

U.S. Tax Planning for Structuring Investments into the United States

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International Tax Structuring of Investment into the United States by Indian and Other Non-US Investors

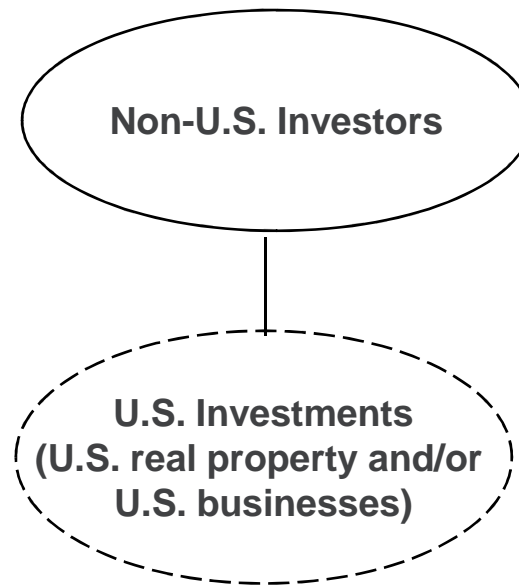
Requires careful analysis of:

- home country (e.g. Indian) tax considerations
- source country (e.g. US) tax considerations
- tax considerations in any third, interposed jurisdictions (e.g. Hungary)
- applicable tax treaties

This presentation focuses on the key U.S. tax considerations

Structure #1: Direct Investment in U.S.

**(U.S. tax payment and filing obligations
for non-U.S. investors)**



U.S. Tax Considerations for Direct Investment

1. Non-U.S. investors treated as engaging in a U.S. business
2. U.S. income tax payment obligations
 - corporate investors: maximum 35% federal tax (under current law) on ordinary income and capital gains; state taxes may also apply
 - individual investors: maximum 35% U.S. federal tax (under current law) on ordinary income, but long-term capital gains eligible for 15% (this reduced rate expires after 2010)

U.S. Tax Considerations for Direct Investment

3. Additional 30% U.S. “branch profits tax” payment obligation for corporate investors, which may increase the 35% U.S. federal rate by about 19.5%, such that the total U.S. federal tax impact may be approximately 54.5%
 - branch profits taxes may be reduced by applicable treaty to 5% or even 0% in some cases, if certain conditions are satisfied
 - the jurisdictions of the investors need to be identified, and a treaty-by-treaty analysis needs to be undertaken, to determine the availability of branch profits tax reductions



U.S. Tax Considerations for Direct Investment

4. U.S. filing obligations (federal tax return on Form 1120-F for corporate investors and Form 1040NR for individual investors, plus state tax returns)
5. U.S. taxes paid may be creditable in own jurisdictions

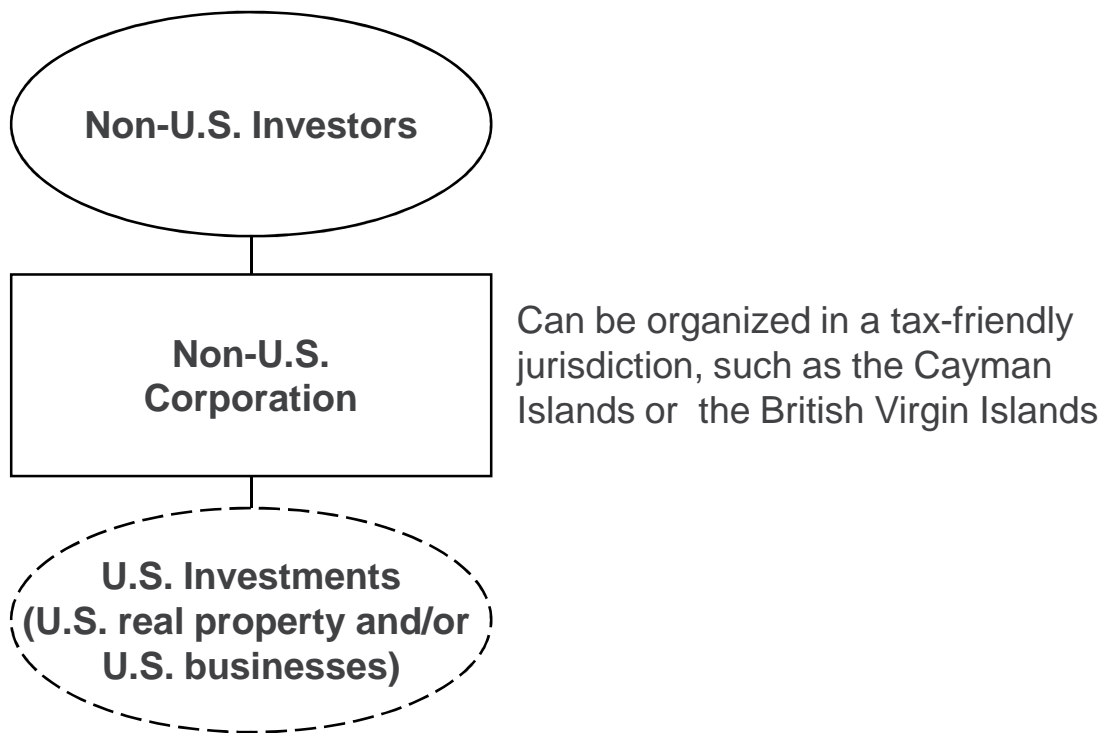
U.S. Tax Considerations for Direct Investment

6. U.S. estate taxes for individual investors

- certain U.S. investments (including U.S. real estate and shares of U.S. companies) are included in foreign investor's U.S. taxable estate and are subject to U.S. estate tax (with an exemption of \$60,000 of U.S. asset value) when the investor passes away
- public probate needed to transfer the investments since they will be owned in investors' own names; this will be costly
- property jointly owned by a husband and wife could be subject to US estate tax twice

Structure #2: Investment Through Non-U.S. Company

(no U.S. tax payment and filing obligations for non-U.S. investors)



U.S. Tax Considerations for Investment Through Non-U.S. Company

Taxation of Non-U.S. Investor:

- No U.S. income tax payment or filing obligations with respect to investment in non-U.S. corporation
- No U.S. estate tax consequences for individual investors, as interests in a non-U.S. corporation are “non-U.S. situs” assets
- No U.S. withholding tax on dividends paid by non-U.S. corporation to investors
- No U.S. income tax payment or filing obligations on gain from sale of shares in non-U.S. corporation



U.S. Tax Considerations for Investment Through Non-U.S. Company

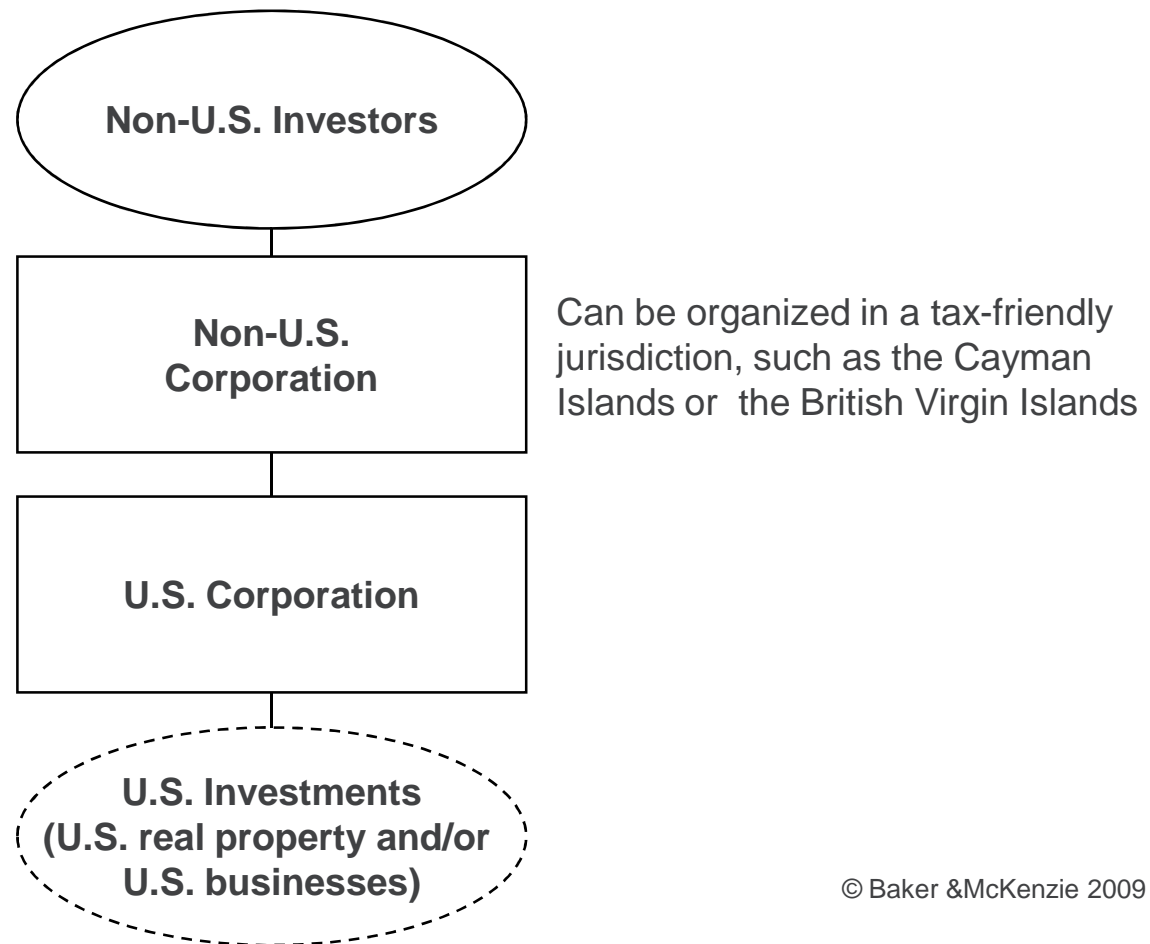
Taxation of Non-U.S. Company:

- U.S. income tax payment obligations (maximum 35% U.S. federal rate under current law; state taxes may also apply)
- U.S. tax filing obligations (federal tax return on Form 1120-F, plus state tax returns)

U.S. Tax Considerations for Investment Through Non-U.S. Company

3. Additional 30% U.S. “branch profits tax” payment obligation which may increase the 35% U.S. federal rate by about 19.5%, such that the total U.S. federal tax impact may be approximately 54.5%
 - branch profits taxes may be reduced by applicable treaty to 5% or even 0% in some cases, if certain conditions are satisfied
 - the jurisdictions of the investors need to be identified, and a treaty-by-treaty analysis needs to be undertaken, to determine the availability of branch profits tax reductions
4. Any U.S. taxes paid may be creditable in own jurisdiction

Structure #3: Investment Through Non-U.S./U.S. Companies (no U.S. tax payment and filing obligations for non-U.S. investors and non-U.S. corporation)



U.S. Tax Considerations: Dual (U.S./Non-U.S.) Company Structures

Taxation of the Non-U.S. Investor:

- No U.S. income tax payment or filing obligations with respect to investment in non-U.S. corporation
- No U.S. estate tax consequences for individual investors, as interests in a non-U.S. corporation are “non-U.S. situs” assets
- No U.S. withholding tax on dividends paid by non-U.S. corporation to investors
- No U.S. income tax payment or filing obligations on gain from sale of shares in non-U.S. corporation

U.S. Tax Considerations: Dual (U.S./Non-U.S.) Company Structures

Taxation of the Non-U.S. Company:

1. No U.S. income tax payment or filing obligations, including no U.S. “branch profits tax” obligation
2. “Portfolio interest” from U.S. corporation exempt from U.S. withholding tax
 - “portfolio interest” includes interest paid on debt where the payor of the interest receives a certification (i.e., a Form W-8BEN) from the holder of the instrument evidencing the debt that such holder is not a U.S. person
3. Dividends received from U.S. corporation subject to 30% U.S. withholding tax, which may be reduced or eliminated by applicable treaty

U.S. Tax Considerations: Dual (U.S./Non-U.S.) Company Structures

4. Gain from sale of shares in the U.S. corporation generally not subject to U.S. tax. However, such gain is subject to U.S. federal income tax at a maximum of 35% (under current law), if the U.S. corporation is a “U.S. real property holding corporation,” i.e., the fair market value of its “U.S. real property interests” is at least 50% of the fair market value of (a) its U.S. real property interests, plus (b) its real property interests outside the U.S., plus (c) any other of its assets used in a trade or business; otherwise gain from the sale of shares in the U.S. corporation is not subject to U.S. tax
 - “U.S. real property interests” include (a) direct non-creditor interests in U.S. real estate and (b) non-creditor interests in entities that hold U.S. real property interests, such as stock of a corporation, a partnership interest and a beneficiary’s interest in a trust

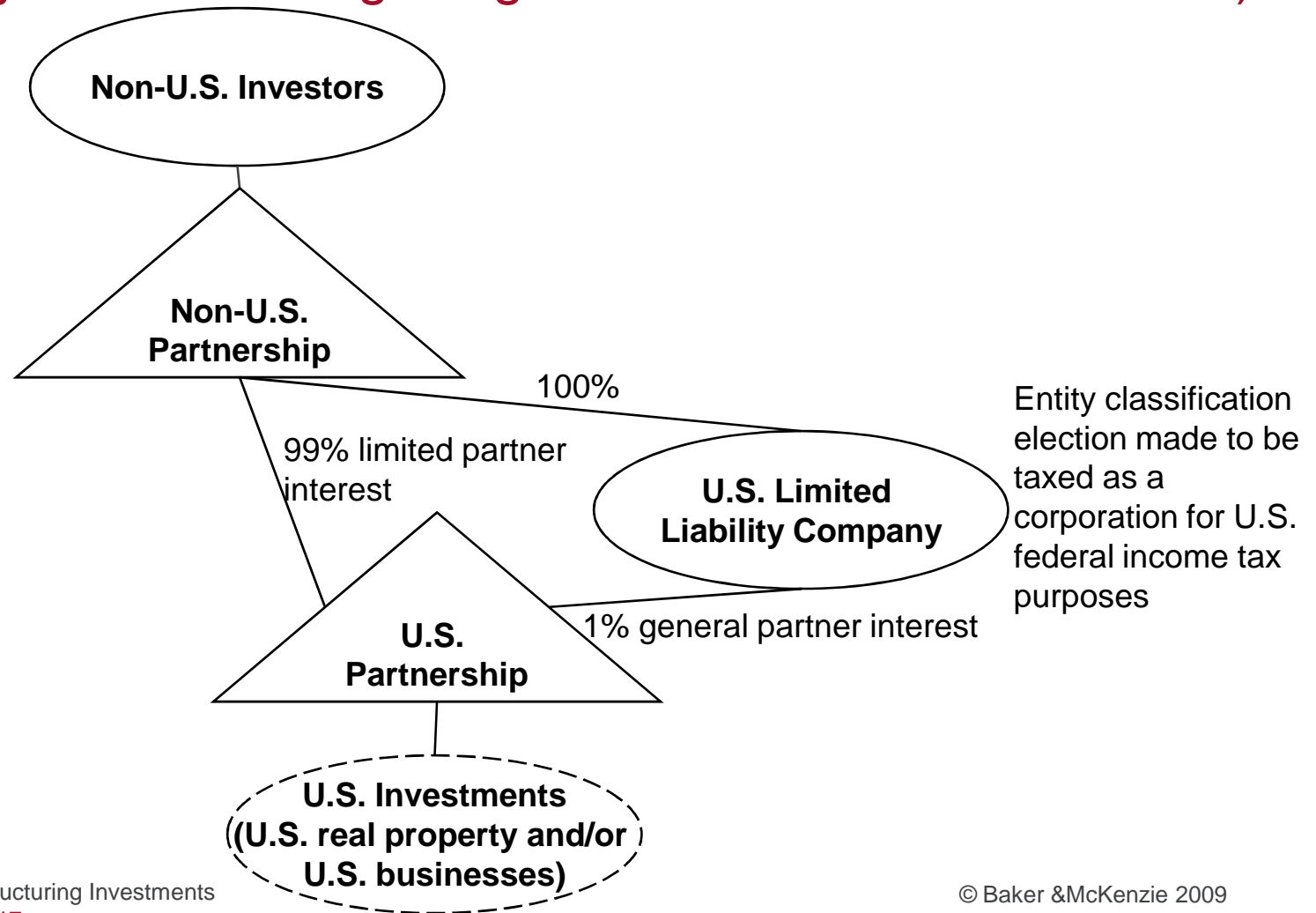


U.S. Tax Considerations: Dual (U.S./Non-U.S.) Company Structures

Taxation of U.S. Operating Company:

- U.S. income tax payment obligations (maximum 35% federal rate under current law; state taxes may also apply)
- U.S. tax filing obligations (federal tax return on Form 1120, plus state tax returns)
- Obligation to impose 30% U.S. withholding tax on dividend payments, subject to reductions under applicable income tax treaties

Structure #4: Investment Through Two-Tier Partnership (U.S. tax payment and filing obligations for non-U.S. investors)



U.S. Tax Considerations: Two Tier Partnership Structures

Taxation of Non-U.S. Investors:

1. Non-U.S. investors treated as owning proportionate share of U.S. investments through its interests in the non-U.S. partnership and the U.S. partnership
2. U.S. income tax payment obligations on income allocable from the non-U.S. partnership (which income is the non-U.S. partnership's share of the U.S. partnership's income from the U.S. investments)
 - corporate investors: maximum 35% U.S. federal tax (under current law) for allocable share of the non-U.S. partnership's ordinary income and capital gain that are allocated to the non-U.S. partnership from the U.S. partnership; state taxes may also apply
 - individual investors: maximum 35% U.S. federal tax (under current law) on allocable share of the non-U.S. partnership's ordinary income and 15% on allocable share of the non-U.S. partnership's long-term capital gains (the 15% rate expires after 2010); state taxes may also apply

U.S. Tax Considerations: Two Tier Partnership Structures

3. U.S. filing obligations (federal tax return on Form 1120-F for corporate investors and Form 1040NR for individual investors, plus state tax returns)
4. Additional 30% U.S. “branch profits tax” payment obligation for corporate investors, which may increase the 35% U.S. federal rate by about 19.5%, such that the total U.S. federal tax impact may be approximately 54.5%
 - branch profits taxes may be reduced by applicable treaty to 5% or even 0% in some cases, if certain conditions are satisfied
 - the jurisdictions of the investors need to be identified, and a treaty-by-treaty analysis needs to be undertaken, to determine the availability of branch profits tax reductions

U.S. Tax Considerations: Two Tier Partnership Structures

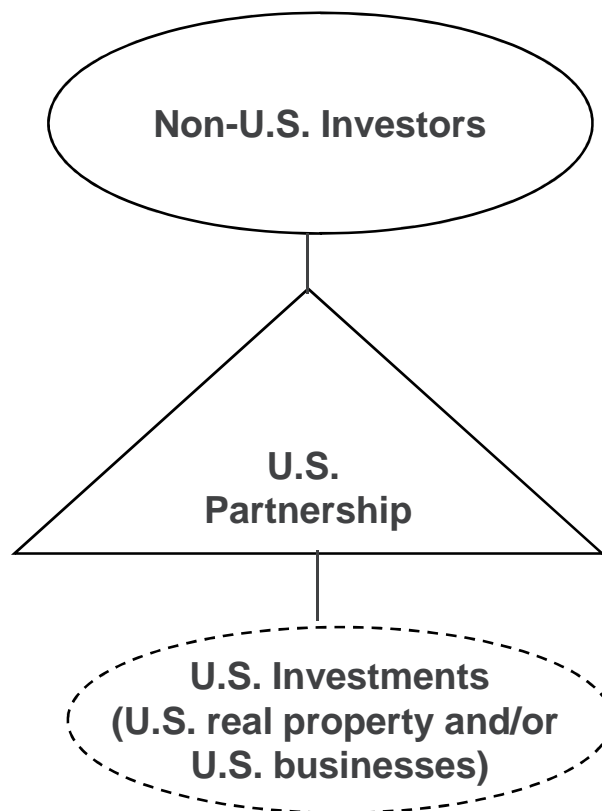
5. Non-U.S. investors should provide a certification of non-U.S. status (generally on a Form W-8 – i.e., Form W-8BEN, Form W-8IMY, Form W-8EXP) to the non-U.S. partnership
6. U.S. taxes paid may be creditable in investors' own jurisdictions
7. Generally no U.S. estate tax consequences for individual investors, but this cannot be guaranteed

U.S. Tax Considerations: Investing Through a Non-U.S. Partnership

The Non-U.S. Partnership Itself:

- No U.S. tax payment obligations
- U.S. tax filing obligations (annual income tax return on Form 1065, annual withholding tax return on Forms 8804 and 8805)
- Non-U.S. partnership should provide a certification to the U.S. partnership as to its flow-through status (i.e., Form W-8IMY), along with the certifications of non-U.S. status (i.e., Form W-8BEN, Form W-8IMY, Form W-8EXP) that it receives from its partners
- Possible filing and/or payment obligations in own jurisdiction

Structure #5: Investment Through U.S. Partnership (U.S. tax payment and filing obligations for non-U.S. investors)



U.S. Tax Considerations: Investing Through a U.S. Partnership

Taxation of Non-U.S. Investors:

1. Non-U.S. investors will be treated as engaging in a U.S. business as a result of directly investing in the U.S. partnership
2. U.S. income tax payment obligations
 - corporate investors: maximum 35% U.S. federal tax (under current law) on allocable share of the U.S. partnership's ordinary income and capital gains; state taxes may also apply
 - individual investors: maximum 35% U.S. federal tax (under current law) on allocable share of the U.S. partnership's ordinary income and 15% on allocable share of the U.S. partnership's long-term capital gains (the 15% rate expires after 2010); state taxes may also apply

U.S. Tax Considerations: Investing Through a U.S. Partnership

3. Additional 30% U.S. “branch profits tax” payment obligation for corporate investors, which may increase the 35% U.S. federal rate by about 19.5%, such that the total U.S. federal tax impact may be approximately 54.5%
 - branch profits taxes may be reduced by applicable treaty to 5% or even 0% in some cases, if certain conditions are satisfied
 - the jurisdictions of the investors need to be identified, and a treaty-by-treaty analysis needs to be undertaken, to determine the availability of branch profits tax reductions
4. U.S. filing obligations (federal tax return on Form 1120-F for corporate investors and Form 1040NR for individual investors, plus state tax returns)

U.S. Tax Considerations: Investing Through a U.S. Partnership

5. Sale of interest in U.S. partnership

- gain on sale is capital gain treated as effectively connected with a U.S. trade or business
- individual investors generally taxed at 15% to extent they have held their interests in the U.S. partnership for over 1 year (this rate expires after 2010)
- corporate investors taxed at 35% on gain from sale
- U.S. filing obligations with respect to gain on sale (federal tax return on Form 1120-F for corporate investors and Form 1040-NR for individual investors)

U.S. Tax Considerations: Investing Through a U.S. Partnership

6. U.S. taxes paid may be creditable in investors' own jurisdictions (despite U.S. tax payment and filing obligations, this is often the reason that non-U.S. investors invest into the United States via a partnership)
7. U.S. estate tax risk for individual investors


U.S. Tax Considerations: Investing Through a U.S. Partnership

The U.S. Partnership Itself:

1. No U.S. tax payment obligations
2. U.S. tax filing obligations (annual income tax return on Form 1065, annual withholding tax return on Forms 8804 and 8805)
3. U.S. withholding tax obligations with respect to income allocations to non-U.S. partners
 - U.S. tax withheld at 30% on U.S. source “passive” income not effectively connected with a U.S. trade or business (i.e., dividends, interest, royalties) (the 30% may be reduced by applicable treaty)
 - U.S. tax withheld (maximum 35%) on income effectively connected with a U.S. trade or business

Proposed Changes to U.S. Tax Law

- Many significant U.S. tax proposals are being debated
- Obama “Green Book” proposals
- “Anti tax haven” legislation
- Specific provisions of new U.S. tax legislation are still uncertain
- What is certain:
 - tax increases
 - stricter enforcement of U.S. international tax laws
 - need for careful structuring and implementation



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