

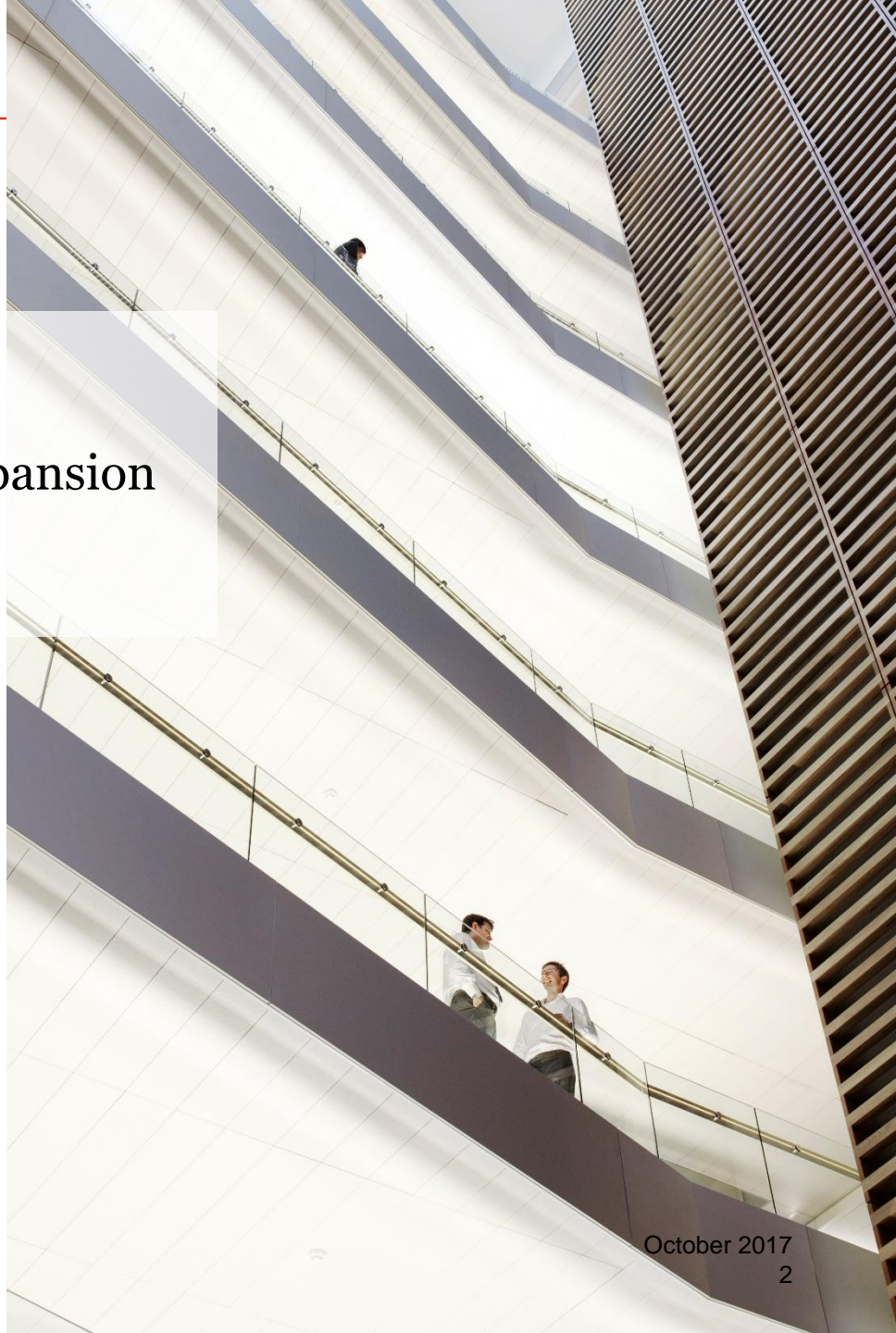
Setting-up shop in the US - tax aspects

October 2017

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Agenda

- 1** Overview of the US tax system
- 2** Common structures for US expansion
- 3** Q&A





Overview of US tax system

Main types of legal forms for setting-up a business

Legal form vs. tax treatment (transparent vs. opaque)

Corporation

Limited liability
company

Branch

Sole Proprietorship

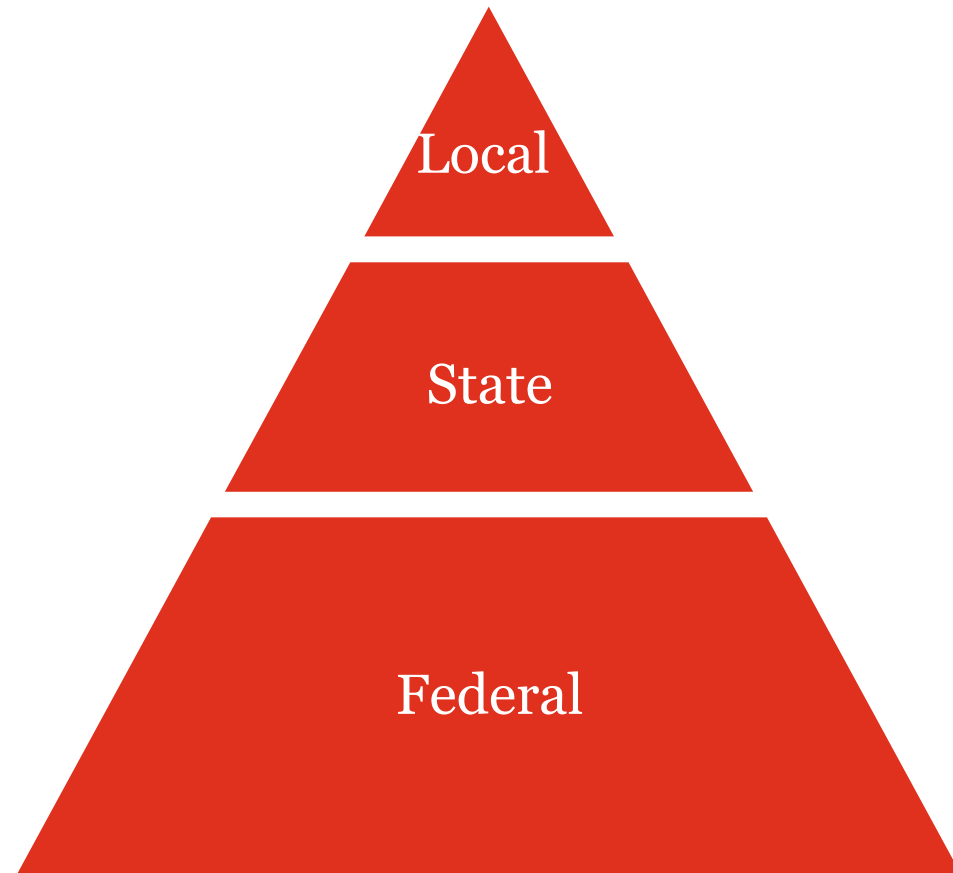
Joint Venture

Partnerships

US tax system

Main features

- ✓ Among the countries with highest corporate tax rates
- ✓ Overly complicated system, undergoing reform aiming to reduce the tax rates, to simplify reporting and to encourage innovation and manufacturing
- ✓ Based on three layers: federal, state and local level



US tax system

Federal system

- Any business in one of the 50 states is subject to corporate income tax (“CIT”)
- US resident corporations are taxed based on their worldwide income
- The US CIT rate is based on a progressive rate schedule; however, an alternative minimum tax provides for a flat rate with fewer deductions
- A foreign corporation is taxed at regular US CIT rates, but only on income from US sources that is effectively connected with that business, and at 30% on US-source income not effectively connected with that business

| 2017 taxable income | | CIT | | |
|---------------------|--------------------|-------------|-------------|--------------------------|
| Over (USD*) | But not over (USD) | Pay (USD) + | % on excess | of the amount over (USD) |
| 0 | 50,000 | 0 | 15 | 0 |
| 50,000 | 75,000 | 7,500 | 25 | 50,000 |
| 75,000 | 100,000 | 13,750 | 34 | 75,000 |
| 100,000 | 335,000 | 22,250 | 39 | 100,000 |
| 335,000 | 10,000,000 | 113,900 | 34 | 335,000 |
| 10,000,000 | 15,000,000 | 3,400,000 | 35 | 10,000,000 |
| 15,000,000 | 18,333,333 | 5,150,000 | 38 | 15,000,000 |
| 18,333,333 | | | 35 | 0 |

US tax system

State and local taxes

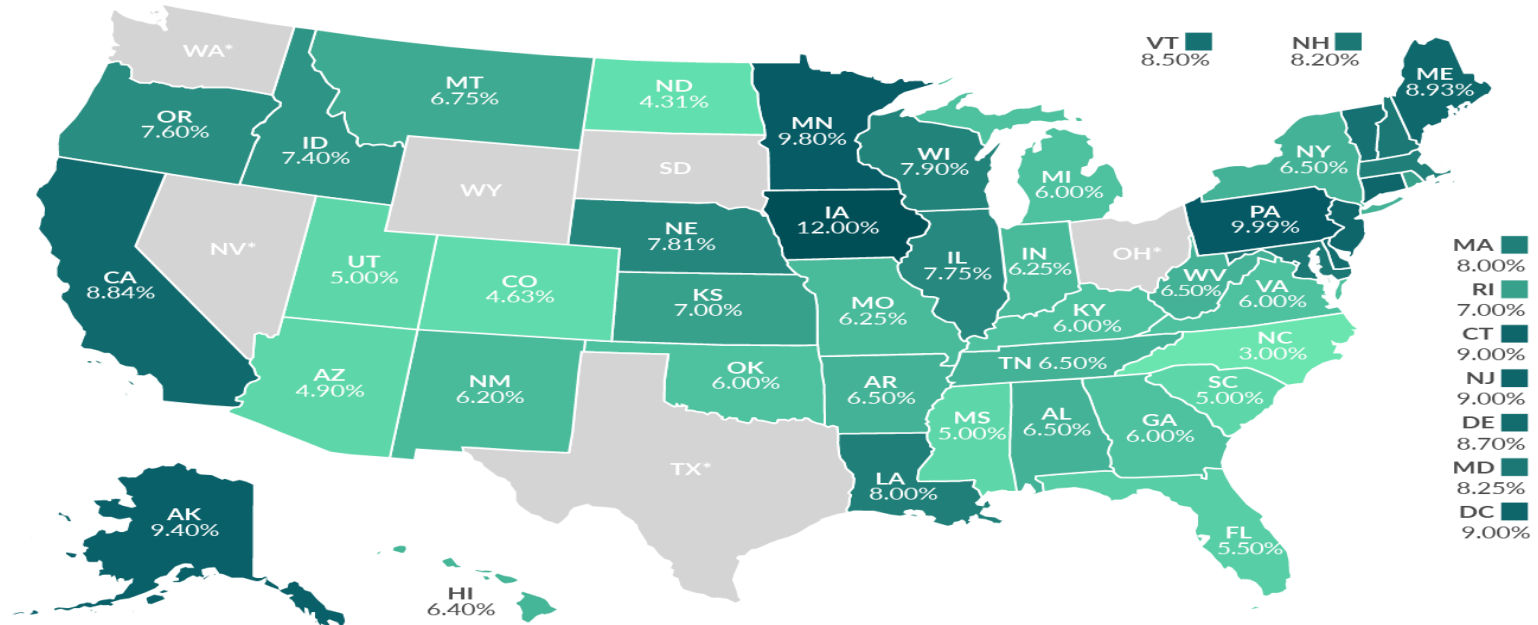
- ✓ Levied by each individual State's government
- ✓ US treaties generally do not apply to state taxation
- ✓ The most common taxable base is federal taxable income, which is modified by state provisions and generally is allocated to a state on the basis of a three factor formula: tangible assets and rental expense, sales and other receipts, and payroll

US tax system

State and local taxes

How High Are Corporate Income Tax Rates in Your State?

Top State Marginal Corporate Income Tax Rates in 2017



Note: (*) Nevada, Ohio, Texas, and Washington do not have a corporate income tax but do have a gross receipts tax with rates not strictly comparable to corporate income tax rates. Arkansas has a "benefit recapture," by which corporations with more than \$100,000 of taxable income pay a flat tax of 6.5% on all income, not just on amounts above the benefit threshold. Connecticut's rate includes a 20% surtax, which effectively increases the rate from 7.5% to 9%. Surtax is required by businesses with at least \$100 million annual gross income. Illinois' rate includes two separate corporate income taxes, one at a 5.25% rate and one at a 2.5% rate. Indiana's tax rate will decrease to 6.0% on July 1, 2017.

Source: State tax statutes, forms, and instructions; Bloomberg BNA

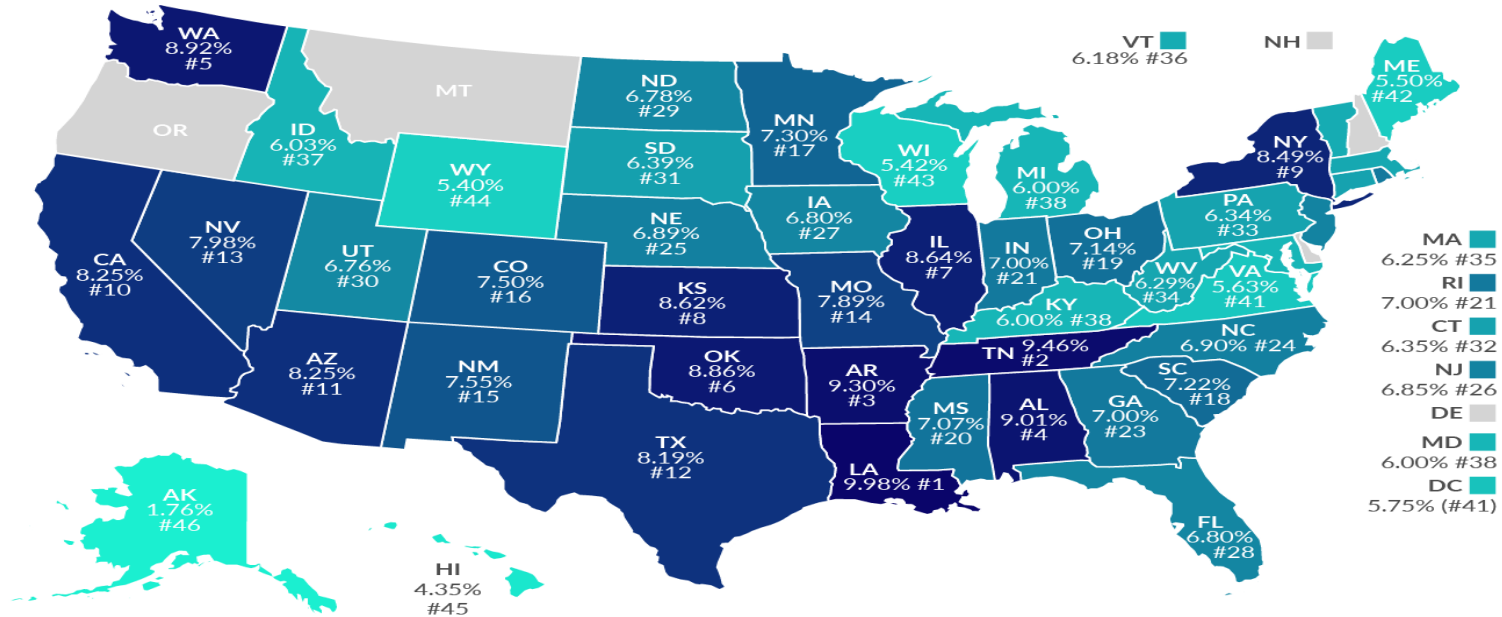


US tax system

Sales tax

How High Are Sales Taxes in Your State?

Combined State & Average Local Sales Tax Rates, Jan. 1 2017



Note: City, county and municipal rates vary. These rates are weighted by population to compute an average local tax rate. Three states levy mandatory, statewide, local add-on sales taxes at the state level: California (1%), Utah (1.25%), Virginia (1%), we include these in their state sales tax. The sales taxes in Hawaii, New Mexico and South Dakota have broad bases that include many services. Due to data limitations, table does not include sales taxes in local resort areas in Montana. Salem County is not subject to the statewide sales tax rate and collects a local rate of 3.4375%. New Jersey's average local score is represented as a negative.

Source: Sales Tax Clearinghouse, Tax Foundation calculations, State Revenue Department Websites



US tax system

Individual taxation

- Individual income tax rate of a 39.6% maximum; based on a progressive rate schedule
- Alternative minimum tax
- Net investment income tax (“NIIT”) - applies to various types of investment income received by individuals with modified adjusted gross income above certain statutory thresholds
- State and local income taxes - most states and a number of municipal authorities, impose income taxes on individuals working or residing within their jurisdictions. No personal income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming
- US residency - triggered based on certain tests including physical presence
- US residents are taxed based on worldwide income!

Taxation of cross border operations

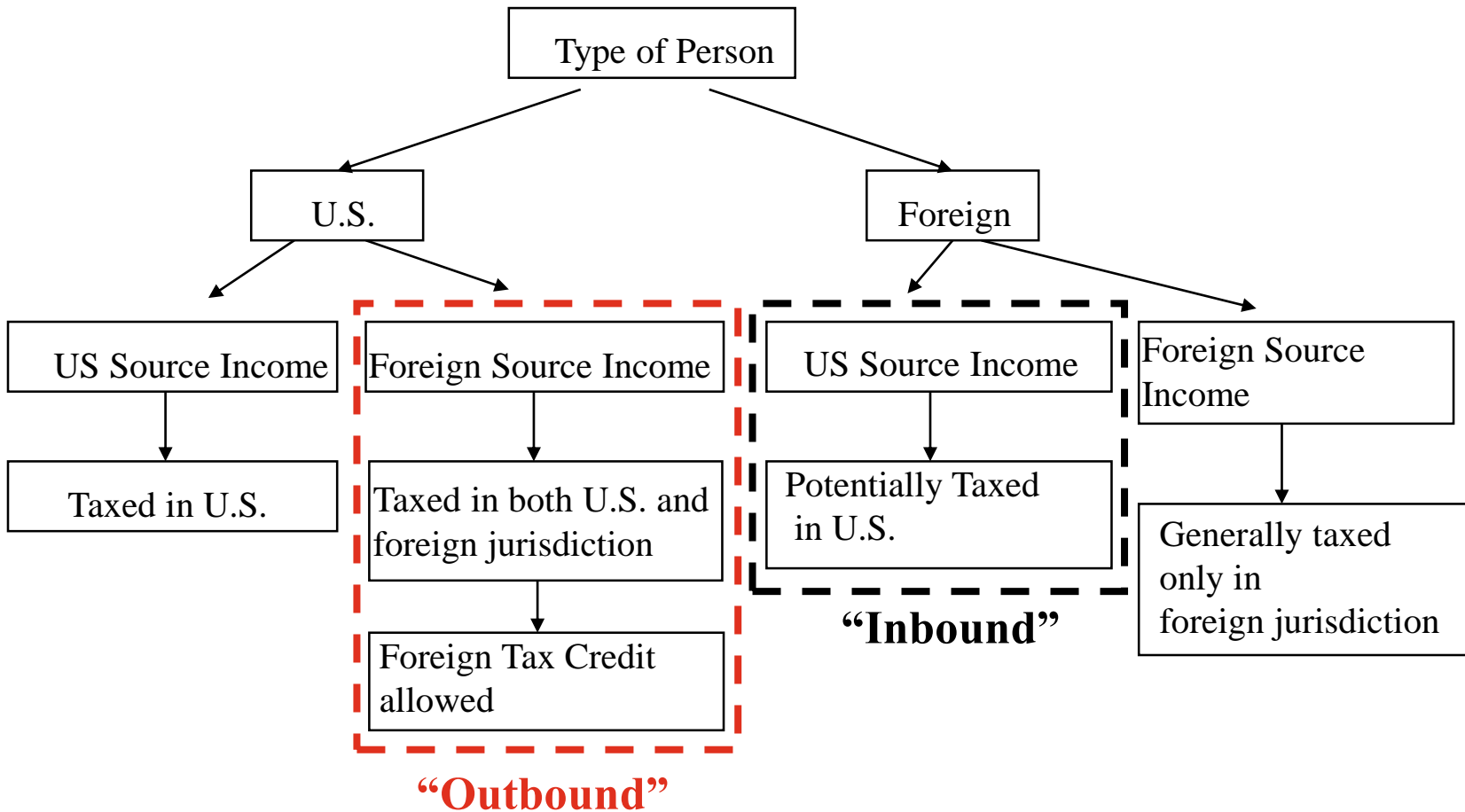
Residence-based nexus

- The US taxes the *worldwide income* of U.S. citizens and residents (individuals and corporations)

Source-based nexus

- The US generally taxes only the *US source income* of non-U.S. citizens/residents (individuals and corporations), as follows:
 - if the income is **effectively connected** (“ECI”) with a U.S. trade or business – CIT is applied to net (taxable) income
 - if the income is **fixed or determinable, annual or periodic** (“FDAP”) income – a flat withholding tax is imposed on gross income (30% unless reduced by treaty)

Taxation of cross border operations

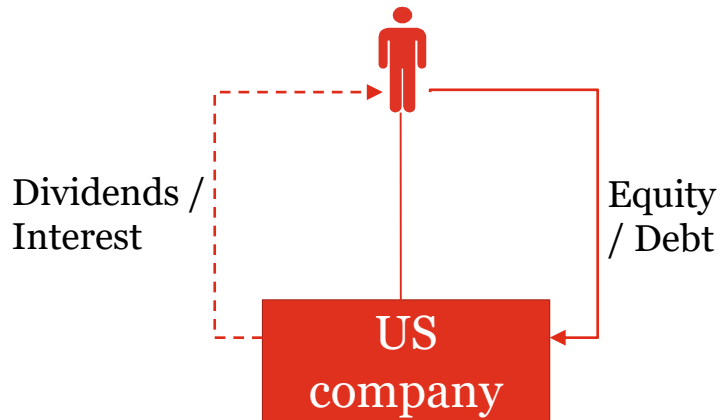




Common structures for US expansion

Common structures for US expansion

US company, Romanian individual shareholder



US Company

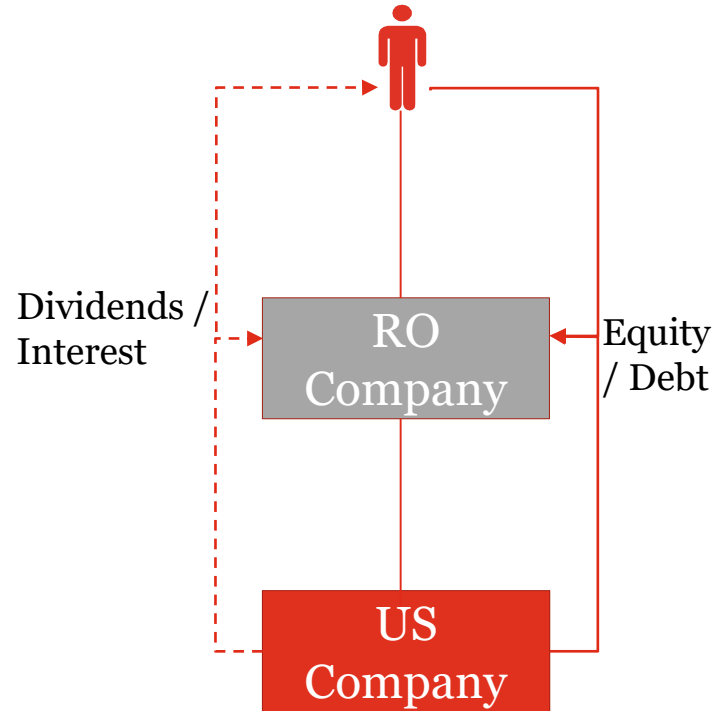
- maximum federal CIT 35%; state CITs range from 1% to 12% (although some states impose no CIT) and are deductible expenses for federal CIT purposes
- impact of state and local taxes (average 6.47%)
- 10% WHT on dividends and interest paid to Romanian individual based on the double tax treaty between Romania and the US

Romanian individual

- dividends taxable at 5% at individual level; fiscal credit for the US WHT (subject to certain conditions and only up to the limit of tax paid there)
- interest income taxable at 16% at individual level
- capital gains taxed at 16% in Romania; not subject to tax in the US

Common structures for US expansion

US company, Romanian holding



US Company

- maximum federal CIT 35%; state CITs range from 1% to 12% (although some states impose no CIT) and are deductible expenses for federal CIT purposes
- Impact of state and local taxes (average 6.47%)
- 10% WHT on dividends paid to the Romanian company based on the double tax treaty between Romania and the US

RO Company

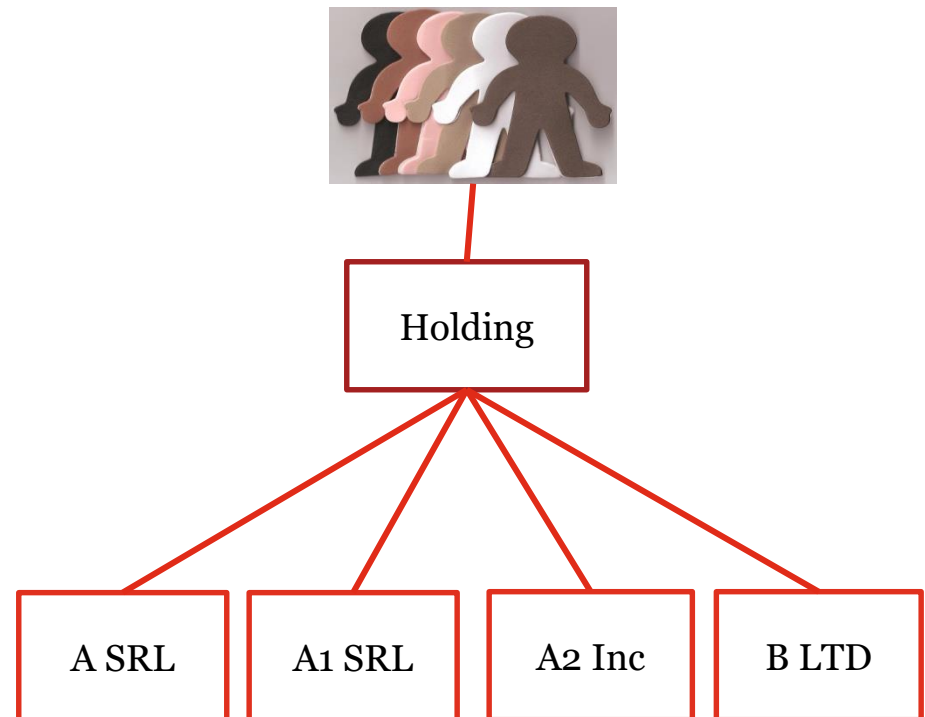
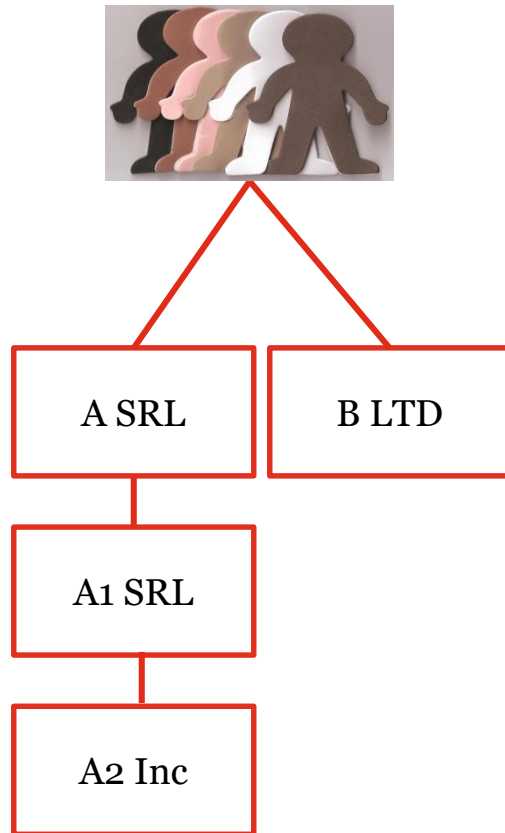
- dividends exempt from CIT (minimum 10% shareholding for one year)
- capital gains exempt from CIT (minimum 10% shareholding for one year)
- interest income taxed at 16%
- 10% WHT due on interest in US can be credited against Romanian corporate income tax payable

RO individual

- defer taxation at individual level – 5% income tax on dividends (vs. 16% income tax on interest)

Common structures for US expansion

Holding company - concept



Common structures for US expansion

Holding company – Romania or other jurisdictions?

Romanian holding

- CIT exemption on revenues from*:
 - Dividends
 - Capital gains
 - Liquidation

**Subject to participation conditions – minimum 10% shareholding for at least one year*

- Low WHT for dividends distributed to individuals – 5%
- Tax rulings and APAs

Foreign holding

Advantages:

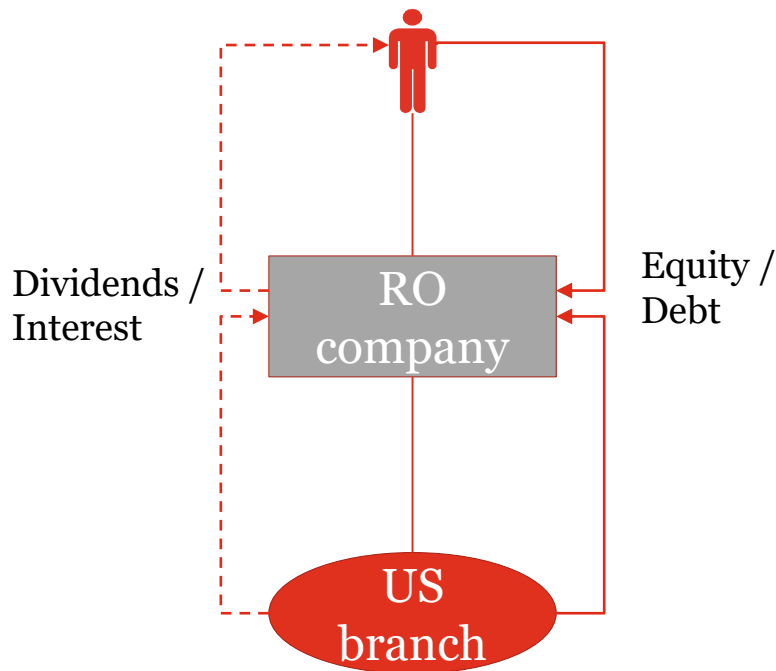
- Interim dividends
- Mature market for attracting financing (IPO)
- Reputation
- FX protection (functional currency)
- Corporate income tax consolidation
- Tax rulings and APAs

Disadvantages

- Compliance costs
- Substance conditions becoming stricter
- Higher WHT on dividends distributed to individuals in some jurisdictions – e.g. Netherlands 15%

Common structures for US expansion

US branch, Romanian company



US branch

- maximum federal CIT 35%; state CITs range from 1% to 12% (although some states impose no CIT) and are deductible expenses for federal CIT purposes
- Impact of state and local taxes (average 6.47%)
- Exit: US taxation on disposal of the US business

Romanian company

- Branch profits exempt in Romania based on the double tax treaty between Romania and the US

Romanian individual

- 5% income tax on dividends

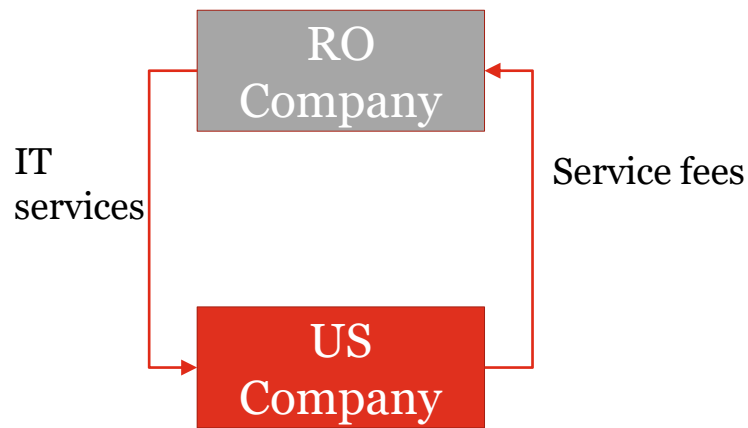
Similar tax position: US company or US branch

Other factors: legal, commercial

Usually a US company is preferred

Common structures for US expansion

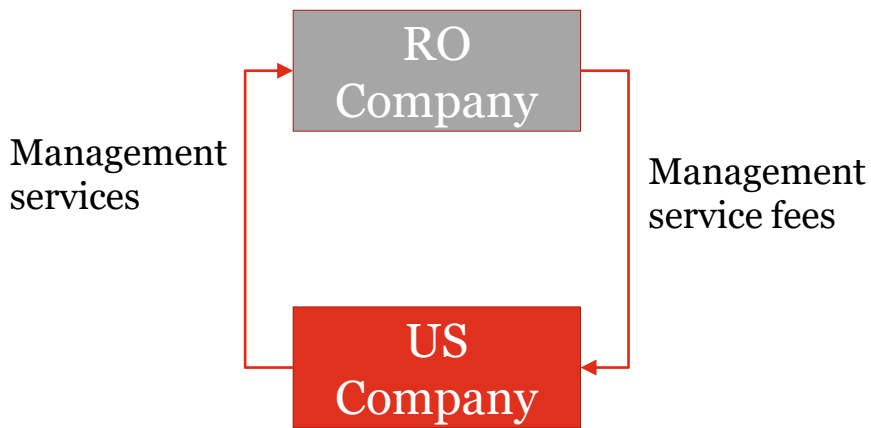
Business model considerations – IT services



- No WHT on service fees in the US (assuming no royalties are involved)
- 16% CIT in Romania on the IT service fees
- Transfer pricing rules – market value and documentation

Common structures for US expansion

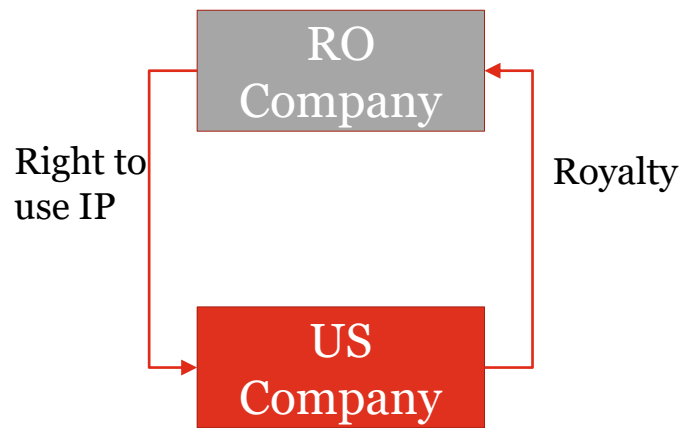
Business model considerations – management services



- Services fees paid from Romania are subject to 16% WHT in Romania – may be reduced to nil under the double tax treaty between Romania and the US (tax residency certificate needed)
- Management service fees are subject to CIT at the level of US company
- Transfer pricing rules – market value and documentation
- Deductibility of services expenses in Romania – aggressive approach of tax authorities!!!

Common structures for US expansion

Business model considerations – royalties



- US WHT on royalty payment. Domestic 30% rate can be reduced based on double tax treaty depending on type of royalty:
 - industrial equipment royalties – 0%
 - know-how/other industrial royalties – 15%
 - patent royalties – 15%
 - motion picture and television royalties - 10%
 - copyright royalties (software) – 10%
- Royalty income subject to 16% CIT in Romania but may benefit of certain incentives:
 - R&D supplementary deduction of 50%
 - Tax holiday for taxpayers performing only innovation and R&D
- Other favourable IP holding jurisdictions: Netherlands, UK, Cyprus, Ireland

Attention to economic substance!



Conclusions

Conclusions



US tax system is complex and in course of reform - importance of local tax and legal advice



Advantages of the holding company structure. Right holding structure has both tax and operational advantages but is subject to a case by case analysis



Changes in international tax framework and focus on economic substance



Q&A

Thank you!



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Sistemul fiscal specific aplicabil industriei de petrol si gaze

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