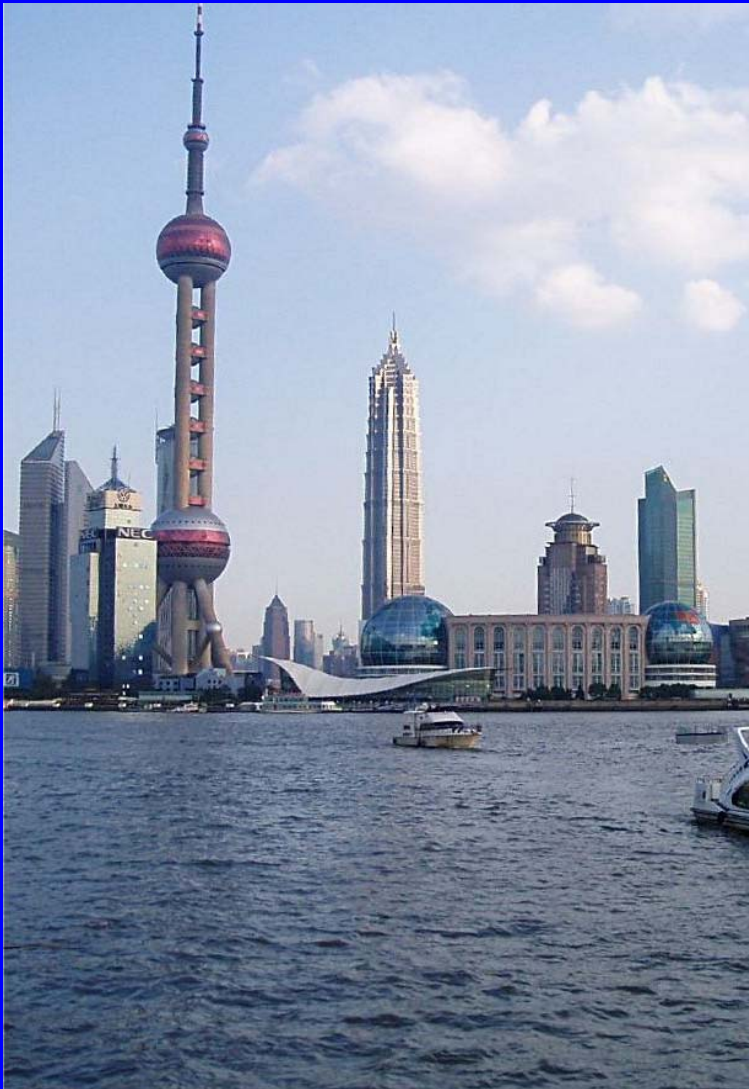


Real Estate Roundtable - Educational Forum
U.S. Real Property Investment – An Asian Perspective
October 14, 2010 ~ City Club

from Shanghai...



...to San Francisco



Harriet Leung

Brian Rowbotham

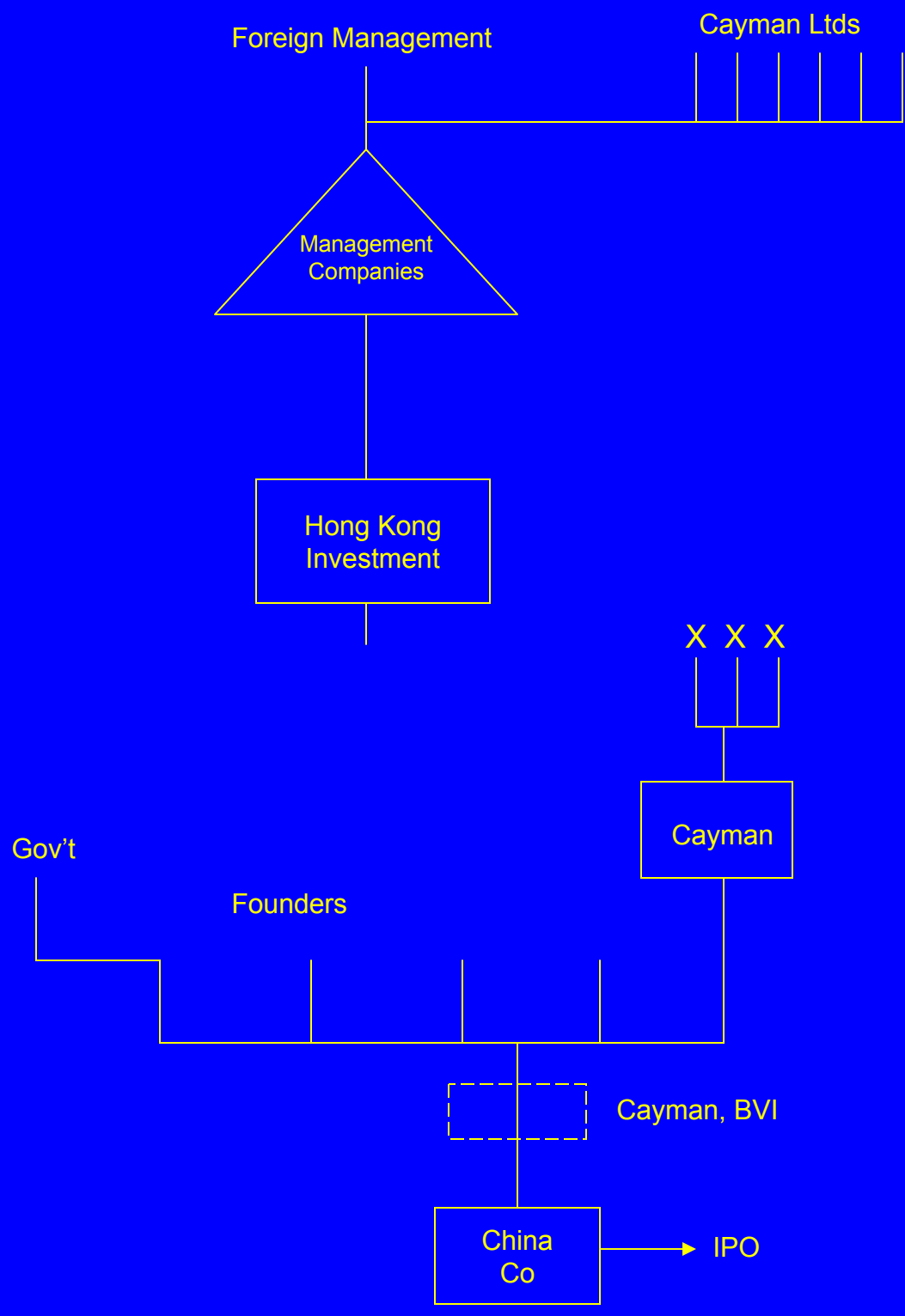


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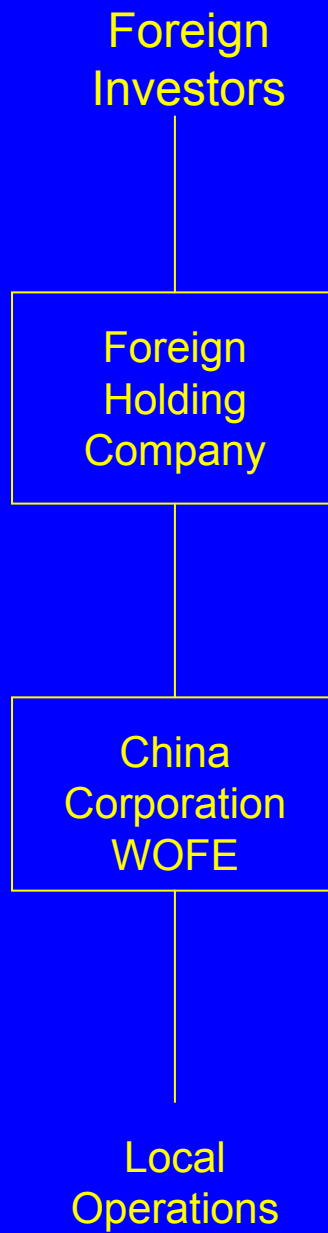
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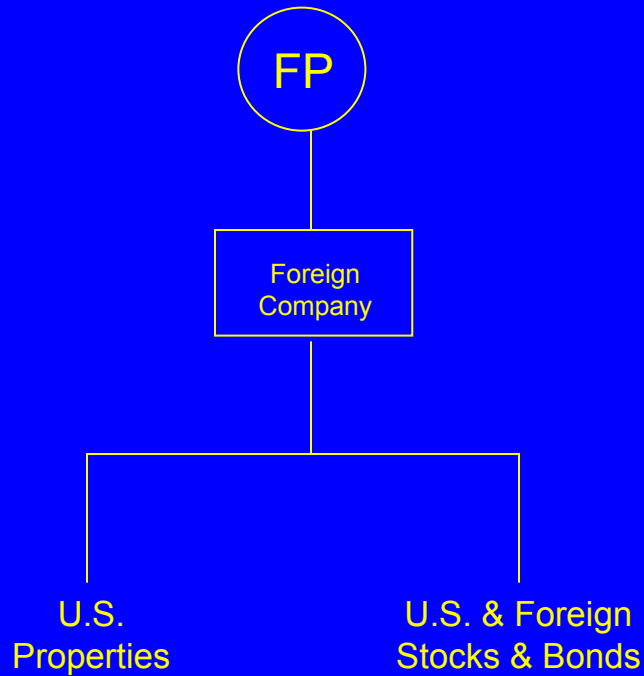
China Structures



Investing into China Today



Typical “One-Stop Shop” Solution



Foreign Ownership of U.S. real property

- + Estate tax protection
- + No gift tax on transfers of foreign stock
- U.S. real estate gains in FC taxed at combined federal and state income tax rate of 40%
- Possible “branch profits tax” on “dividend equivalent”

U.S. Gift & Estate Tax Rates & Exemptions

Residents & U.S. Citizens

Gift Tax Exemptions:

Annual	\$13,000
Lifetime	\$1 million

Estate Tax Exemptions:

Exemptions and Maximum Tax Rates		
Year	Estate Tax Exemption	Highest Rate
2003	\$1 million	49%
2004	\$1.5 million	48%
2005	\$1.5 million	47%
2006	\$2 million	46%
2007	\$2 million	45%
2008	\$2 million	45%
2009	\$3.5 million	45%
2010	N/A (taxes eliminated)	0%
2011	\$1 million	55%

?
?

Nonresidents

Gift Tax Exemptions:

Annual	\$13,000
Lifetime	NA

Estate Tax Exemption \$60,000 [?]

Assets Subject to U.S. Gift & Estate Tax

	U.S. Gift Tax (1)	U.S. Estate Tax (2)
<u>Tangible Property</u>		
Cash	Yes	No (1)
U.S. Real Property	Yes	Yes
Art	Yes	Yes (3)
Autos	Yes	Yes
Jewelry	Yes	Yes
<u>Intangible Property</u>		
U.S. Money Market Fund	No	Yes
U.S. LLC	No	- - - (2)
U.S. Stocks	No	Yes
U.S. Bonds	No	Yes

- (1) Special exception for cash in U.S. banks
- (2) Facts and circumstances
- (3) Exception for art in the U.S. on display in U.S. exhibition

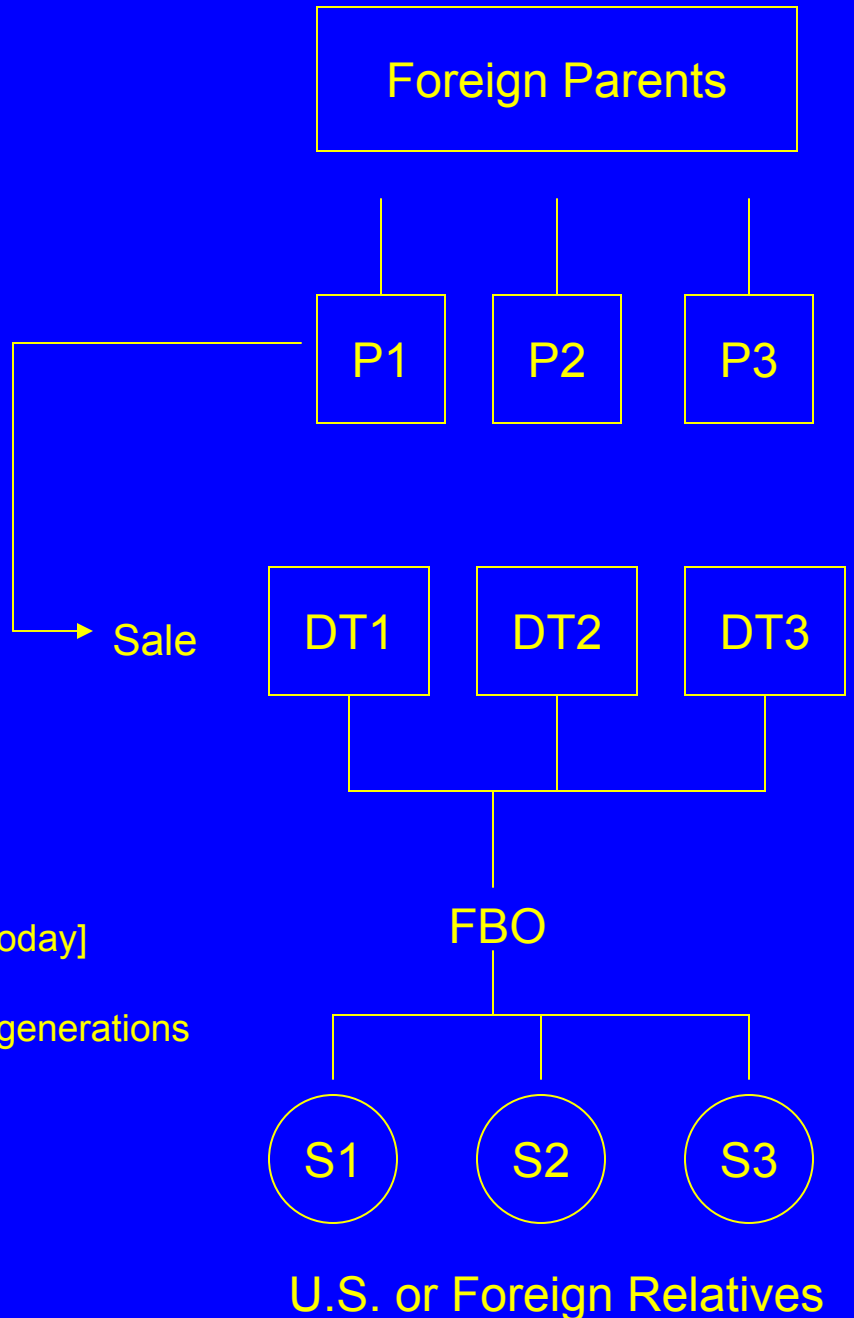
China Today

- General Rule: No gift tax
- Real Property
 - Family gifting exempt
 - Gifting to third parties subject to gift tax
- No Estate Tax

- (1) Gift Tax: - Property "situated in the U.S." [Section 2511]
 - Intangible property is excluded [Section 2501 (a) (2)]
- (2) Estate Tax: Property "situated in the U.S." [Section 2103]

Avoiding Transfer Taxes by Selling Property

Cost	100
FMV	101
	<hr/>
Gain	1
	<hr/> <hr/>



- Sale at depressed values avoid
 - gift tax
 - estate tax [for generations]
- Minimizes income tax [15% rates today]
- Dynasty trusts avoid tax for future generations

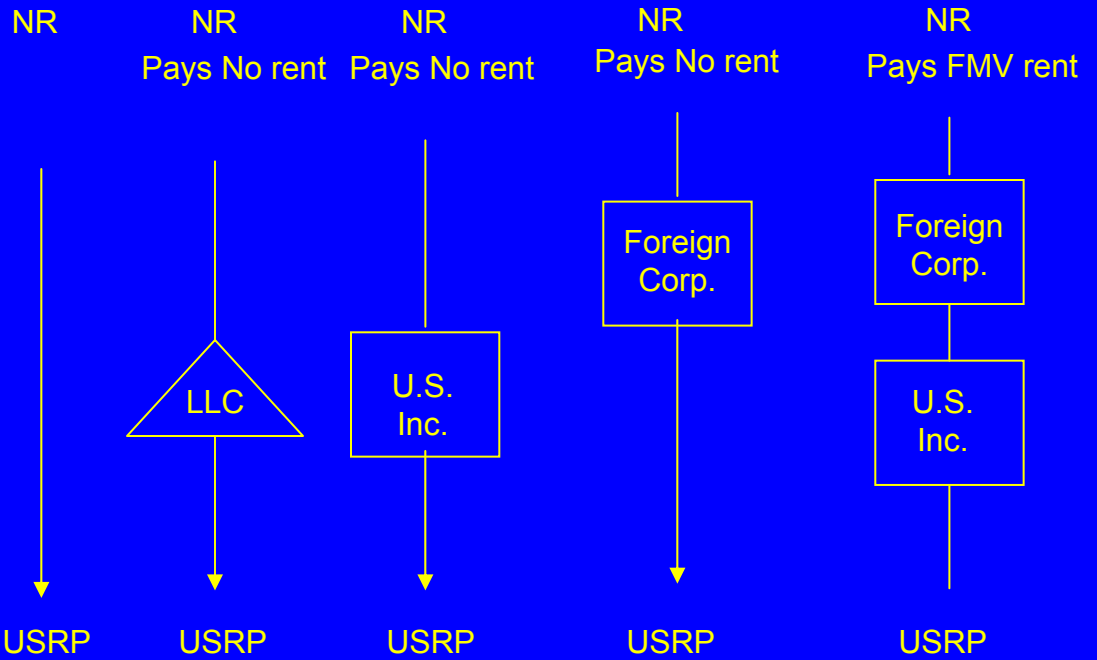
Income Taxation

	<u>Federal</u>	<u>State</u>
Individuals & Trusts:		
– Operating income	35%	0-12%
– Capital gains (sale of USRP)	15%	“
Corporations:		
– Operating income	35%	“
– Capital gains (sale of USRP)	35%	“
Foreign Corporations – second level tax:		
– Dividends from U.S. Corp.	30% ⁽¹⁾ ⁽²⁾	-0-
– Branch Profits Tax		
– Tax on dividends equivalent	30% or treaty	-0-

(1) Lower rates apply if income tax treaty exists

(2) U.S. – China tax treaty rate = 10%

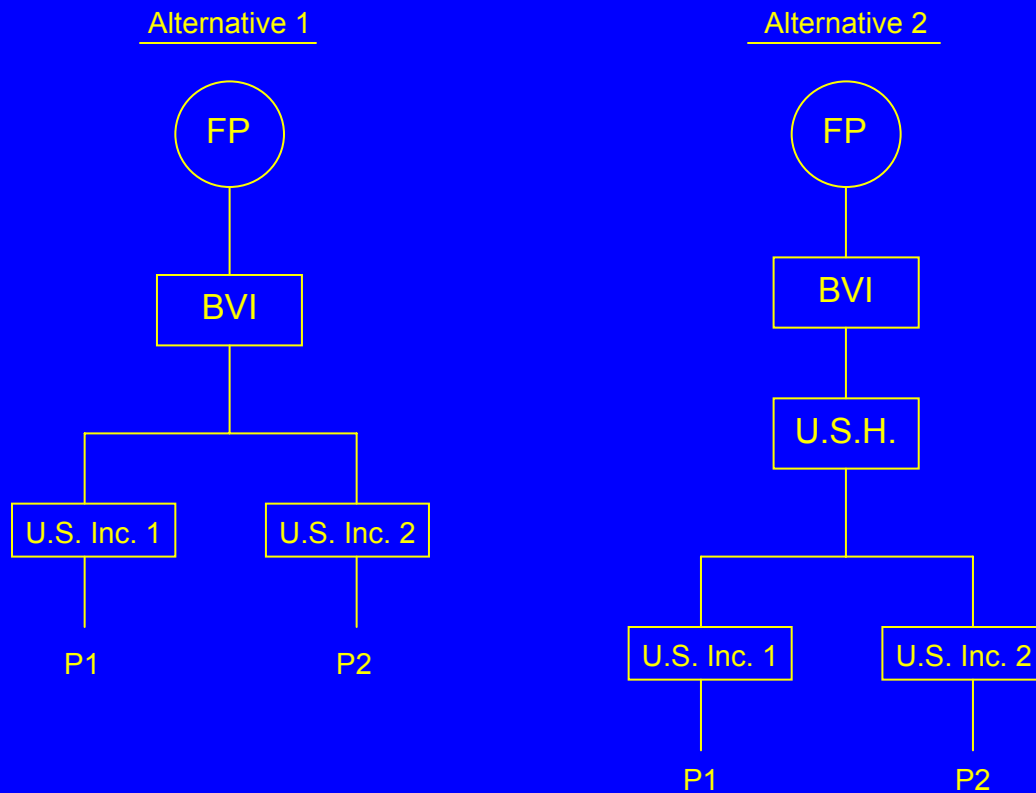
Residential Property: Florida Beach House



Estate Tax	X	X	X	-0-	-0-
Risk Inclusion in Estate (Section §2036(a)(1))	-0-	-0-	-0-	X	-0-
Income Tax Risk					
Imputed Income §482	-0-	-0-	X	X	-0-
Branch profits tax §884	-0-	-0-	-0-	X	-0-
Lost deductions	-0-	-0-	-0-	X	-0-

Foreign Investment in Real Property Tax Act [1980] “FIRPTA”

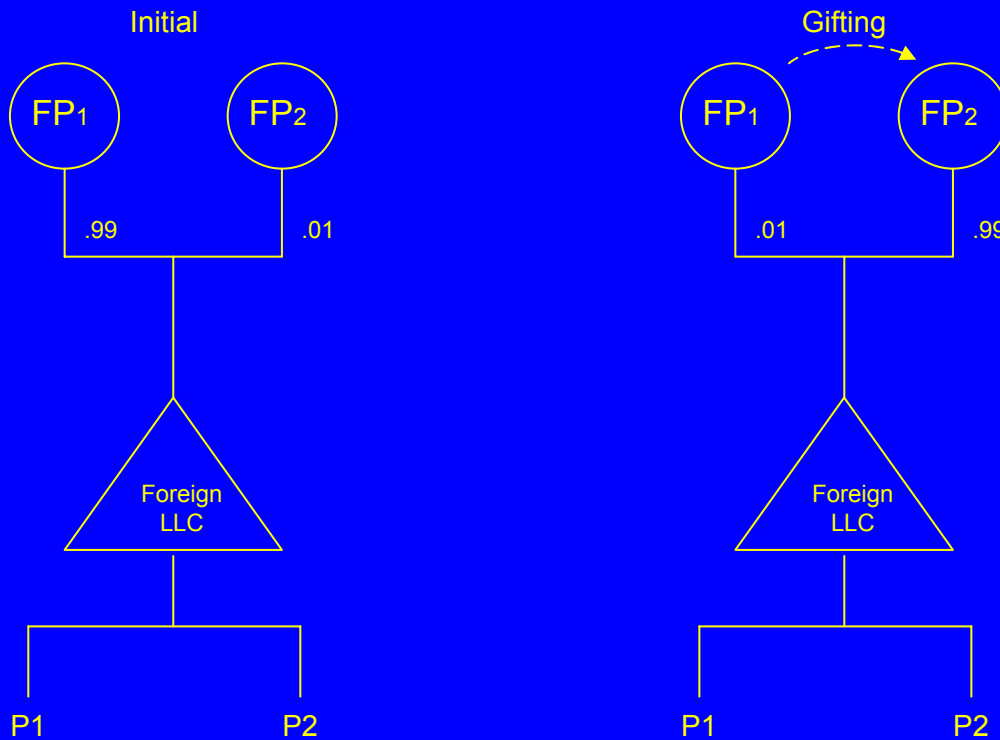
Commercial Property – Corporate Ownership



Foreign Corporation Structure

- Estate tax eliminated by foreign corporation
- Corporate tax rates on income and on gains
- Dividends paid by foreign corporation = 30% [lower treaty rate] withholding tax
- Confidentiality for ultimate foreign owner
- Sale of all U.S. property and liquidation of U.S. corporation [tax-free] avoids dividend withholding tax
 - For this reason, we often see each U.S. property held in a separate U.S. Company [Alternative 1]
 - If U.S. holding company is used, the gains and losses are combined [Alternative 2]
 - Downside is the loss of tax-free liquidation

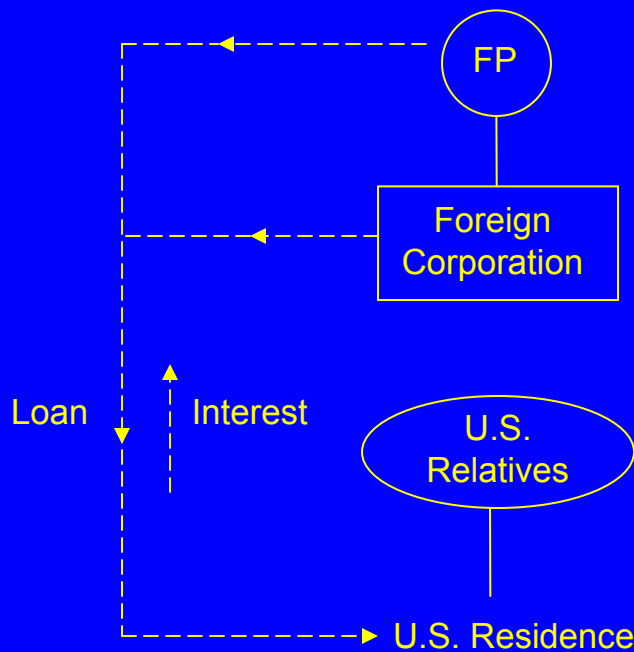
Commercial Property Ownership through Foreign Partnerships



Partnership Benefits compared to ownership through foreign corporation

- Single Level of Income Tax
 - FP pays tax
 - FP qualifies for 15% capital gain rates
 - FP files annual returns to report U.S. income
- Partnership Interest = Intangible Property
- Partnership Interest [U.S. or foreign] is not subject to U.S. gift tax
- Partnerships have risk re: Estate Tax
 - See *Blodgett v. Silberman*, 277 U.S.1 (1928).
 - Rev Rule 55-701, 1955-2 C.B. 836
 - Estate taxation of partnership based upon situs:
 - location of partnership's trade on business?
 - owner's domicile?
 - where assets located?

Financing: Portfolio Interest Exemption



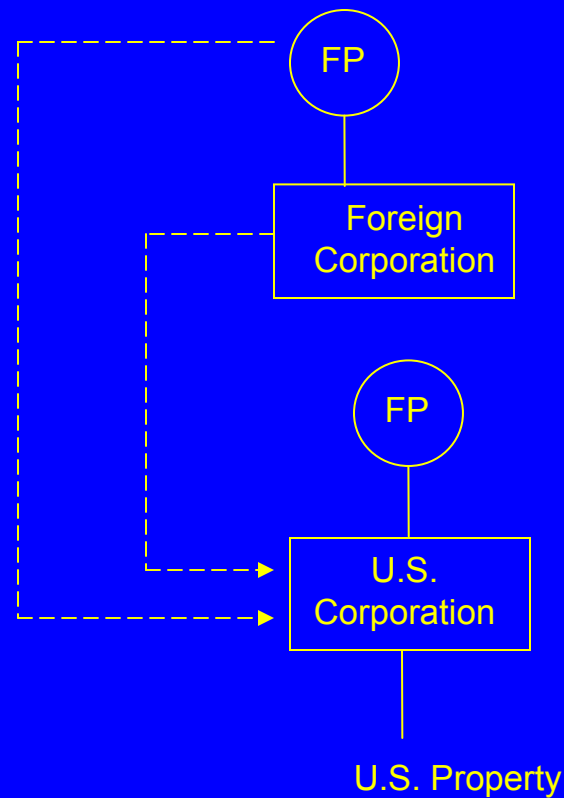
Normal Rule: Interest paid to foreign lender subject to

- 30% withholding tax, or
- Lower rate may apply under income tax treaty

Exception: Portfolio interest exemption if

- Unregistered obligations
- Held by non U.S. person (Section 871 (h))

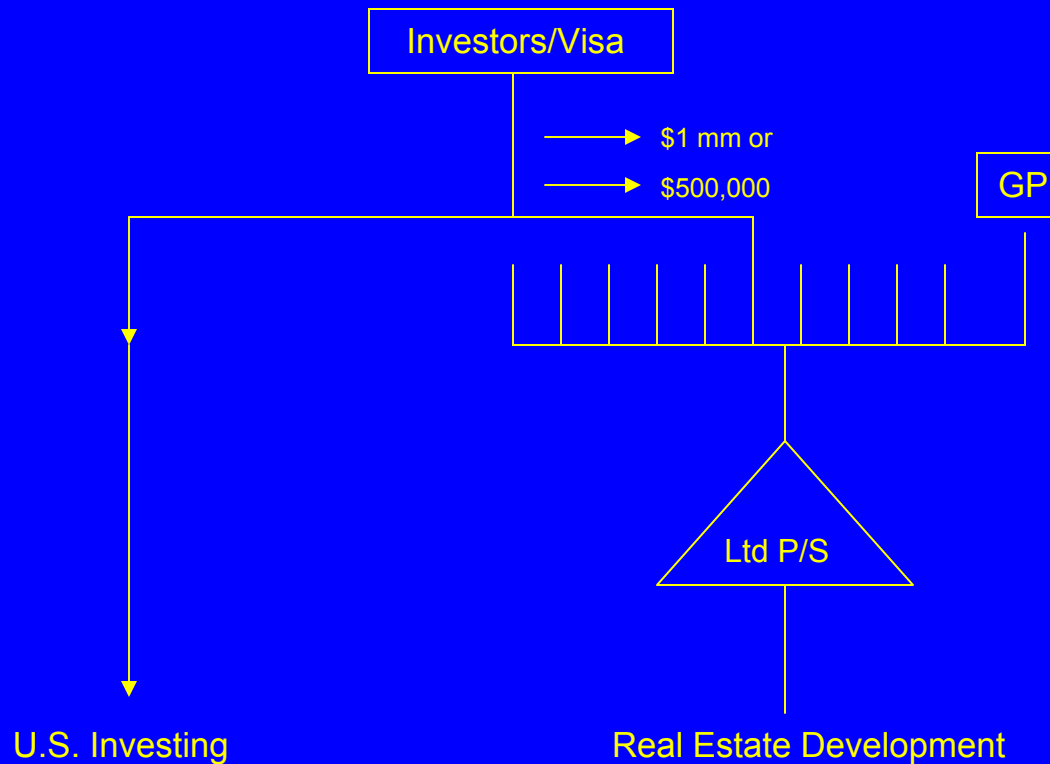
Corporate Financing



Related Party Loan to U.S. Corporations and Partnerships:

- Tax withholding on interest at 30% or treaty rate if FP or lender has 10% or more direct or indirect interest in U.S. entity
- Challenge: Confirming ownership

EB5 Program



Status

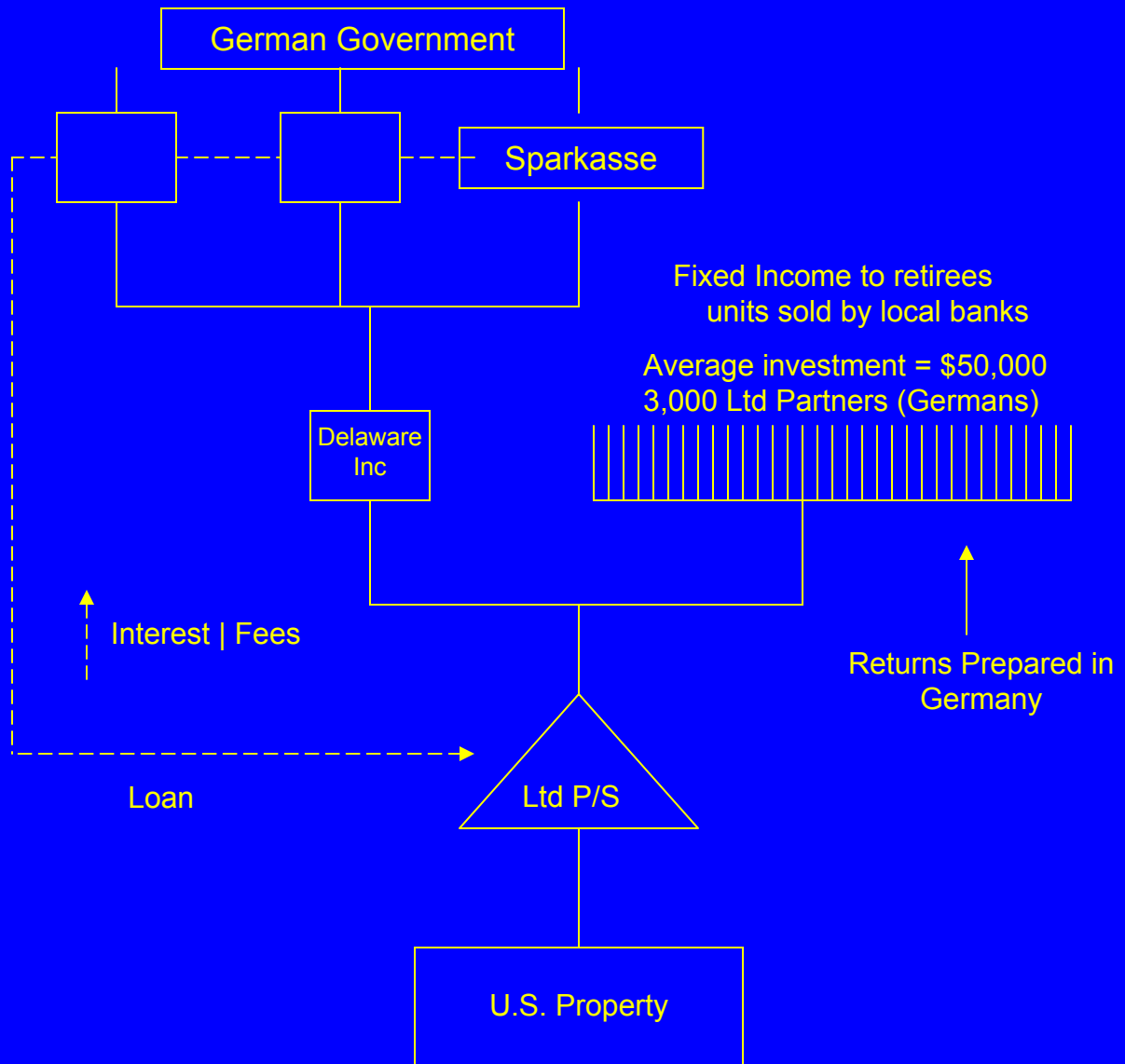
- Green card issued
- Wife & children reside in CA
- Husband runs businesses in China
 - U.S. presence of 4 months per year
 - Dual resident

U.S. Residence status in question

- Green card vs. Income Tax Treaty
- Treaty with China:
 - If dual resident, competent authority will determine where individual resides

Investing in U.S. – German Style

Commercial Property



- (1) Tax advantages in Germany with direct investment in property
- (2) Risk of estate tax: only \$60,000 exemption
- (3) Risk to GP re: estate tax

Tax Traps for Investing in U.S. Property

(1) Withholding Taxes

- Maximum rates on income in U.S. or foreign partnership
- On sale of property by foreign person
 - federal 10%
 - state 3.3%
- No withholding on residence $\leq 300,000$

(2) Gift Tax

(3) Resident Status of Investors

(4) Property Tax Assessment

Harriet Leung 梁詠嫻



Tel

(415) 433-1177

Email

hleung@rowbotham.com

Harriet Leung is a CPA and heads up the firm's Asian business practice engagements for private and public companies. Ms. Leung is active advising companies with M&A transactions and international clients in the financial due diligences, audit and business advisory areas.

She has substantial experience servicing companies that were seeking listings on both foreign and U.S. stock exchange markets. She has represented and worked with companies in Asia completing reverse mergers into the U.S. public companies.

Ms. Leung also has extensive experience working in restructuring international investment funds with operations in the U.S., but owned and controlled in Asia.

Ms. Leung's client base includes companies in real estate (including domestic and foreign), international investments, science, distribution, high-tech and software.

She oversees activities related to the firm's membership of the American Institute of Certified Public Accountants (AICPA) and Public Company Accounting Oversight Board (PCAOB). These memberships allow the firm to service both private and publicly held companies.

Ms. Leung earned a Bachelor of Science in Accounting with honors and a Master in Finance from Golden Gate University. She also received several scholarships and awards of distinction at Golden Gate University.

Ms. Leung is a member of several organizations including the San Francisco Chapter of the California Society of CPAs, the American Institute of Certified Public Accountants, the Monte Jade Science and Technology Association, the Hong Kong Association of Northern California, and the Hong Kong General Chamber of Commerce. Ms. Leung also serves on the advisory committee and leadership development committee for the non-profit Tax-Aid program that provides tax services to low income families in the San Francisco Bay Area.

Ms. Leung is fluent in both Cantonese and Mandarin.



Brian Rowbotham 羅博文



Tel

(415) 433-1177

Email

br@rowbotham.com

Brian Rowbotham is a CPA with 33 years of experience advising businesses and individuals on complex domestic and international income and estate tax planning. He is the founding partner of Rowbotham & Company LLP which is almost exclusively dedicated to businesses and investors needing both domestic and international tax and accounting services.

His clients include private and public companies around the globe which consist of: U.S. and foreign institutional investors, multinational families and executives and non-U.S. investors doing business in the U.S. Mr. Rowbotham has advised clients in major domestic and international litigation and has also served on the boards of both privately held and publicly traded companies. From 1992 to 2006, he directly supervised his firm's engagement by trustees in Europe to assist with the recoveries of funds from one of the largest frauds in U.K. history. Over the past 20 years, he has represented large European and Middle Eastern institutional investors and numerous Asian families investing in U.S. Real Estate transactions.

Mr. Rowbotham has been a frequent guest lecturer at the Haas School of Business, University of California Berkeley, and at the University of San Francisco. He taught graduate courses on corporate and partnership taxation at the University of California Extension. He has been a speaker for several U.S. and international tax planning organizations, including the ITPA and STEP, in Europe, Asia and the U.S. He presented in-house training lectures on investment structures for acquisitions of U.S. property at major European trust companies and banking institutions.

Mr. Rowbotham is a frequent commentator on international tax topics of interest. He submitted proposed legislation to the U.S. Treasury in the FIRPTA arena which resulted in changes to final regulations on withholding tax on foreign partnerships with investments in U.S. Real Property. This past year he issued several commentaries that were critical of IRS procedures and policies in the FBAR amnesty program.

He is member of the Tax Division of the AICPA and a past president of the San Francisco Tax Club. Mr. Rowbotham is a former featured columnist for Outlook, the official journal for the California Society of CPAs. He has been a contributor to the Journal of Accountancy and several international tax and investment journals. In 2005, he was profiled in the San Francisco Business Times as an entrepreneur of the accounting profession. In April 2009, his article "Doing Business in China" was featured on the cover of the California CPA Journal.

Mr. Rowbotham began his career in national accounting firms in San Francisco and London, specializing in international tax, before founding Rowbotham & Company in 1991. He was born in Buenos Aires with British citizenship, and became a naturalized U.S. citizen in 1969. He earned his bachelors degree and MBA, with honors, from the University of California, Berkeley.



Rowbotham & Company LLP

Rowbotham & Company is a Certified Public Accounting firm that provides accounting services and domestic and international tax consulting to individuals and businesses of all sizes, including large multi-national companies. The firm takes a global approach to client services and responds to complex business challenges with experience and care.

The firm provides a full range of audit and tax services. Frequent engagements include:

- ❖ Income and estate planning for executives and investors – domestic and international
- ❖ Audit services, Pre-IPO consulting services, and Sarbanes-Oxley compliance
- ❖ Merger and acquisition services, including due diligence and business valuations
- ❖ International tax planning and compliance
- ❖ Litigation support
- ❖ Assistance with federal and state tax audits

The firm works closely with client audit committees, CEOs, CFOs, and controllers and coordinates with foreign accountants or service providers, as needed. Industry experience includes:

- ❖ Distribution
- ❖ Financial Services
- ❖ Information Technology
- ❖ Investment Funds
- ❖ Life Sciences
- ❖ Real Estate
- ❖ Software

Founded in 1991, Rowbotham & Company has offices in San Francisco and Santa Clara and is a member of the Polaris International, a worldwide network of accounting and consulting firms. The firm is a member of the American Institute of Certified Public Accountants and is also registered with the Public Company Accounting Oversight Board, which entitles it to practice before the SEC. The firm maintains close ties to the legal, banking, and venture capital communities and frequently makes strategic introductions for its clients.

