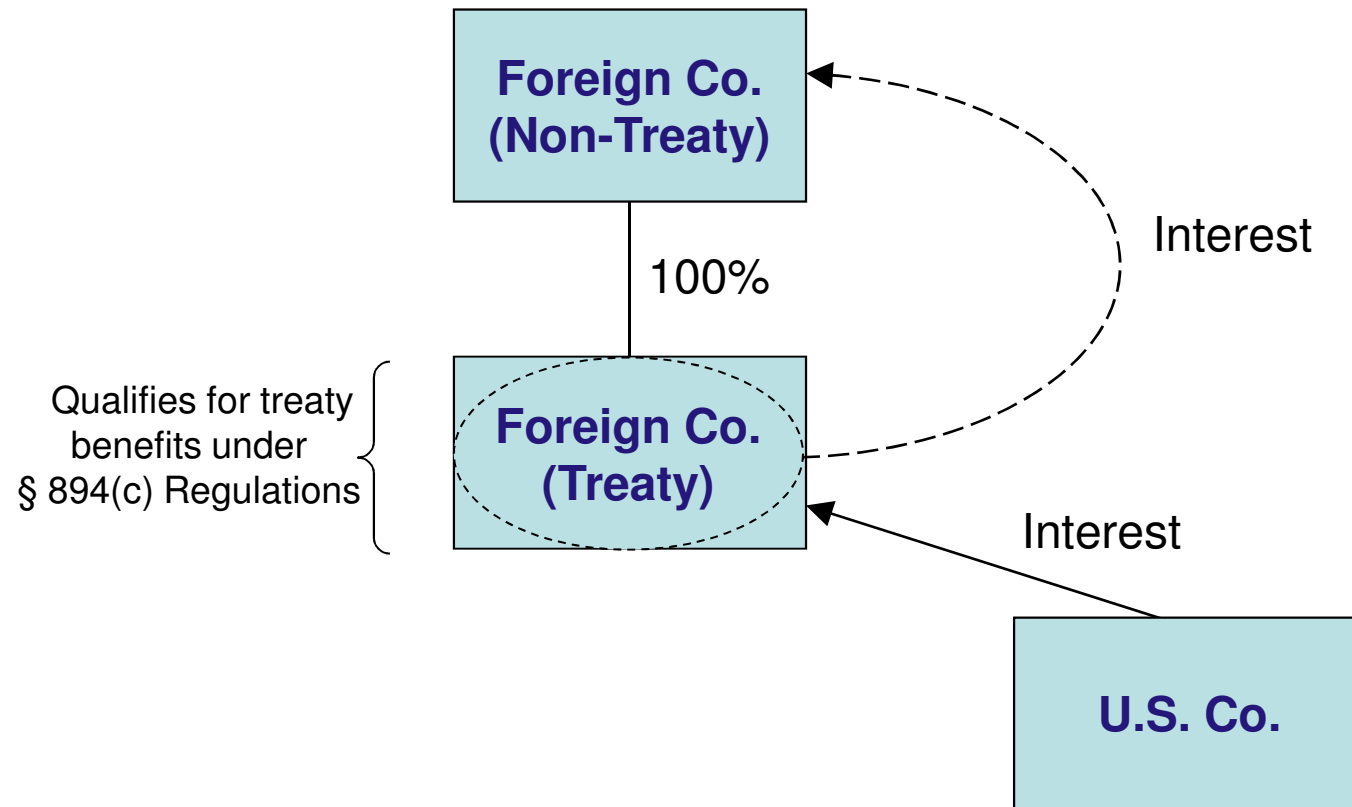


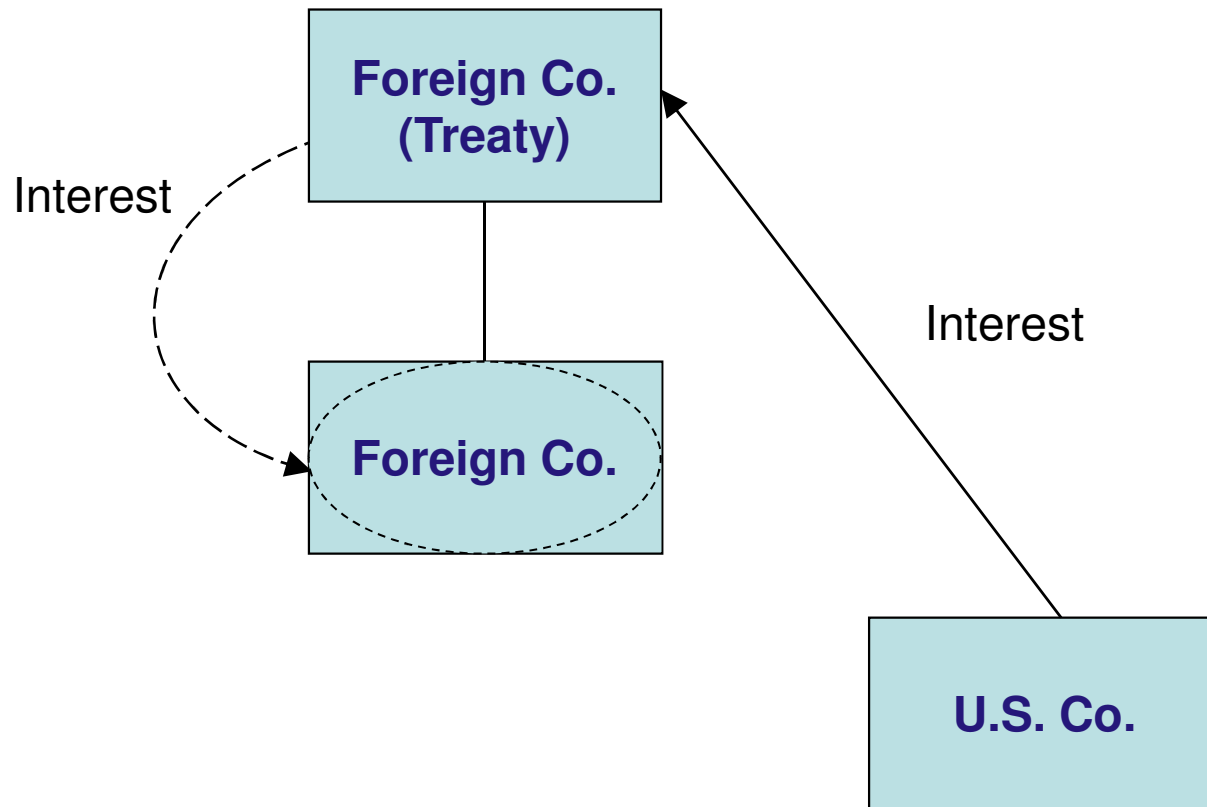
# U.S. Treaty Developments

Seth J. Entin, Esq.  
Greenberg Traurig, P.A.  
1221 Brickell Ave.  
Miami, Florida 33131  
(305) 579-0615  
Entins@gtlaw.com

# Anti-conduit regulations: Case #1 (See Example in Proposed Regs.)



## Anti-conduit regulations: Case #2



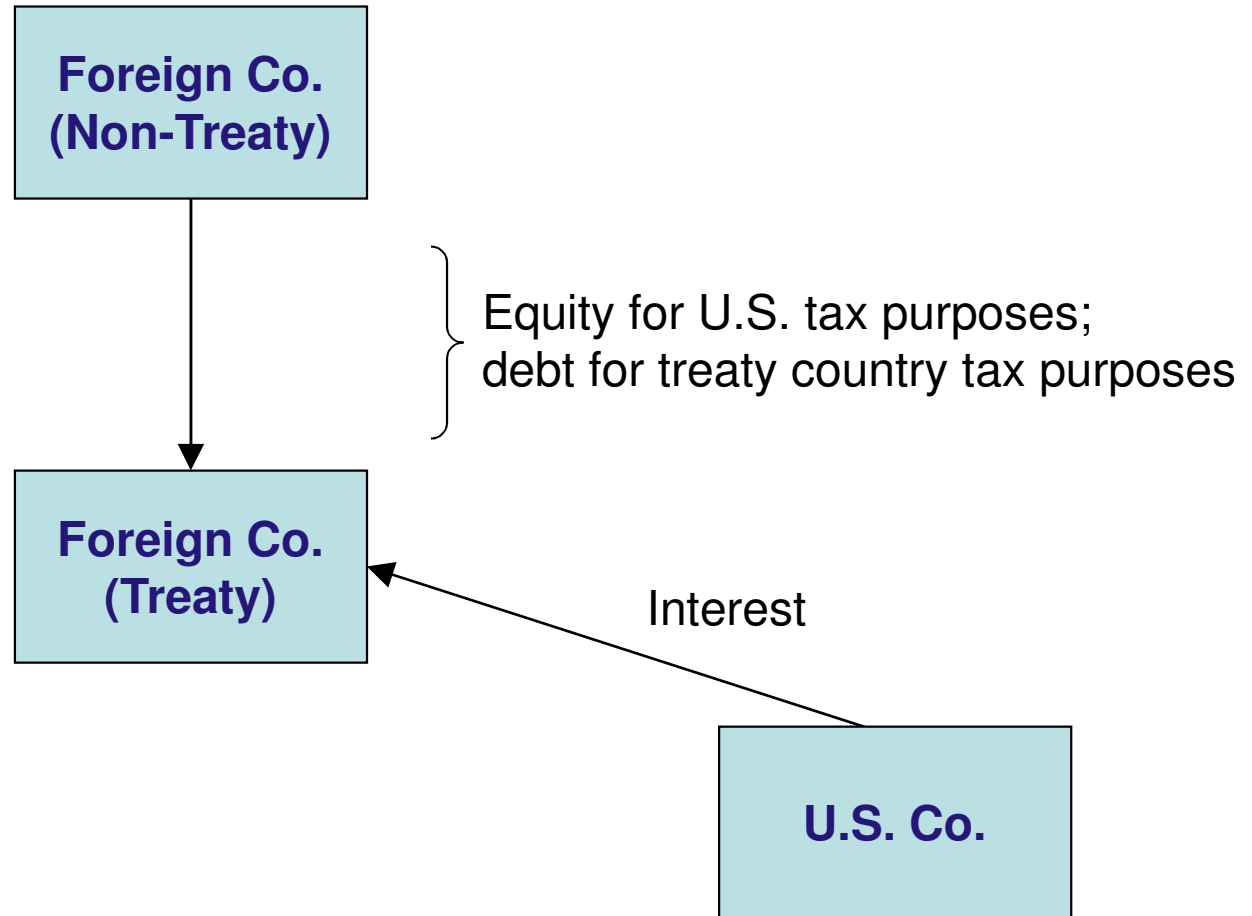
# Proposed revisions to anti-conduit regulations

- Regulation § 1.881-3(a)(2)(i)(C)
- For purposes of conduit financing rules, “person” includes disregarded entity
- For purposes of anti-conduit Regulations, the term *person* includes a *business entity* that is a disregarded entity.
- Eliminates back-to-back structures using DRE to create “double non-taxation” (US tax deduction and reduced withholding, with little or no tax to direct recipient)
- Can we get to this result under current Regs.?
  - Is a disregarded entity a *person*?
  - Even if it is a person, can it enter into a *transaction* with its parent?
  - Is treating a disregarded entity as not a *person* inconsistent with §894(c) Regs.?

## What's Left?

- Use of grantor trust (not a *business entity*) in Case #2 rather than disregarded entity?
- Hybrid instruments (see next slide)
  - Treasury studying this issue
  - Does a hybrid instrument offend the policy behind § 7701(I)?
  - Or, is Treasury trying to police the level of foreign tax the treaty entity is subject to? If so, what about:
    - Low-taxed treaty jurisdictions (e.g., Switzerland)
    - Low-taxed branch structures
    - Participation exemptions
    - Belgium notional interest deduction
    - Common investment funds
  - Does the fact that there is “arbitrage” bring a structure within § 7701(I)?

# Hybrid Instrument



# Small Business and Infrastructure Jobs Tax Act of 2010 (H.R. 4849)

- Bill would limit treaty benefits on payments that are:
  - Deductible for U.S. federal income tax purposes;
  - Made by a U.S. corporation that is controlled by a foreign parent; and
  - Made to a recipient that is also controlled by the same foreign parent.
- Would not apply where foreign parent would have qualified for a reduced rate on a direct payment.