

Transnational Tax Network

International Structuring for U.S. Taxpayers after the American Taxpayer Relief Act of 2012

Jim Spencer
Vestal & Wiler
May 2, 2013

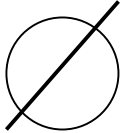
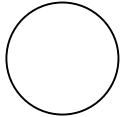
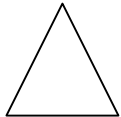
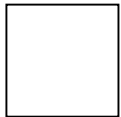
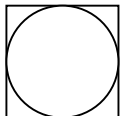
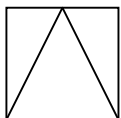
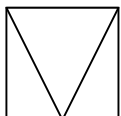
Qualified Dividends

CFC Look through rule

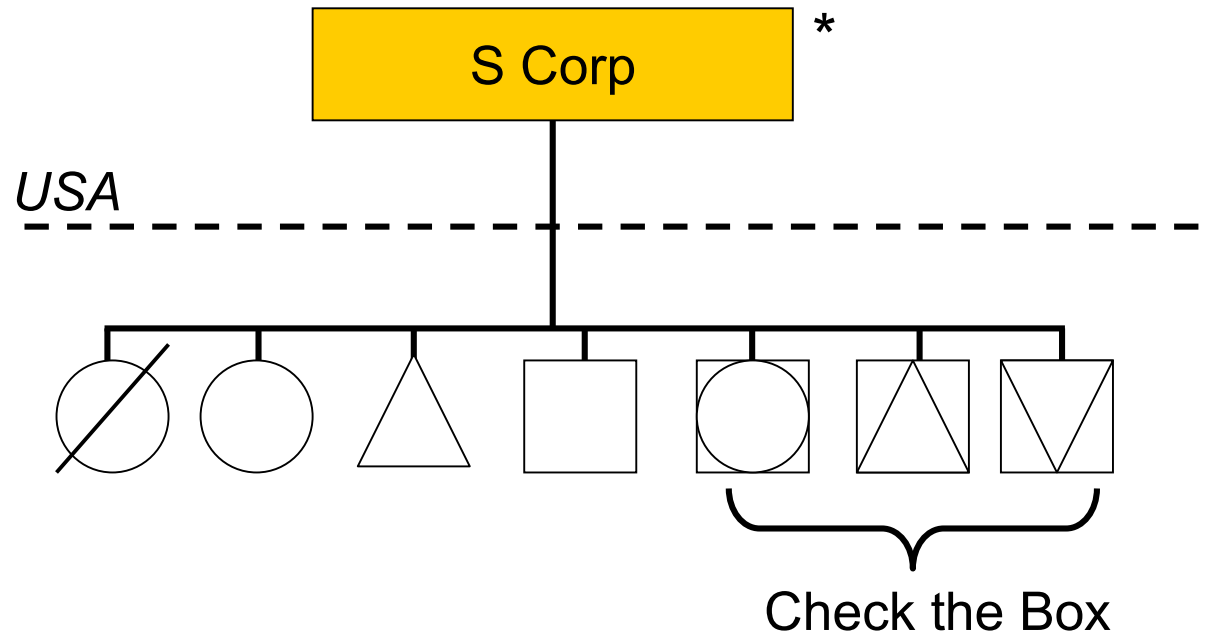
ATRA of 2012

- Qualified Dividend tax legislation no longer has a sunset provision.
- The maximum tax rate applicable to Qualified dividends increases from 15 percent to 20 percent for post-2012 dividends.
- The 3.8 percent medicare tax applies to post-2012 qualified dividends for taxpayers with AGI > \$200K or \$250K.
- Dividends from Qualified Foreign Corporations (QFCs) are taxed as qualified dividends if certain requirements (holding period, LOB provision, non-PFIC).
- Dividends from CFC to CFC do not cause foreign personal holding company (FPHC) income under the look through rule of section 954(c)(6) for years beginning before 01/01/2014.

Structure options

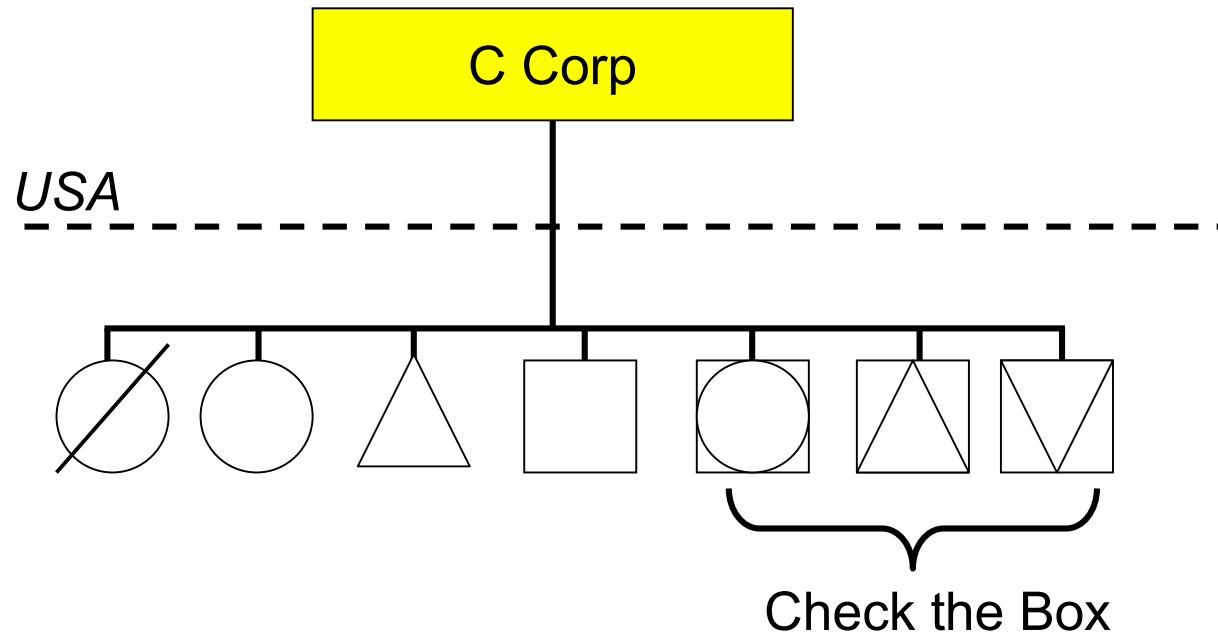
-  = Tax exempt branch
-  = Taxable branch
-  = True partnership
-  = Corporation
-  = 100% DRE
-  = < 100% DRE
-  = Reverse hybrid

Structure options



*Also LLC or partnership

Structure options



Rodriguez v. Commissioner

Investment in U.S. Property

Tax court decision dated December 7, 2011

- The IRS agreed as to the amount of the section 956 inclusions due to the Mexican CFC's investment in U.S. real property.
- However, the IRS disallowed qualified dividend treatment on the basis that the section 956 inclusion was not a dividend pursuant to Revenue Procedure 2004-70 and assessed approximately \$600K in tax deficiencies (approximately \$300K per year).

Rodriguez v. Commissioner

Investment in U.S. Property

Tax court decision dated December 7, 2011

- The tax court in disallowing qualified dividend treatment, pointed out that the same 1962 legislation that enacted section 951, which does not provide for dividend treatment, also enacted section 1248, which provides that in certain circumstances gain from disposition of CFC stock “shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation”. Sec. 1248(a). The absence, in the same legislation, of any corresponding provision for section 951 inclusions seems purposeful. Consistent with this legislative scheme, the regulations carefully distinguish “deemed dividends” under sections 551 and 1248 from “deemed inclusions” under section 951(a).

Assumptions

Ultimate individual shareholders > \$450K Taxable income

Ultimate individual shareholders are U.S. citizens or RAs

All FTC utilized under FTC Limitation

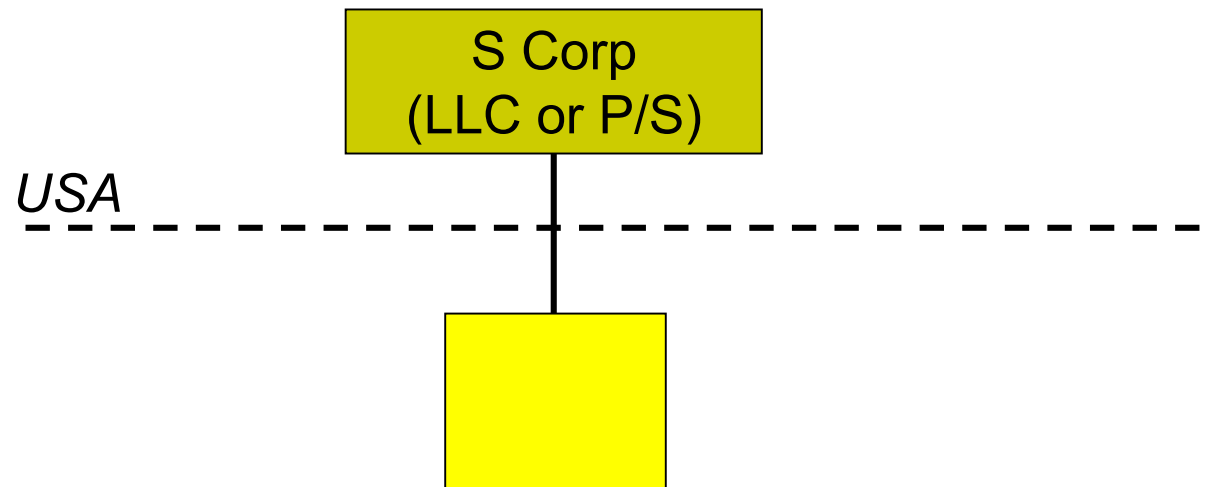
Non Treaty jurisdictions

Non taxing example – Bahamas

Low tax example – Singapore

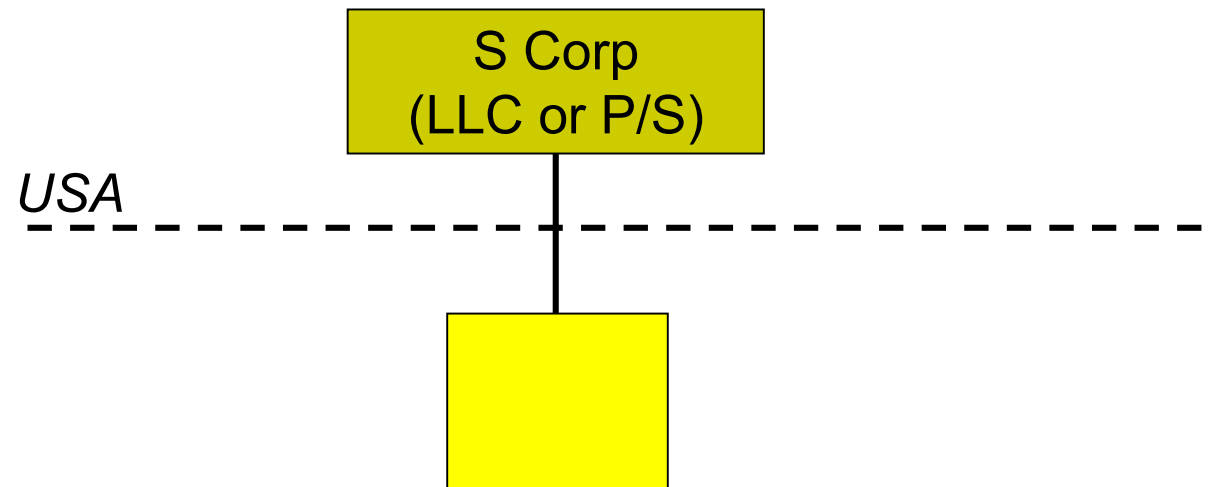
High tax example - Brazil

S Corporation/LLC/Partnership Wholly-owned CFC – Non taxing jurisdiction



- Non taxing jurisdiction - Bahamas
- No treaty
- Current ETR – 0%
- Losses not deductible
- S Corp Long term ETR – 43.4%
- LLC/Partnership Long term ETR – 43.4%

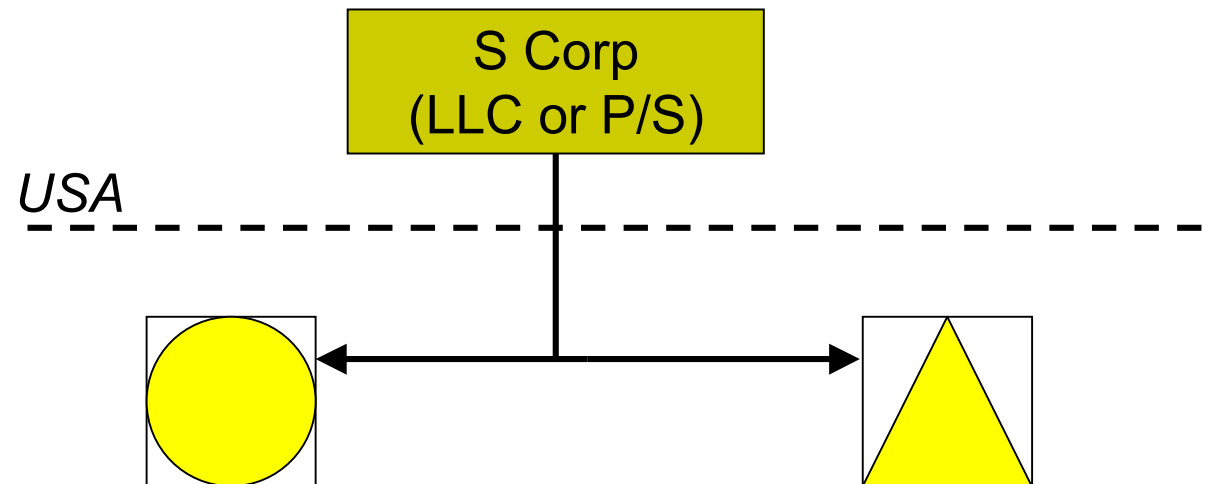
S Corporation/LLC/Partnership
Wholly-owned CFC – Non taxing jurisdiction
Subpart F income or Investment in U.S. Property



- Non taxing jurisdiction - Bahamas
- No treaty
- Subpart F Current ETR – 43.4%
- Losses not deductible
- S Corp Long term ETR – 43.4%
- LLC/Partnership Long term ETR – 43.4%

S Corporation/LLC/Partnership

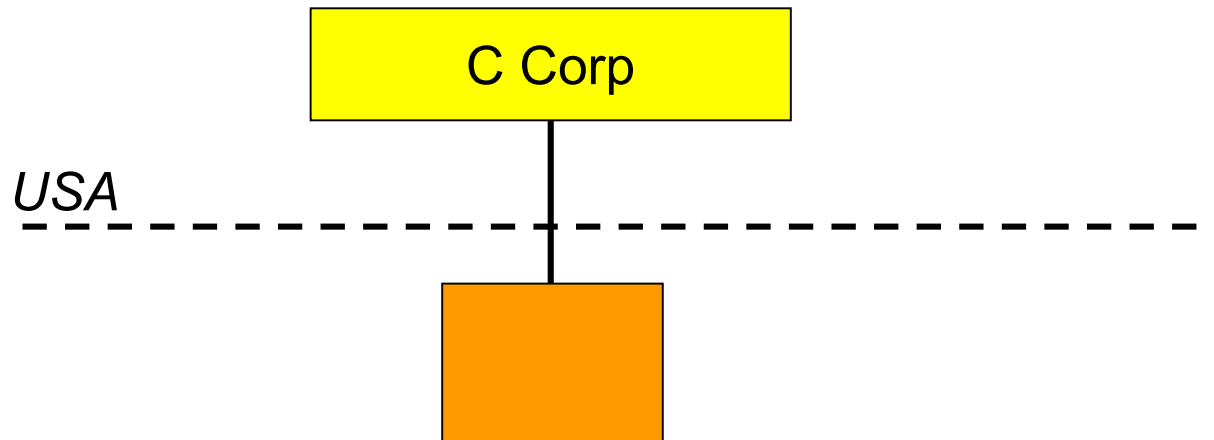
Wholly-owned Flow through entity – Non taxing jurisdiction



- Non taxing jurisdiction - Bahamas
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

C Corporation

Wholly-owned CFC – Non taxing jurisdiction

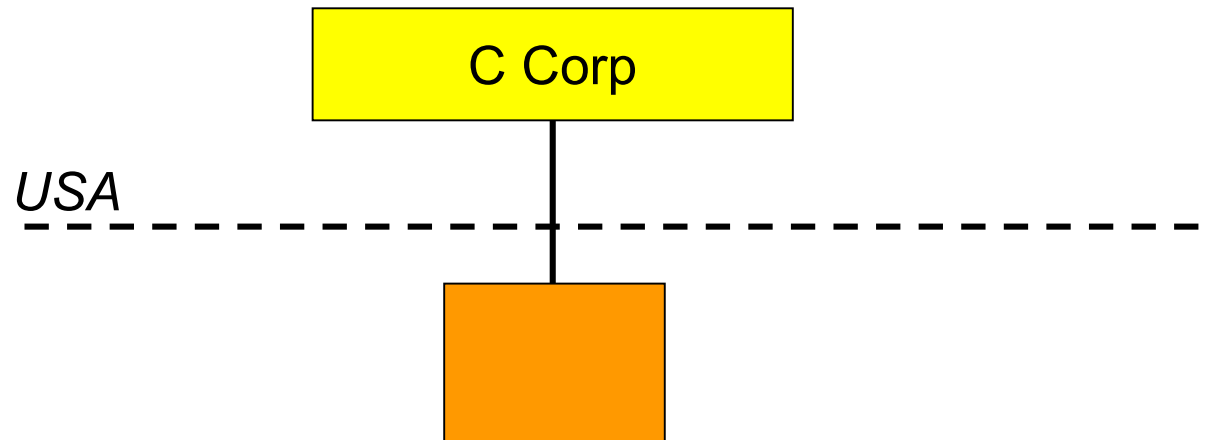


- Non taxing jurisdiction - Bahamas
- No treaty
- Current ETR – 0%
- Losses not deductible
- C Corp Long term ETR – 34%
- ETR upon distribution to shareholders – 49.7%

C Corporation

Wholly-owned CFC – Non taxing jurisdiction

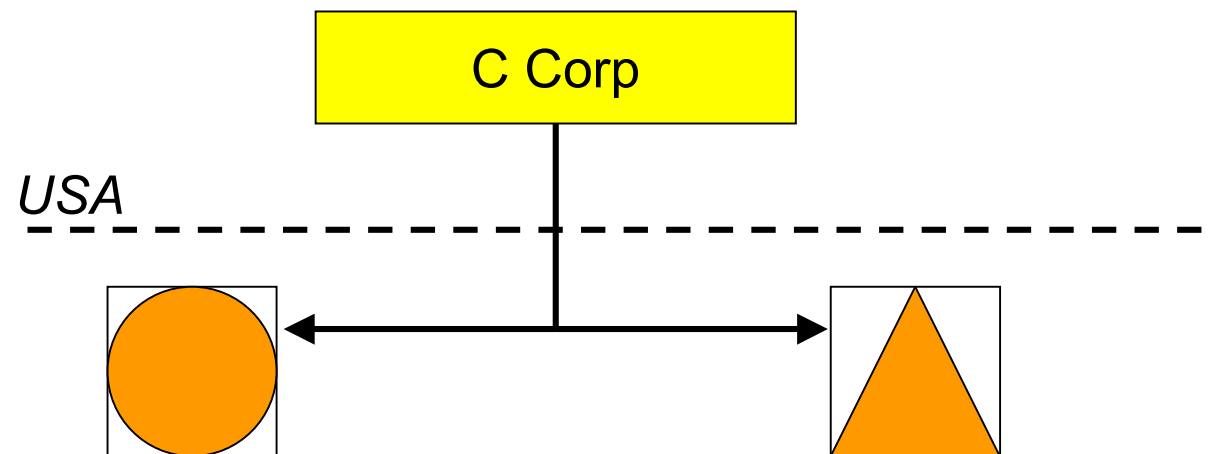
Subpart F income



- Non taxing jurisdiction - Bahamas
- No treaty
- Subpart F Current ETR – 34%
- Losses not deductible
- C Corp Long term ETR – 34%
- ETR upon distribution to shareholders – 49.7%

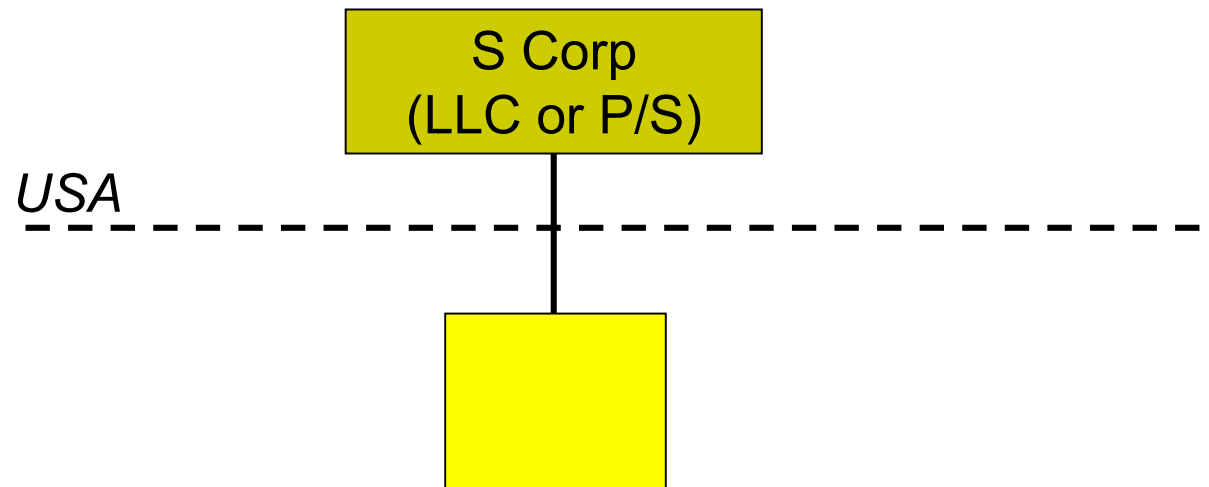
C Corporation

Wholly-owned Flow through entity – Non taxing jurisdiction



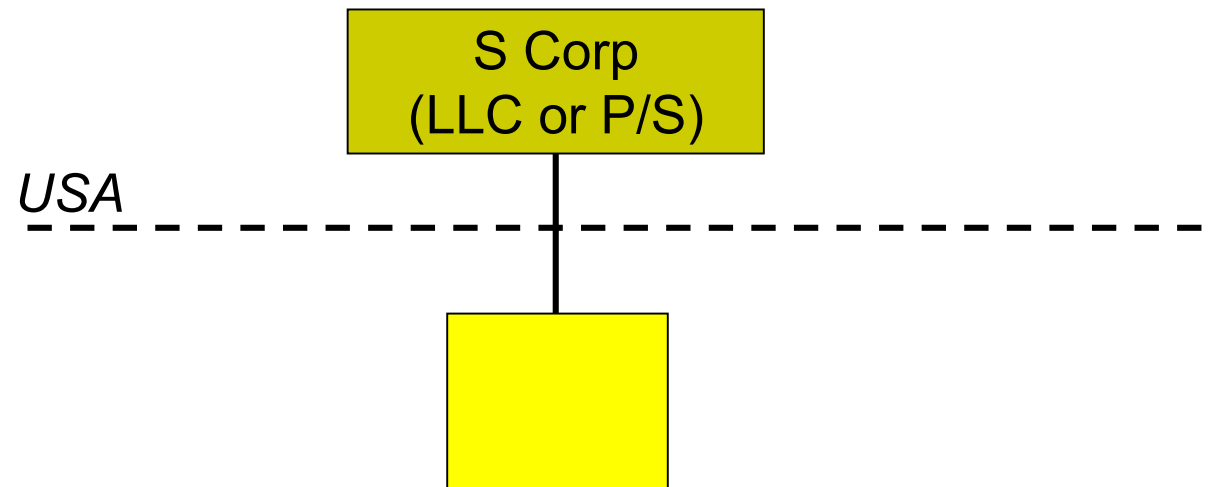
- Non taxing jurisdiction - Bahamas
- Current ETR to C corp earnings – 34.0%
- Ultimate ETR to shareholders – 49.7%

S Corporation/LLC/Partnership Wholly-owned CFC – Low tax jurisdiction



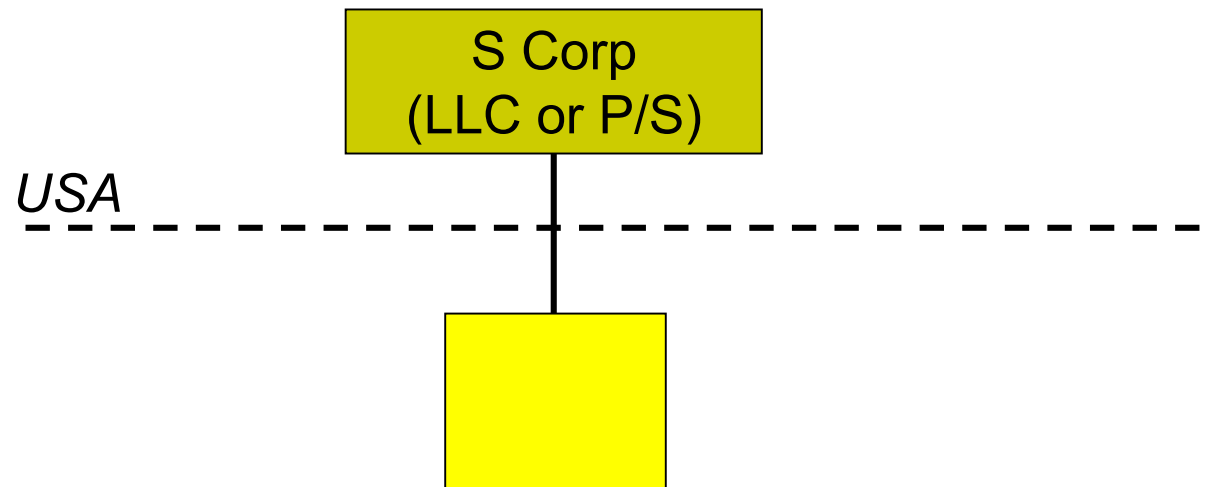
- Low tax jurisdiction - Singapore
- No treaty
- Current ETR – 17.0%
- Losses not deductible
- S Corp Long term ETR – 53.0%
- LLC/Partnership Long term ETR – 53.0%

S Corporation/LLC/Partnership Wholly-owned CFC – Low tax jurisdiction Subpart F income



- Low tax jurisdiction - Singapore
- No treaty
- Subpart F Current ETR – 53.0%
- Losses not deductible
- S Corp Long term ETR – 53.0%
- LLC/Partnership Long term ETR – 53.0%

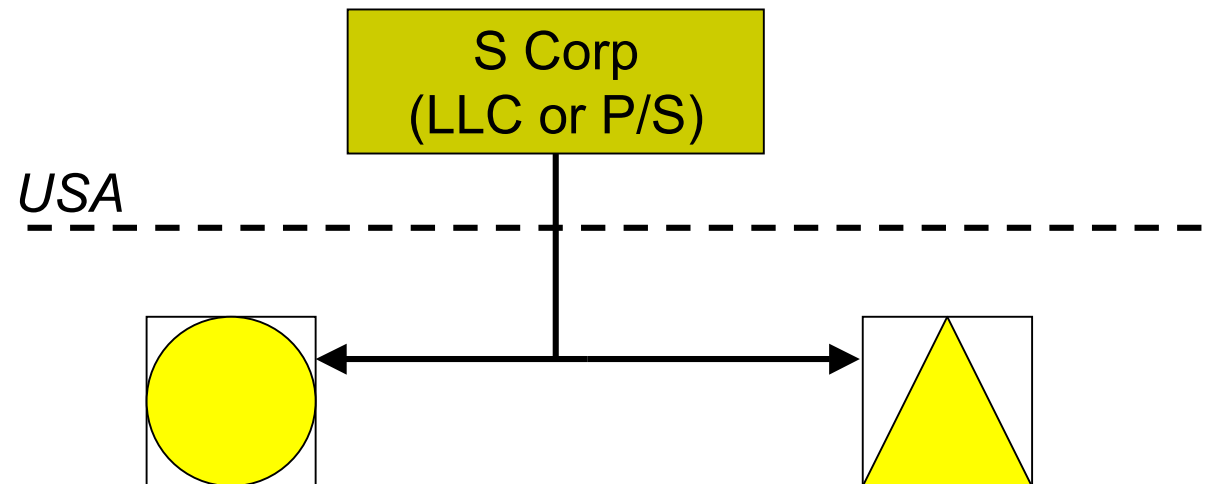
S Corporation/LLC/Partnership Wholly-owned CFC – Low tax jurisdiction



- Low tax jurisdiction – Singapore/Pioneer Tax Holiday
- No treaty
- Current ETR – 0%
- Losses not deductible
- S Corp Long term ETR – 43.4%
- LLC/Partnership Long term ETR – 43.4%

S Corporation/LLC/Partnership

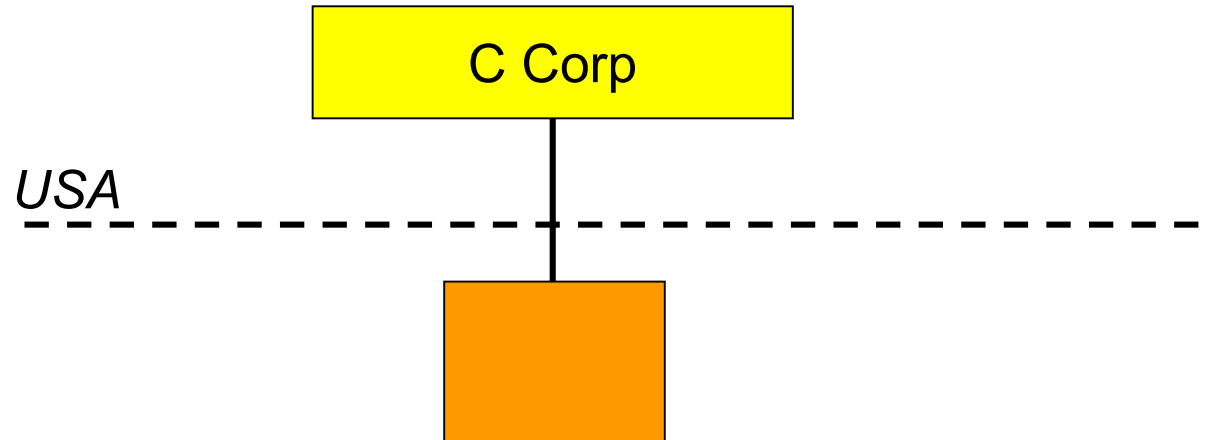
Wholly-owned Flow through entity – Low tax jurisdiction



- Low tax jurisdiction - Singapore
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

C Corporation

Wholly-owned CFC – Low tax jurisdiction

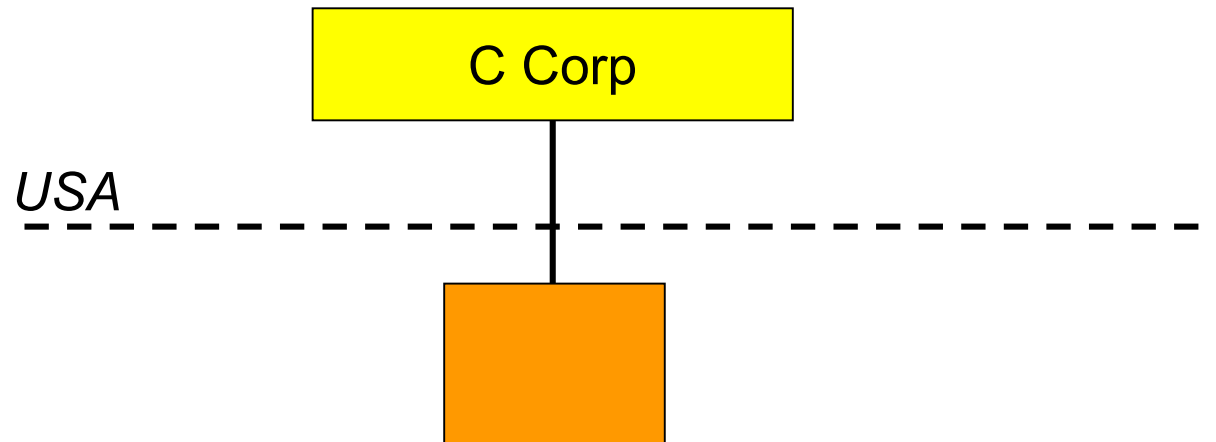


- Low tax jurisdiction – Singapore
- No treaty
- Current ETR – 17%
- Losses not deductible
- C Corp Long term ETR – 34%
- ETR upon distribution to shareholders – 49.7%

C Corporation

Wholly-owned CFC – Low tax jurisdiction

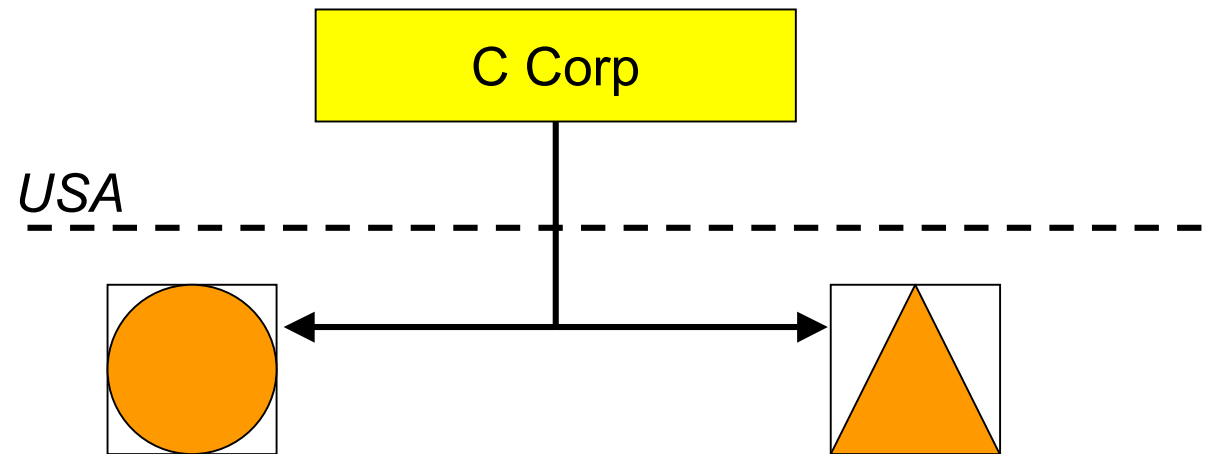
Subpart F income



- Low tax jurisdiction – Singapore
- No treaty
- Subpart F Current ETR – 34%
- Losses not deductible
- C Corp Long term ETR – 34%
- ETR upon distribution to shareholders – 49.7%

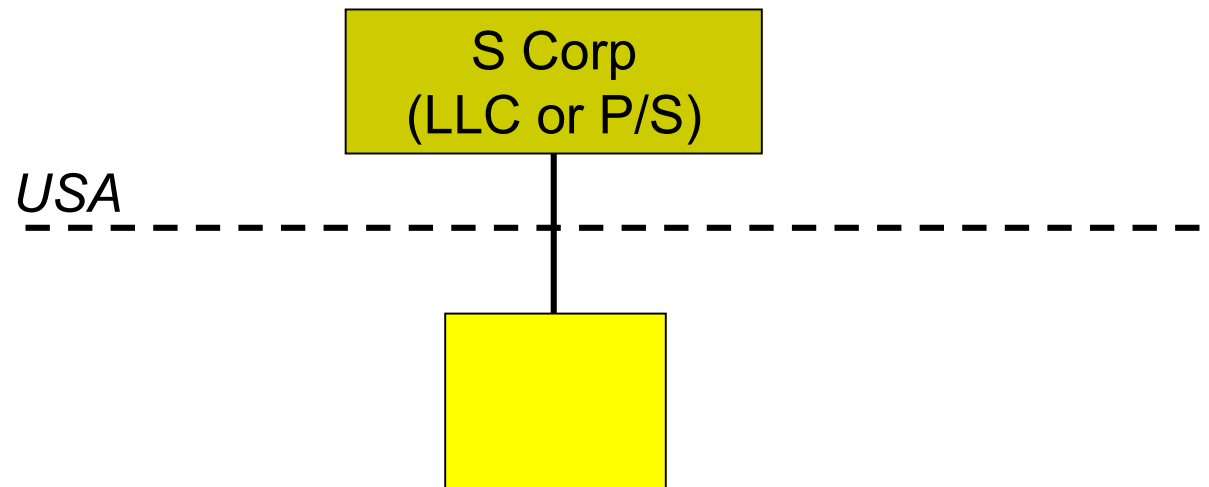
C Corporation

Wholly-owned Flow through entity – Low tax jurisdiction



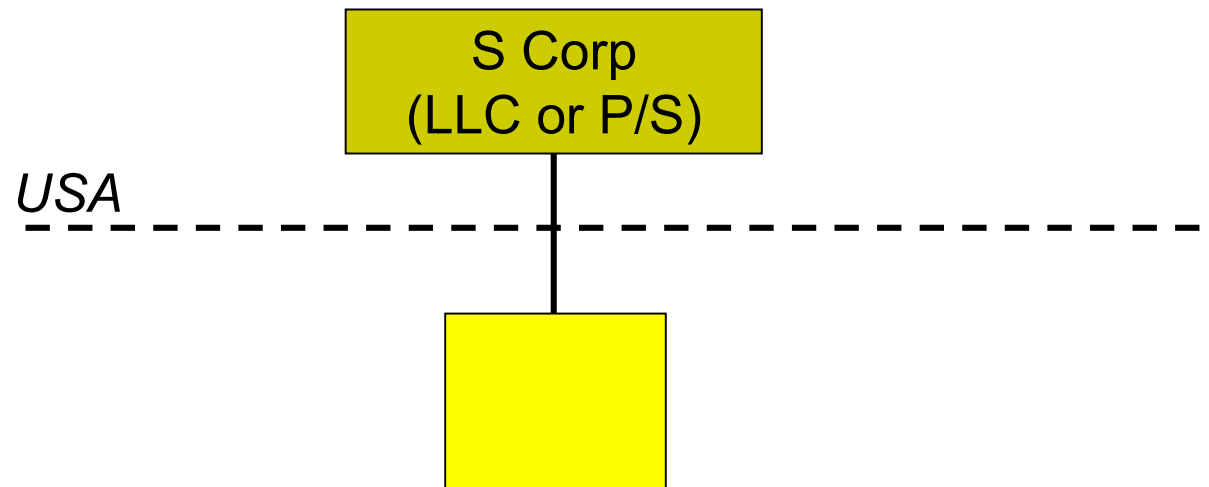
- Low tax jurisdiction - Singapore
- Current ETR applicable to C corp earnings – 34.0%
- Ultimate ETR to shareholders – 49.7%

S Corporation/LLC/Partnership Wholly-owned CFC – High tax jurisdiction



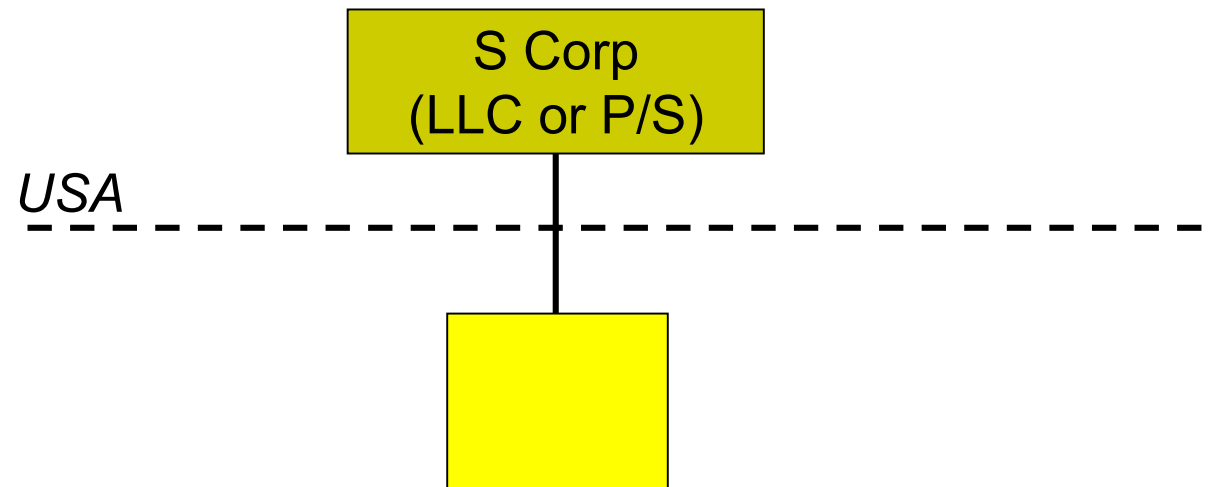
- High tax jurisdiction - Brazil
- No treaty
- Current ETR – 34.0%
- Losses not deductible
- S Corp Long term ETR – 62.6%
- LLC/Partnership Long term ETR – 62.6%

S Corporation/LLC/Partnership Wholly-owned CFC – High tax jurisdiction Subpart F Income



- High tax jurisdiction - Brazil
- No treaty
- Subpart F Current ETR – 62.6%
- High Tax Exception ETR – 34.0%
- Losses not deductible
- S Corp Long term ETR – 62.6%
- LLC/Partnership Long term ETR – 62.6%

S Corporation/LLC/Partnership Wholly-owned CFC – High tax jurisdiction Investment in U.S. Property

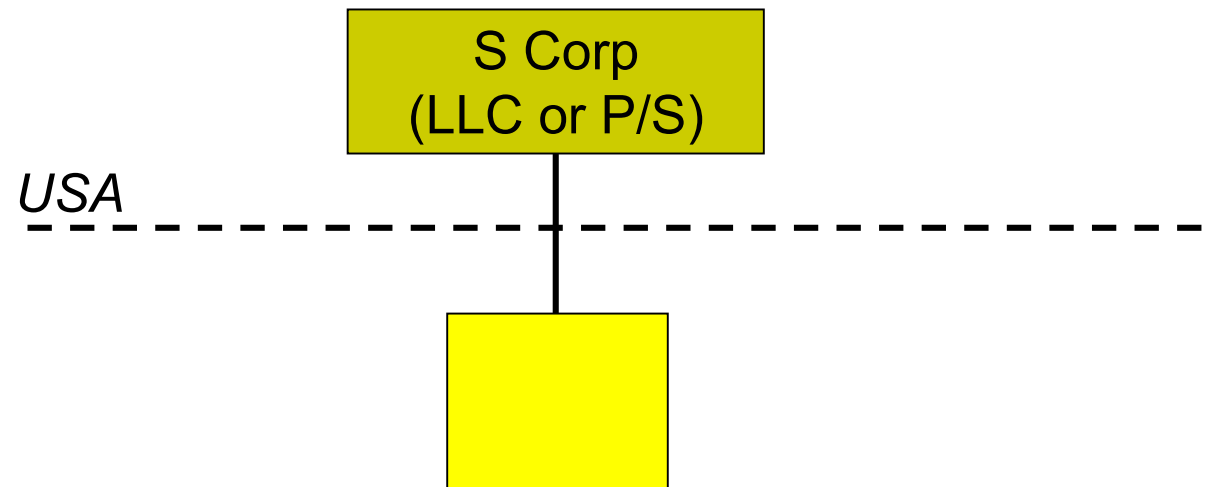


- High tax jurisdiction - Brazil
- No treaty
- Subpart F Current ETR – 62.6%
- High Tax Exception ETR – N/A
- Corporate Tax Election – 34.0%
- Losses not deductible
- S Corp Long term ETR – 62.6%
- LLC/Partnership Long term ETR – 62.6%

S Corporation/LLC/Partnership

Wholly-owned CFC – Dividends accumulated

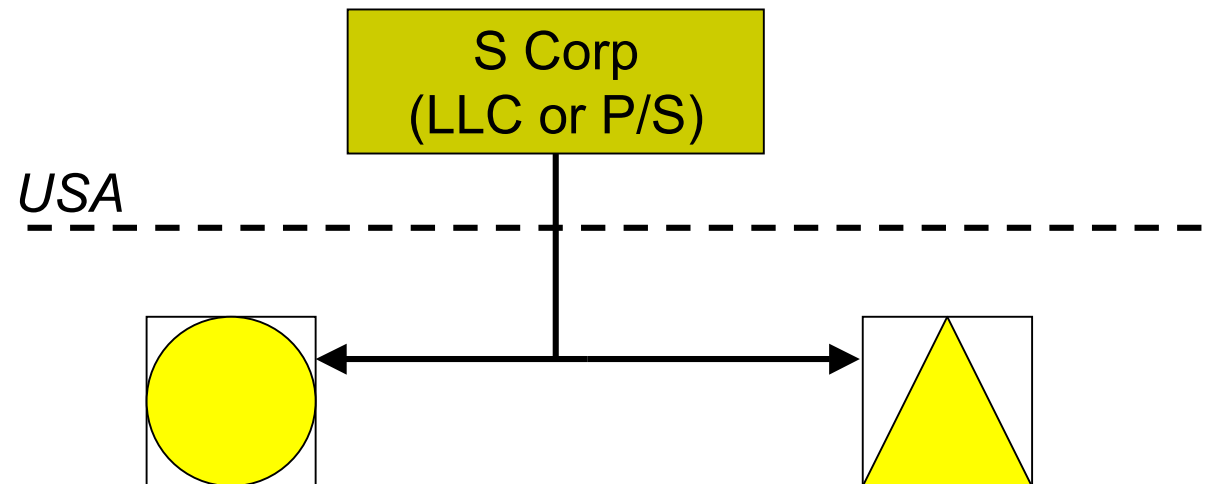
Exit strategy – dividends deferred until final year



- High tax jurisdiction - Brazil
- No treaty
- Current ETR – 34.0%
- Losses not deductible
- S Corp year of exit ETR – 49.7%
- LLC/Partnership year of exit ETR – 49.7%

S Corporation/LLC/Partnership

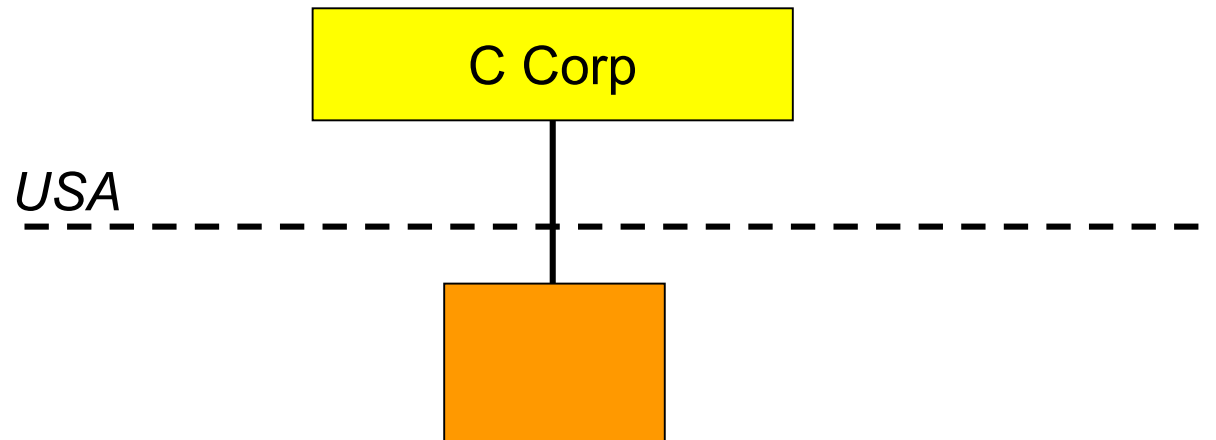
Wholly-owned Flow through entity – High tax jurisdiction



- High tax jurisdiction - Brazil
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

C Corporation

Wholly-owned CFC – High tax jurisdiction

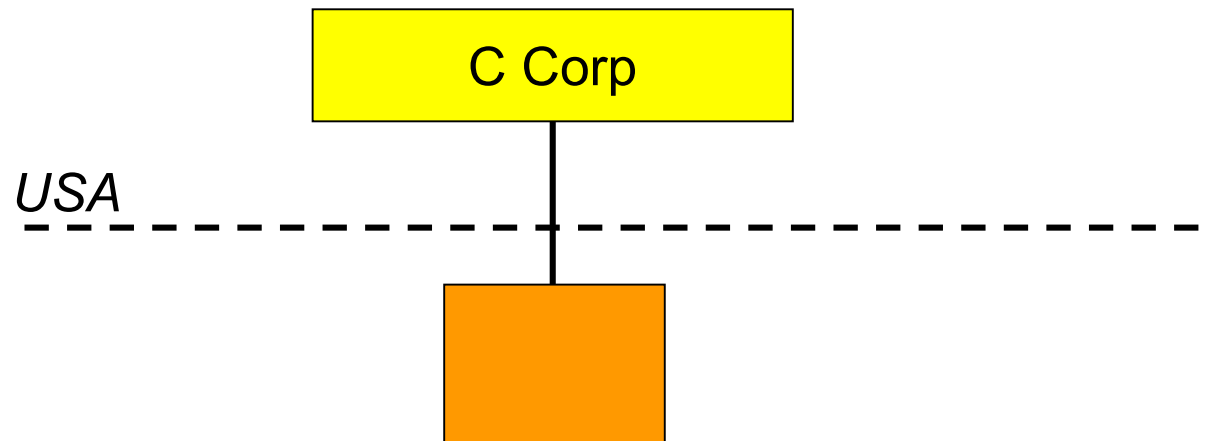


- High tax jurisdiction – Brazil
- No treaty
- Current ETR – 34%
- Losses not deductible
- C Corp Long term ETR – 34%
- ETR upon distribution to shareholders – 49.7%

C Corporation

Wholly-owned CFC – High tax jurisdiction

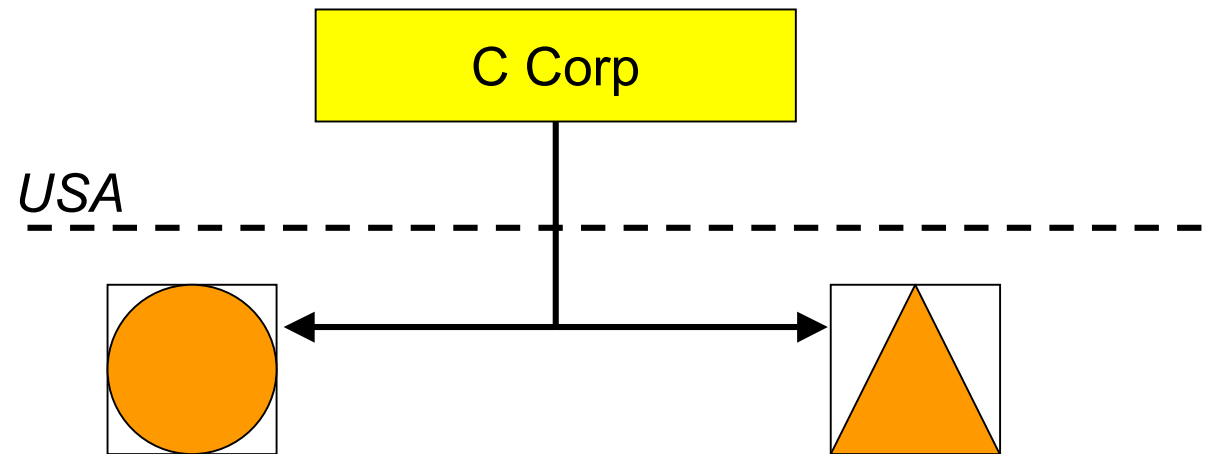
Subpart F Income



- High tax jurisdiction – Brazil
- No treaty
- Subpart F ETR – 34%
- Losses not deductible
- C Corp Long term ETR – 34%
- ETR upon distribution to shareholders – 49.7%

C Corporation

Wholly-owned Flow through entity – High tax jurisdiction



- High tax jurisdiction - Brazil
- Current ETR applicable to C corp earnings – 34.0%
- Ultimate ETR to shareholders – 49.7%

Treaty jurisdictions

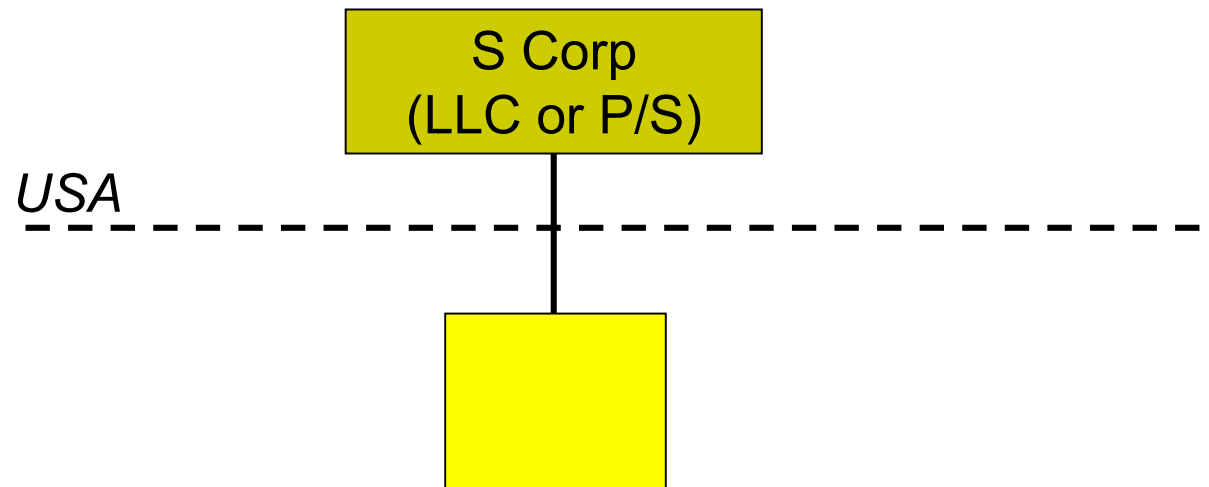
Non-taxing example – India (Tax Holiday)

Low tax examples – Switzerland, Ireland

Mid-level tax example – United Kingdom

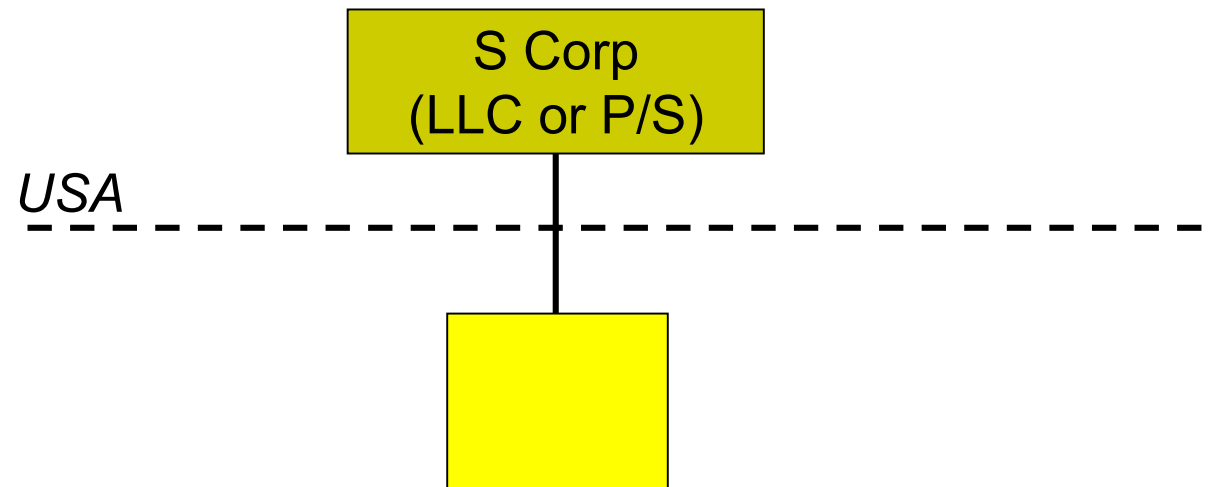
High tax examples – Australia, Canada

S Corporation/LLC/Partnership Wholly-owned CFC – Low tax jurisdiction



- Non-taxing jurisdiction – India (Tax Holiday)
- Treaty
- Current ETR – 0%
- Losses not deductible
- Indian tax on transfer pricing adjustments
- S Corp Long term ETR – 23.8%
- LLC/Partnership Long term ETR – 23.8%

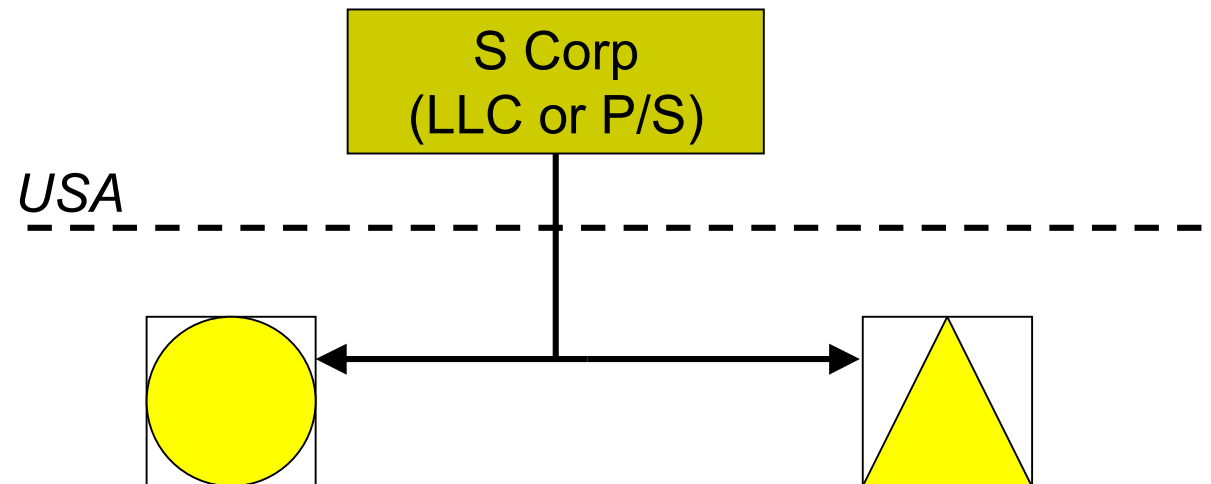
S Corporation/LLC/Partnership
Wholly-owned CFC – Low tax jurisdiction
Subpart F Income – Indian Tax Holiday



- Low tax jurisdiction – India (Tax Holiday)
- Treaty
- Subpart F ETR – 43.4%
- Losses not deductible
- S Corp Long term ETR – 43.4%
- LLC/Partnership Long term ETR – 43.4%

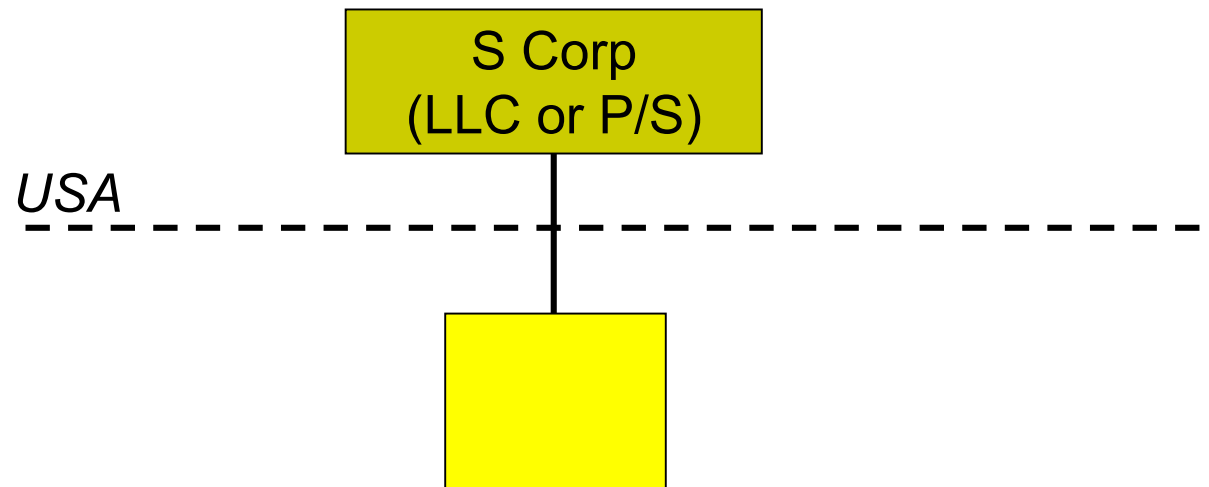
S Corporation/LLC/Partnership

Wholly-owned Flow through entity – Low tax jurisdiction



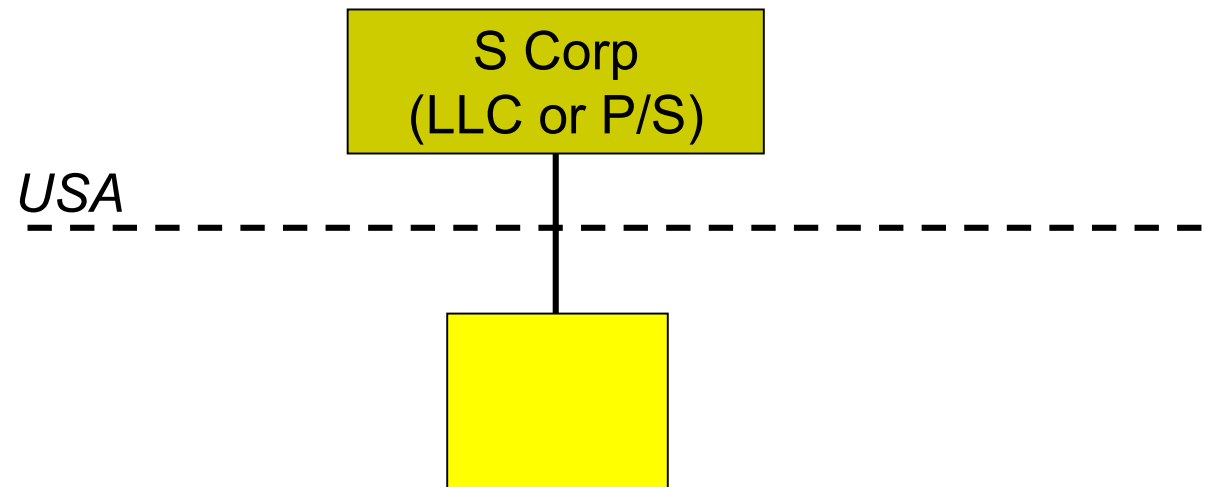
- Low tax jurisdiction – India (Tax Holiday)
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

S Corporation/LLC/Partnership Wholly-owned CFC – Low tax jurisdiction



- Low tax jurisdiction - Switzerland
- Treaty
- Current ETR – 10.8%
- Losses not deductible
- Swiss DWT generates FTC against U.S. tax
- S Corp Long term ETR – 32.0%
- LLC/Partnership Long term ETR – 32.0%

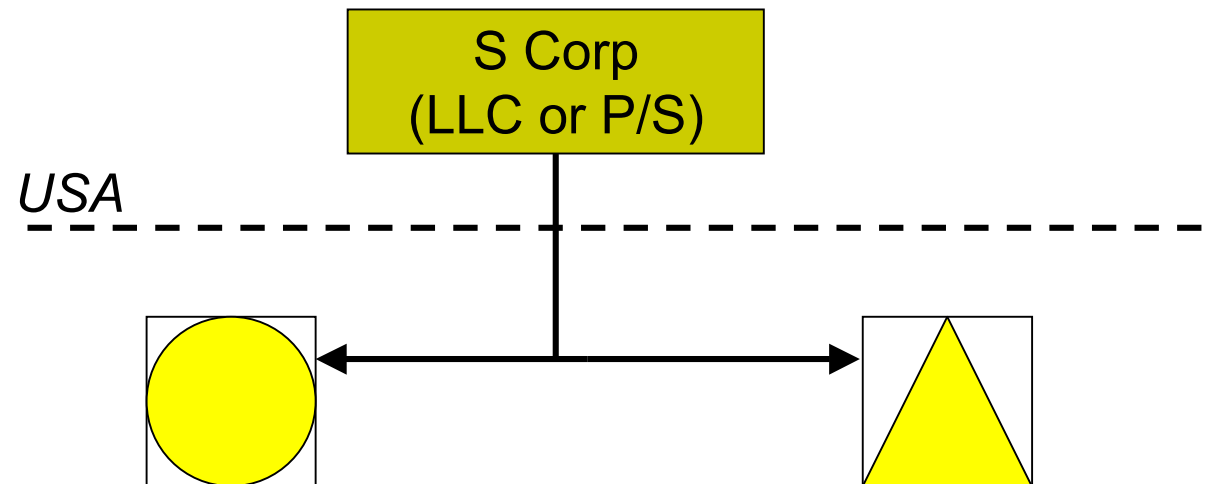
S Corporation/LLC/Partnership
Wholly-owned CFC – Low tax jurisdiction
Subpart F Income – Interest on Swiss accounts



- Low tax jurisdiction - Switzerland
- Treaty
- Subpart F ETR – 49.5%
- Losses not deductible
- S Corp Long term ETR – 49.5%
- LLC/Partnership Long term ETR – 49.5%

S Corporation/LLC/Partnership

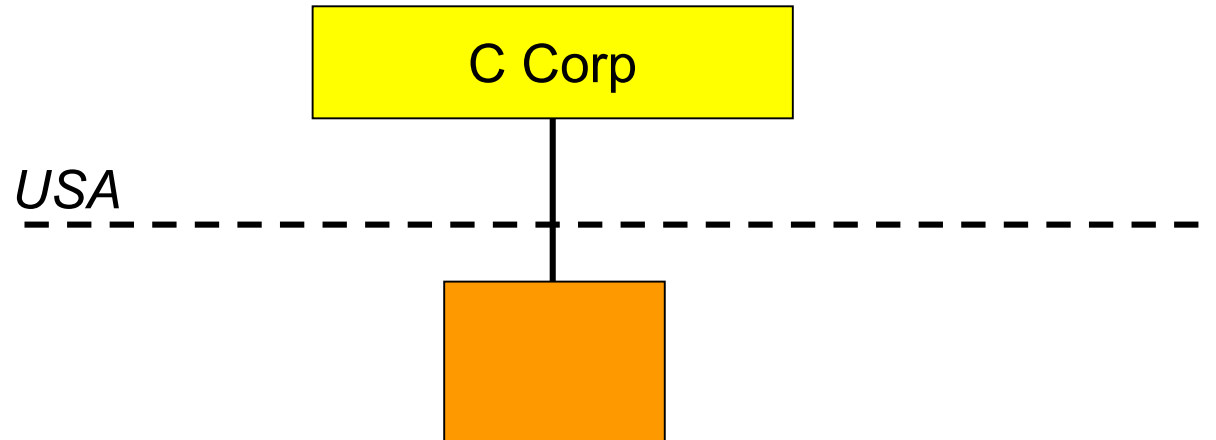
Wholly-owned Flow through entity – Low tax jurisdiction



- Low tax jurisdiction - Switzerland
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

C Corporation

Wholly-owned CFC – Low tax jurisdiction

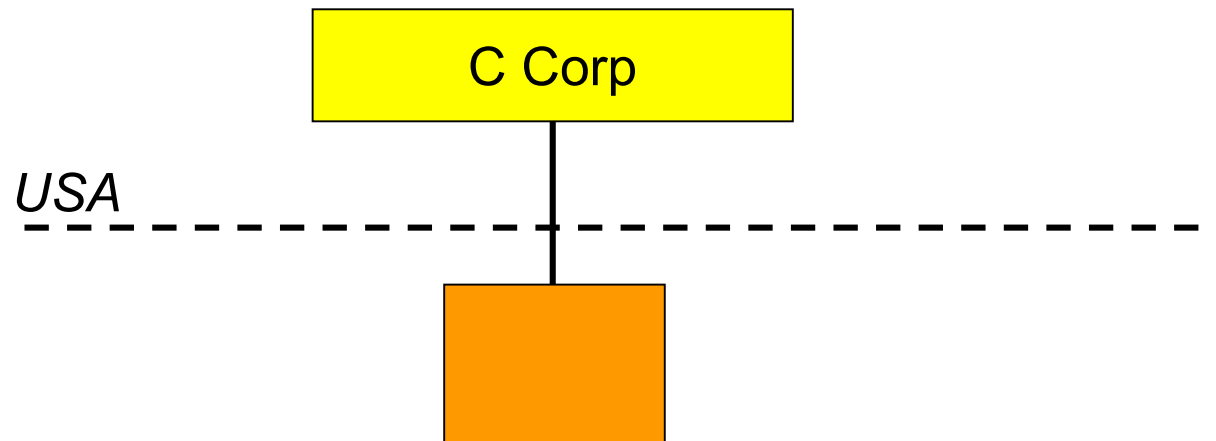


- Low tax jurisdiction – Switzerland
- Treaty
- Current ETR – 10.8%
- Losses not deductible
- C Corp Long term ETR – 34%
- ETR upon distribution to shareholders – 49.7%

C Corporation

Wholly-owned CFC – Low tax jurisdiction

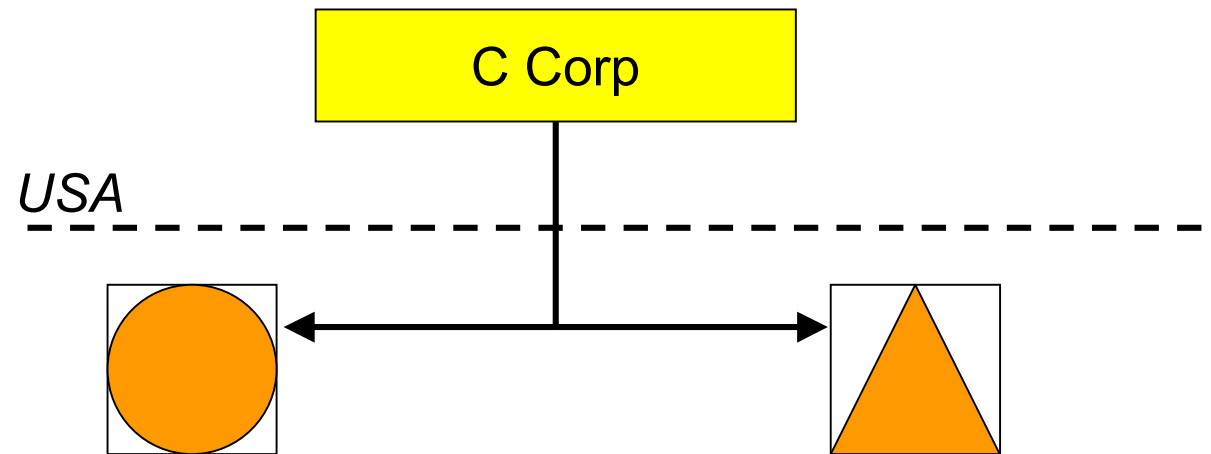
Subpart F Income



- Low tax jurisdiction – Switzerland
- Treaty
- Subpart F ETR – 49.5%
- Corporate tax election ETR – 34.0%
- Losses not deductible
- C Corp Long term ETR – 34.0%
- ETR upon distribution to shareholders – 49.7%

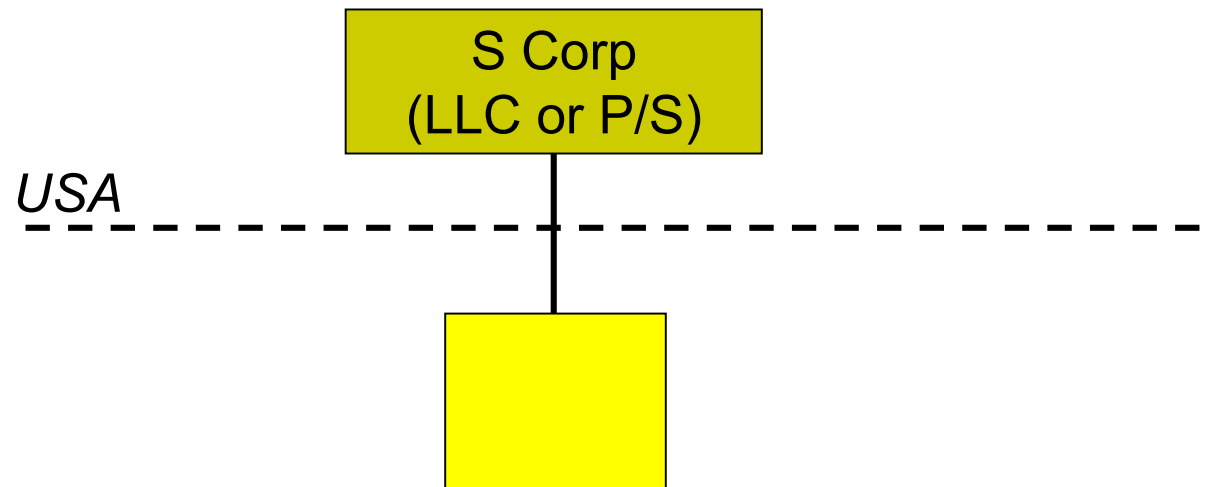
C Corporation

Wholly-owned Flow through entity – Low tax jurisdiction



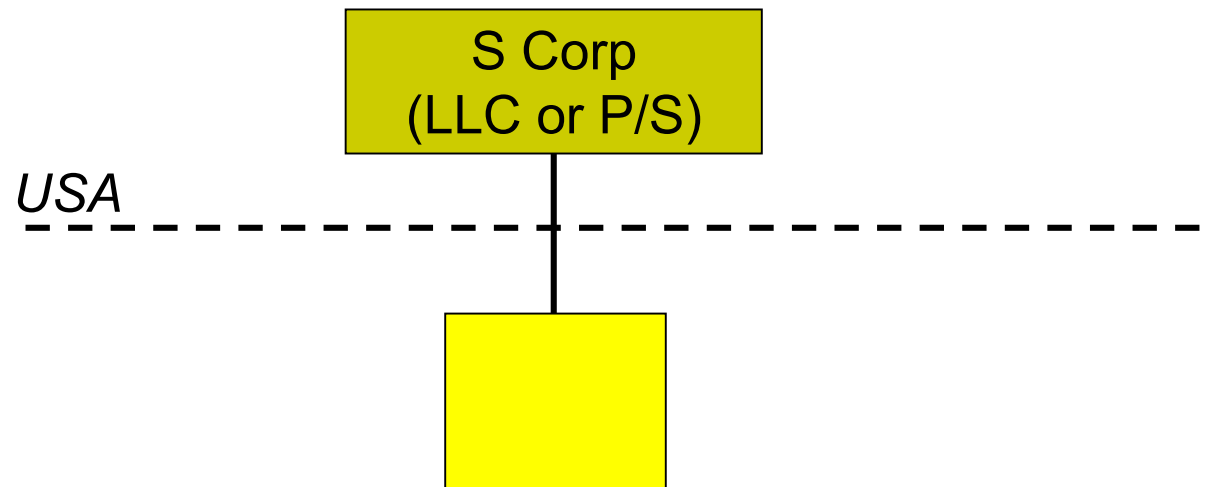
- Low tax jurisdiction - Switzerland
- Current ETR applicable to C corp earnings – 34.0%
- Ultimate ETR to shareholders – 49.7%

S Corporation/LLC/Partnership Wholly-owned CFC – Low tax jurisdiction



- Low tax jurisdiction - Ireland
- Treaty
- Current ETR – 12.5%
- Losses not deductible
- Irish DWT generates FTC against U.S. tax
- S Corp Long term ETR – 33.3%
- LLC/Partnership Long term ETR – 33.3%

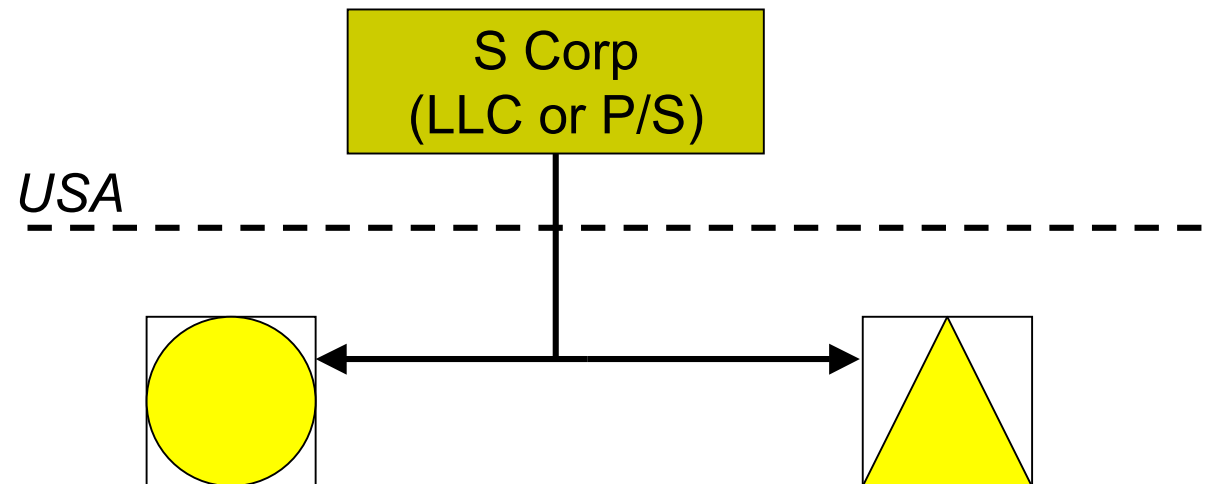
S Corporation/LLC/Partnership
Wholly-owned CFC – Low tax jurisdiction
Subpart F Income – Interest on Irish accounts



- Low tax jurisdiction - Ireland
- Treaty
- Subpart F ETR – 50.5%
- Corporate tax election – 34.0%
- Losses not deductible
- S Corp Long term ETR – 49.7%
- LLC/Partnership Long term ETR – 49.7%

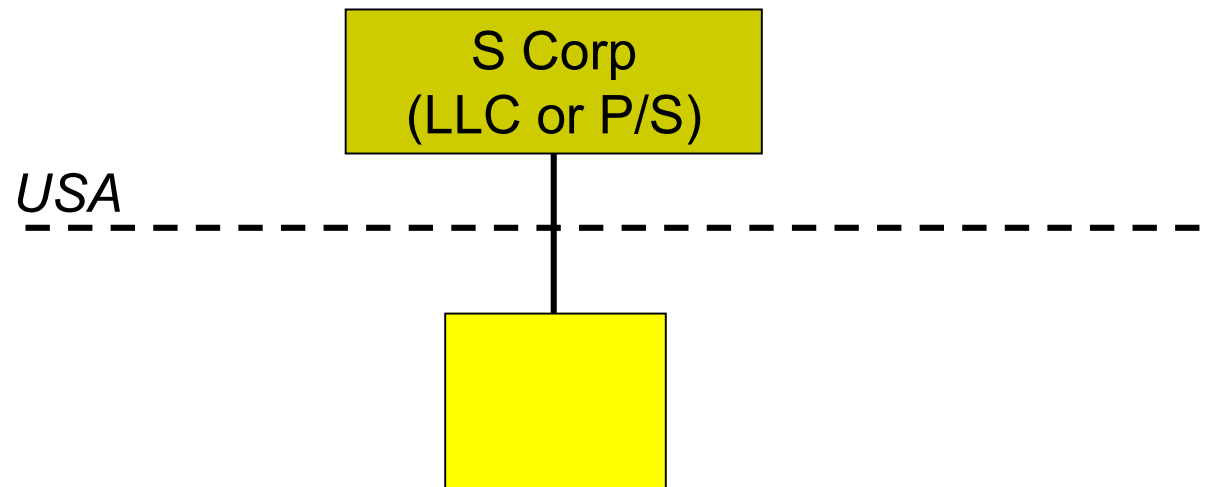
S Corporation/LLC/Partnership

Wholly-owned Flow through entity – Low tax jurisdiction



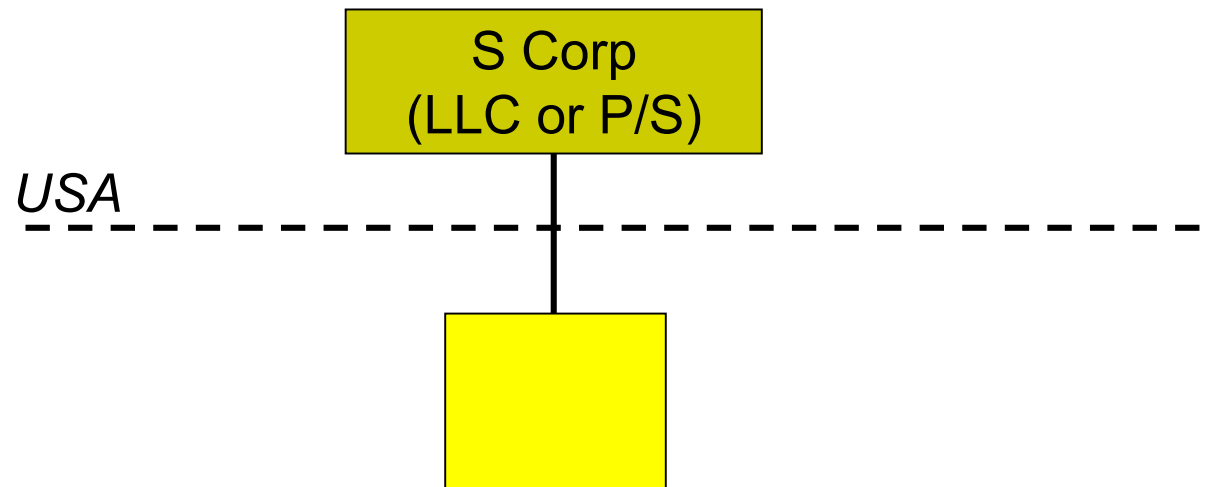
- Low tax jurisdiction - Ireland
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

S Corporation/LLC/Partnership Wholly-owned CFC – Mid-level tax jurisdiction



- Mid-level tax jurisdiction – United Kingdom
- Treaty
- Current ETR – 23.0%
- Losses not deductible
- No U.K. DWT
- S Corp Long term ETR – 41.3%
- LLC/Partnership Long term ETR – 41.3%

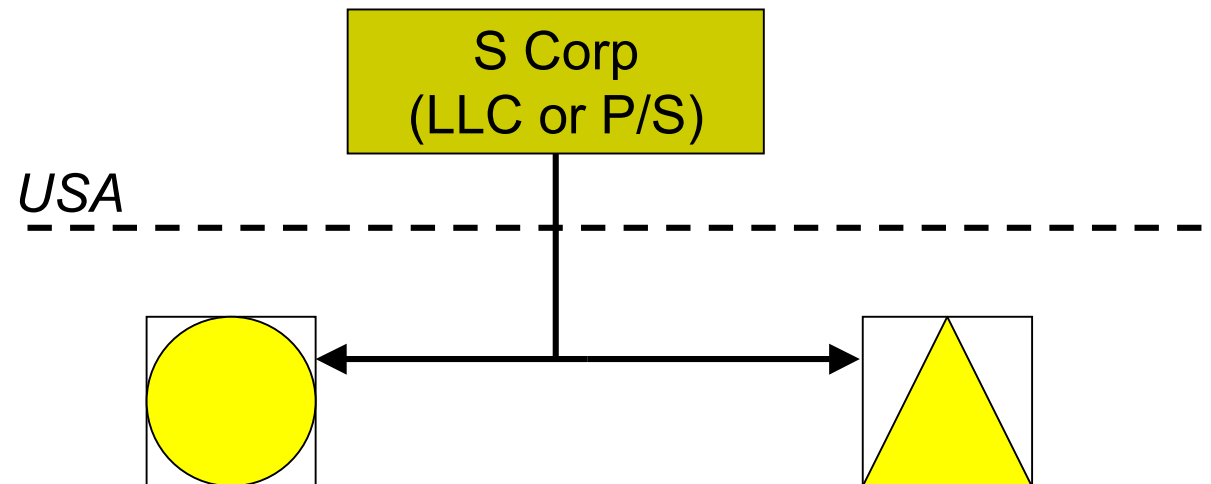
S Corporation/LLC/Partnership
Wholly-owned CFC – Mid-level tax jurisdiction
Subpart F Income – Interest on U.K. accounts



- Mid-level tax jurisdiction – United Kingdom
- Treaty
- Subpart F ETR – 56.4%
- Corporate tax election – 34.0%
- Losses not deductible
- S Corp Long term ETR – 49.7%
- LLC/Partnership Long term ETR – 49.7%

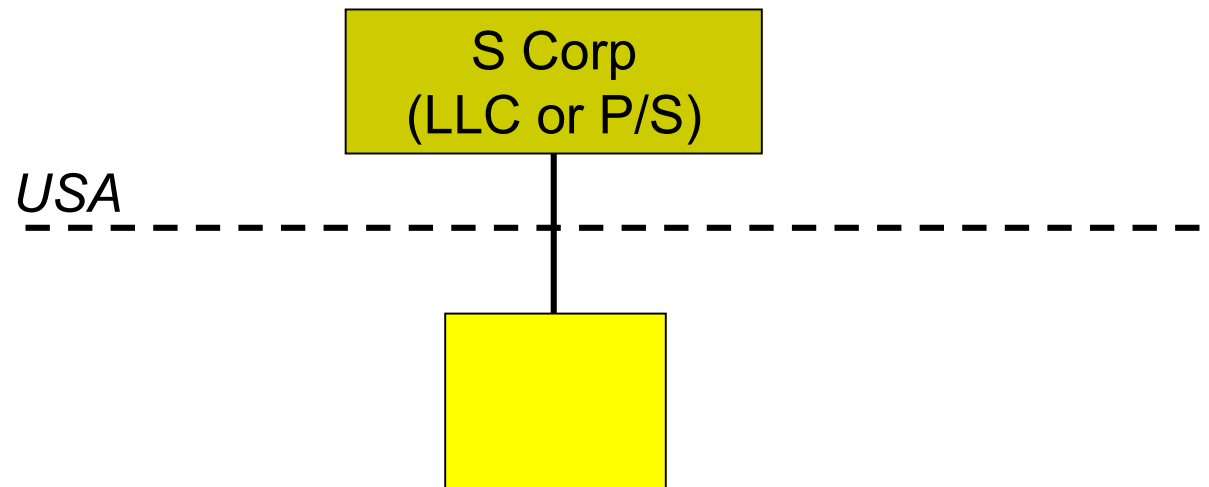
S Corporation/LLC/Partnership

Wholly-owned Flow through entity – Mid-level tax jurisdiction



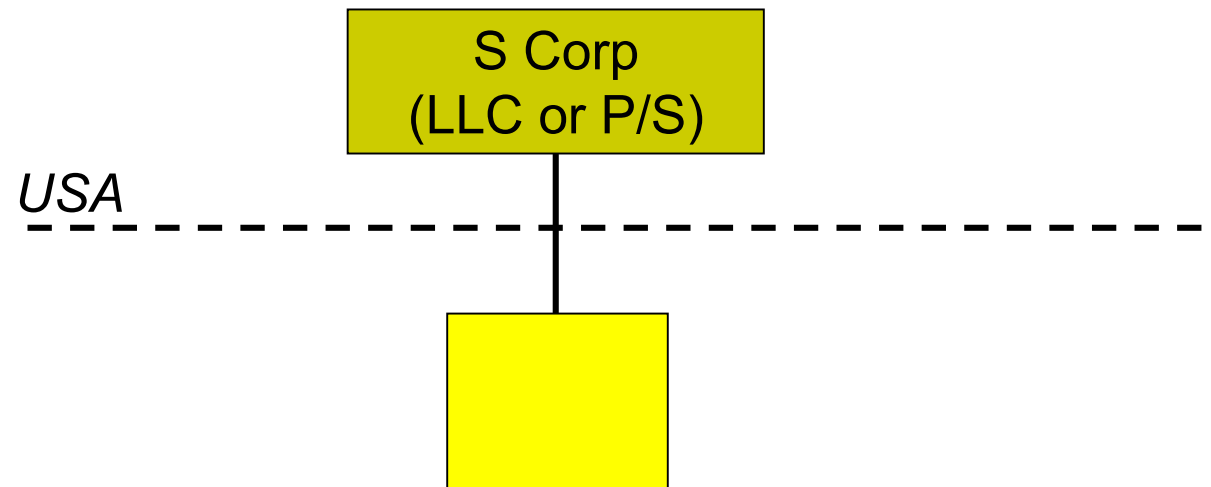
- Mid-level tax jurisdiction – United Kingdom
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

S Corporation/LLC/Partnership Wholly-owned CFC – High tax jurisdiction



- High tax jurisdiction – Australia
- Treaty
- Current ETR – 30.0%
- Losses not deductible
- S Corp Long term ETR – 46.7%
- LLC/Partnership Long term ETR – 46.7%

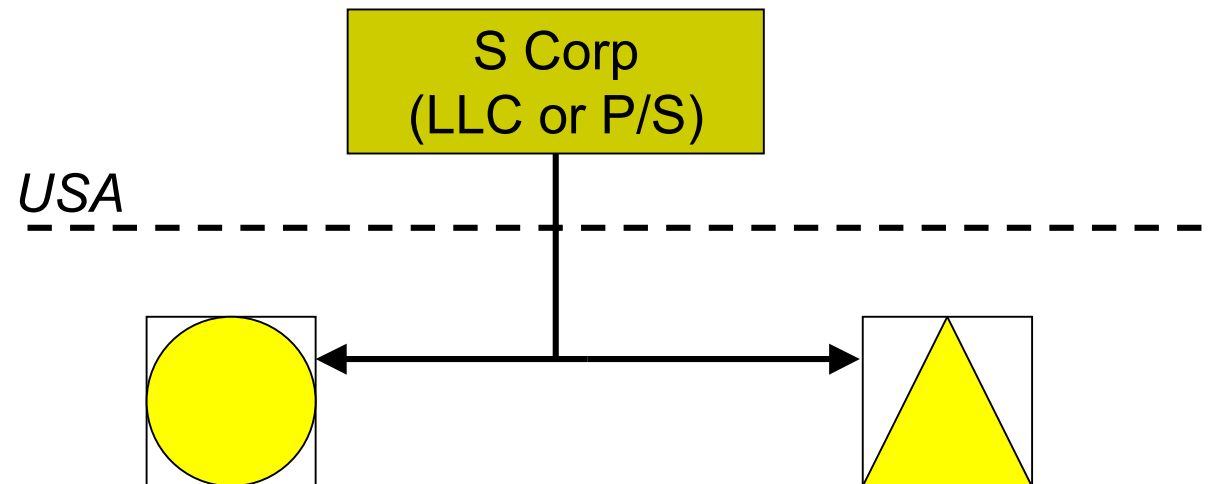
S Corporation/LLC/Partnership Wholly-owned CFC – High tax jurisdiction Subpart F Income – Interest on Aussie accounts



- High tax jurisdiction – Australia
- Treaty
- Subpart F ETR – 56.4%
- High tax exception – N/A
- Corporate tax election – 34.0%
- Losses not deductible
- S Corp Long term ETR – 49.7%
- LLC/Partnership Long term ETR – 49.7%

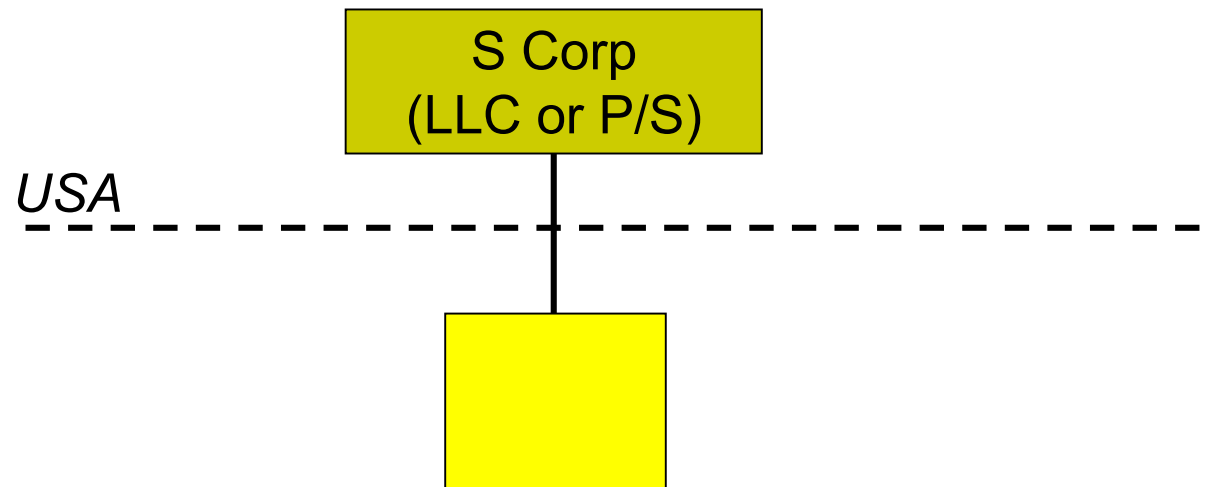
S Corporation/LLC/Partnership

Wholly-owned Flow through entity – High tax jurisdiction



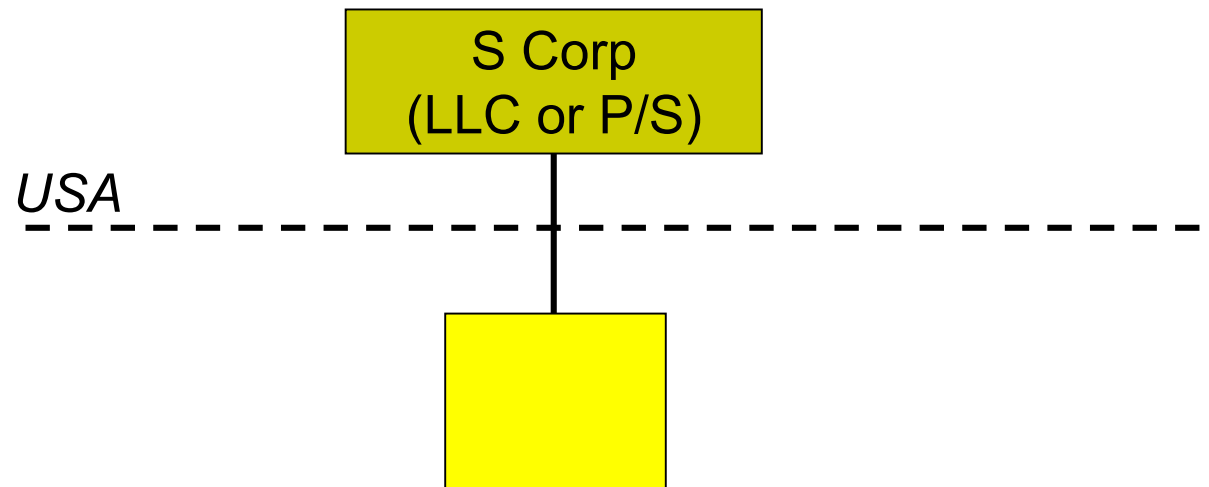
- High tax jurisdiction – Australia
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

S Corporation/LLC/Partnership Wholly-owned CFC – High tax jurisdiction



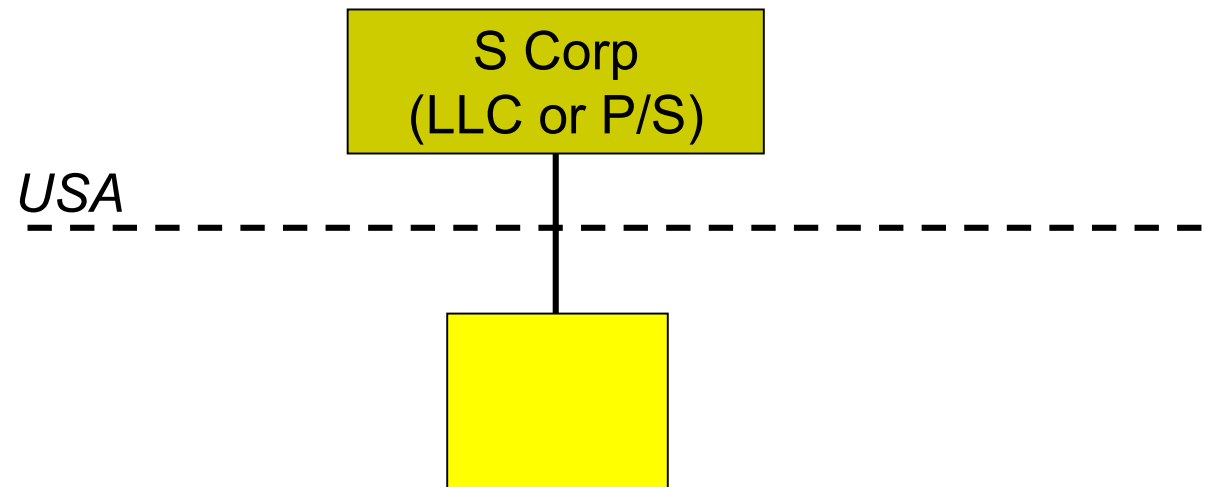
- High tax jurisdiction – Canada
- Treaty
- Current ETR – 26.5%
- Losses not deductible
- S Corp Long term ETR – 44.0%
- LLC/Partnership Long term ETR – 44.0%

S Corporation/LLC/Partnership Wholly-owned CFC – High tax jurisdiction Capital gains



- High tax jurisdiction – Canada
- Treaty
- Current ETR – 13.25%
- Losses not deductible
- S Corp Long term ETR – 33.9%
- LLC/Partnership Long term ETR – 33.9%

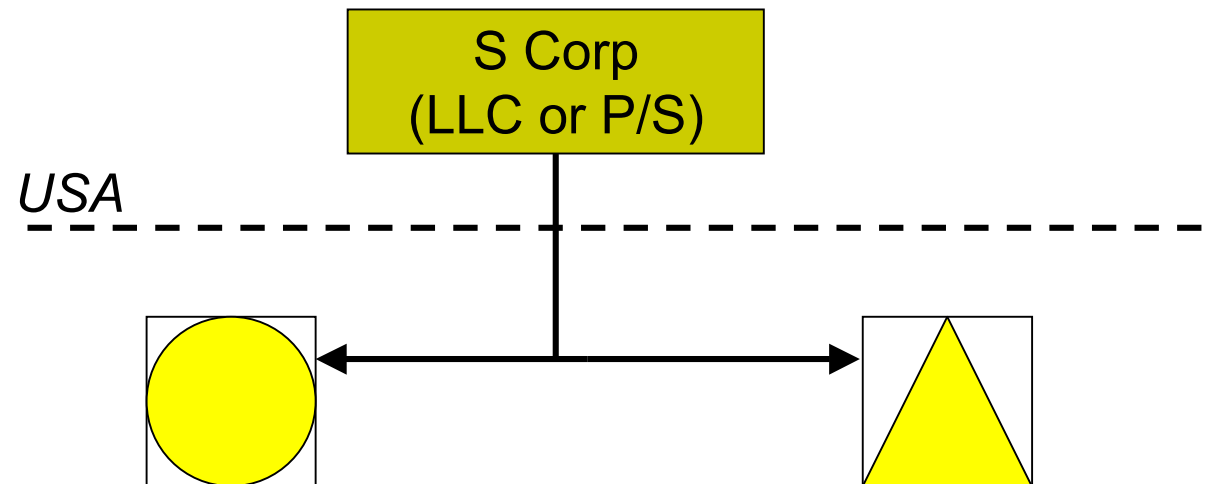
S Corporation/LLC/Partnership
Wholly-owned CFC – High tax jurisdiction
Subpart F Income – Interest on Aussie accounts



- High tax jurisdiction – Canada
- Treaty
- Subpart F ETR – 58.4%
- High tax exception – N/A
- Corporate tax election – 34.0%
- Losses not deductible
- S Corp Long term ETR – 49.7%
- LLC/Partnership Long term ETR – 49.7%

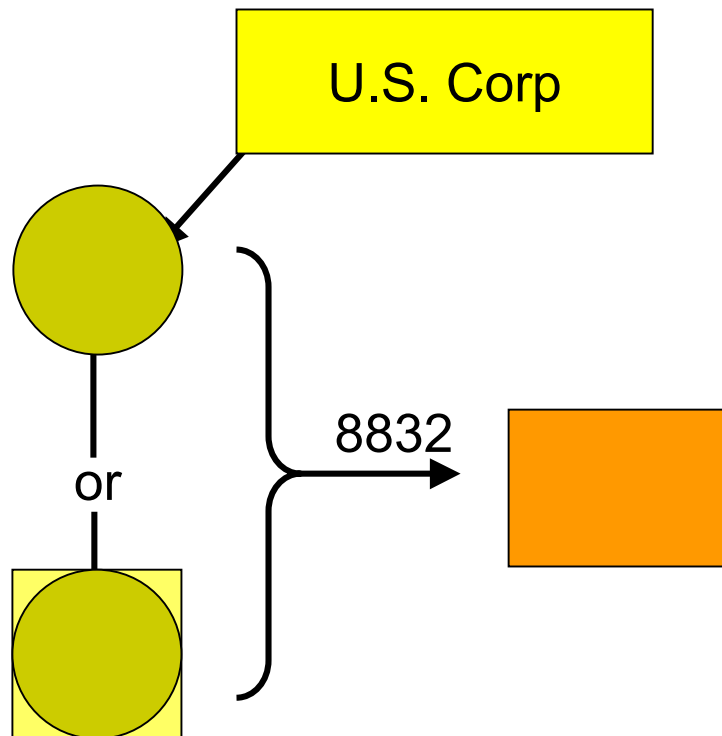
S Corporation/LLC/Partnership

Wholly-owned Flow through entity – High tax jurisdiction



- High tax jurisdiction – Canada
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 44.9%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 44.9%

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



Deemed U.S. Tax Consequences

- Deemed 351 Transfer
- Potential branch loss recapture
- Inventory gains deemed recognized
- Depreciation recaptured

Form 8832

Form 8832 (Rev. January 2006) Department of the Treasury Internal Revenue Service	<h2>Entity Classification Election</h2>	OMB No. 1545-1516
Type or Print	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.

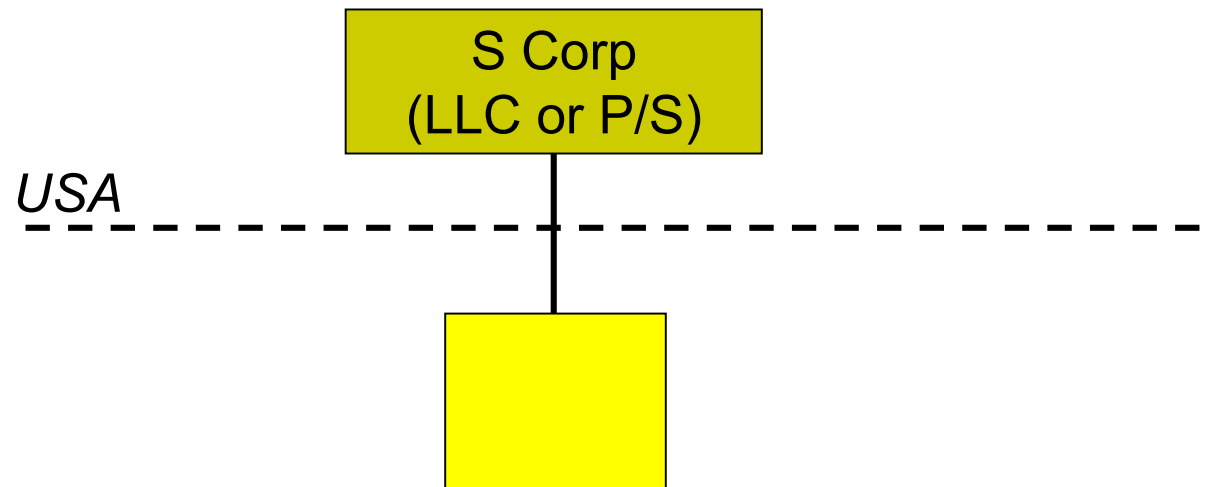
Treaty jurisdictions
U.S. – Chile tax treaty
Pending ratification

The Chile-U.S. Treaty was signed on February 4, 2010

The Chile-U.S. Treaty was sent to the U.S. Senate for approval on May 17, 2012 but was not ratified during 2012

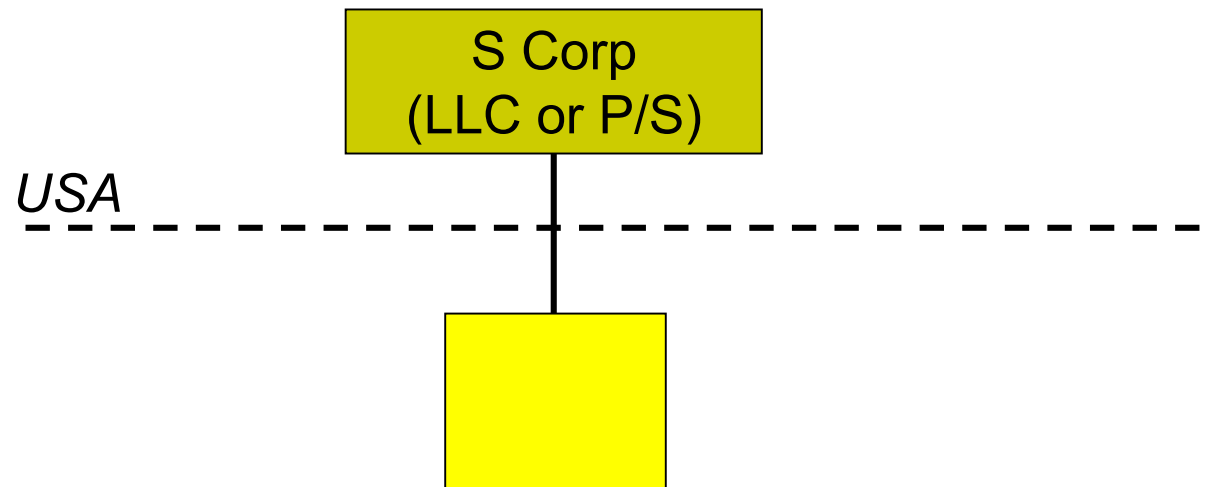
If the Treaty is ratified during 2013 it will likely become effective January 1, 2014

S Corporation/LLC/Partnership Wholly-owned CFC – Chile If Treaty ratified during 2013



- High tax jurisdiction – Chile
- Treaty
- Current ETR – 20.0%
- Losses not deductible
- S Corp Long term ETR – 39.0%
- LLC/Partnership Long term ETR – 39.0%

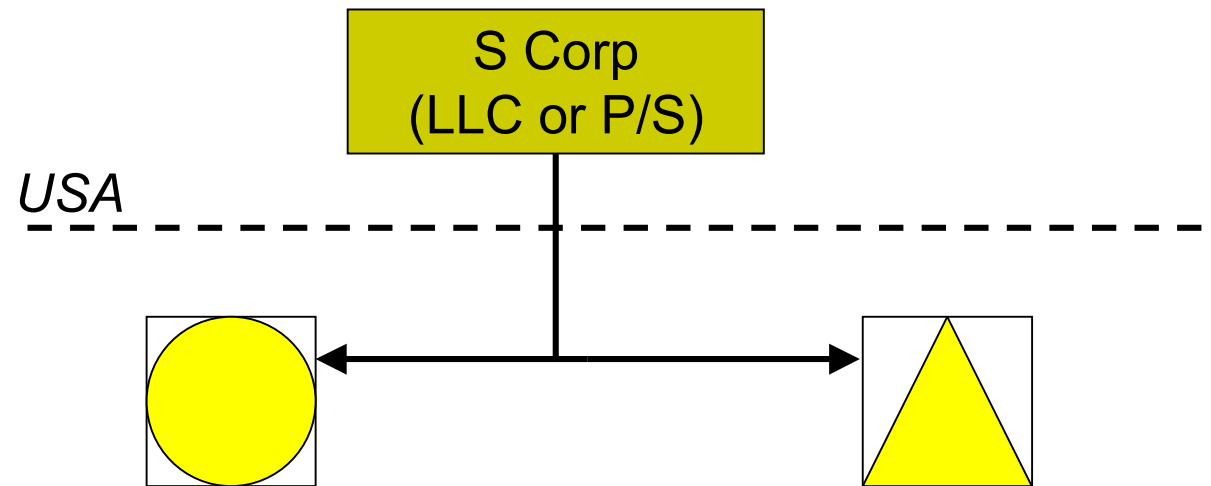
S Corporation/LLC/Partnership Wholly-owned CFC – Chile If Treaty not ratified during 2013



- High tax jurisdiction – Chile
- Treaty
- Current ETR – 20.0%
- Losses not deductible
- S Corp Long term ETR – 54.7%
- LLC/Partnership Long term ETR – 54.7%

S Corporation/LLC/Partnership

Wholly-owned Flow through entity – High tax jurisdiction



- High tax jurisdiction – Chile
- Potentially no SE tax to S Corp
- Current ETR to S corp earnings – 39.6%
- Direct/Indirect FTC Available
- Current ETR to LLC/Partnership earnings – 43.4%

Treaty jurisdictions
Multiple CFCs
Cyprus as holding company jurisdiction

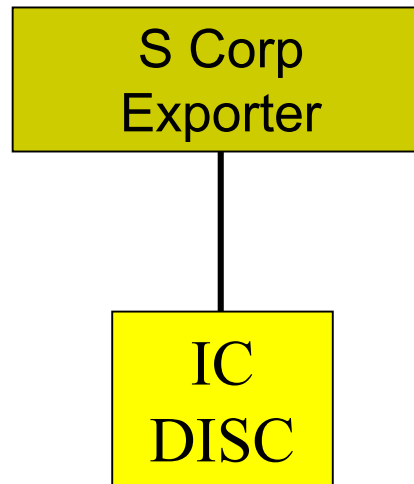
Notice 2011-64

Definition of Qualified foreign corporation

IRS position: a foreign corporation is treated as though it were claiming treaty benefits, even if it does not derive income from sources within the United States

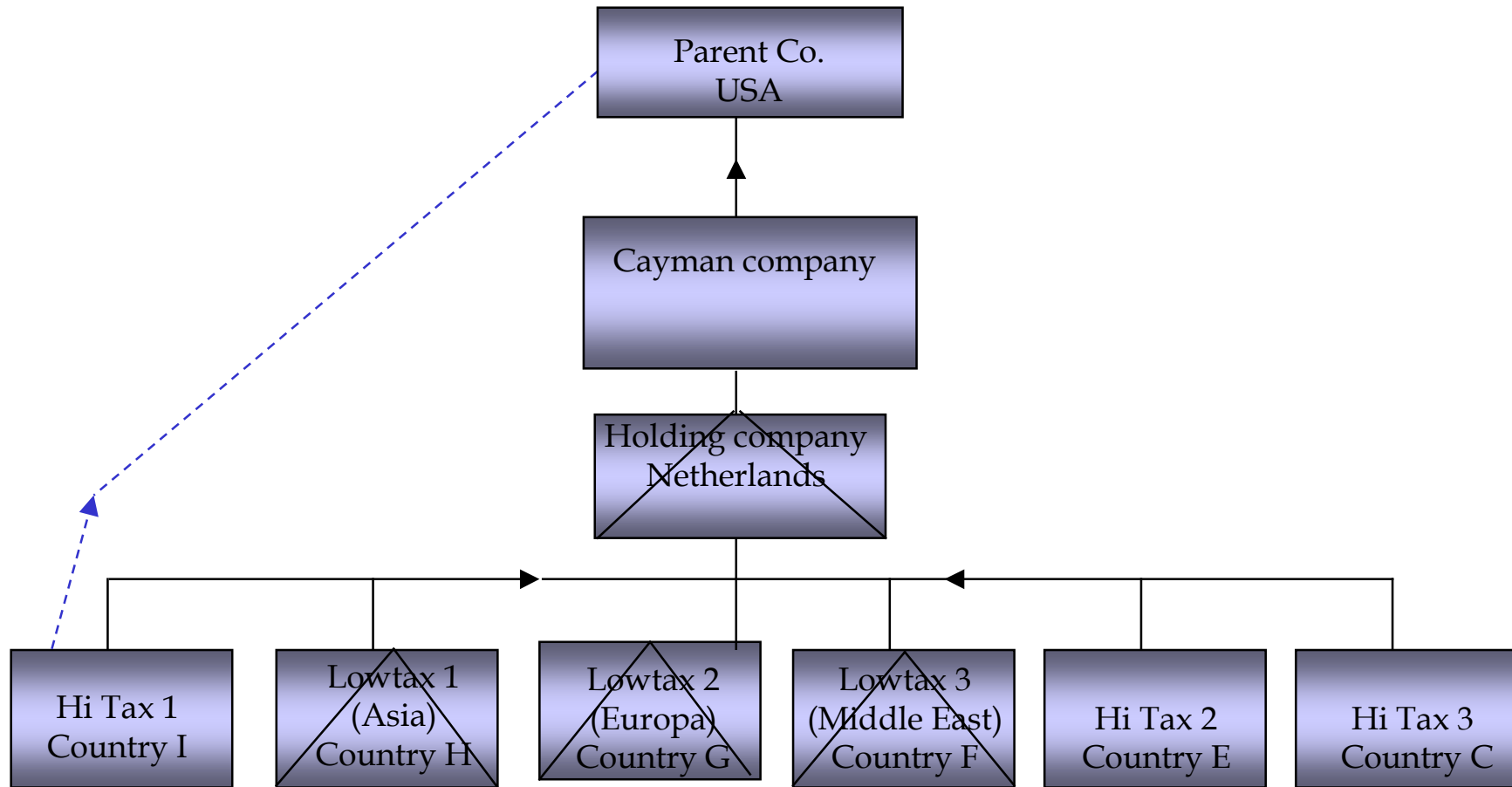
Dividends from Cyprus may be viewed as Non-qualified dividends
Under this definition

S Corporation/LLC/Partnership IC DISC



- IC DISC
- Low Margin ETR – 23.8%
- High Margin ETR – 31.7%

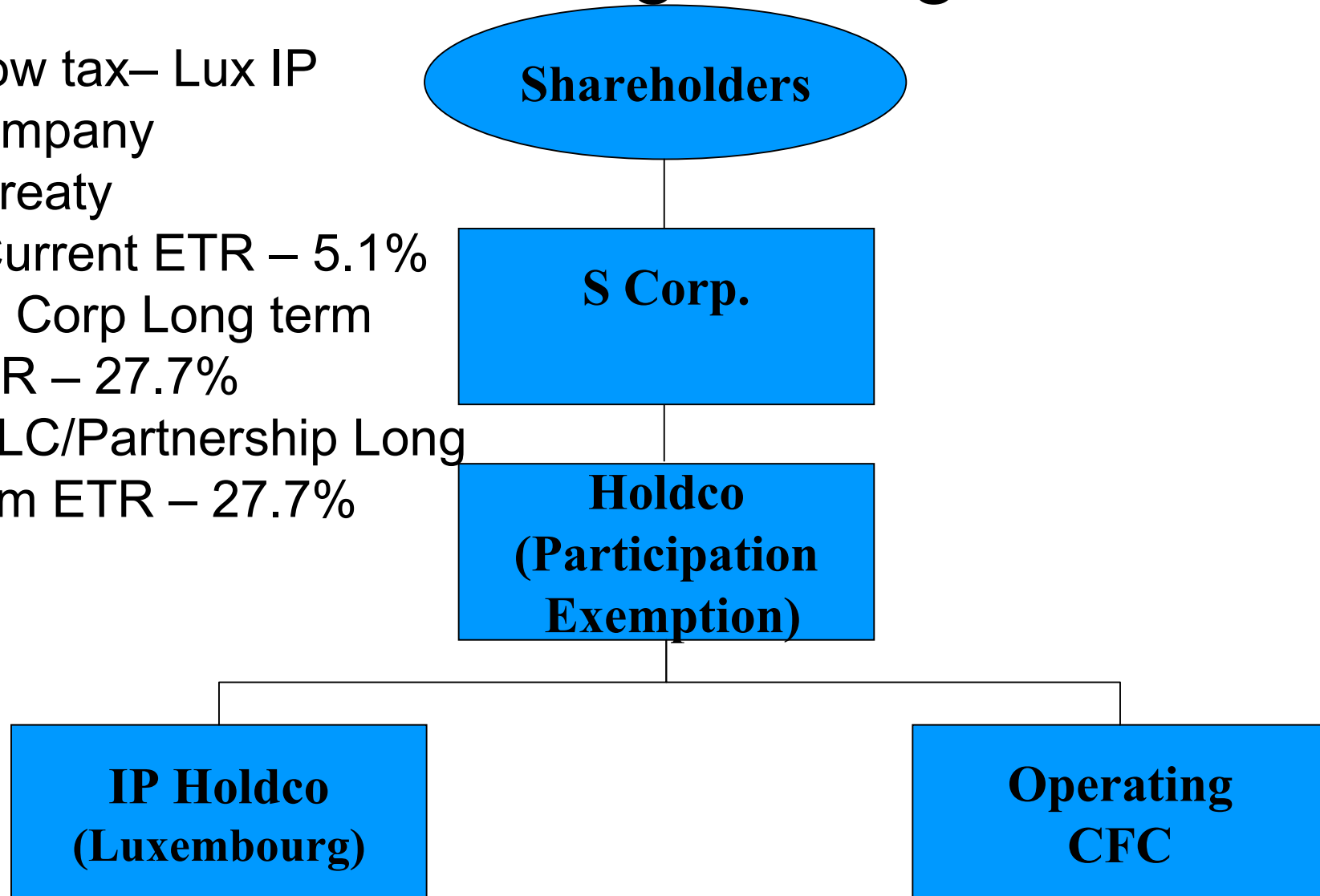
Super Holding company structure



.....> Flow of loans

IP Company Cost Sharing Arrangement

- Low tax – Lux IP Company
- Treaty
- Current ETR – 5.1%
- S Corp Long term ETR – 27.7%
- LLC/Partnership Long term ETR – 27.7%



Treaty jurisdictions
Multiple CFCs
Look through rule

Section 954(c)(6)

Expires for years beginning after 12/31/2013.

Use CFC tax year beginning in 2013 and ending in 2014
If it meets section 898 requirement



Questions?

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