Outbound Planning Into Brazil - U.S. Tax Considerations - Transnational Tax Network
November 30, 2017

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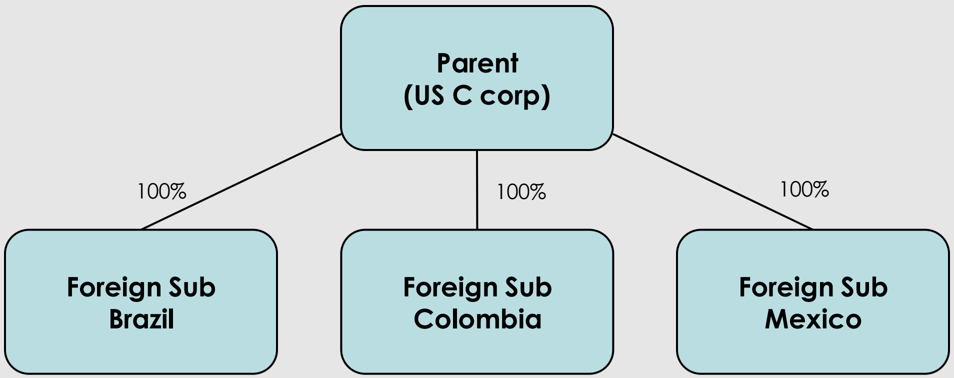
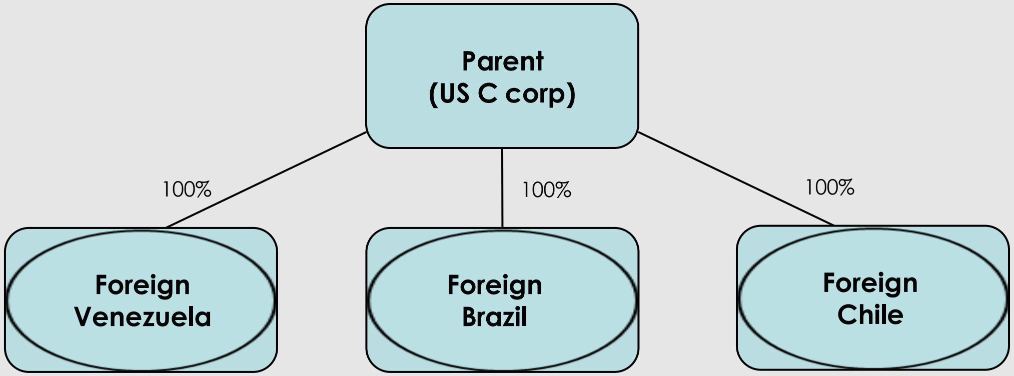
Basic Case - Direct Ownership of High Tax Latam Subsidiaries



Tax Consequences of Structure

- U.S. corporate parent eligible to claim indirect foreign tax credit for corporate level income paid or incurred in foreign jurisdictions.
- Double tax in the United States (corporate and shareholder level tax).
  - Cannot claim indirect foreign taxes for certain foreign taxes such as Brazilian PIS or COFINS; VAT taxes.
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- No treaty based reductions if withholding taxes paid in countries, such as, Brazil on royalties.
- No ability to defer intergroup payments of interest, dividends, royalties, etc.

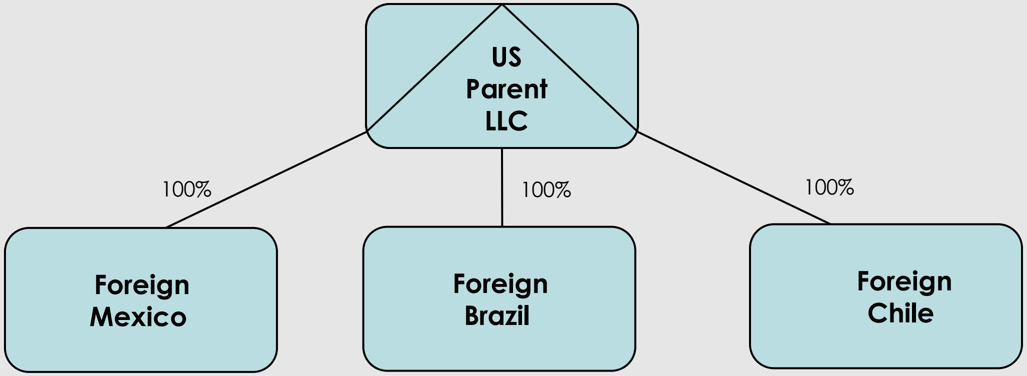
Flow-Through Tax Treatment of High-Tax Latam Subsidiaries



Tax Consequences of Structure

- No ability to defer income
- Can claim direct foreign tax credit for eligible foreign income taxes paid
- Double tax in the United States (corporate level plus shareholder dividend)
- Losses flow-through
  - But potential loss recapture rules, dual consolidated loss rules, and overall foreign loss rules.
- No treaty based reductions of withholding for non-treaty subsidiaries.
- No ability to defer intergroup payments

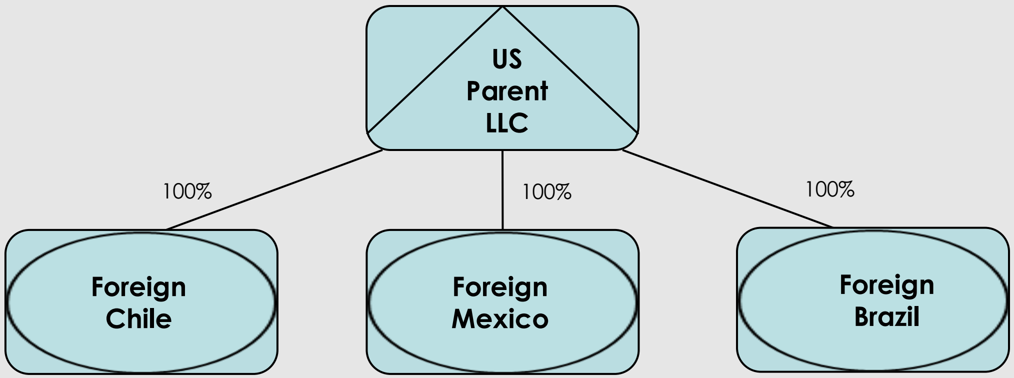
Flow-Through U.S. Parent



Tax Consequences of Structure

- U.S. parent <u>cannot</u> claim foreign tax credit for corporate level income paid or incurred in foreign jurisdictions (can only claim credit for any withholding taxes incurred).
  - But single layer of U.S. income tax.
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- No treaty based reductions if withholding taxes paid in countries on dividends.
- U.S. owners eligible to claim qualified dividend treatment on dividends received from treaty-based subsidiaries, such as Mexico, but not Brazil.
- No ability to defer intergroup payments of interest, dividends, royalties, etc.

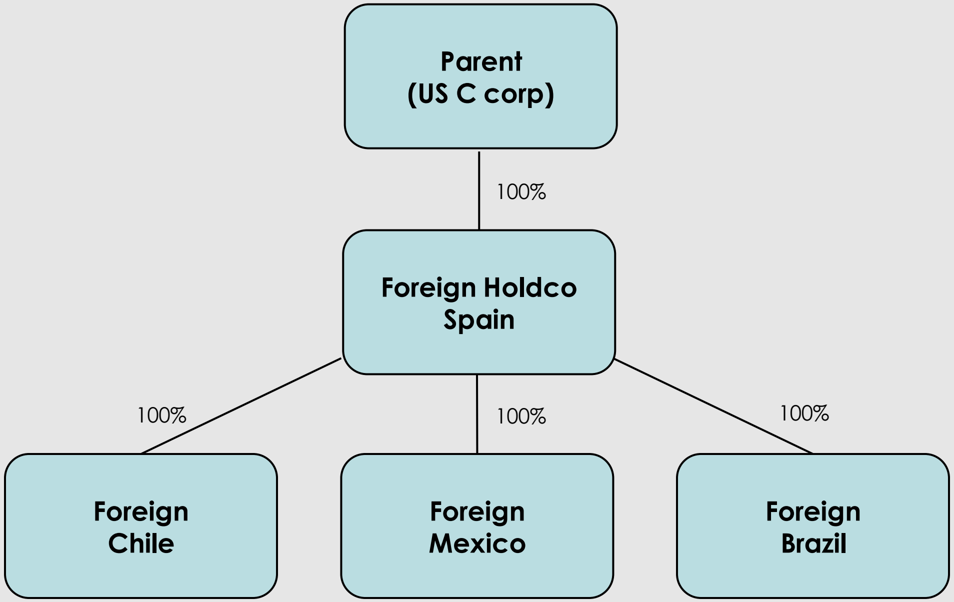
Flow-Through U.S. Parent and High-Tax Latam Subsidiaries



Tax Consequences of Structure

- No ability to defer income
- Can claim direct foreign tax credit for eligible foreign income taxes paid
- Single layer of U.S. income tax.
- No ability to treat income as qualified dividend income
- Losses flow-through
    - But remember potential loss recapture rules, dual consolidated loss rules, and overall foreign loss rules.
- No treaty based reductions of withholding for non-treaty subsidiaries.
- No ability to defer intergroup payments

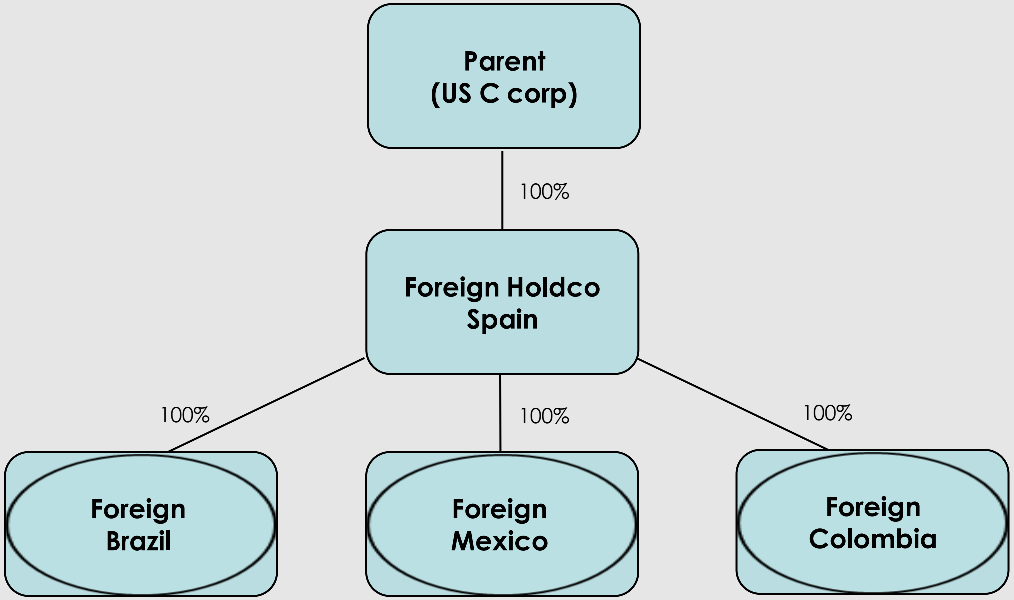
Foreign Holding Company Structure



Tax Consequences of Structure

- U.S. corporate parent eligible to claim indirect foreign tax credit for corporate level income paid or incurred in foreign jurisdictions.
  - Cannot claim indirect foreign taxes for certain foreign taxes such as Brazilian PIS or COFINS.
- Double tax at U.S. corporate level
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- Can claim treaty based reductions with Spanish holding company if withholding taxes incurred in foreign jurisdictions.
- No qualified dividends for dividends received from Spanish holding company as C corporations do not qualify for lower rate.
- Can defer intergroup payments of interest, dividends, royalties, etc, so long as Section 954(c)(6) exists.
- Benefit from bilateral investment protection treaties with Spain (except Brazil)

Foreign Holding Company with Flow-Through Foreign Subsidiaries



Tax Consequences of Structure

- U.S. corporate parent eligible to claim indirect foreign tax credit for corporate level income paid or incurred in foreign jurisdictions, even though foreign subsidiaries disregarded because holding company treated as separate corporation.
  - Cannot claim indirect foreign taxes for certain foreign taxes such as Brazilian PIS or COFINS.
- Double tax at U.S. corporate level
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- Can claim treaty based reductions with Spanish holding company if withholding taxes incurred in foreign jurisdictions.
- No qualified dividends for dividends received from Spanish holding company as C corporations do not qualify for lower rate.
- Can defer intergroup payments of interest, dividends, royalties, etc, because foreign subsidiaries are disregarded for subpart F income purposes
- Benefit from bilateral investment protection treaties with Spain (except for Brazil)

Flow-Through Foreign Holding Company and Foreign Subsidiaries

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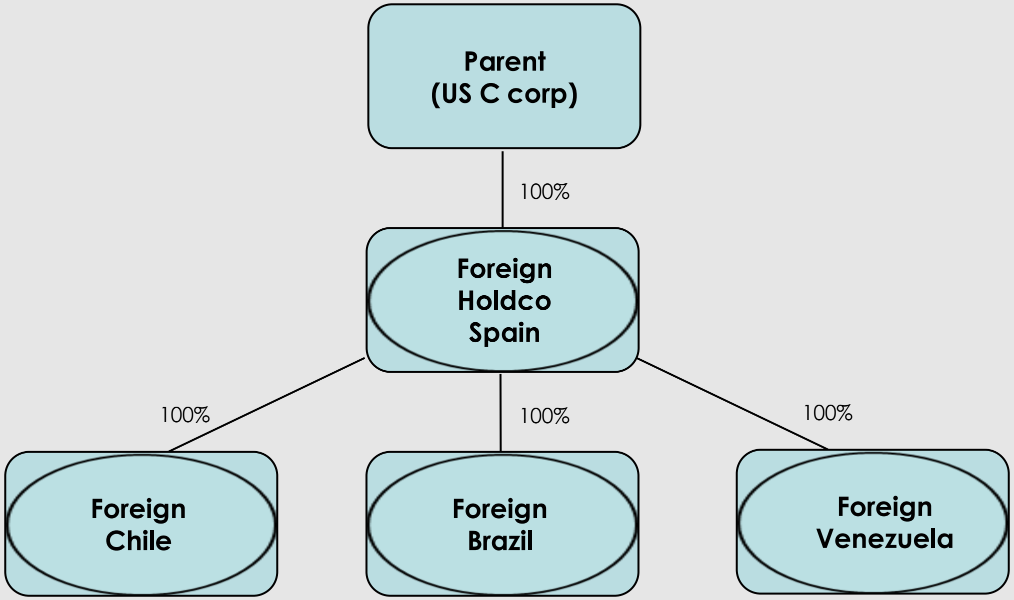

Tax Consequences of Structure

- No ability to defer income
- Can claim direct foreign tax credit for eligible foreign income taxes paid
- Double tax at U.S. corporate level
- Losses flow-through
  - But remember potential loss recapture rules, dual consolidated loss rules, and overall foreign loss rules.
- Can claim treaty based reductions of withholding taxes incurred in foreign jurisdictions under treaty with Spain.
- No ability to defer intergroup payments
- Benefit from bilateral investment protection treaties with Spain (except Brazil)

Flow-Through U.S. Parent with Foreign Holding Company

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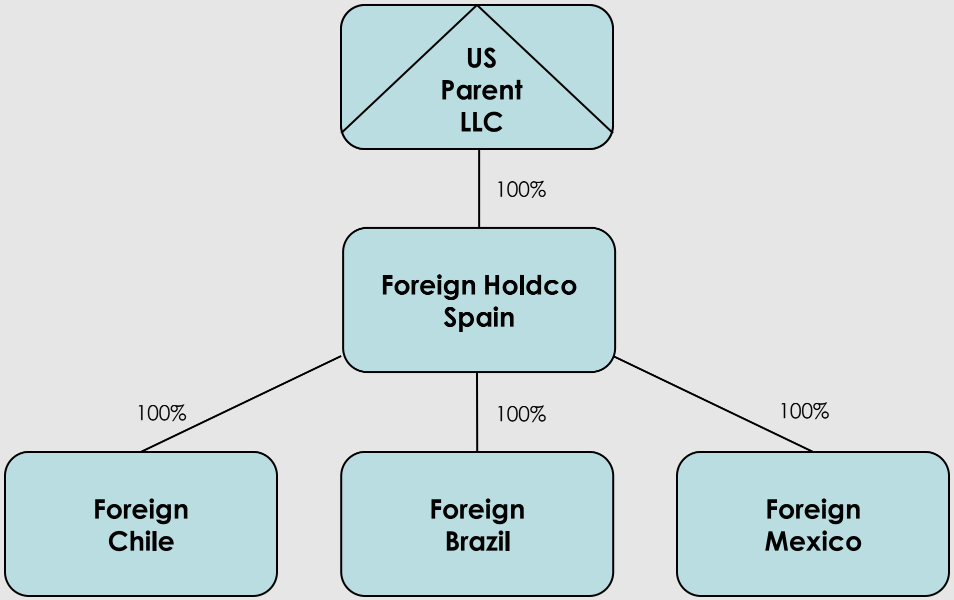
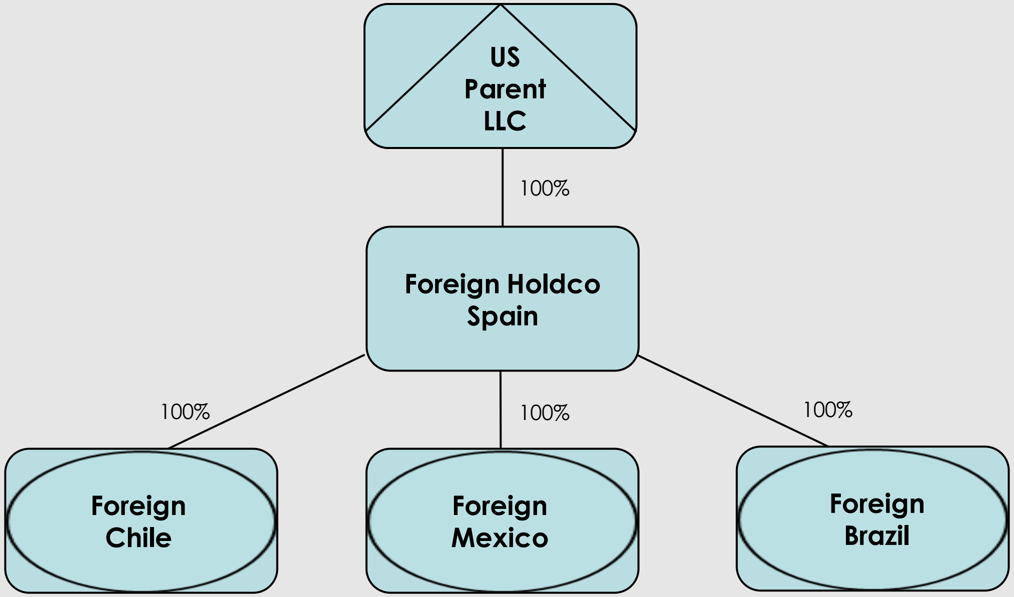


Tax Consequences of Structure

- U.S. parent <u>cannot</u> claim foreign tax credit for corporate level income paid or incurred (as well as foreign withholding taxes paid) in foreign jurisdictions
  - But single layer of U.S. income tax.
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- Can claim treaty based reductions if withholding taxes paid incurred in foreign jurisdictions under treaty with Spain.
- U.S. owners eligible to claim qualified dividend treatment on dividends received from Spanish holding company.
- Can defer intergroup payments of interest, dividends, royalties, etc, so long as Section 954(c)(6) extended.
- Benefit from bilateral investment protection treaties with Spain (except Brazil)

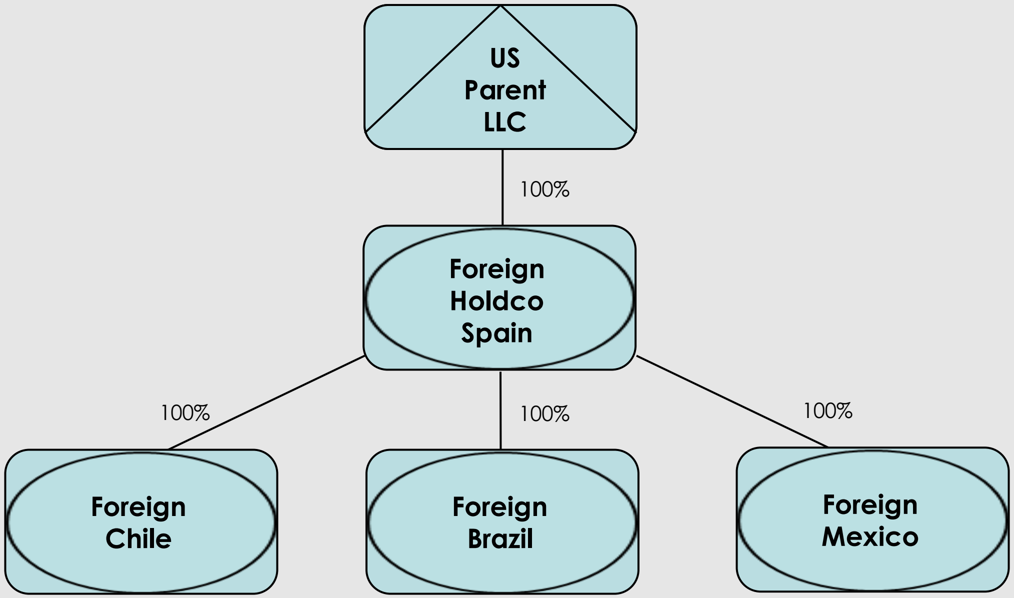
Flow-Through U.S. Parent and Foreign Subsidiaries with Foreign Holding Company



Tax Consequences of Structure

- U.S. parent <u>cannot</u> claim foreign tax credit for corporate level income paid or incurred (as well as foreign withholding taxes paid) in foreign jurisdictions
  - But single layer of U.S. income tax.
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- Can claim treaty based reductions with Spanish holding company if withholding taxes incurred in foreign jurisdictions.
- U.S. owners eligible to claim qualified dividend treatment on dividends received from Spanish holding company.
- Can defer intergroup payments of interest, dividends, royalties, etc, because foreign subsidiaries are disregarded for subpart F income purposes
- Benefit from bilateral investment protection treaties with Spain (except for Brazil)

Complete Flow-Through Holding Company Structure



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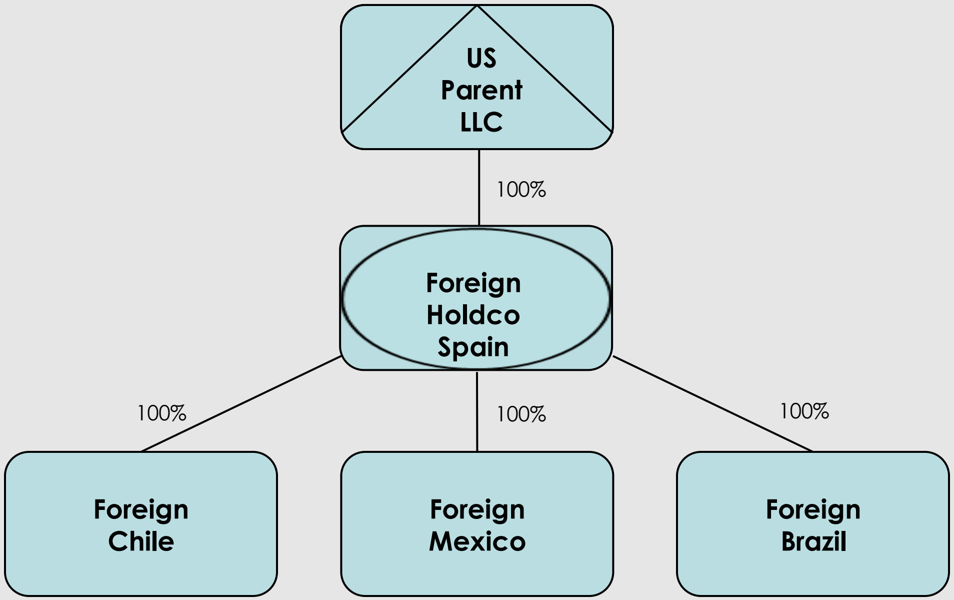
Tax Consequences of Structure

- No ability to defer income
- Can claim direct foreign tax credit for eligible foreign income taxes paid (including withholding taxes)
- Single layer of U.S. income tax.
- No ability to treat income as qualified dividend income
- Losses flow-through
  - But remember potential loss recapture rules, dual consolidated loss rules, and overall foreign loss rules.
- Can claim treaty based reductions with Spanish holding company if withholding taxes incurred in foreign jurisdictions
- No ability to defer intergroup payments
- Benefit from bilateral investment protection treaties with Spain (except Brazil)

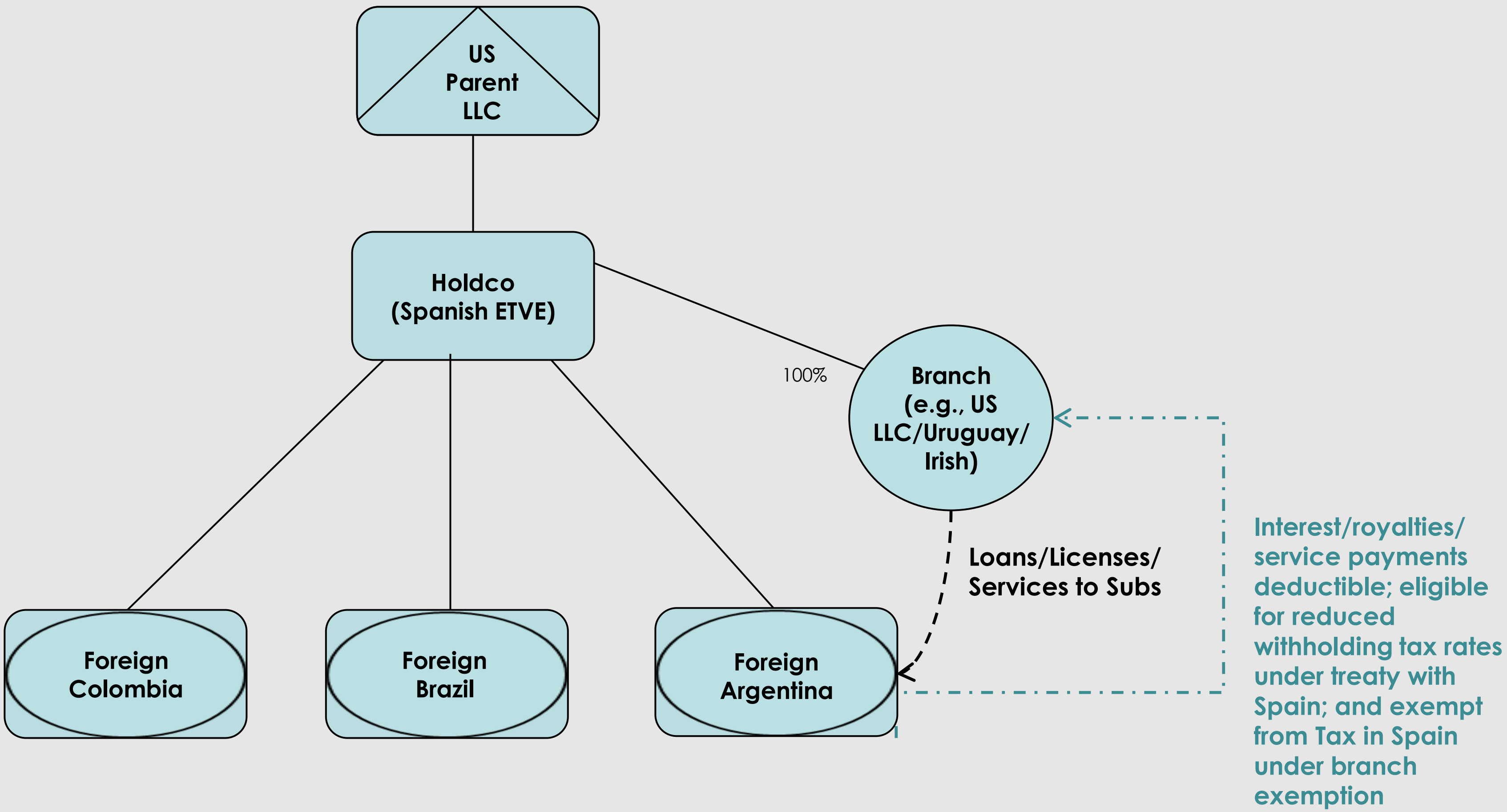
Flow-Through U.S. Parent and Foreign Holding Company



Tax Consequences of Structure

- U.S. parent <u>cannot</u> claim foreign tax credit for corporate level income paid or incurred in foreign jurisdictions (can only claim credit for any withholding taxes incurred).
  - But single layer of U.S. income tax.
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- Can claim treaty based reductions with Spanish holding company if withholding taxes incurred in foreign jurisdictions
- No ability to defer intergroup payments
- U.S. owners eligible to claim qualified dividend treatment on dividends paid from treaty-based subsidiaries, such as Mexico, but not Brazil.
- No ability to defer intergroup payments of interest, dividends, royalties, etc.
- Potentially can convert subpart F income into qualified dividend income with check-the-box planning
- Benefit from bilateral investment protection treaties with Spain (except for Brazil)

Use of Foreign Holding Company with Branch Exemption



Tax Consequences of Structure

- U.S. parent <u>cannot</u> claim foreign tax credit for corporate level income paid or incurred (as well as foreign withholding taxes paid) in foreign jurisdictions
  - But single layer of U.S. income tax.
- Income earned in foreign subsidiaries can be deferred from U.S. tax until repatriated.
  - Losses do not pass through.
- Can claim treaty based reductions with Spanish holding company if withholding taxes incurred in foreign jurisdictions, even though payments made to low-tax branch of Spanish holding company.
  - May <u>not</u> work with Brazil according to Brazil-Spain income tax treaty.
- Can claim deductions for intergroup payments incurred at foreign subsidiary level, even though receipt of payments will be exempt (or subject to low taxes) at branch level and Spanish holding company level under branch exemption.
- U.S. owners eligible to claim qualified dividend treatment on dividends received from Spanish holding company.
- Can defer intergroup payments of interest, dividends, royalties, etc, because foreign subsidiaries are disregarded for subpart F income purposes
- Benefit from bilateral investment protection treaties with Spain (except for Brazil).