

Contact:
info@rowbotham.com

Website:
www.rowbotham.com

San Francisco Office:
tel: (415) 433-1177
fax: (415) 433-1653

Santa Clara Office:
tel: (408) 850-7295
fax: (415) 433-1653

Rowbotham Launches a New Blog in China

February 15, 2010

Dear Colleagues and Friends,

We are pleased to announce the launching of our new blog *in China!*
Check out our blog at www.rowbothamcompany.com.

The purpose of our blog is to provide information and commentaries on important current issues regarding cross-border tax, accounting, business and investment matters between Asia and the U.S.

U.S. blogs are, in general, blocked from being viewed in China. In order to make our blog site available to our clients and friends throughout Asia, including China, our site is hosted in China and is searchable on Baidu, China's largest search engine. As a result of using a hosting service in China, viewers outside of Asia may sometimes experience a minor delay with download time, but in most instances, this delay will only be a few seconds.

We hope the information and our commentaries cover subjects of interest. We'd be delighted to hear from you regarding any questions or topics you would like us to explore.

The following are two recent firm presentations that can be viewed on our blog site:

1. [San Francisco Real Estate Roundtable - An Asian Perspective on Real Estate Tax Planning](#)
The presentation covers tax strategies for foreign investors in U.S. real property. This was presented to the San Francisco Real Estate Roundtable.
2. [Doing Business in China](#)
The presentation covers tax issues for individuals and corporations doing business in China. This was presented at the annual Offshore Investment conference in Puerto Rico.

We wish you all a prosperous and healthy Year of the Rabbit!

[Brian Rowbotham](#) and [Harriet Leung](#)

亲爱的同事和朋友:

我们很高兴向大家宣布:我们的博客正式在中国启动了。
请往 www.rowbothamcompany.com 浏览我们的博客。

我们建立此博客的目的是为各位设立一个讨论平台,提供当前亚洲与美国之间的跨国税务、会计、业务和投资相关事宜的最新信息。

为了让在亚洲(包括中国)的客户和朋友能浏览我们的网站,我们特意把我们的博客网站设在中国网路上,并可在中国最大的搜索引擎 - 百度上搜索。因为博客网站设在中国,在亚洲以外浏览网站的朋友可能会遇上轻微的迟误。

我们希望为大家提供多完化的投资税务信息及讨论话题。若阁下对我们博客上的内容有任何问题或意见, 又或想提出一些大家感兴趣的讨论话题, 欢迎到我们的博客上留言。我们一定尽量为阁下作答。

为配合各位在新一年的投资计划, 以下是蔽公司为大家上载近期相关的演说:

1. [旧金山房地产圆桌会议 - 从亚洲角度看美国不动产投资税务计划](#)

这演说是在旧金山房地产圆桌会议上发表的。演说文稿涵盖了外国投资者在美国投资房地产时应注意的税务策略。

2. [在中国营商](#)

这演说是在波多黎各举行的境外投资年会上发表的。演说文稿涵盖了个人和公司在中国做生意时应注意的税务问题。

谨祝

大家兔年万事如意, 身体健康。

[罗博文](#) and [梁泳娴](#)

Firm newsletters on other subjects can be viewed at our [website](#).

Rowbotham & Company is an accounting and consulting firm that provides domestic and international accounting, tax and consulting services to individuals and businesses including closely held corporations, investment partnerships and funds, venture backed technology enterprises and large multinational companies, both public and private.

The firm is registered with the Public Company Accounting Oversight Board (PCAOB), and is qualified to practice before the SEC. Rowbotham & Company has offices in San Francisco and the Silicon Valley and is a member of the AICPA and Polaris International, a worldwide association of accounting and consulting firms.

[Click here](#) for more information about our firm and its service areas.

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**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



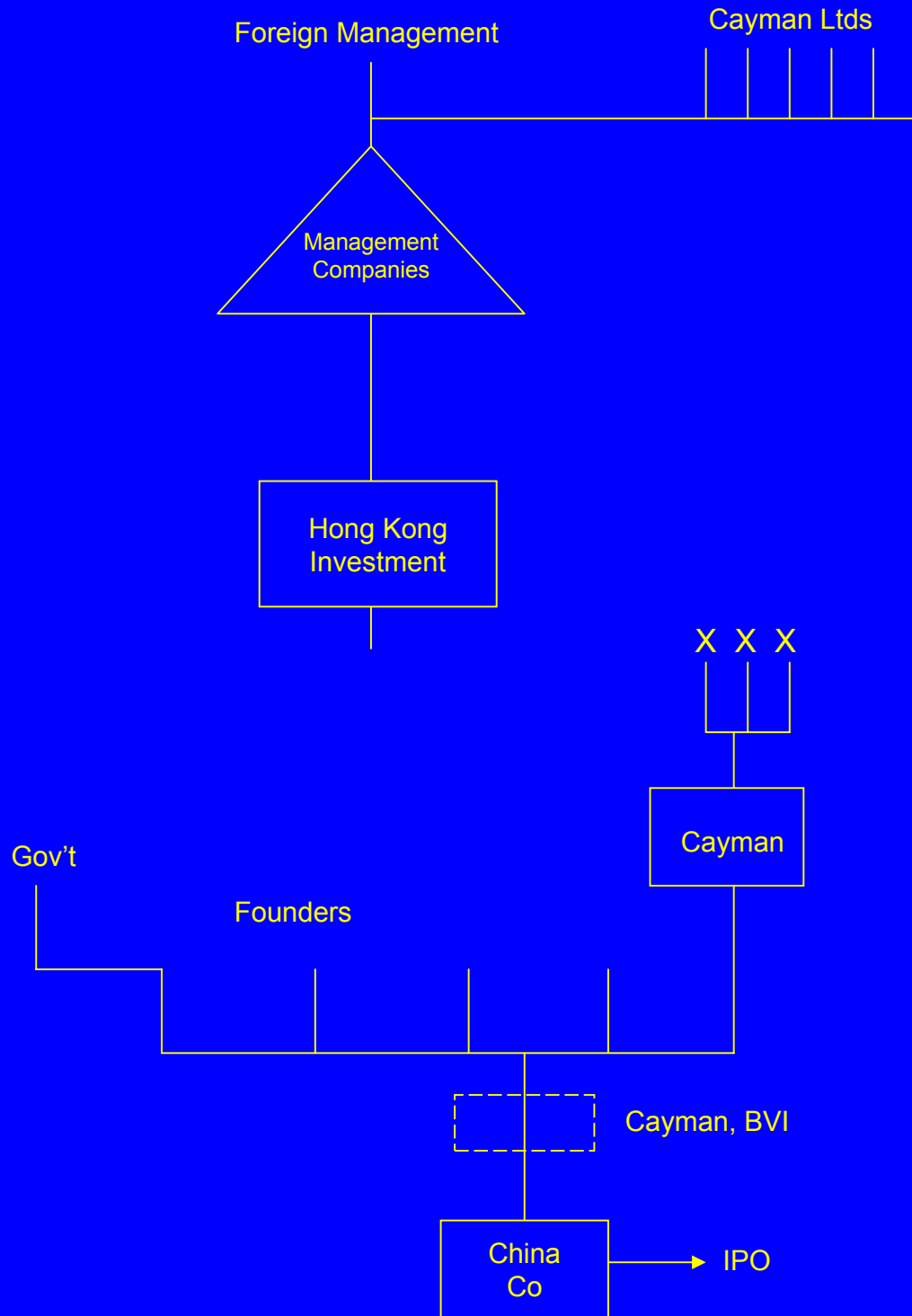
Rowbotham
& COMPANY LLP

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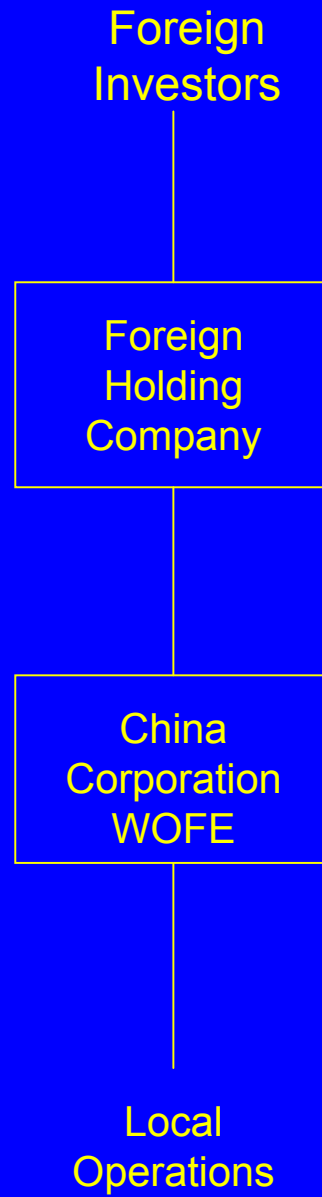
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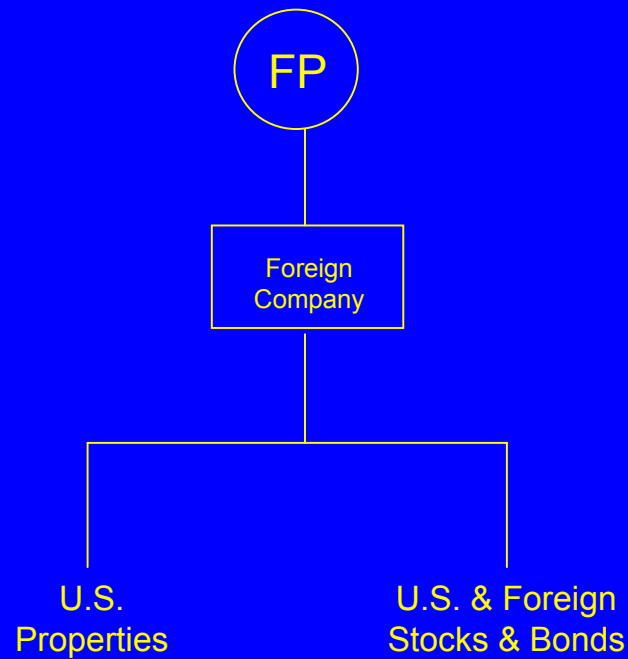
China Structures



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>U.S. Gift Tax (1)</u>	<u>U.S. Estate Tax (2)</u>
<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

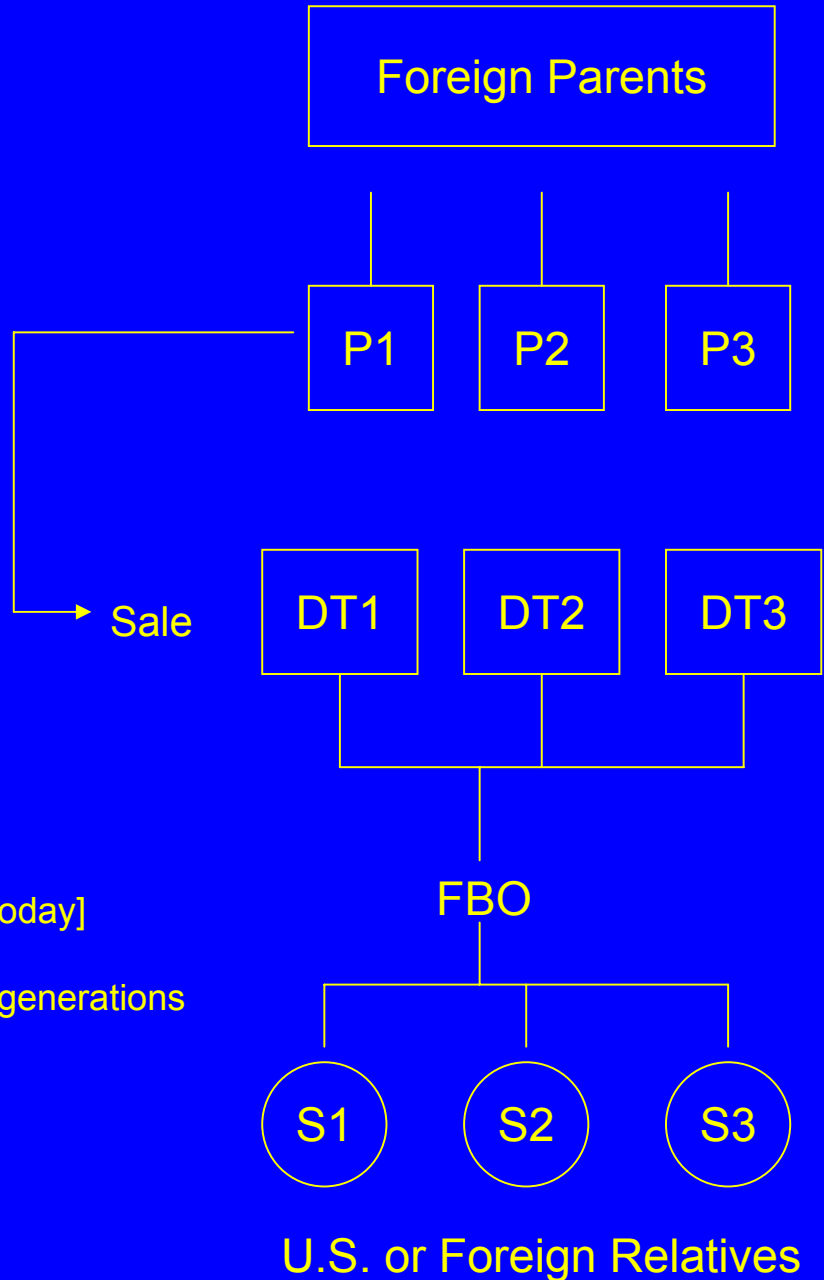
China Today

- 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

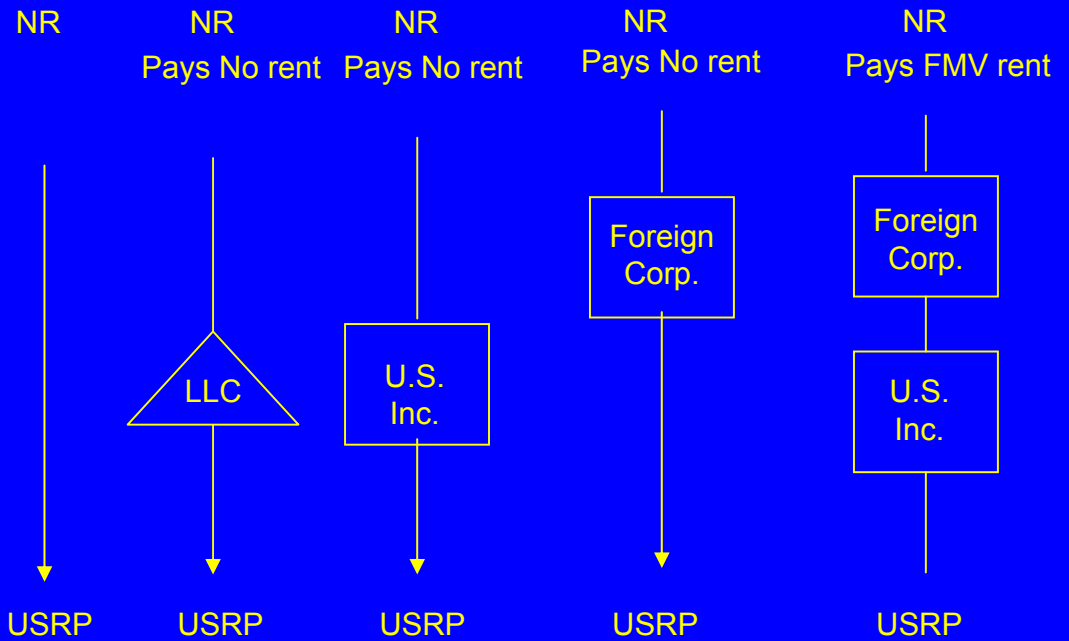
Income Taxation

	<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%

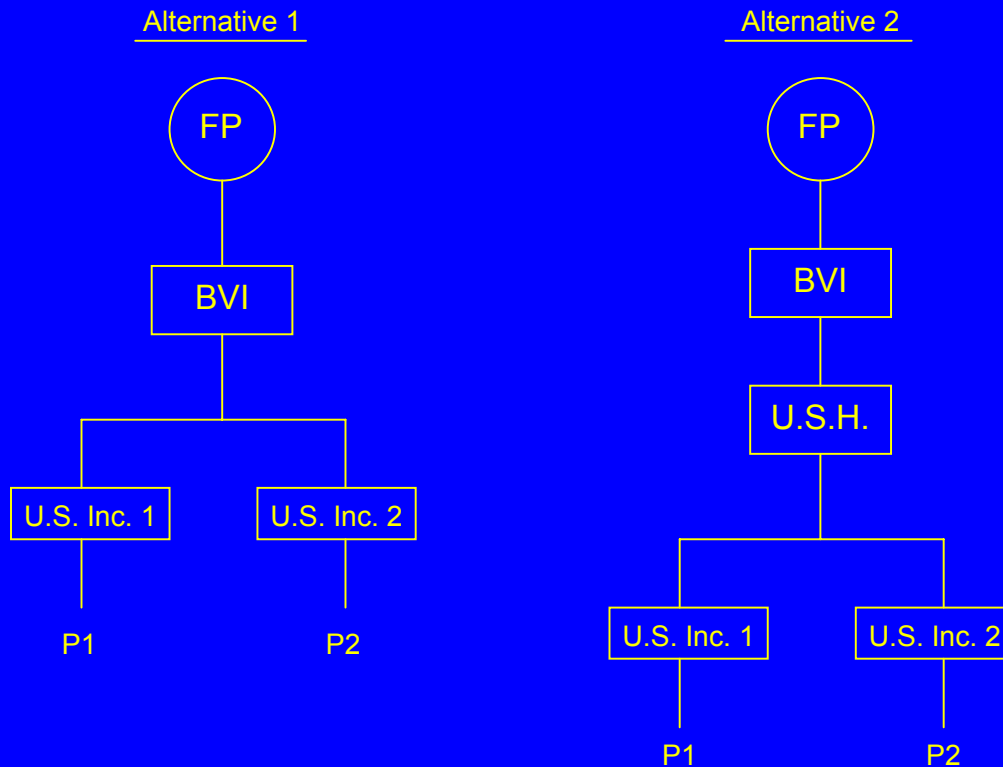
Residential Property: Florida Beach House



	NR Pays No rent	NR Pays No rent	NR Pays No rent	NR Pays No rent	NR Pays FMV rent
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”

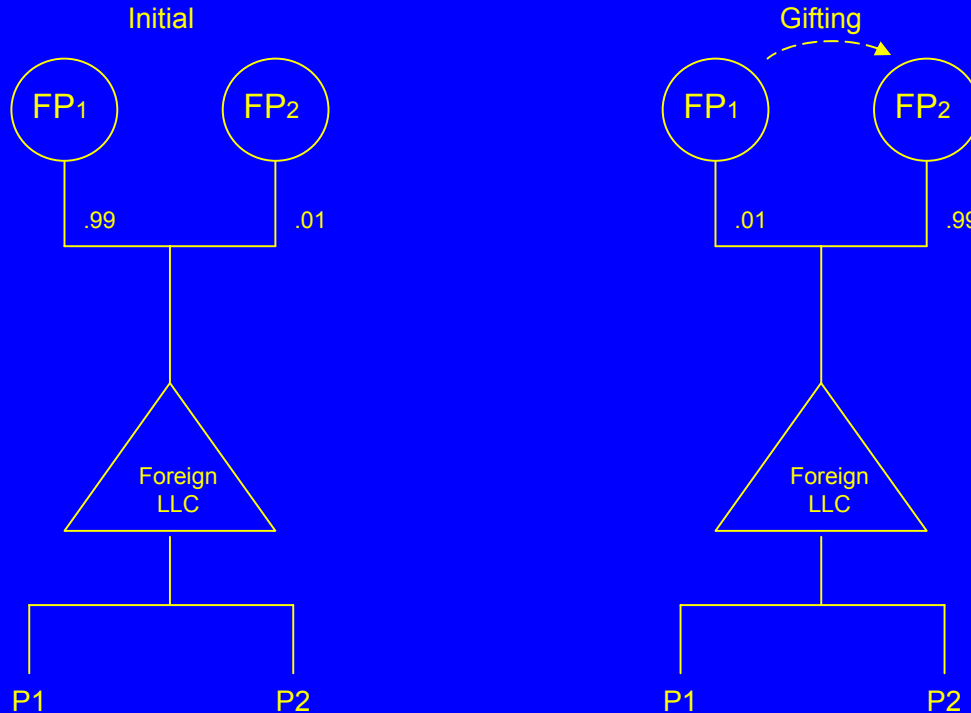
Commercial Property – Corporate Ownership



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

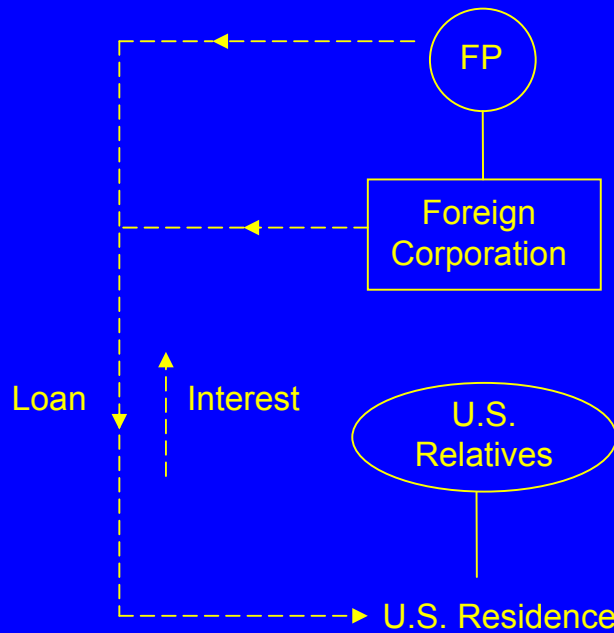
Commercial Property Ownership through Foreign Partnerships



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



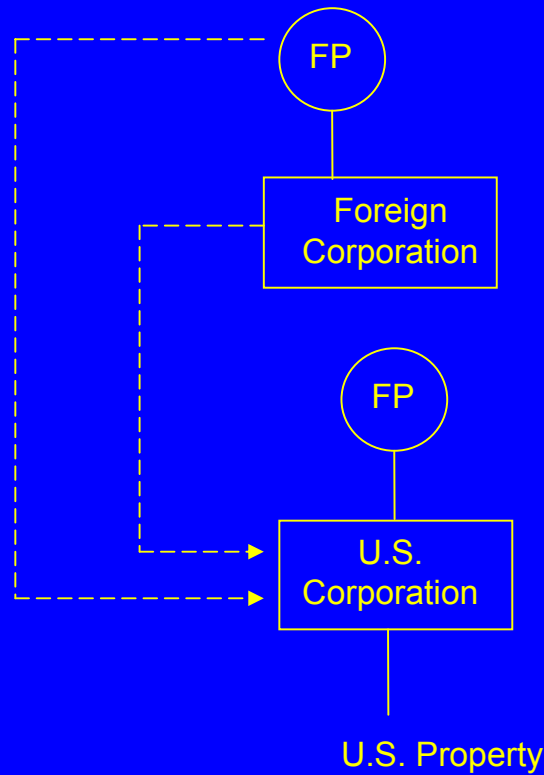
Normal Rule: Interest paid to foreign lender subject to

- 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))

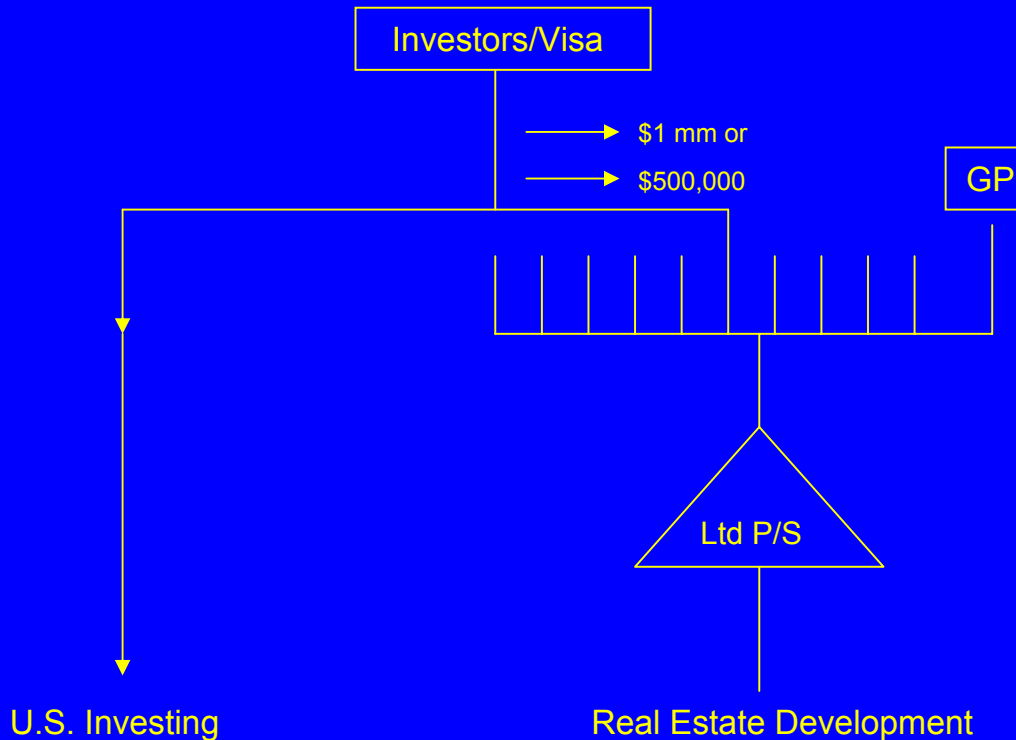
Corporate Financing



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

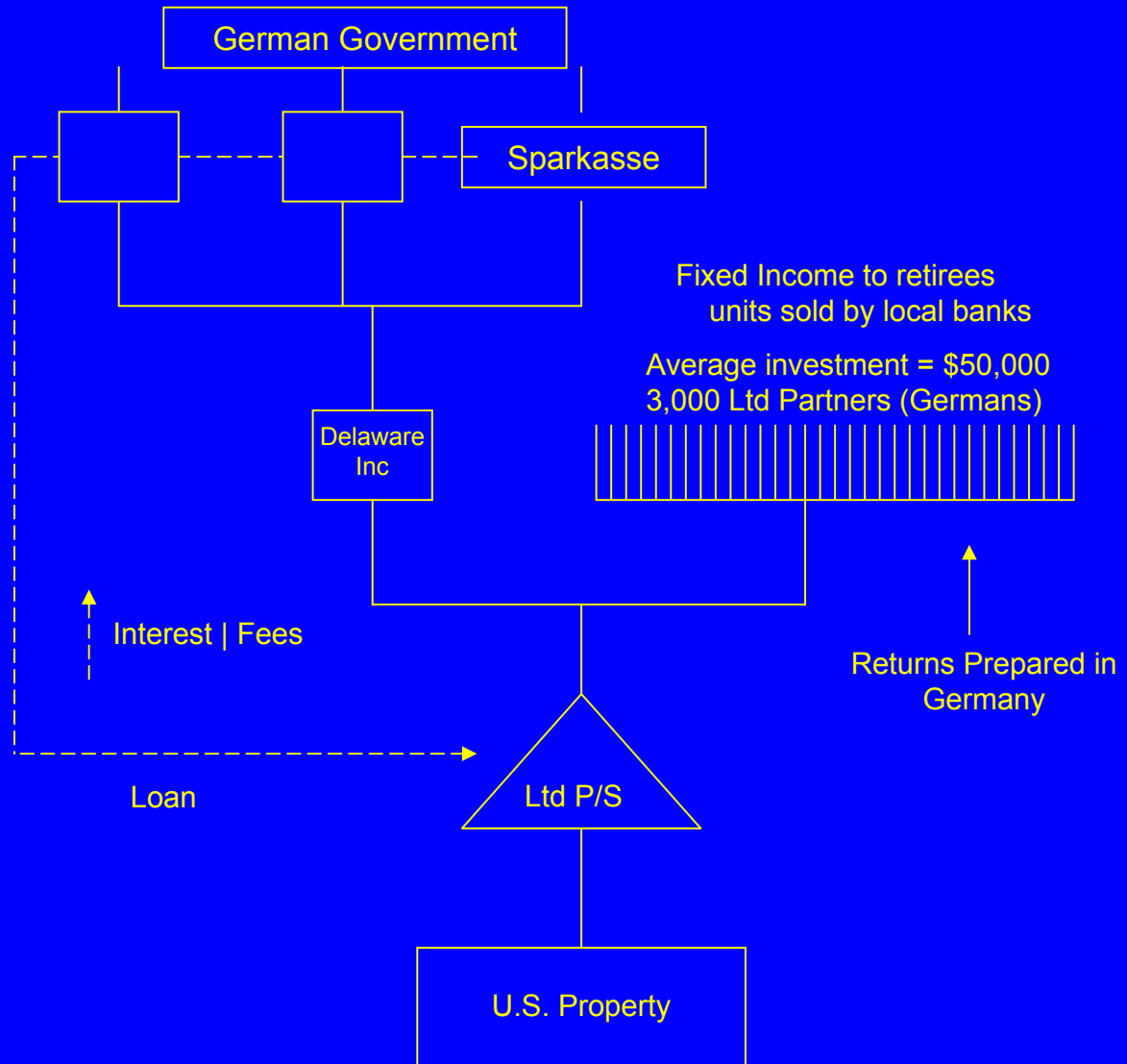
- Green card issued
- Wife & children reside in CA
- Husband runs businesses in China
 - U.S. presence of 4 months per year
 - Dual resident

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.



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Specialized cross-border services between the United States and China include:

- ❖ Executive income and estate tax planning
- ❖ Business expansion into the United States and China
- ❖ Financial audit and accounting services
- ❖ Mergers and acquisitions
- ❖ U.S. real estate acquisitions
- ❖ U.S. tax residency and immigration planning



China Tax Update



17th World Offshore Convention
November 17-18, 2010

Brian Rowbotham
羅博文
br@rowbotham.com

China Tax Update

Tax rates

Business taxes

- Basic rate of 25%
- Small to low profit enterprises meeting special criteria – 20%
- Preferred Industries - 15% (e.g. Tech, Pharma)

Individual Taxes

- Residents subject to tax on worldwide income
- Nonresidents taxed only on China source income
- As a result, foreign structures often formed to keep revenue outside

Trusts

- Tax laws not currently in place
- Business tax laws generally prevail on activities

China Tax Update

Personal Tax Categories

Taxation on scheduled basis

- Not cumulative
- May change in time

Wages – per month (5 % to 45% if over 100,000 RMB per month)

Business income from proprietorship

- 5% to 35% if over \$35000 annually

Personal Service Income:

- 20% to 40% (over 50,000 RMB)

Investment income - Fixed rate of 20%

China Tax Update

Personal Tax Categories (continued)

Other taxes include:

- Real estate tax
- Deed tax
- Stamp duty

Exemption from tax:

- Capital gains
 - Public Securities
 - Mutual funds
 - Treasury bonds

No AMT or State taxes

China Tax Update

Resident vs. Nonresident Status

Residents

- Defined to be domiciled or living in China for full year
- Taxed on worldwide income
- No exit tax

Change in status can occur if:

- Person obtains new citizenship or resident visa
- Resides outside China for full year

Nonresidents

- Foreign nationals residing in China for less than full year
- Taxed on China source income only

China Tax Update

Article 4 – U.S. China Income Tax Treaty

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the law of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head office, place of incorporation or any other criterion of a similar nature.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine through consultations the Contracting State of which that individual shall be deemed to be a resident for purposes of this Agreement.

China Tax Update

Gift and Estate Tax

Gift Tax

- Generally no gift taxes
- Exceptions - Real estate
- Not applicable to gifting within family
- 20% rate plus transfer related taxes

Estate Tax

- No estate tax
- Rules may change

Wealth transfer planning through trusts

- Starting to be used

China Tax Update

Tax Planning Strategies

Tax structures:

- Use of partnerships and joint ventures to obtain 20% tax rate

Changing source of earnings to foreign source

e.g. Changing to partnership structure

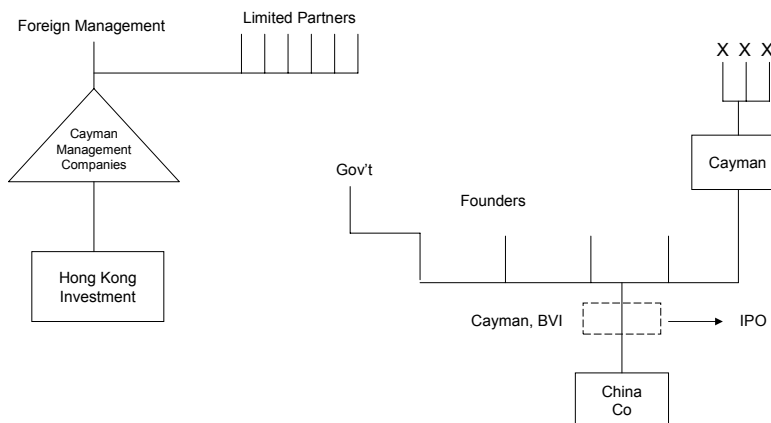
- Use of limited partnerships with 25% tax
- Avoids double taxation with using a corporation

Creating offshore structures

- Risks if there is no substance to foreign structure
- Examples include Hong Kong, Cayman and BVI holdings structures
- Certain filings necessary to obtain treaty benefits
- Need for active trading or management income
- New CFC regime – deemed dividends if there is no substance
- Transfer pricing is new concern

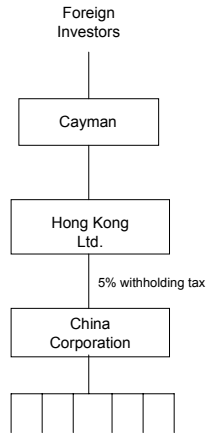
China Tax Update

Structures



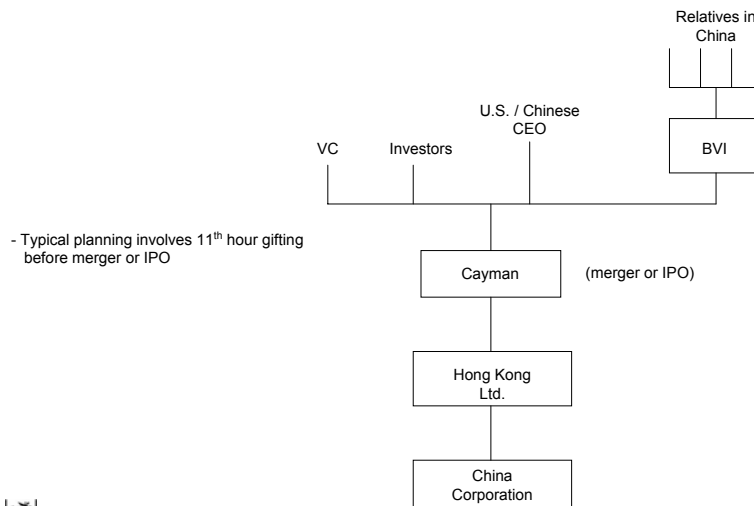
China Tax Update

Typical Investment Structure into China Today



China Tax Update

Home Grown Tax Planning



- Typical planning involves 11th hour gifting before merger or IPO

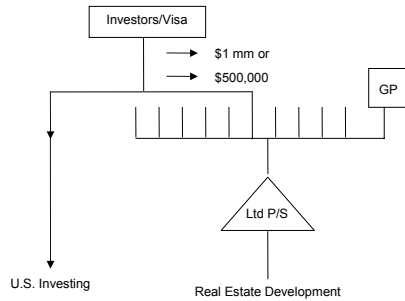
China Tax Update EB5 Program

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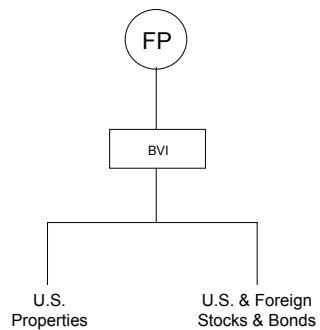
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China Tax Update Typical "One-Stop Shop" Solution

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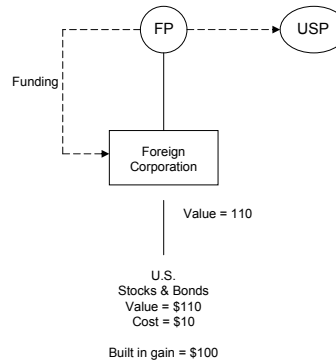
China Tax Update

Wealth transfers to U.S. Persons

Problem with typical ownership

At date of death, USP inherits foreign corporation:

- Basis of foreign corporation steps up to \$110 [Section 1014]
- Tax basis of assets inside corporation do not step up
- Old basis carries over
- Liquidation of foreign corporation results in \$100 of dividend income to USP [Subpart F income under Section 954]
- Sale of assets by the foreign corporation results in deemed dividend of \$100 to USP [Subpart F income under Section 954]

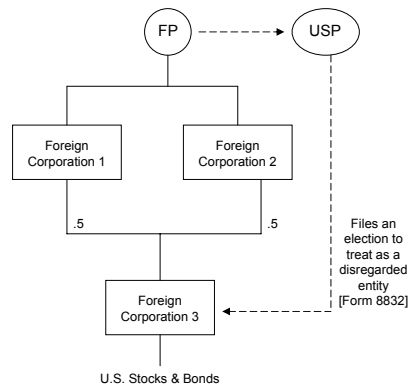


China Tax Update

Solution # 1: Using a "Check-the-Box" Election

At date of death,

- USP inherits two foreign corporations
- The shares in Foreign Corporations (1) and (2) step up to their fair market value at date of death of FP
- USP files an election with Form 8832 to treat Foreign Corporation 3 as a disregarded entity
 - The election causes Foreign Corporation 3 to be treated as being liquidated for U.S. tax purposes only
 - The liquidation causes the assets in Foreign Corporation 3 to step up to their fair market value as long as neither (1) nor (2) owns 80% or more of (3).
 - If the election is made within 75 days of date of death, then the liquidation of (3), for U.S. tax is treated as being effective prior to death of foreign owner
- USP can now liquidate (1) and (2) and will own all the U.S. stocks & bonds at fair market value without paying any income or estate tax
- Limitation: Strategy does not work with real property.

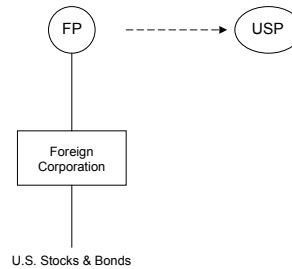


China Tax Update

Solution # 2: Thirty Day Liquidation

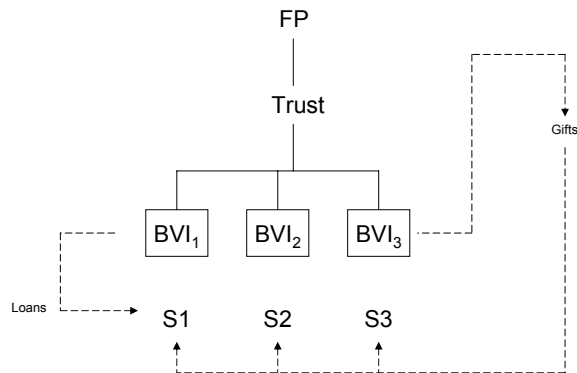
At date of death:

- USP inherits the foreign corporation with its basis stepped up to its fair market value
- Assets inside corporation will not step up
- USP now owns a "controlled foreign corporation" [Section 957]
- Sale of assets creates "Subpart F Income" = deemed divided to USP
- Exception: There is no Subpart F Income if the CFC exists for less than 30 days [Section 951]
 - Within 30 days of death, liquidate the foreign company
 - The gain from the liquidation of the CFC is no longer taxable to the USP since basis of FC stock = FMV of stock
 - Question: Can the documents and liquidation be accomplished within 30 days of the death of the foreign person?



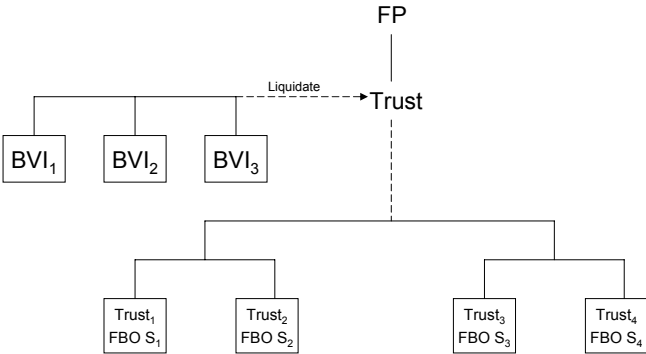
China Tax Update

Succession Planning Part 1



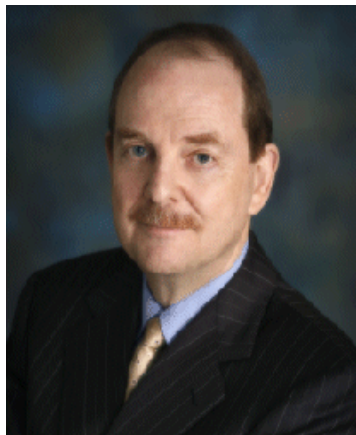
China Tax Update

Succession Planning Part 2



- (1) Exempt Trust [Foreign Assets]
- (2) Nonexempt Trust [U.S. Assets]

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.



房地产圆桌会议-咨询讨论会
美国不动产投资-从亚洲投资
2010年10月14日 ~ 城市俱乐部

从上海...

...到旧金山



梁詠嫻

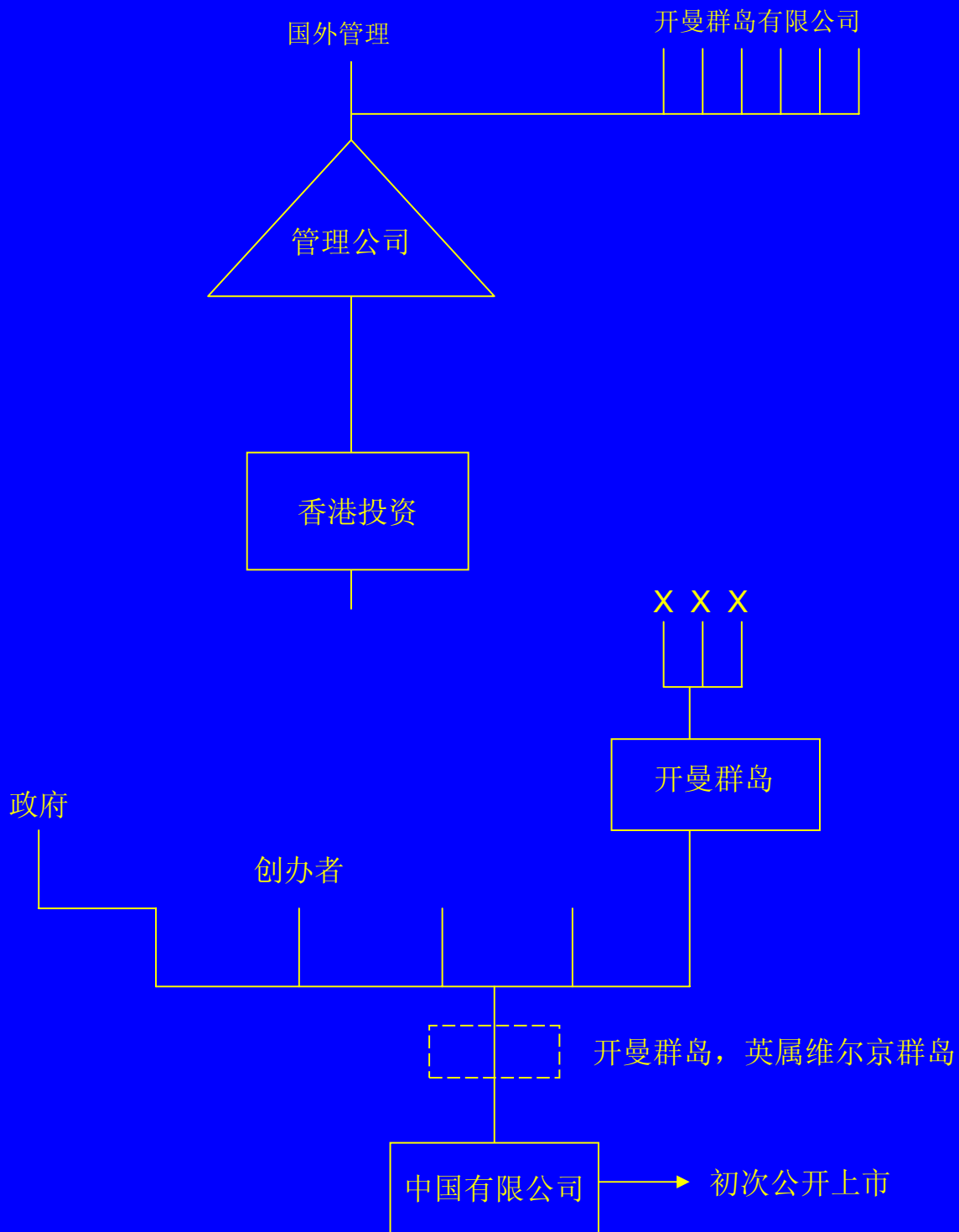
羅博文

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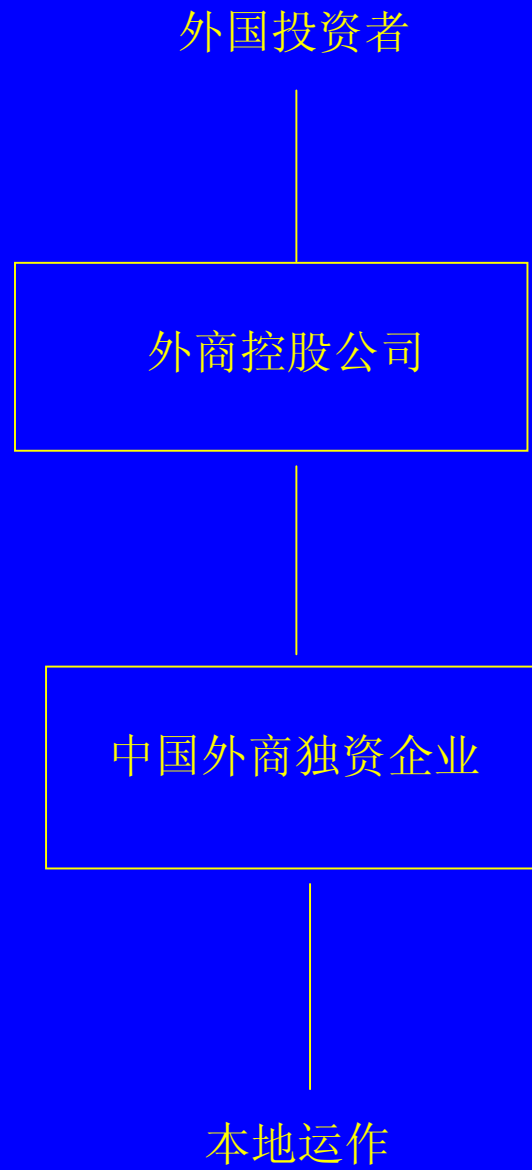
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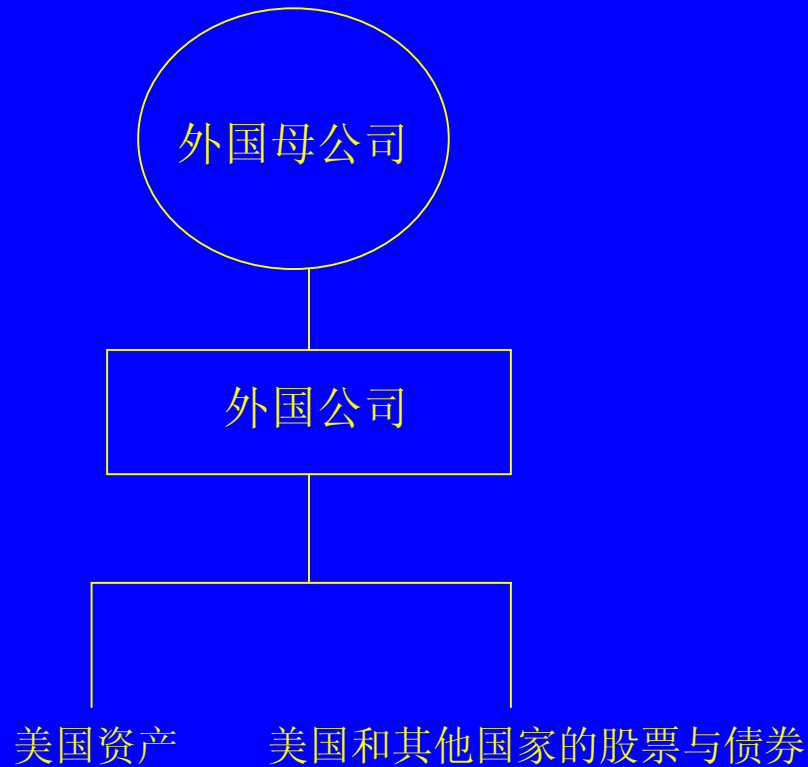
中国体系



目前在中国投资的方案



典型一站式解决方案



外资对美国不动产的所有权

- + 遗产税保护
- + 没有外国股票转让赠与税
- 外国公司在美房地产所得将被征收合并税率为**40%**的联邦所得税及州所得税
- 股息或相当于股息的收入可能被征收分公司利润税

美国的赠与税，遗产税税率及其豁免额

美国居民及美国公民

赠与税豁免额

一年 = 1.3万美金

终身 = 1百万美金

遗产税豁免额

税务豁免额及最高税率		
年份	遗产税豁免额	最高税率
2003	1百万美金	49%
2004	1百50万美金	48%
2005	1百50万美金	47%
2006	2百万美金	46%
2007	2百万美金	45%
2008	2百万美金	45%
2009	3百50万美金	45%
2010	无	0%
2011	1百万美金	55%

?

?

非居民

赠与税豁免额

一年 = 1.3万美金

终身 = 无豁免

遗产税豁免额

在美国受赠与税和遗产税限制的相关资产

	美国赠与税 (1)	美国遗产税 (2)
有形资产		
现金	需要	不需要 (1)
美国不动产	需要	需要
艺术品	需要	需要 (3)
汽车	需要	需要
珠宝	需要	需要
无形资产		
美国货币市场基金	不需要	需要
美国有限责任公司	不需要	--- (2)
美国股票	不需要	需要
美国债券	不需要	需要

(1) 存于美国银行中的现金除外

(2) 根据实际条件及情况决定

(3) 在美展示的艺术品除外

目前中国的情况

- 通则：无赠与税
- 不动产
 - 家庭馈赠豁免
 - 赠与第三方则需缴纳赠与税
- 无遗产税

(1) 赠与税 - 在美资产/地产 [2511章节]
- 无形资产不包括在内 [2501 (a)(2)章节]

(2) 遗产税 - 在美资产/地产 [2103章节]

避免因出售物业所导致的转让税

成本
市场价
收益

100
101

1

出售

外国父母

物业1

物业2

物业3

朝代
信托1

朝代
信托2

朝代
信托3

以下亲属可以获益：

S1

S2

S3

美国或者外国亲属

- 用低迷的价格出售可以避免：
 - 赠与税
 - 遗产税 [子孙后代都可避免]
- 最低所得税 [现今税率为15%]
- 朝代信托可以避免子孙后代被征税

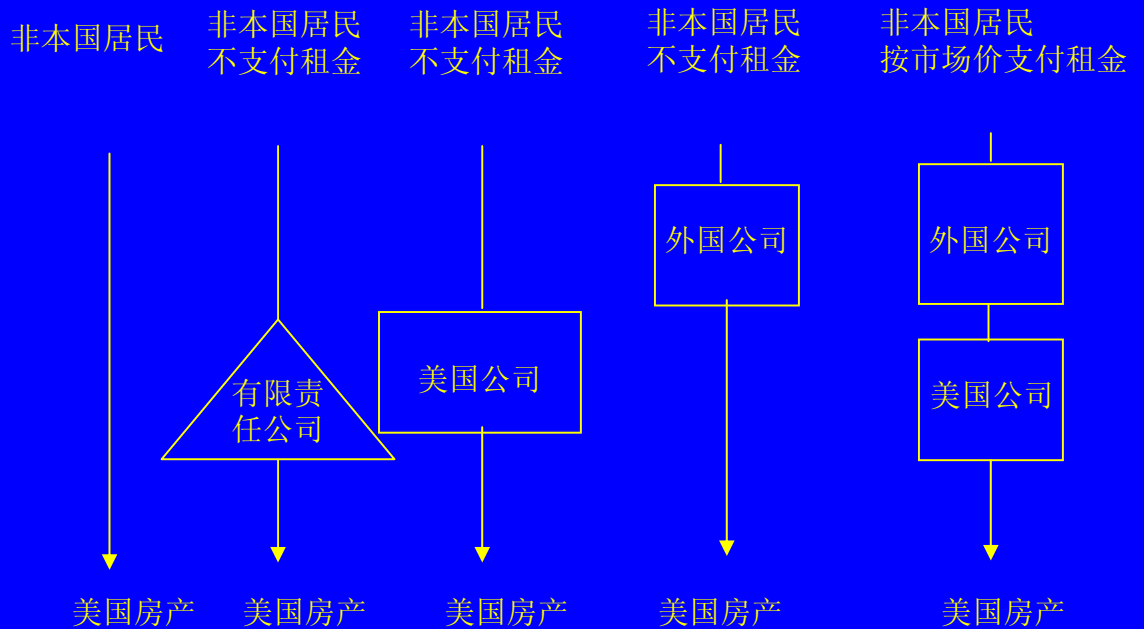
所得税

	<u>联邦税率</u>	<u>州税率</u>
个人与信托		
- 营业收入	35%	0-12%
- 资本收益(出售美国不动产的所得)	15%	“
企业		
- 营业收入	35%	“
- 资本收益(出售美国不动产所得)	35%	“
外国企业 – 第二层税务		
- 从美国公司所获得的股息	30% (1) (2)	-0-
- 分公司利润税		
- 相当于股息的收入将被收税	30%或条约规定的税率	-0-

(1) 若两国存在税务条约，将使用较低的税率

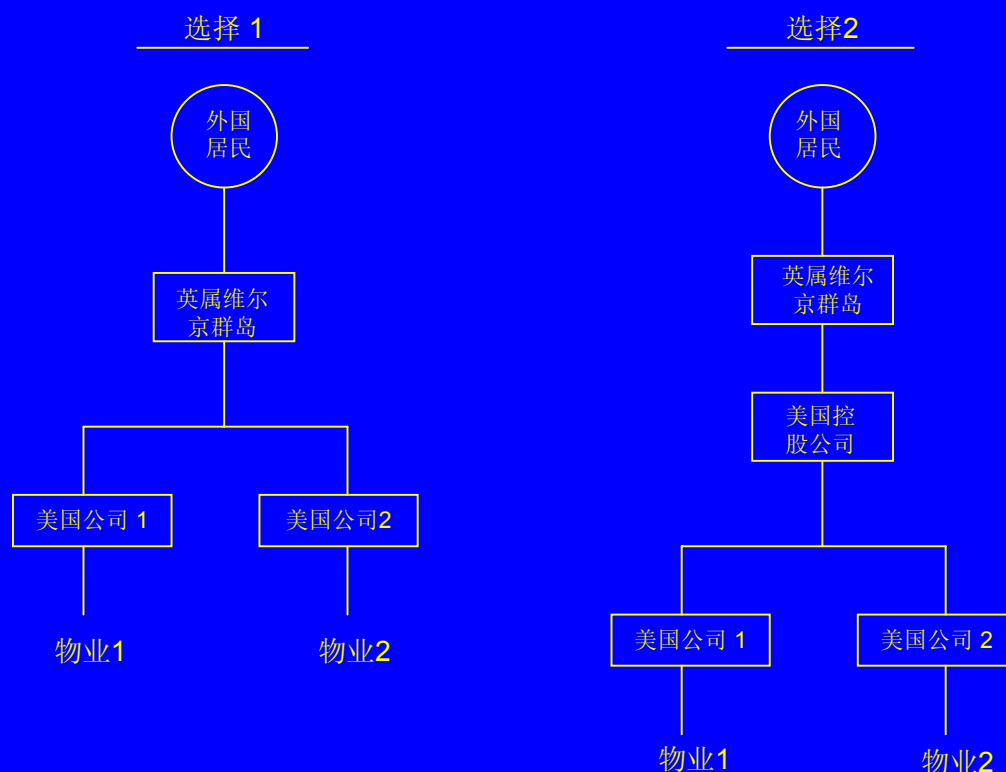
(2) 中美税务条约的税率为10%

住宅物业：佛罗里达的海滨别墅



遗产税	X	X	X	-0-	-0-
遗产风险 (章节 2036 (a)(1))	-0-	-0-	-0-	X	-0-
所得税风险					
估算所得 章节 482	-0-	-0-	X	X	-0-
分公司利润税 章节 884	-0-	-0-	-0-	X	-0-
公司的亏损用来减税	-0-	-0-	-0-	X	-0-

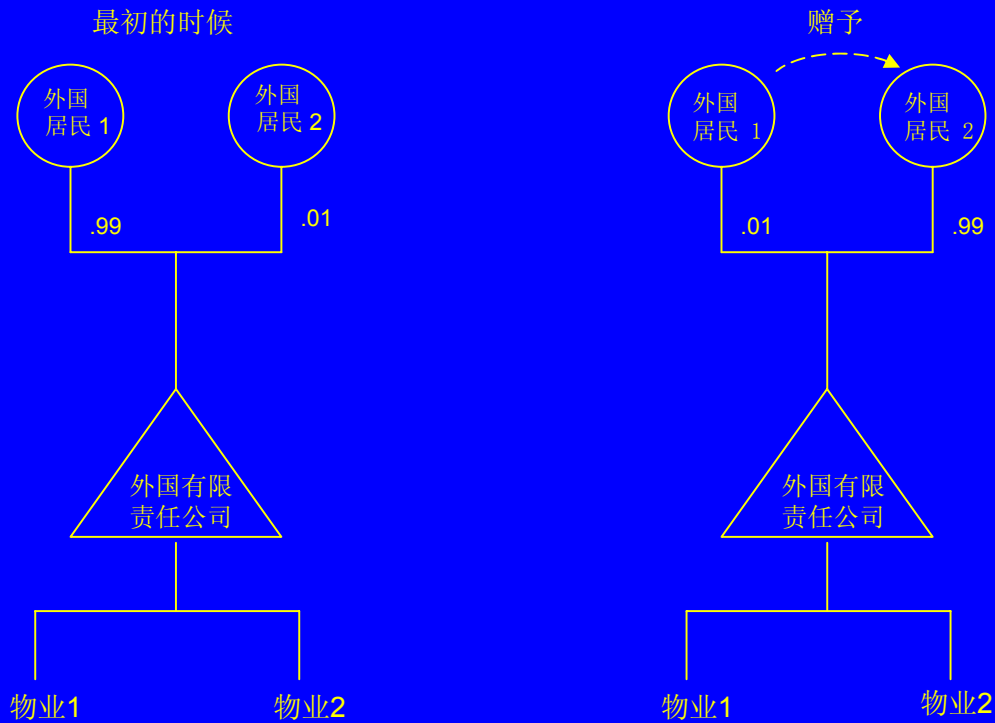
商业地产 - 企业所有权



外国公司的结构

- 外国公司不需要缴纳遗产税
- 公司所得以及收益税按企业税率计算
- 外国公司所付股息=30% [低于条约所规定的税率] 的代扣税
- 对公司最终的外国所有者身份严加保密
- 当出售美国资产/地产以及美国公司的破产清算[免税]时，将免除股息代扣税
 - 因此，我们经常可以看到每一个美国地产都被不同的美国公司持有[备选方案1]
 - 如果加入美国控股公司，则公司的收益与损失将相互抵消 [备选方案2]
 - 缺点是将失去公司破产清算时的免税优惠政策

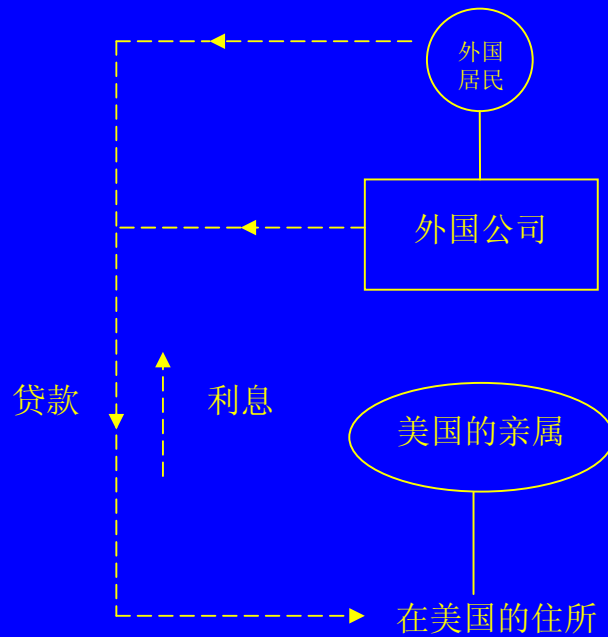
通过外商合作关系所得商业地产所有权



合伙关系的好处与直接通过外国公司获得所有权相对比

- 单层所得税
 - 外国居民缴纳税务
 - 外国居民有15%的资本收益率
 - 外国居民通过递交年度申报表汇报在美国的收入
- 合伙利息= 无形资产
- 合伙利息[美国或外国] 不受美国赠与税的限制
- 合伙关系风险： 遗产税
 - 参考布洛杰特起诉西尔伯曼案例(*Blodgett v. Silberman*) 277 U.S 1 (1928)
 - 税收规则 55-701, 1955-2 C.B. 836
 - 合伙关系的遗产税是根据所在地而定的:
 - 合伙关系的商业贸易地点
 - 公司持有人的主要永久住所
 - 资产所在地

融资：投资组合利息豁免



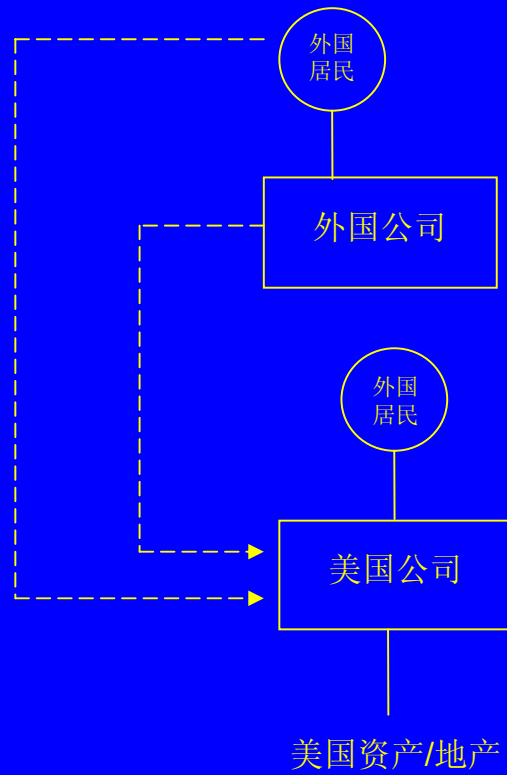
一般法则：外国贷款人所收利息受制于

- 30% 的代扣税 或
- 条约规定的较低的所得税税率

例外情况：投资组合利息豁免，假如

- 有未登记的责任或义务
- 非美国人持有 (章节 871 (h))

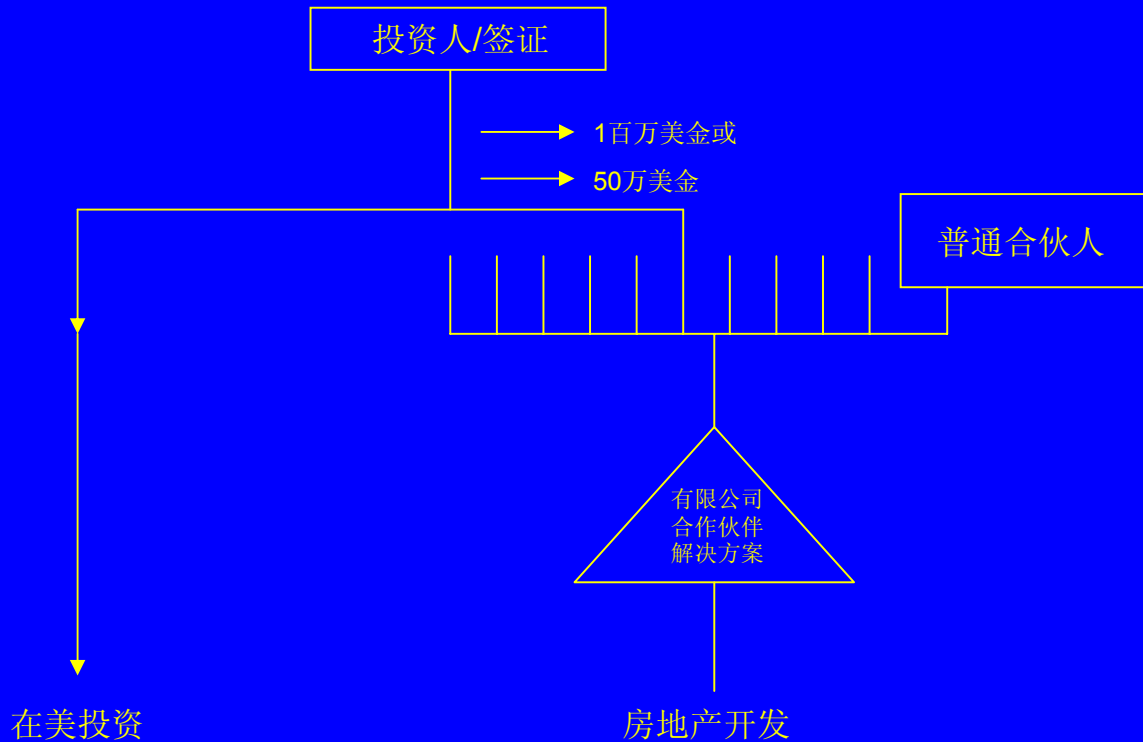
企业融资



相关方贷款给美国公司及其合作伙伴

- 如果外国母公司或者贷款人拥有美国实体公司**10%**以上的直接或间接权益，则要付利息的代扣税，税率为**30%**或者条约规定的税率
- 将面对的难题：确认所有权

EB5 投资移民方案



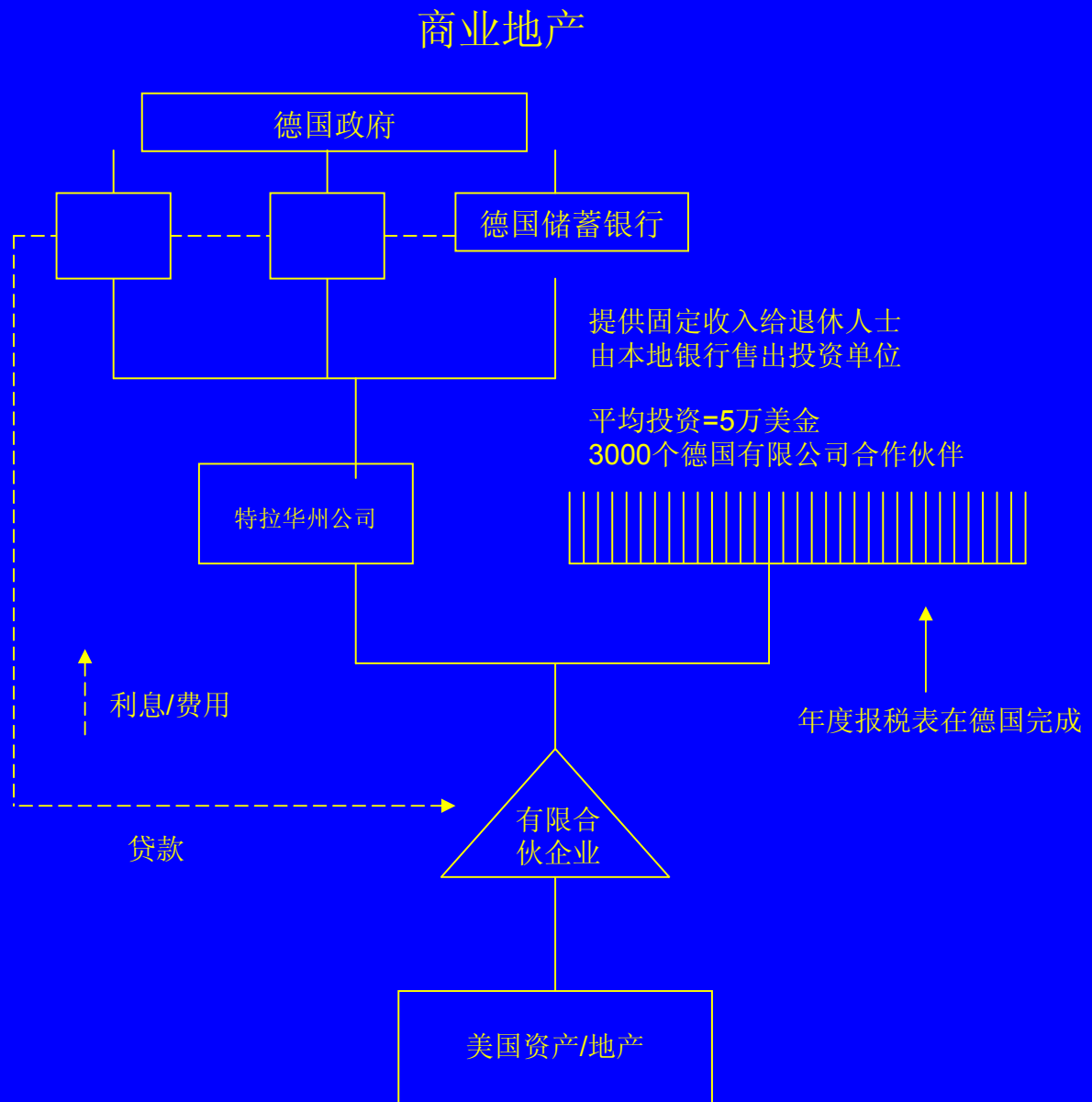
身份

- 获得绿卡
- 妻子与小孩住在加州
- 丈夫在中国经营业务
 - 每年需在美国住4个月
 - 雙重的居民身份

美国居住身份问题

- 绿卡与所得税条约
- 美国与中国的条约
 - 如果是拥有雙重的居民身份，主管机关将决定个人主要住所的所在地

在美投资-德国方式



- (1) 享受德国税收优惠并且可以同时直接投资地产
- (2) 遗产税风险：只有6万美金的豁免额
- (3) 普通合伙人的风险：遗产税

在美投资房地产的税务陷阱

(1) 代扣所得税

- 对于在美国或者外国的合作伙伴的所得收入将受最高税率限制

- 外国人士出售物业

联邦税	10%
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州税	3.3%
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- 美国居民所得 $\leq 300,000$ 则没有代扣所得税

(2) 赠与税

(3) 投资者的居留身份

(4) 物业税评定

梁詠嫻：合伙人，企业顾问 & 亚洲执行总监



电话: (415) 433-1177
邮箱: hleung@rowbotham.com

梁咏娴女士是注册会计师，主管本公司与其他私人公司以及上市公司的亚洲业务。她能帮助各类公司积极提供有关公司该如何操作运营的策略与方法，并能及时的提出宝贵的交易建议。同时也可以为国际客户提供审计，财务尽职调查，以及商务咨询等方面的建议。她善于社交，勇于面对挑战，对工作和生活充满热情。

梁女士不但拥有丰富的工作经验和社会经验，而且还曾以优异的成绩从旧金山金门大学取得了会计学学士和金融学硕士学位。在校期间，她还获得了奖学金并且荣获杰出表现奖。

梁女士可以为一些希望在美国或其他国家股票交易市场上市的公司提供相关服务。她还曾与亚洲的公司合作并代表他们出色的反向兼并美国的上市公司。在帮助重组那些在美国运作的国际投资基金(亚洲的公司拥有或控股)的同时，梁女士还凭借她非常独到而丰富的经验，成为了AICPA与PCAOB的会员，使得本公司能够为私人企业提供相关服务。

梁女士的客户群还涉及到房地产(美国以及世界其他国家)，国际投资，科研，分销，高科技和计算机软件企业。

本公司为美国注册会计师协会(AICPA)和上市公司会计监督委员会(PCAOB)的会员，梁女士负责主管及沟通以上两协会里与本公司相关的事务。

并且梁女士是许多协会的会员，包括加利福尼亚州旧金山市注册会计师协会，美国注册会计师协会，玉山科技协会，北加州香港协会，以及香港总商会。

梁女士同时还担任咨询委员会及领导才能发展委员会中非营利税务援助计划的委员，为旧金山湾区低收入家庭提供税务服务。
梁女士的广东话和普通话都很流利。



羅博文：合伙人，国际税务



电话: (415) 433-1177
邮箱: br@rowbotham.com

罗博文先生是注册会计师，他出生在阿根廷布宜诺斯艾利斯，拥有英国公民身份，于1969年入籍成为美国公民。他具有33年的会计师从业经验，他有着睿智的头脑，坚定的意志，能用自信谱写豪迈，并能用理性和智慧成功从英国历史上最大诈骗案中把资金收回。更让人钦佩的是他曾以优异的成绩从美国加州大学伯克利分校获得了学士学位和工商管理硕士学位。他能够为企业及个人提供复杂的国内国际所得税和遗产税的筹划。同时他还是罗博文会计事务所的创始人。

他的客户包括世界各地的私人公司和上市公司。其中有美国以及外国投资机构，跨国家族，公司高管，还包括在美国经商的非美国籍投资人。罗博文先生不但可以在重大的国内及国际诉讼中为客户提供意见和建议，他还同时担任一些私人控股公司及上市公司的董事。从1992年到2006年，他直接领导公司来协助在欧洲的委托人，在过去的20年中，他曾代表欧洲和中东的大型机构的投资者和众多的亚洲家族投资者在美国投资不动产。

罗博文先生曾经多次被聘为加州大学伯克利分校汉斯商学院的客座讲师以及旧金山大学的客座讲师。他还在加州大学进修部执教有关“公司及合伙公司税务”的研究生课程。

他曾代表多个美国和国际税务筹划组织发言。这些组织包括欧洲，亚洲以及美国的国际税务筹划协会(ITPA)和信托与地产从业人员协会(STEP)。他曾出席公司内部的培训讲座并介绍有关欧洲信托公司以及银行对美国资产收购的投资结构。罗博文先生还是国际税务兴趣课题的评论员。他曾向美国财政部提交过有关外商投资房地产税法的立法建议。这些建议使得针对外国投资者投资美国房产的最后法案得到了一定的修改。在过去的一年里，他还发表了几篇关于国税局对外国银行及金融账户赦免方案的评述。

他是美国注册会计师协会税务部的会员，也是旧金山税会前任会长。他曾是Outlook杂志（加利福尼亚州注册会计师协会的官方杂志）的特色专栏作家。他同时也为会计杂志和一些国际税务及投资杂志撰稿。2005年，旧金山工商时报对他的报导是：“一位会计专业的企业家”。2009年4月，他的文章“在中国经商”被精选为美国加州注册会计师杂志的封面文章。正所谓：成功的道路只在奋斗者的脚下延伸，他做到了。在1991年创建罗博文会计事务所之前，他专攻国际税收。

后来罗博文先生在旧金山和伦敦的国家会计师事务所开始了他的职业生涯。罗博文创办的会计师事务所是一家注册会计师事务所，面向个人和各种规模的公司，包括大型跨国公司提供会计服务，还包括国内，国际税务咨询服务。罗博文会计师事务所在旧金山与圣克拉拉市均设有办事处。公司同时是北极星国际（一个由会计师事务所及咨询公司组成的全球网络）的会员。公司还成为了美国会计师公会会员，并在上市公司会计监督委员会注册，可以在美国证券交易委员会批准之前从业。公司与法律界，银行界，风险投资界保持密切联系，有机会我们会引荐给我们的客户。



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