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Going International And The Changing Tax Times

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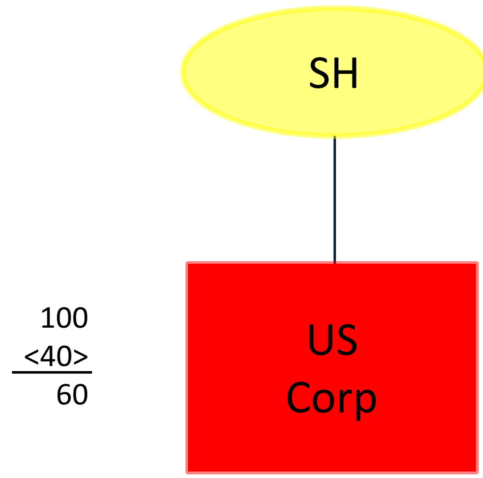
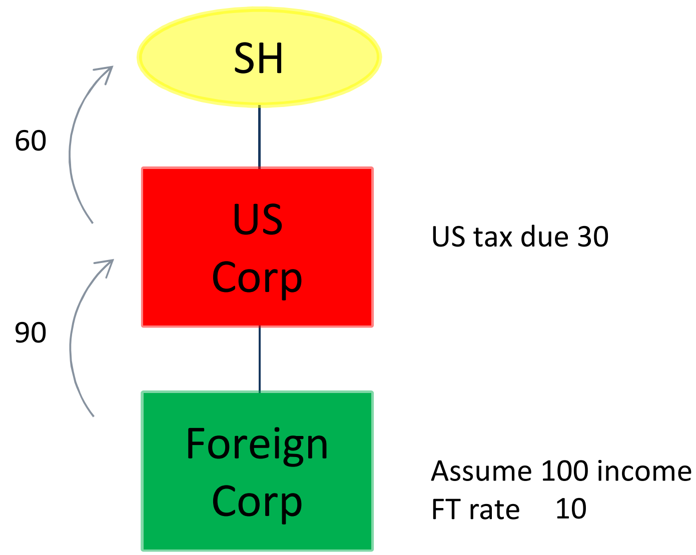
Why Go International?
The Stand Alone US Corporation



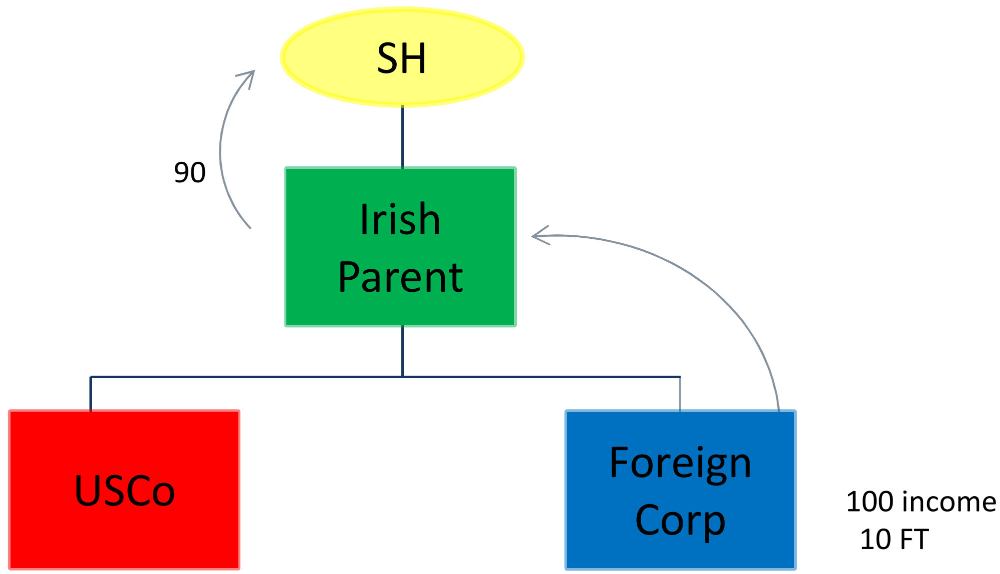
- Invents
- Commercializes
- Realizes revenue
- Pays US federal corporate tax @ 35%, plus state income tax. Assume 40%
- After tax money to reinvest or distribute to shareholders is 60%

Why Go International?
The "Deferral" Structure



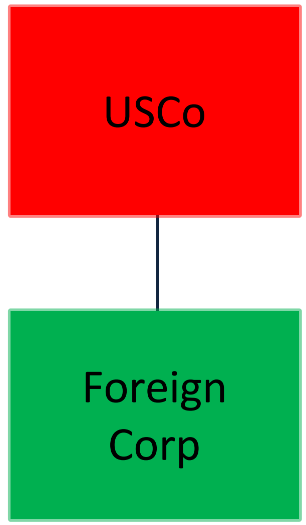
- No tax to US Corp until earnings are distributed to US Corp, or deemed distributed under anti-abuse rules (Subpart F)
- After tax money to reinvest is 90
- But it is temporary. When income comes back to US Corp, incremental tax is due of ≈ 30%
- Financial accounting allows deferral

Why Go International?
The "Preclusion Structure"



- 100 of income of FC never runs through the US tax system
- Does Ireland impose a tax on Irish Parent on receipt of the 90 dividend?

How To Get There Going International



- develops IP, such as software, processes, patents, etc.
- Commercializes it
  - licensing
  - manufacture and sell

Supply Chain Management

- What can FC do?
  - Contract manufacture for USCo
    - low profit margin
  - Full risk manufacturer
    - higher profit margin
  - Sell product
    - captures profit from sales activities
  - Develop and commercialize intangibles
    - likely highest profit margin

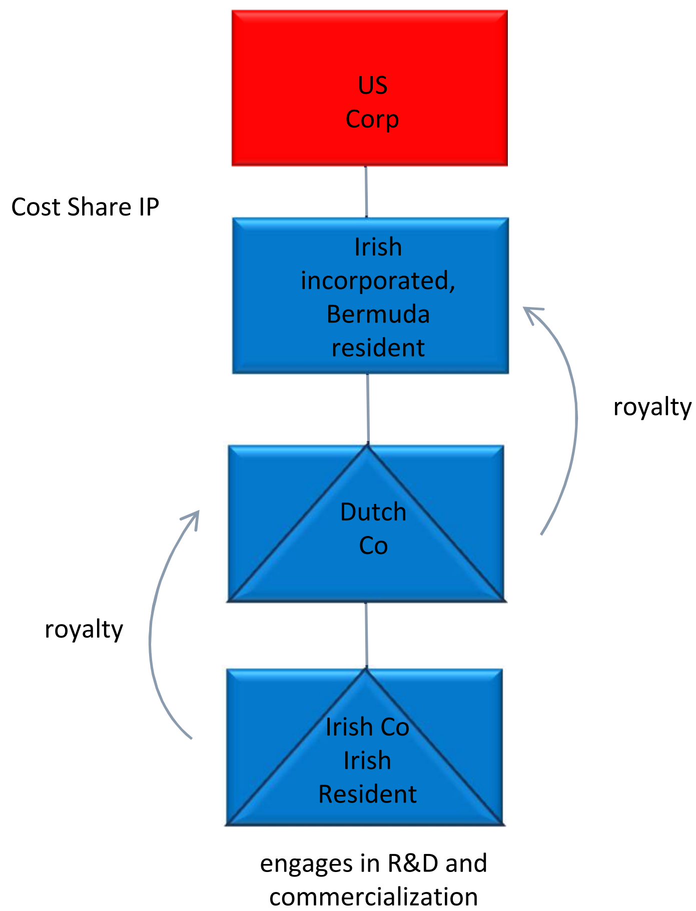
Getting There

- Key Issues
  - FC must be capable of performing functions. If all activities occur via US staff, FC likely subject to US taxation
  - Outbound transfer of IP is subject to transfer pricing rules
    - it may be licensed or sold
    - if contributed (knowingly or not), deemed royalty
  - Ongoing intercompany relationship subject to transfer pricing review
  - Will the anti-abuse (subpart F) rules override deferral?

How Low Can You Go?

- Irish rate on operational (trading) income 12.5%
- Swiss rate has been negotiated in the past down to 6-8%
- But how do you get to “stateless income?”

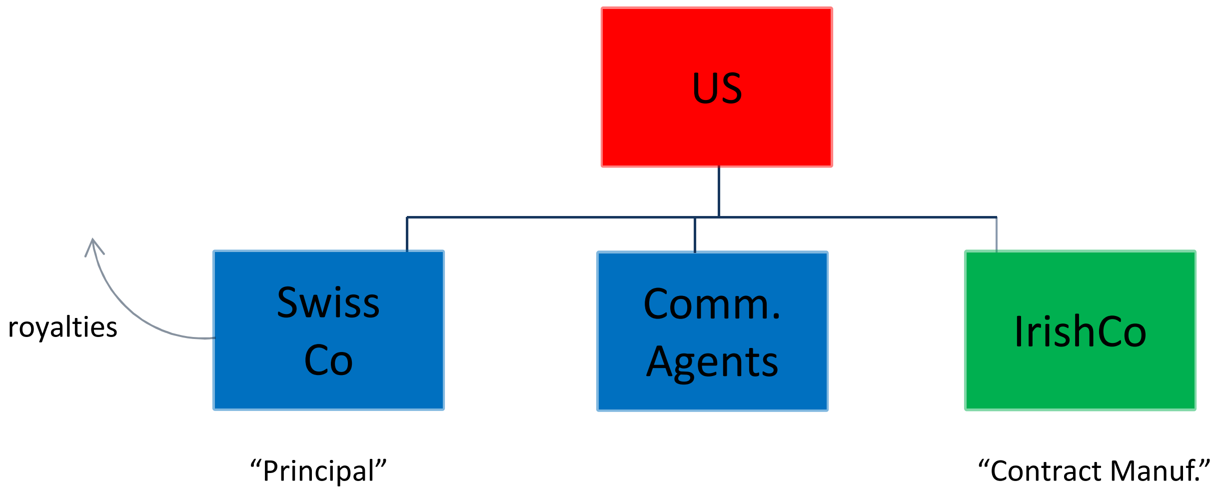
How Low Can You Go?



- Royalties don’t exist for U.S. purposes because CTB, no Sub F income
- Active R&D and commercialization do not create Sub F income
- Dutch Co. needed for withholding tax on royalty
- Royalty is deductible in Ireland, creating an effective 2% Irish tax rate

- Inconsistencies
  - Check the box
  - US views topco as Irish company, so activities in Ireland are good for Sub F qualification
  - Ireland views topco as Bermuda resident under “management and control,” so no Irish tax

How Low Can You Go?
Swiss Hub Structure

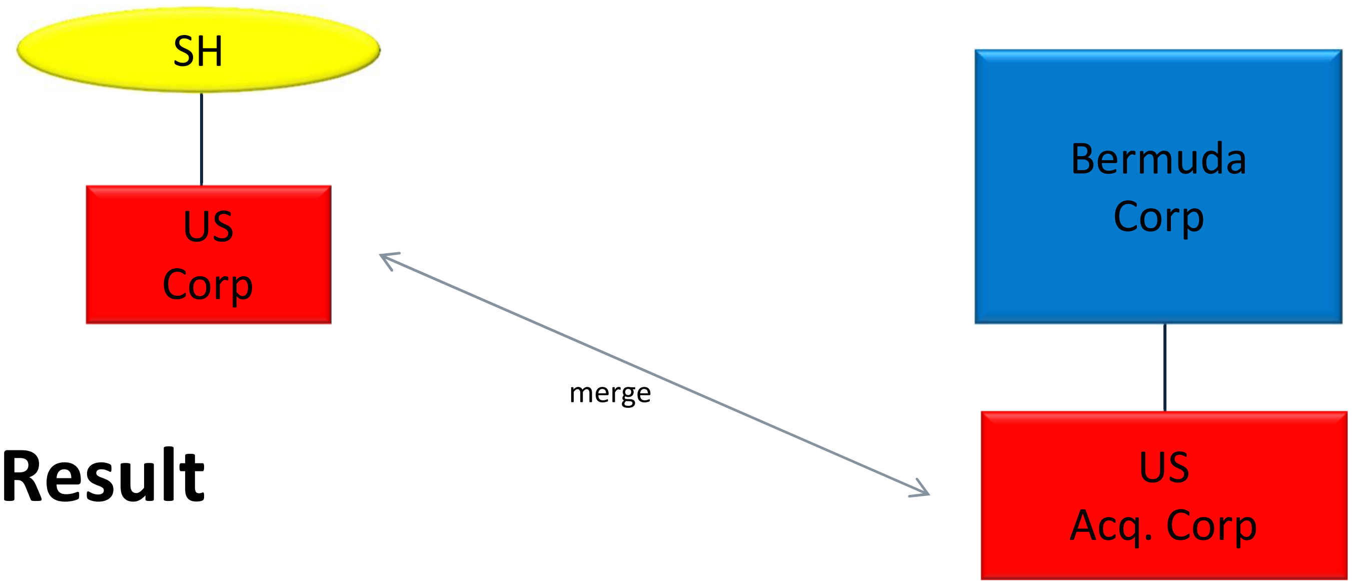


- Swiss Co develops IP
- Hires Irish Co to manufacture on limited risk basis – limits taxable income in Ireland
- Swiss Co is active participant in overseeing manufacturing
- Sales companies are commissionaires or limited risk distributor – limits taxable income
- Most of the profit resides in Switzerland at 8% but is then reduced by royalties

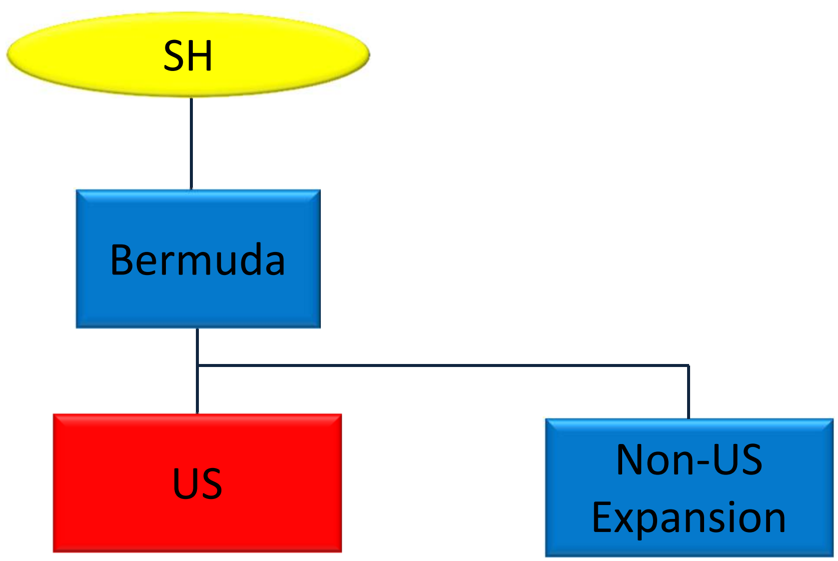
Global Reaction

- Double Irish structure
- Swiss ruling policy
- BEPS
  - What is it?
  - What are we seeing?

Avoiding the US Tax Net - Inversion



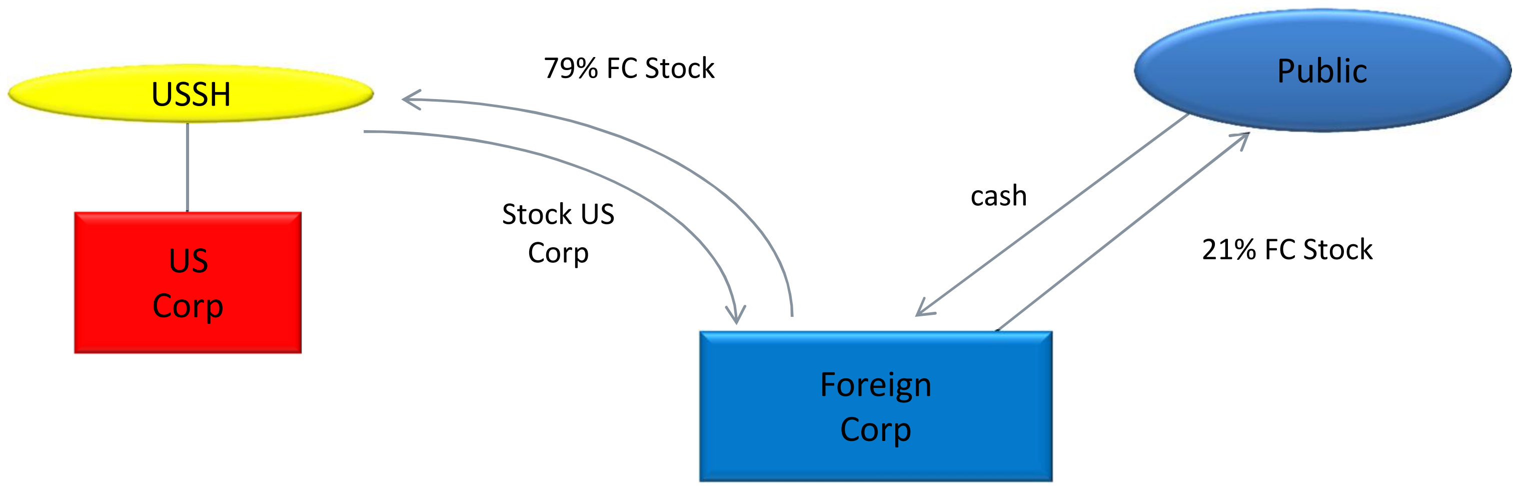
Result



In Response

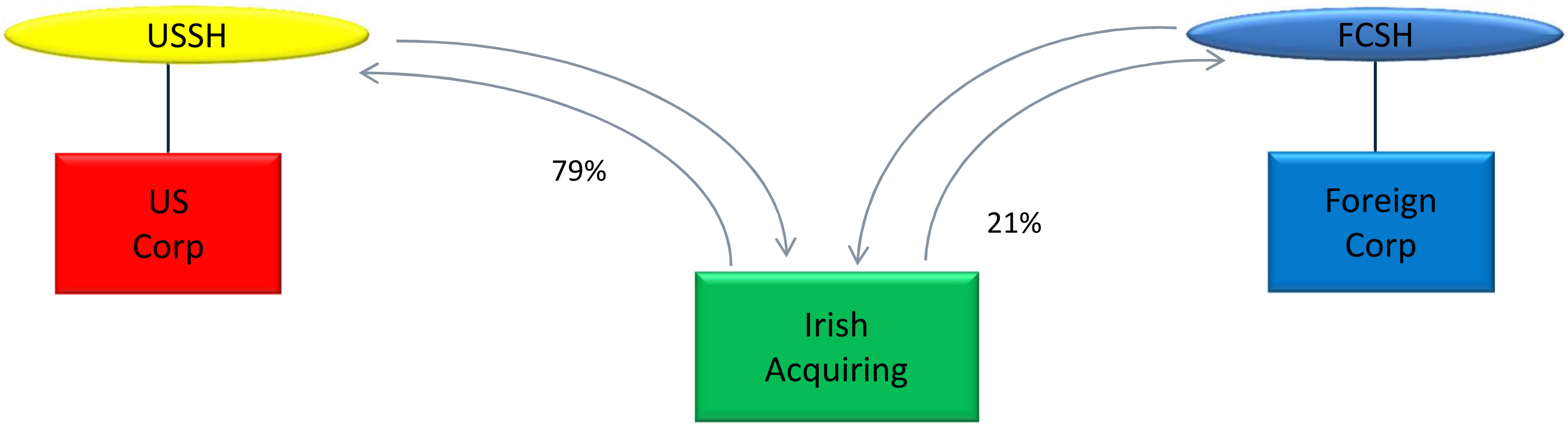
- §7874. If the shareholders of US Corp own 80% or more of Bermuda after the deal, Bermuda is a US corporation for US tax purposes, so no tax planning is achieved

§7874

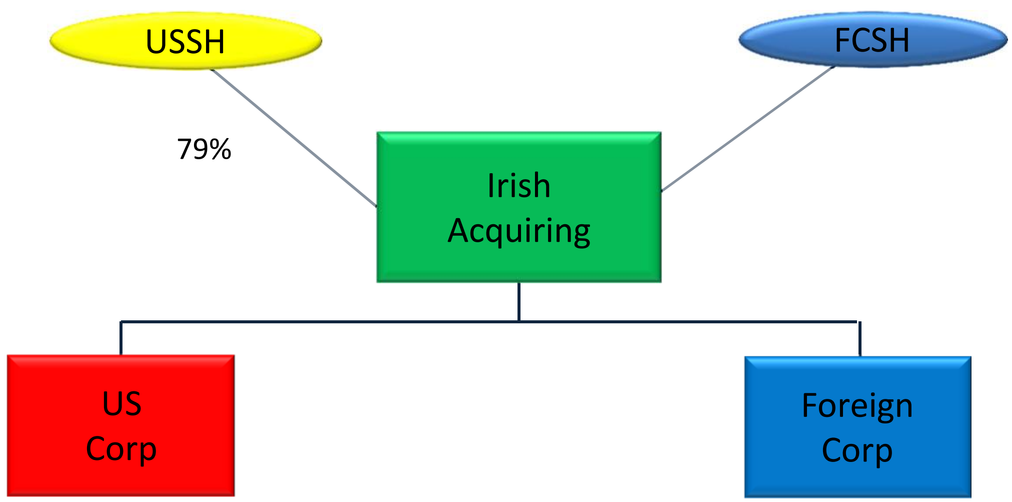


- The stock acquired by the Public is ignored, so USSH holds 79/79, or 100 percent of the stock of FC, and it runs afoul of the anti-inversion rules
- Note USSH means all shareholders of US Corp that acquire stock in FC by virtue of owning stock in US Corp. Does not limit it to US persons

Determining "Ownership"



Result



- Stock of foreign corporation in a business combination is <u>not</u> disregarded, so USSH own 79%, no 80% inversion.

Notice Provided by IRS In 2014

- Severely limited the benefits of the business combination, even if the < 80% test is met
- Stopped the “cash box” mergers
- Has <u>not</u> stopped company interest in the analysis

What We Have Seen

- Direct Migrations from Caribbean:

- Then: Inversions by Acquisitions
  - » Spin-Offs (Alkermes)
  - » Direct Acquisition of private company through reverse takeovers (Jazz / Azur)
  - » Direct Acquisition of public companies (Eaton / Cooper; Perrigo / Elan)
- Now: Direct Migrations from Switzerland

Recent M&A/Inversion Deals into Ireland

Jazz Pharmaceuticals®

Azur Pharma

Cooper

Eaton® Powering Business Worldwide™

élan

Perrigo®

Actavis™

Alkermes

Warner Chilcott

Vidara Therapeutics™

Horizon Pharma

Fyffes

Chiquita

Expected Synergies And Impact On Effective Tax Rates

Acquiror	Expected synergies	Expected group effective tax rate (previous)
Endo International plc	Annual operational and tax synergies of at least $75 million	20% (30%)
Perrigo Company plc	After-tax annual operating expenses and tax savings of more than $150 million.	20% (30%)
Actavis plc	More than $400 million in after-tax operational synergies	17% (28%)
Eaton Corporation plc	Global cash management and resultant tax benefits of $160 million annually	8-10% (13%)
Horizon Pharma	Not quantified	Future expected tax rates of low-20%'s or lower
Chiquita	At least $40 million in expected annual pre-tax operating synergies by the end of 2016	Not quantified

THANK YOU

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