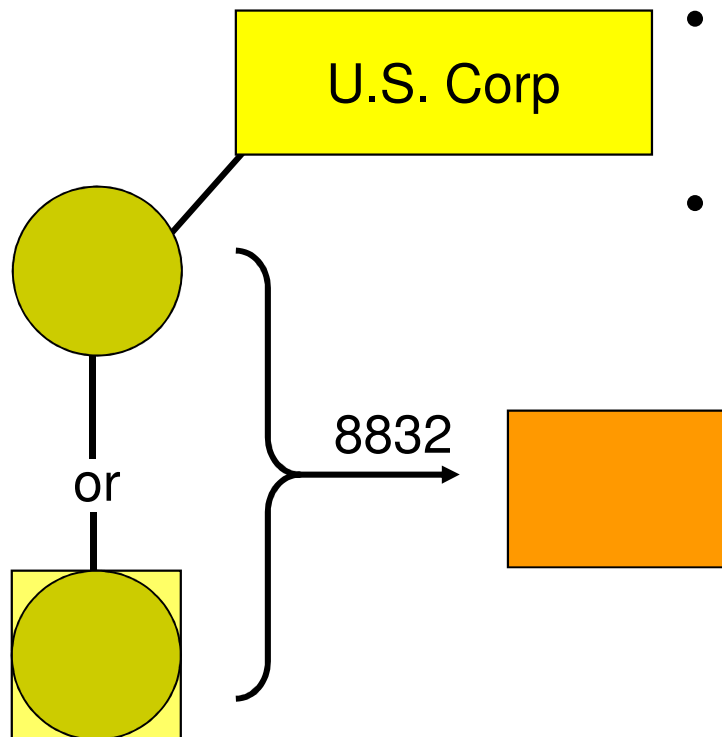
- Deemed Danish Tax Consequences after October 8, 2008
- The old Danish branch is deemed to have disposed of all of its assets at market value at the time when the branch is no longer taxed as a branch for U.S. and Danish tax purposes.

Danish Anti check the box regime Electing to regard the ApS



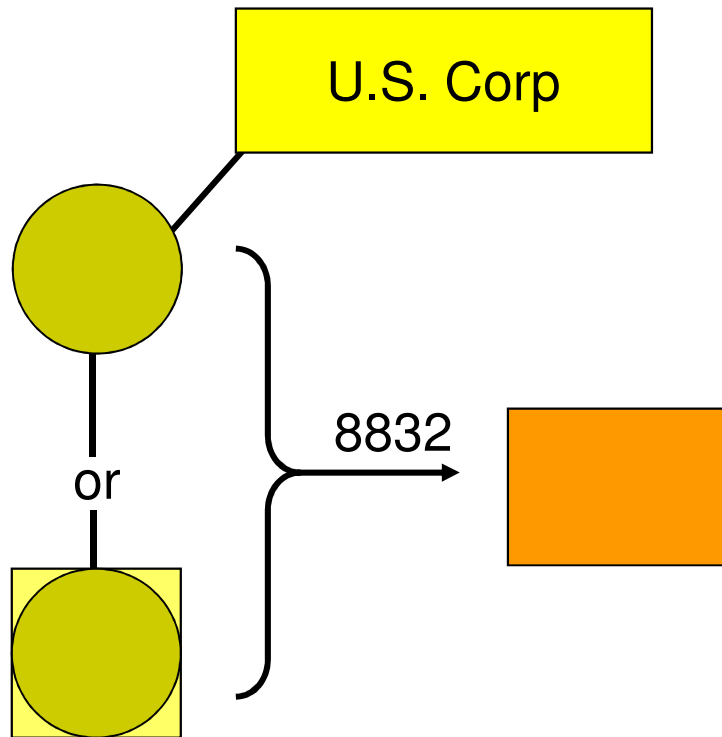
- Deemed Danish Tax Consequences after 10/8/2008
- The new Danish company is deemed to have acquired all of its assets at market value at the time when it is taxed as a company again for Danish tax purposes.

Danish Anti check the box regime Electing to regard the ApS



- Deemed Danish Tax
Consequences after 10/8/2008
- Danish NOLs may be used by the old branch to offset the gain on the disposal event, but cannot be used by the new company.

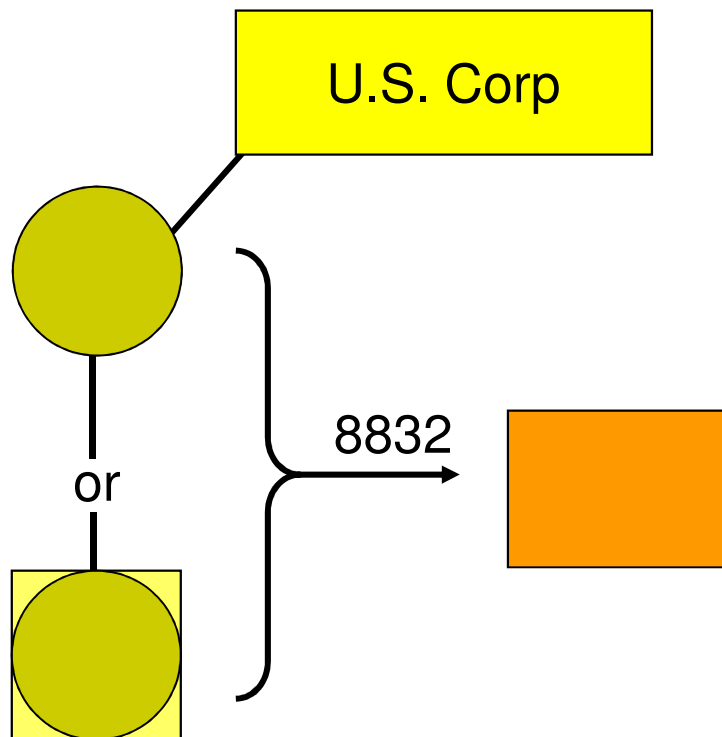
U.S. check the box regime Electing to regard the ApS



Deemed U.S. Tax Consequences

If an eligible entity that is disregarded as an entity separate from its owner elects to be classified as an association, the owner of the eligible entity is deemed to have contributed all of the assets and liabilities of the entity to the association in exchange for the stock of the association.

U.S. check the box regime Electing to regard the ApS



Deemed U.S. Tax Consequences

- Potential branch loss recapture
- Inventory gains deemed recognized
- Depreciation recaptured



Questions?

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