

# TAX STRUCTURES *Of* UNITED STATES *Foreign Owned LLCs*

**PACIFICO**TAX

A guidebook that takes a simplistic approach to explaining the U.S. tax implications of Foreign-Owned Limited Liability Companies.

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# **Tax Structures of United States**

## *Foreign-Owned LLCs*

***By Marcus Marcial***

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A guidebook that takes a simplistic approach to explaining the U.S. tax implications of Foreign-Owned Limited Liability Companies.

## **Disclaimer**

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## About The Author

Marcus Marcial is a seasoned tax professional with experience predominantly dealing with International Taxation. Originally from Southern California, he attended Hunter College in New York City and has resided abroad for many years.

While employed at the IRS, he learned from examining and preparing tax returns for individuals residing and businesses operating offshore. After leaving the IRS, he started his own tax firm, helping various international clients with tax compliance, accounting, and consultation.

## Tax Consultations

To schedule a consultation to discuss the concepts, structures, and tax law references found in this book or for a custom tax structure development or consultation for tax compliance, planning, and strategy, visit <https://pacifico.tax/schedule-consultation>

PacificoTax, LLC is a professional tax firm specializing in International Tax and providing income tax return filing, consultation, tax planning, sub-contracted accounting and IRS representation/resolution services.

# Concepts Covered in This Book

This book is designed as a primer for understanding the fundamental concepts of international tax transactions for Foreign-Owned U.S. Limited Liability Companies. It is not intended to replace international tax law references, comprehensive client planning and strategy, or a single reference for international structures. This book only describes the BASIC understanding of the *most relevant and commonly occurring* concepts for LLCs, which include:

1. Income Sourcing
2. Taxation of Individual Non-Residents in reference to Ownership of an LLC (in Limited Circumstances)
3. Fixed, Determinable, and Periodic (FDAP) Withholding Tax
4. Determination of Effectively Connected Income (ECI)
5. Tax Treaty Exemptions
6. Tax Treaty Special Withholding Tax Rates
7. Preliminary Concepts of Permanent Establishment

# Concepts NOT Covered in This Book

Concepts related to the U.S. International Tax system are vastly complex and a continually growing and changing field. This book does not claim to describe every situation and every legal reference in a given structure. Instead, this book only describes the basic understanding of the most relevant and commonly used concepts for the average international tax transaction, which do not include the following concepts not covered in this book:

- General Taxation of Individual Non-Residents
- Taxation of Dual Residents
- Foreign Trusts, Foreign Estates & Foreign Gifts
- U.S. Taxation of Foreign Partnerships
- Tax Effects of Entity Acquisitions, Dispositions, and Reorganizations
- Certain Foreign Source and U.S. Source Income Apportionments
- Subjective Tax Law regarding a number of opinionated issues such as Arm's Length, Form vs. Substance, Agency, etc...
- Other Complex Concepts (Redemptions, Financial Hedging, Derivatives, Foreign Currency Straddles, Transfer Pricing Models, Cost Sharing Arrangements etc...
- Certain Tax Effects of Intercompany Transactions (Such as the Base Erosion and Anti-Abuse Tax)

# Structures

Structure #1 - Non-Resident Alien U.S. LLC Foreign Consultant

Structure #2 - Argentinian Resident with SMLLC E-Commerce China Direct

Structure #3 - Bulgarian NRA LLC Partnership Software Sales

Structure #4 - German LLC Partners No USTOB ECI Reduced Withholding

Structure #5 - Real Estate Rental ECI Election No Withholding

Structure #6 - Co-Ownership Real Estate Sale FIRPTA Withholding

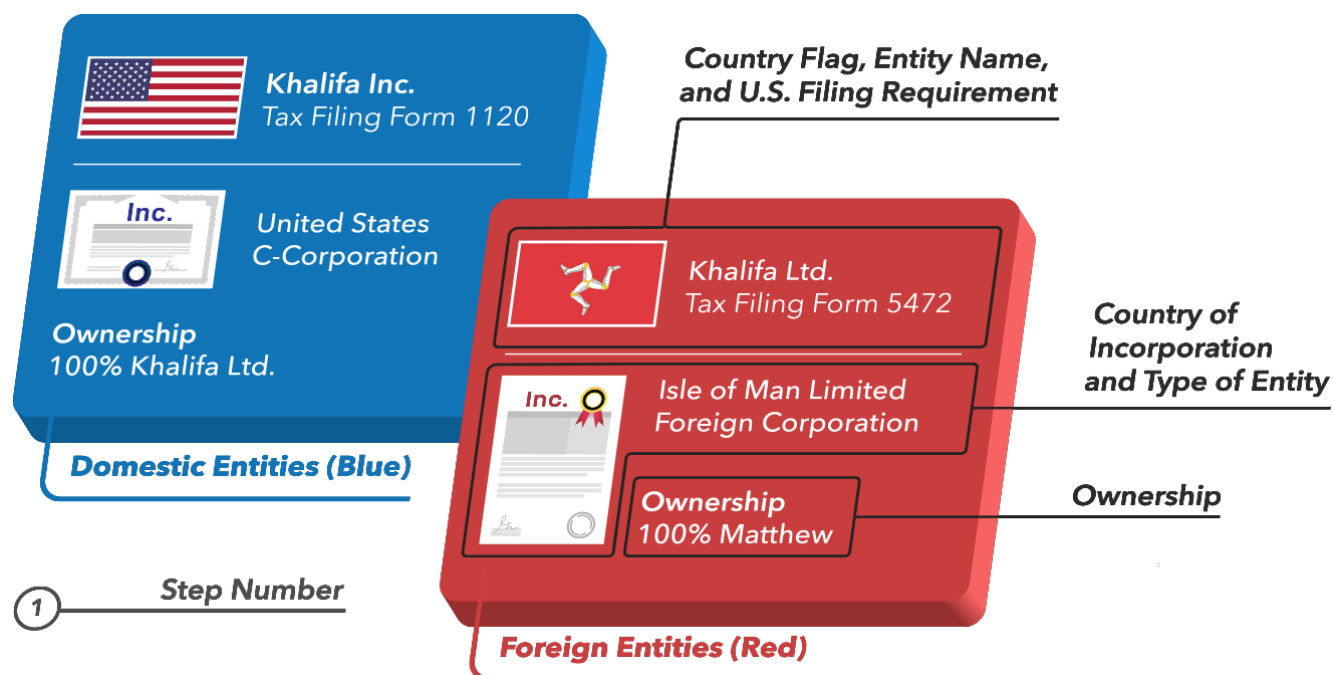
Structure #7 - Tax Treaty Exemption E-Commerce SMLLC Belgian Permanent Establishment

Structure #8 - Belgian NRA LLC Owner with Office Permanent Establishment

Structure #9 - Netherland NRA Royalties E-Commerce and Events from SMLLC

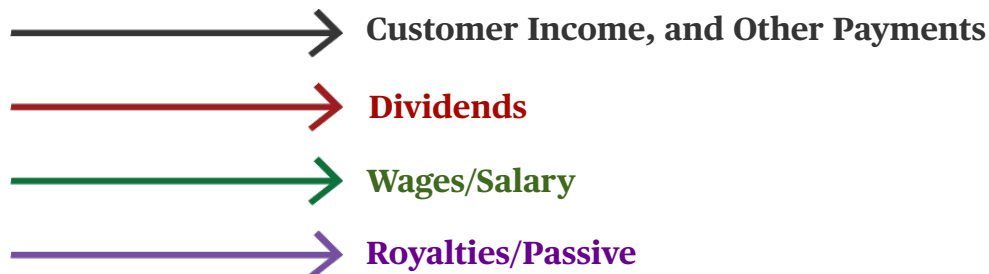
Structure #10 - Romanian NRA SaaS Digital Sales and E-Commerce from DE LLC

# Structure Icon Legend



Legal Entities are two-dimensional flat icons that portray U.S. entities (in blue) and foreign entities (in red), including a country flag, name, U.S. filing requirement, and ownership. The cash transfer is shown in a lined arrow, generally colored based on the character of income.

## Flow of Cash & Character of Income



## Humans

Humans are shown with a photo, with a background/border in blue for U.S. citizens and residents and red for non-resident aliens



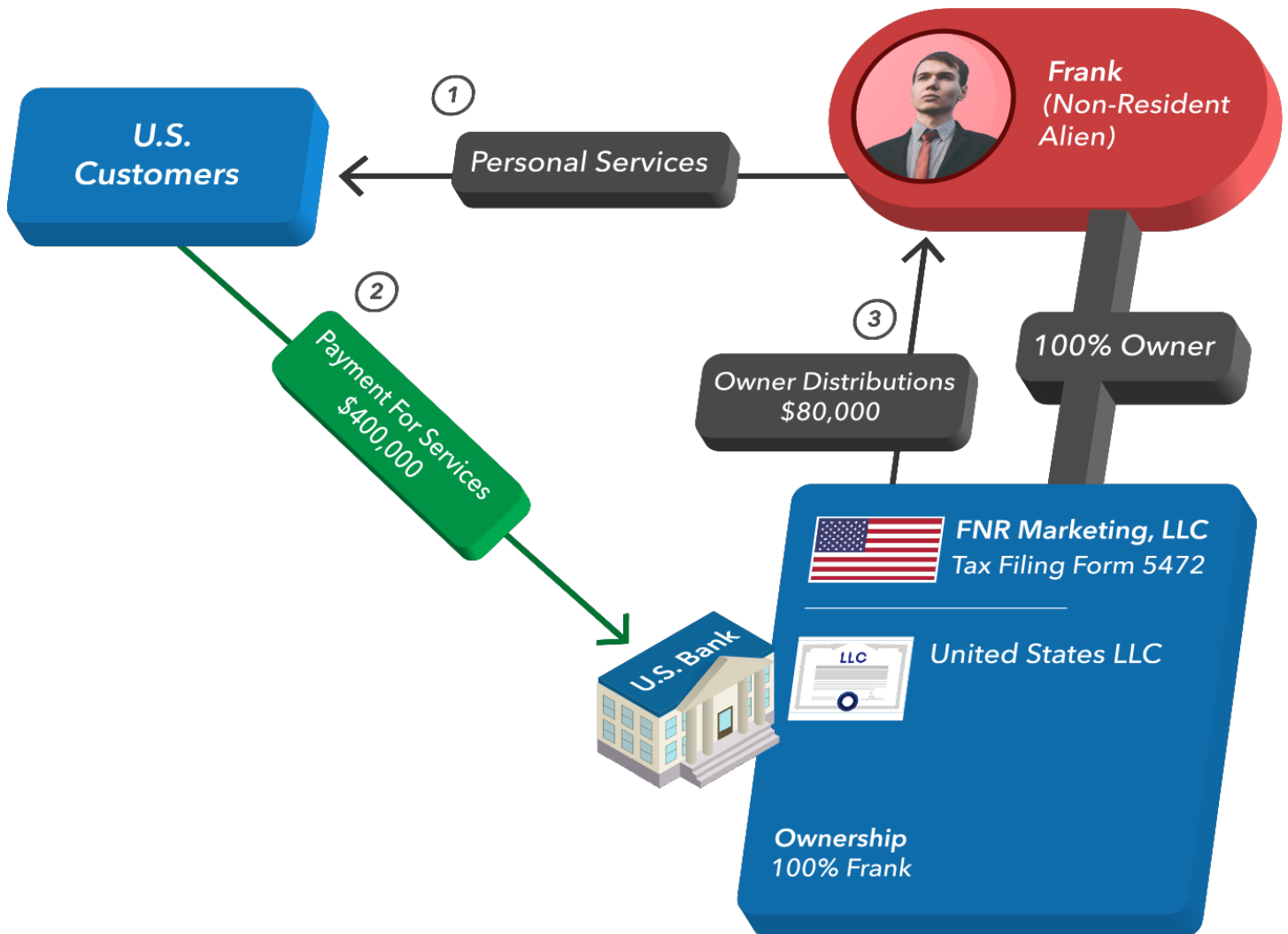
\*Note, certain electronic readers and print publications do not display colors, but are instead in greyscale.

# Non-Resident Alien U.S. LLC Foreign Consultant

## *Tax Structures of United States Foreign-Owned LLCs - Structure #1*

### Structure Summary

A Non-Resident Alien provides personal consulting services through his solely owned LLC, and is not subject to U.S. tax for the work he performs in a foreign country.



## **Non-Resident Alien U.S. LLC Foreign Consultant**

### **Structure Background**

A United States Limited Liability Company, FNR Marketing, LLC, provides Marketing services, and is owned 100% by Frank, a Canadian resident. As a Single-Member LLC (SMLLC), FNR Marketing, LLC is disregarded for Federal tax purposes per Treasury Regulation §301.7701-3.

FNR Marketing, LLC provides Marketing to U.S. customers, while Frank, as the sole owner and manager, is physically located in Canada. Payments from U.S. customers are paid to a U.S. bank account held by the LLC. During the year, all net earnings are distributed from the bank account to Frank.

As Frank does not physically provide services in the United States, nor maintains a permanent establishment, nor conducts business on a regular and continuing basis, the LLC's portion of income for Frank's services is determined not to be Effectively Connected Income (ECI) with a U.S. trade or business per Treasury Regulation §1.355-3.

### **Monetary Transactions & Accounting**

1. In exchange for payment, Frank provides marketing services as a manager of the LLC. Frank is physically located in Canada while providing these services.
2. During the year, FNR Marketing, LLC received service income of \$80,000 from U.S. customers, which is deposited into a U.S. bank account.
3. At the conclusion of the year, the LLC has a Net Income of \$80,000, of which the entire \$80,000 is distributed to Frank.

### **U.S. Tax Filing Compliance**

4. **Pro Forma 1120, with Form 5472 (FNR Marketing, LLC).** Foreign-owned disregarded entities must generally file [Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business](#), to report certain reportable transactions per Internal Revenue Code §6038.



## Non-Resident Alien U.S. LLC Foreign Consultant

### Summarized Tax Returns and Financial Statements

3

#### **FNR Marketing, LLC** Income Statement

Consultation Revenue	\$80,000
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<b>Net Income</b>	<b>\$80,000</b>
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4

#### **Form 5472 (FNR Marketing, LLC)**

##### **Foreign Owned DE**

Reportable Compensation	\$80,000
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### Resulting Tax Implications

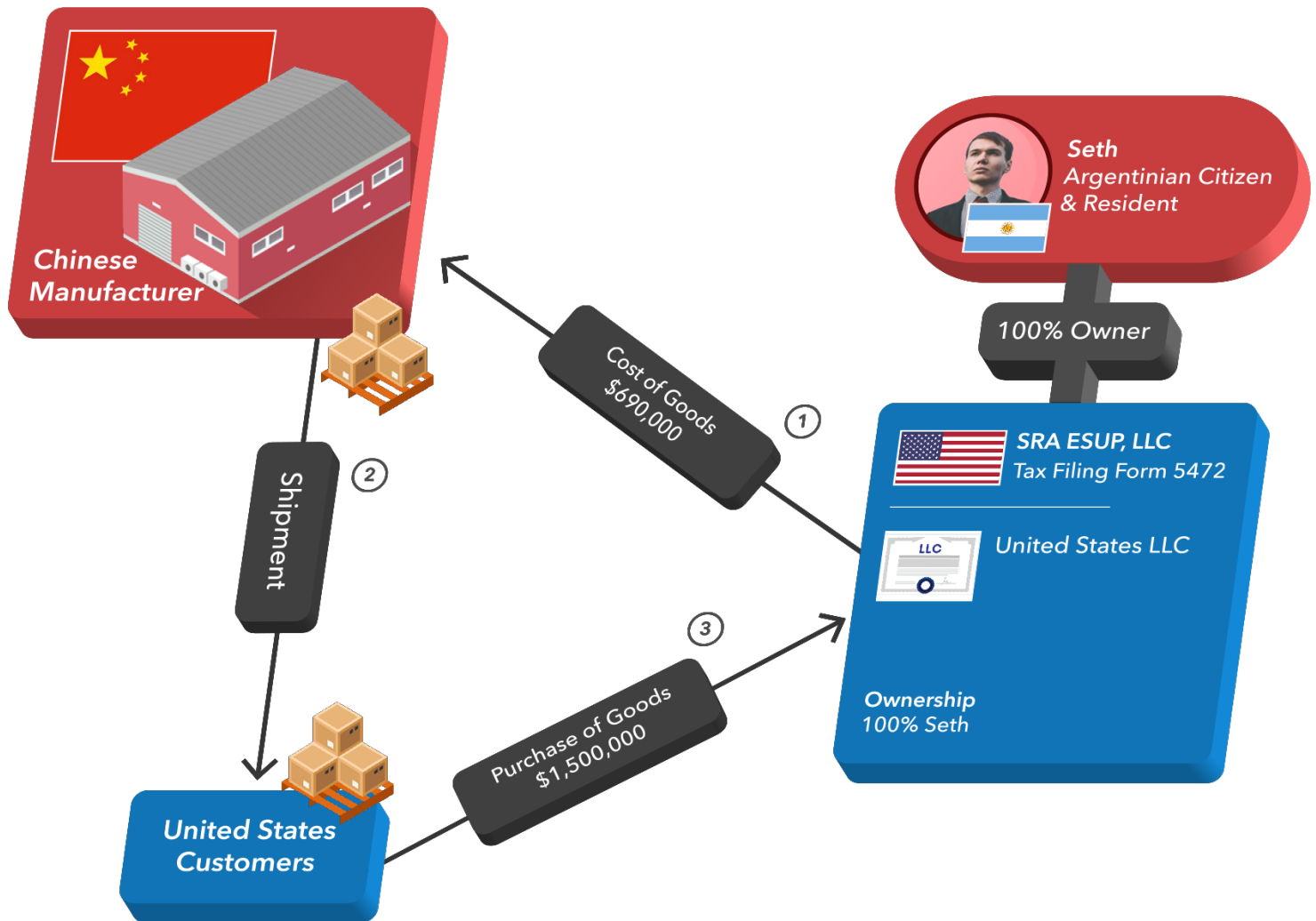
As a result of this structure, the total U.S. income tax liability paid by Frank (as the result of the disregarded United States LLC) is \$0, as there is no U.S. trade or business.

# Argentinian Resident with SMLLC E-Commerce (China Direct)

*Tax Structures of United States Foreign-Owned LLCs - Structure #2*

## Structure Background

A U.S. Non-Resident Alien (Argentinian Resident) and owner of a U.S. LLC selling goods directly to customers from a Chinese warehouse is not subject to U.S. income tax as the originating location of goods is from a foreign location.



## Argentinian Resident with SMLLC E-Commerce (China Direct)

### Structure Background

Seth is an Argentine citizen and resident, and also the sole owner of SRA ESUP, LLC, a U.S. Wyoming Limited Liability Company, which sells various tool-related products to customers located in the United States.

As a Single-Member LLC (SMLLC), SRA ESUP, LLC is disregarded for Federal tax purposes per Treasury Regulation § 301.7701-3. An election was *not* made to treat the LLC as a C-Corporation for U.S. tax purposes.

The tools are produced in China and shipped directly to customers in the United States, originating from a Chinese warehouse. There is no shipping intermediary involved in the delivery.

#### *No Effectively Connected Income*

The sale of goods from the Chinese warehouse directly to the U.S. customer is not considered Effectively Connected Income (ECI) earned by the foreign nonresident per Internal Revenue Code §864(c)(4), as the result of the sale of inventory is attributable to a foreign origination per IRC, §865(e)(2) and §882.

### Monetary Transactions & Accounting

1. SRA ESUP, LLC pays a third-party China company \$690,000 for the manufacture of the tools.
2. Once sold, the tools are shipped directly from China to the customer in the United States.
3. The United States customers pay for the purchase of the tools totaling \$1,500,000 throughout the year.

### U.S. Tax Filing Compliance

4. **Pro Forma 1120, with Form 5472 (SRA ESUP, LLC).** Foreign-owned disregarded Entities must generally file [Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business](#), to report certain reportable transactions per Internal Revenue Code §6038.

## Argentinian Resident with SMLLC E-Commerce (China Direct)

### Summarized Tax Returns and Financial Statements

4

Form **5472** (SRA ESUP, LLC)

**Foreign Owned DE**

### Resulting Tax Implications

As a result of this structure, the U.S. tax liability of Seth (and by extension of direct ownership of SRA ESUP, LLC, as a disregarded entity) is \$0, as there is no Effectively Connected Income in the United States.

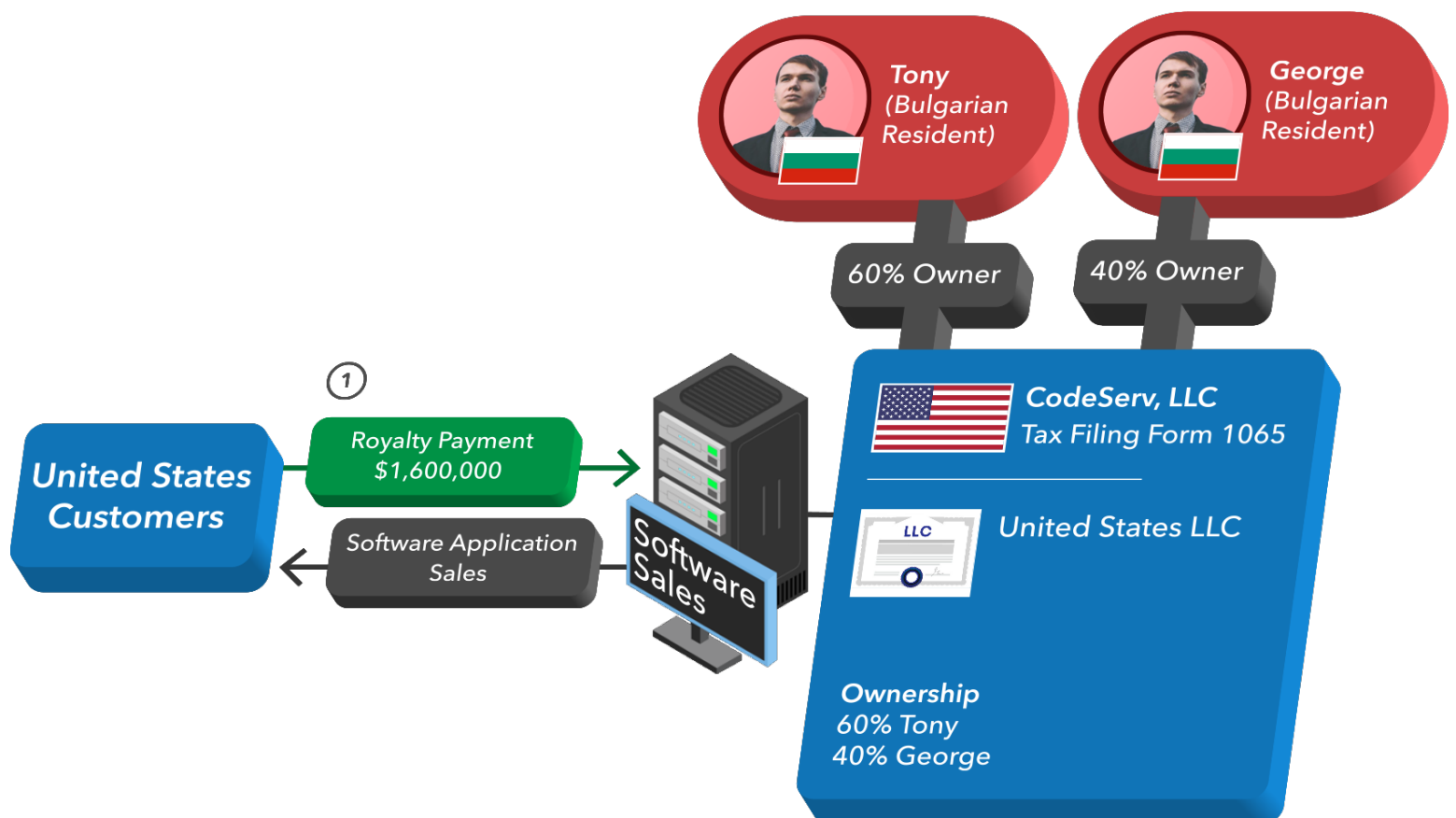
# Bulgarian NRA LLC Partnership

## Software Sales

*Tax Structures of United States Foreign-Owned LLCs - Structure #3*

### Structure Summary

Two Non-Resident Alien Partners of a Limited Liability Company receive royalties from U.S. customers, which are subject to a special 5% tax treaty withholding rate. This structure occurs when non-resident aliens receive royalties from U.S. sources.



## Bulgarian NRA LLC Partnership Software Sales

### Structure Background

CodeServ, LLC is a United States Limited Liability Company that sells software to U.S. customers. Both Tony and George are Bulgarian citizens and residents, as well as the owners of CodeServ, LLC. Tony owns 60%, and George owns 40%.

Both maintain offices in Bulgaria and are not physically present in the United States. As a Multi-Member LLC, CodeServ, LLC is classified as a Partnership for Federal tax purposes.

#### *Source and Taxation of Royalty Income (Software)*

For the use of copyrighted software (whether as a web application subscription or a one-time purchase), royalties are sourced based on the location where the property was used, as per Internal Revenue Code §861. Therefore, software sold to U.S. customers is a U.S. source of royalty income.

Based on the Tax Treaty rate for royalties earned in the United States, residents of Bulgaria are taxed at a flat rate of 5%.

#### *No Trade or Business & Effectively Connected Income (ECI)*

As the LLC does not physically operate in a particular state nor sell physical goods directly to clients, and therefore was not determined to conduct a trade or business in the U.S., resulting in Effectively Connected Income (ECI) per Treasury Regulation §1.355-3.

### Monetary Transactions

1. CodeServ, LLC sells software totaling \$1,600,000, all of which are to U.S. customers using the software in the United States.

### U.S. Tax Filing Compliance

2. **Form 1065 (CodeServ, LLC).** On its Income Statement and related [Form 1065, U.S. Return of Partnership Income](#) CodeServ, LLC reports a Net Income of \$1,600,000.
3. **Form 1042 (CodeServ, LLC).** Withholding tax applies for dividends paid to non-residents per Internal Revenue Code §1441. In this structure, at tax treaty rate of 5% applies to residents of Bulgaria for Royalties. As a result, \$80,000 is withheld from dividends (\$1,600,000 x 5%). The withholding is recorded and paid on [Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons](#).
4. **Form 1040NR (Tony).** As an owner of a Partnership LLC (issuing a Schedule K-1, Tony files [Form 1040NR, U.S. Nonresident Alien Income Tax Return](#), to report the royalty income of \$960,000 taxed at 5% rate, or a \$48,000 withholding tax. As the tax has

## Bulgarian NRA LLC Partnership Software Sales

already been withheld at the source, there is no tax due. [This tax return is shown on the chart]

5. **Form 1040NR (George).** As an owner of a Partnership LLC (issuing a Schedule K-1, George files [Form 1040NR, U.S. Nonresident Alien Income Tax Return](#), to report the royalty income of \$640,000 taxed at 5% rate, or a \$32,000 withholding tax. As the tax has already been withheld at the source, there is no tax due. [This tax return is not shown on the chart but follows the same principle as Tony's Form 1040NR]

## Summarized Tax Returns and Financial Statements

4

Form 1040NR	(Tony)
<b>Schedule NEC</b>	
Total U.S. Source Royalty Income	\$960,000
Royalty FDAP Withholding (Bulgaria)	5%
Withholding Tax	\$48,000
Tax Liability	\$48,000
<b>Tax Due</b>	<b>\$0</b>

2

Form 1065	CodeServ, LLC Partnership Tax Return
Software Sales to U.S. Customers (U.S. Royalties)	\$1,600,000
<b>Net Income</b>	<b>\$1,600,000</b>

3

Form 1042	CodeServ, LLC
U.S Source Royalties	
<b>\$1,600,000 x 5% = \$80,000 Tax</b>	

## Resulting Tax Implications

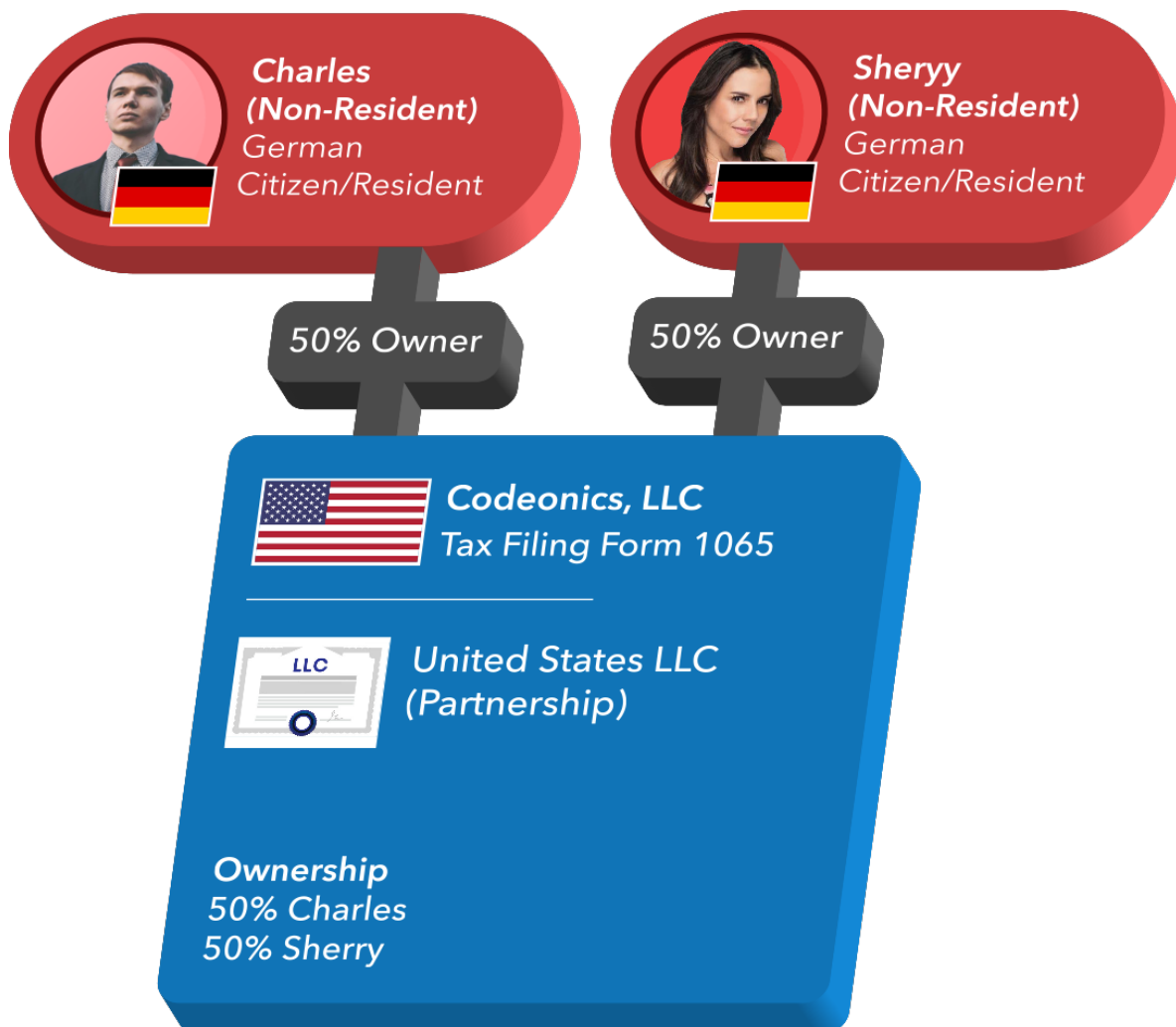
As a result of this structure, the U.S. tax liability of CodeServ, LLC (and by extension, each non-resident partner) is \$80,000 for Fixed Determinable and Periodic income related to Royalties.

# German LLC Partners (No USTOB/ECI) Reduced Withholding

*Tax Structures of United States Foreign-Owned LLCs - Structure #4*

## Structure Summary

A multi-member LLC Partnership owned and operated by two non-resident aliens working in a foreign country is not subject to U.S. tax as they are each providing personal services abroad, have no Permanent Establishment in the U.S., and have no Effectively Connected Income.





## German LLC Partners (No USTOB/ECI) Reduced Withholding

### Structure Background

Codeonics, LLC is a United States Limited Liability Company which provides a mix of computer programming services for clients throughout the world, as well as sells web applications for user use. The LLC has two partners, Charles (a German citizen and resident) owning 50%, and Sherry (also a German citizen and resident) owning 50%. Each partner receives and contributes an equal portion of profit/loss and capital into the partnership.

Both partners work physically in Germany, providing personal services in computer programming. They maintain a permanent establishment in Germany and are not physically present in the United States. Their clients for programming services are based both in the United States and in foreign countries. The web applications are sold through a variety of digital marketplaces, and clients both in the United States and in foreign countries use the web applications for use.

### *Source and Taxation of Personal Services of Foreign Partners (Coding/Programming)*

In regard to business income from personal services (coding/programming services), the source of income is based on the location where the service was performed. Per Internal Revenue Code §864, U.S. source income does not include the personal services for a non-resident alien individual not engaged in trade or business within the United States.

As a result, the compensation for programming services performed in Germany is not U.S. source income.

### *No U.S. Trade or Business & Effectively Connected Income (ECI)*

There is no legal definition of what constitutes a “U.S. Trade or Business”; however, case law has indicated that a business that is “considerable, continuous, and regular” meets that definition. No treasury regulation suggests that the use of a Limited Liability Company solely triggers a U.S. trade or business.

As the income sourced from the business does not physically operate, market, or perform services in the United States and therefore is not determined to conduct a trade or business in the U.S., resulting in Effectively Connected Income (ECI) per Treasury Regulation §1.355-3.

Internal Revenue Code §875, Partnerships; beneficiaries of estates and trusts, does not apply as there are no other partners engaged in a U.S. Trade or business.

## German LLC Partners (No USTOB/ECI) Reduced Withholding

### *Royalty Income (Taxed at 0% for Germany)*

For the use of copyrighted software (either used as a web application subscription, or one time purchase), royalties are sourced where the property was used<sup>5</sup> per Internal Revenue Code § 861.

Based on the Tax Treaty rate of Royalties earned for application used in the United States, residents of Germany are taxed at a flat rate of 0%<sup>1</sup>.

Royalties for applications used by foreign customers is not U.S. source income.

### *Reduced Foreign Partnership Withholding*

Foreign partners are subject to a flat withholding based on their allocable share of the LLC Net Income per Internal Revenue Code §1446 - Withholding of tax on foreign partners' share of effectively connected income.

However, this withholding can be reduced by filing 8804-C, Certificate of Partner-Level Items to Reduce Section 1446 Withholding, based on certification of Effectively Connected Income.

## Monetary Transactions & Accounting

1. Codeonics, LLC generates \$240,000 of Net Income during the year, based on the following:
  - Coding Services to U.S. Customer + \$150,000
  - Coding Services to Foreign Customers + \$100,000
  - Application Sales U.S. Royalties + \$50,000
  - Application Sales Foreign Royalties + \$20,000
  - Administrative Expenses - \$80,000

## U.S. Tax Filing Compliance

2. **Form 1065, Schedule K-1, Form 8804/8805.** The tax return for the LLC is prepared, Form 1065, A U.S. Return of Partnership Income, to include Schedule K-1, and Forms

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<sup>1</sup> <https://www.irs.gov/individuals/international-taxpayers/nonresident-aliens-source-of-income>

### **German LLC Partners (No USTOB/ECI) Reduced Withholding**

8804/8805. However, as there is no Effectively Connected Income shown Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax reports \$0 of U.S. ECI allocable to both foreign partners.

3. **Reduction in Foreign Partner Withholding.** Form 8804-C, Certificate of Partner-Level Items to Reduce Section §1446 Withholding, is filed to the partnership to reduce the withholding for each foreign partner.
4. **Form 1040NR (Charles).** On his personal tax return Form 1040, U.S. Individual Income Tax Return Allen reports \$0 of Effectively Connected Income, and claims the 0% flat tax of Royalties on Form 8833, Treaty-Based Return Position Disclosure Under Section §6114 or §7701(b).
5. **Form 1040NR (Sherry).** On her personal tax return Form 1040, U.S. Individual Income Tax Return Allen reports \$0 of Effectively Connected Income and claims the 0% flat tax of Royalties on Form 8833, Treaty-Based Return Position Disclosure Under Internal Revenue Code §6114 or §7701(b).

## German LLC Partners (No USTOB/ECI) Reduced Withholding

### Summarized Tax Returns and Financial Statements

1

#### Income Statement Codeonics, LLC

Coding Services (U.S. Customers)	\$150,000
Coding Services (Foreign Customers)	\$100,000
Application Sales (U.S. Royalties)	\$50,000
Application Sales (Foreign Royalties)	\$20,000
Administrative Expenses	- \$80,000
<b>Net Income</b>	<b>\$240,000</b>

4

#### Form 1040NR Charles

Ordinary Income/ECI	\$0
<b>Schedule NEC</b>	
Total U.S. Source Royalty Income	\$25,000
Royalty FDAP Withholding (Germany)	0%
<b>U.S. Tax</b>	<b>\$0</b>

2

#### Form 1065 Codeonics, LLC U.S. Partnership Tax Return

Coding Services (U.S. Customers)	\$150,000
Coding Services (Foreign Customers)	\$100,000
Application Sales (U.S. Royalties)	\$50,000
Application Sales (Foreign Royalties)	\$20,000
Administrative Expenses	- \$80,000
<b>Net Income</b>	<b>\$240,000</b>

#### Form 8832 Tax Treaty Exclusion

5

#### Form 1040NR Sherry

Ordinary Income/ECI	\$0
<b>Schedule NEC</b>	
Total U.S. Source Royalty Income	\$25,000
Royalty FDAP Withholding (Germany)	0%
<b>U.S. Tax</b>	<b>\$0</b>

3

#### Form 8804/8804-C

Reduction in Foreign Partner Withholding  
(on Effectively Connected Income)

**ECI** **\$0**

#### Form 8832 Tax Treaty Exclusion

## **German LLC Partners (No USTOB/ECI) Reduced Withholding**

### **Resulting Tax Implications**

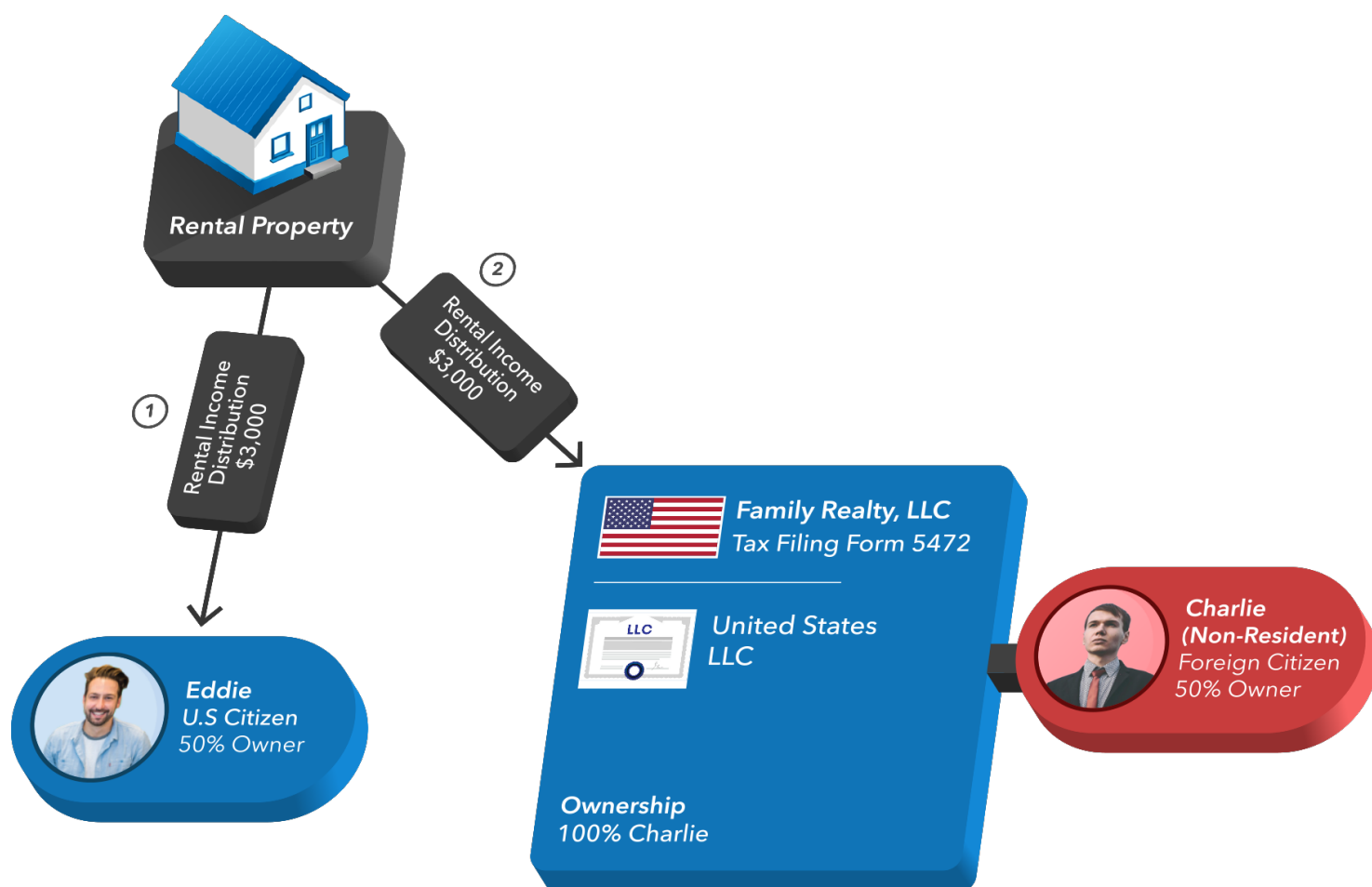
As a result of this structure and the facts and circumstances outlined, each foreign partner's U.S. taxable income is \$0. There is no U.S. Trade or Business with a Permanent Establishment, and the flat tax for Royalties is 0% for German residents.

# Real Estate Rental ECI Election (No Withholding)

*Tax Structures of United States Foreign-Owned LLCs - Structure #5*

## Structure Summary

A rental property partially owned by a U.S. citizen and a Limited Liability Company wholly owned by a Non-Resident Alien, elects to treat the rental income as Effectively Connected Income with a U.S. trade or business. By making this election, the LLC/Non-Resident owner avoids U.S. Fixed, determinable, annual, or periodical (FDAP) tax withholding.



## Co-Ownership FIRPTA Withholding

### Structure Background

A United States Real Estate Property is owned equally as 50% owners between Eddie (a U.S. citizen) and Family Realty, LLC, a U.S. Limited Liability Company wholly owned by his brother (a Non-Resident Alien of a country that does not have a U.S. tax treaty).

The home is rented during the year, and by default, a 30% withholding applies on the rental income distribution to Family Realty, LLC. However, [Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States](#), is filed, and the withholding is exempt under Internal Revenue Code §871(d).

### Monetary Transactions & Accounting

1. During the year, the total Net Income of the rental property is \$6,000, after deducting expenses and other relevant costs. A Rental Income distribution of \$3,000 is paid to Eddie's Brother with no withholding.
2. A Rental Income distribution of \$3,000 is also paid to Family Realty, LLC \$3,000 (no withholding as well)

### U.S. Tax Filing Compliance

3. **Form 1040 (Eddie).** Based on his personal income tax rate of 10%, the tax due resulting from the rental income is \$300.
4. **Form 1040NR (Brother).** Based on his personal income tax rate of 10%, the tax due resulting from the rental income is \$300.



**Foreign-Owned LLC Disclosure Requirement.** Although the LLC may not necessarily be reported on Charlie's Non-Resident Personal tax return, there is a requirement to file [Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business](#), to disclose foreign ownership of United States LLCs and also certain reportable transactions per Internal Revenue Code §6038.

## Co-Ownership FIRPTA Withholding

### Summarized Tax Returns and Financial Statements

1

Real Estate Property Gain	
Rental Income	\$30,000
Cleaning	- \$7,000
Property Taxes	- \$4,000
Repairs	- \$5,000
Depreciation	- \$8,000
<hr/>	
Net Rental Income	\$6,000

4

Form 1040	Eddie
Rental Income	\$3,000
Income Tax Rate	(10%)
<hr/>	
Tax Due	\$300

5

Form 1040NR	Charlie
Rental Income	\$3,000
Income Tax Rate	(10%)
<hr/>	
Tax Due	\$300

### Resulting Tax Implications

As a result of this structure, Charlie's U.S. income tax liability is \$300, to be paid either during the year or after the tax return is prepared (as no withholding applies).

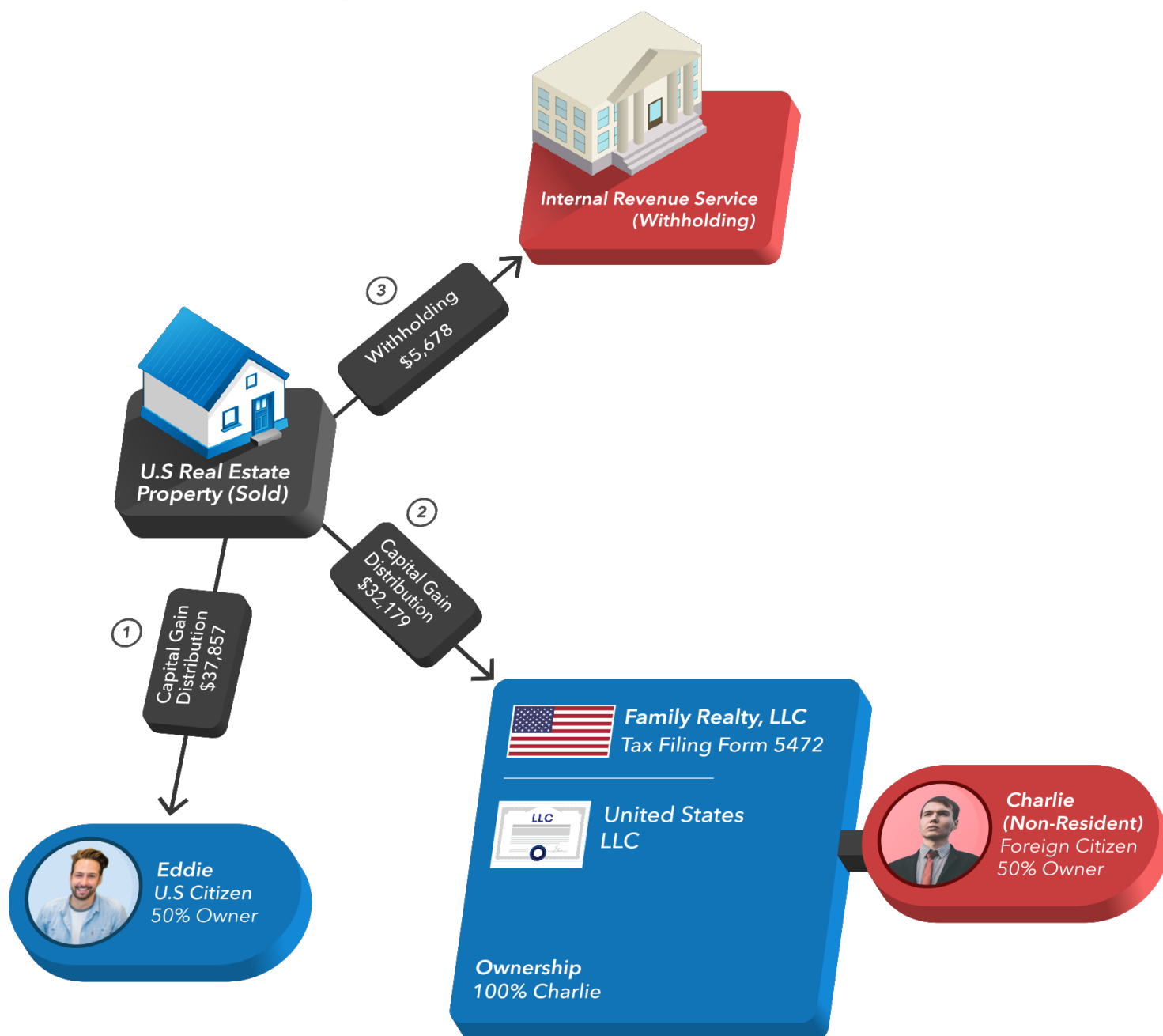


# Co-Ownership Real Estate Sale (FIRPTA Withholding)

*Tax Structures of United States Foreign-Owned LLCs - Structure #6*

## Structure Summary

Upon the sale of a real estate property partially owned by a Non-Resident Alien, an income tax that is imposed on foreign sellers by the Foreign Investment In Real Estate Property Act (FIRPTA) is withheld and paid to the IRS.



## Co-Ownership FIRPTA Withholding

### Structure Background

A United States Real Estate Property is owned equally as 50% owners between Eddie (a U.S. citizen) and a Limited Liability Company, Family Realty, LLC, owned wholly by his brother, Charlie (a Non-Resident Alien). The LLC is disregarded for Federal Tax purposes, and all tax paid is reported by Charlie personally.

The home is sold and subject to Capital Gains tax, and in the case of Charlie, subject to the Foreign Investment in Real Property Tax Act (FIRPTA) withholding under Internal Revenue Code §1445. The withholding requires a 15% withholding based on the gross sale price; alternatively, a holding certification can be requested for a reduced withholding amount.

Prior to the sale, documentation is submitted to escrow with supporting documents of the expected capital gain attributable to the sale along with [Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests](#) for a reduced rate of withholding.

### Monetary Transactions & Accounting

1. Upon the sale, the U.S. Real Estate Property results in a Capital Gain of \$75,715 (Sale Price \$360,000 - Basis in Building \$196,806 - Land Basis \$48,195 - Improvements \$35,000 + Recaptured Depreciation \$13,716 - \$18,000 Selling Expenses). A Capital Gain distribution of \$37,857 is paid to Eddie with no withholding.
2. A Capital Gain distribution is paid to Family Realty, LLC of \$32,179 (less the FIRPTA withholding), with the payment being made to the IRS.
3. A withholding of \$5,678 is sent to the IRS based on the estimated tax liability of Charlie.

### U.S. Tax Filing Compliance

4. **Form 1040 (Eddie).** Based on his Capital Gain, taxed at 15%, the tax due resulting from the sale is \$5,678.
5. **Form 1040NR (Charlie).** Based on his Capital Gain, taxed at 15%, the tax due resulting from the sale is \$5,678; however, as there was already withholding paid to the IRS, the tax due is \$0.

**Foreign-Owned LLC Disclosure Requirement.** Although the LLC may not necessarily be reported on Charlie's Non-Resident Personal tax return, there is a requirement to file [Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business](#), to disclose foreign ownership of United States LLCs and also certain reportable transactions per Internal Revenue Code §6038.



## Co-Ownership FIRPTA Withholding

### Summarized Tax Returns and Financial Statements

1

#### Real Estate Property Gain

<b>Sale Price</b>	<b>\$360,000</b>
Less Basis (Building)	- \$196,806
Less Basis (Land)	- \$48,195
Improvements	- \$35,000
<b>Recaptured Depreciation</b>	<b>+ \$13,716</b>
<hr/>	
<b>Gain on Sale</b>	<b>\$93,715</b>
<b>Selling Expenses</b>	<b>\$18,000</b>
<hr/>	
<b>Total Capital Gain</b>	<b>\$75,715</b>

4

#### Form 1040

Eddie

<b>Capital Gain</b>	<b>\$37,857</b>
<b>Capital Gain Tax Rate</b>	<b>(15%)</b>
<hr/>	
<b>Tax Due</b>	<b>\$5,678</b>

5

#### Form 1040NR

Charlie

<b>Capital Gain</b>	<b>\$37,857</b>
<b>Capital Gain Tax Rate</b>	<b>(15%)</b>
<hr/>	
<b>Tax</b>	<b>\$5,678</b>
<b>Withholding</b>	<b>- \$5,678</b>
<hr/>	
<b>Tax Due</b>	<b>\$0</b>

### Resulting Tax Implications

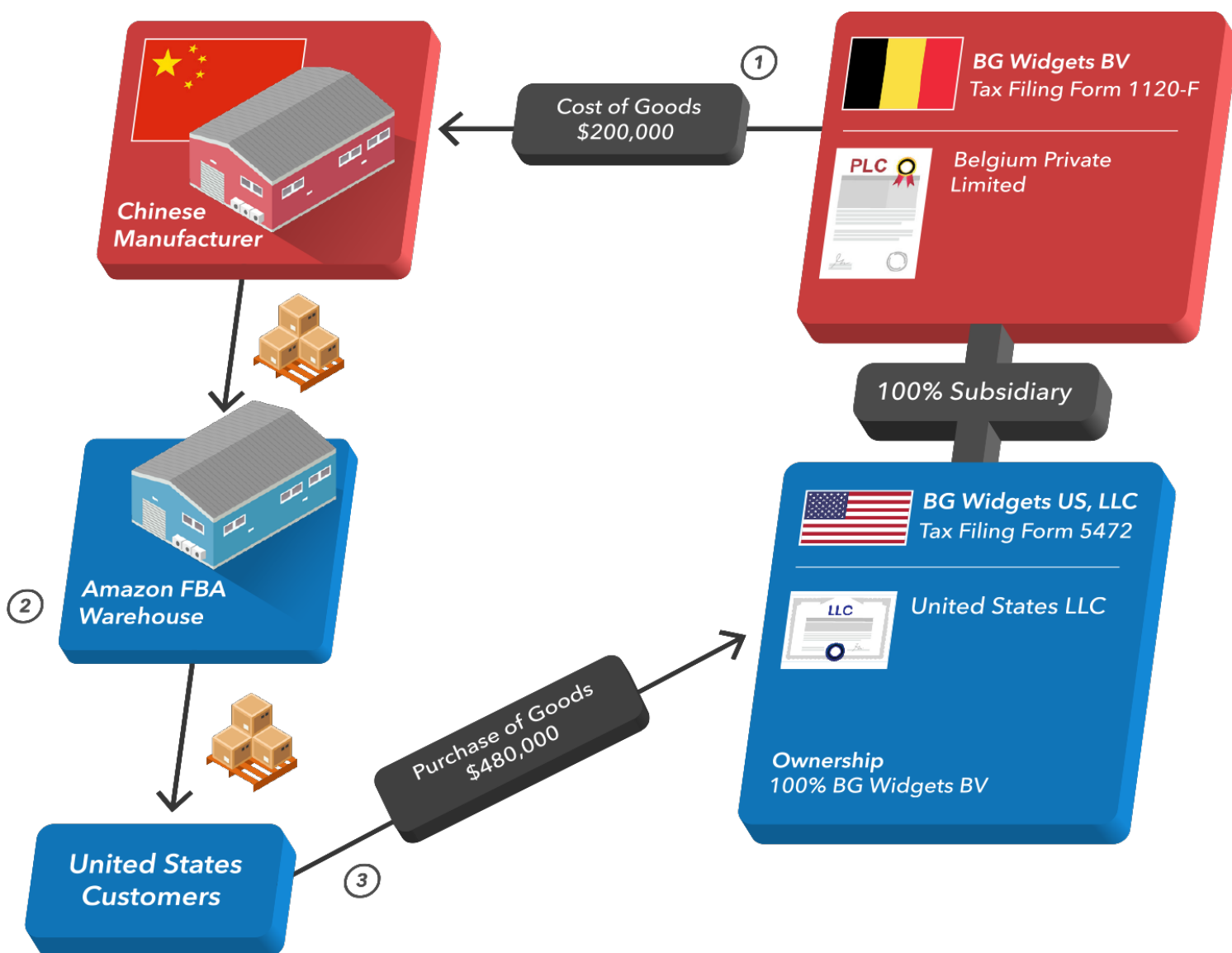
As a result of this structure, Charlie's U.S. tax liability is \$5,678, which is prepaid via a withholding rate.

# Tax Treaty Exemption E-Commerce (SMLLC Belgian Permanent Establishment)

*Tax Structures of United States Foreign-Owned LLCs - Structure #7*

## Structure Summary

A Belgian entity as a parent entity of a United States Single Member LLC is exempt from U.S. income taxes as there is no Permanent Establishment in the United States.



## Tax Treaty Exemption E-Commerce (SMLLC Belgian Permanent Establishment)

### Structure Background

BG Widgets BV is a Belgian private limited company selling widgets globally, which are produced by a third-party Chinese manufacturer. In order to sell in the United States market easily, a U. S. Limited Liability Company, BG Widgets US, LLC was formed as a wholly-owned subsidiary of BG Widgets BV. All sales in the United States are sold and fulfilled through Amazon FBA held by an account of BG Widgets US, LLC.

As a Single-Member LLC (SMLLC), BG Widgets US, LLC is disregarded for Federal tax purposes per Treasury Regulation §301.7701-3.

Once manufactured, the widgets are shipped directly from China to an Amazon FBA warehouse in the United States. Once sold to a customer, the goods are then shipped from Amazon's warehouse directly to customers throughout the United States. Payment for the purchase of goods to customers is made to the U.S. LLC.

Although the sale of goods from Amazon FBA warehouse to the U.S. customer is considered Effectively Connected Income (ECI) earned by the foreign corporation per Internal Revenue Code §864(c)(3), as the result of sale of inventory attributable to a U.S. shipping and destination location per Internal Revenue Code §865(e)(2) and §882, the business profits of the Belgian company qualifies for a Tax Treaty Exclusion under the Belgian-U.S. Income Tax Treaty Articles 5 and 7.

Article 5 of the Belgian-U.S. Tax Treaty describes the definition of a Permanent Establishment. In particular, Article 5(4)(a) specifically describes a warehouse strictly for the purpose of storage and delivery of goods, indicating a Permanent Establishment *does not* include “the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise”.

Article 7 of the Tax Treaty states, “The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.”

## Tax Treaty Exemption E-Commerce (SMLLC Belgian Permanent Establishment)

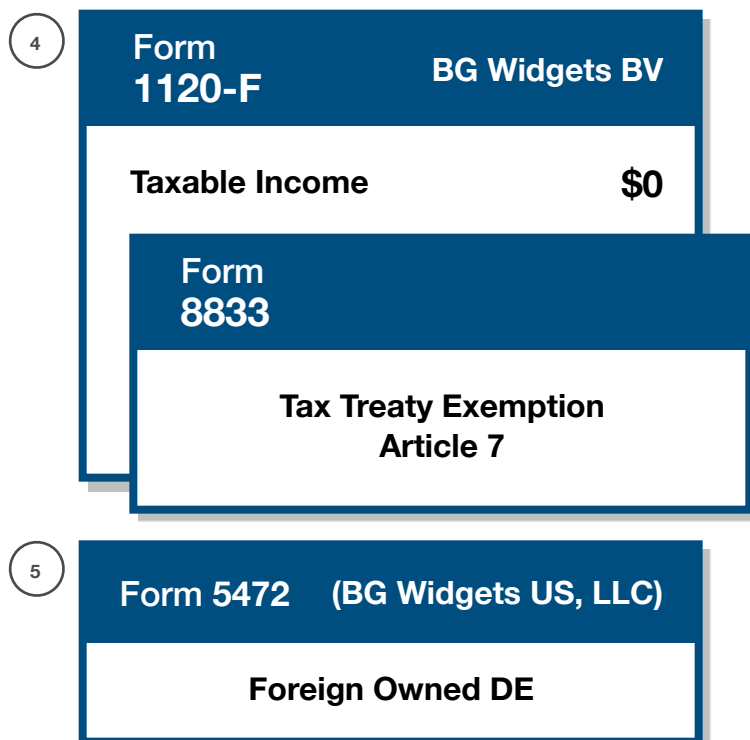
### Monetary Transactions & Accounting

1. BG Widgets BV pays a third-party Chinese company \$200,000 for the manufacture of the widgets.
2. The widgets are then shipped from China to the Amazon FBA warehouse in the United States. BG Widgets US, LLC is the Amazon account holder and title owner of the goods.
3. The United States customers pay for the purchase of the widgets, totaling \$480,000. This payment is processed through Amazon's payment system.

### U.S. Tax Filing Compliance

4. **Form 1120-F (BG Widgets BV).** Based on this structure, the Belgian Limited Company files [Form 1120-F, U.S. Income Tax Return of a Foreign Corporation](#), and claimed a Tax Treaty exclusion on [Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701\(b\)](#). The tax treaty article that directly applies is Article 7, Business Profits.
5. **Pro Forma 1120, with Form 5472 (BG Widgets US, LLC).** Foreign-owned disregarded Entities must generally file [Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business](#) to report certain reportable transactions per Internal Revenue Code §6038.

### Summarized Tax Returns and Financial Statements



## **Tax Treaty Exemption E-Commerce (SMLLC Belgian Permanent Establishment)**

### **Resulting Tax Implications**

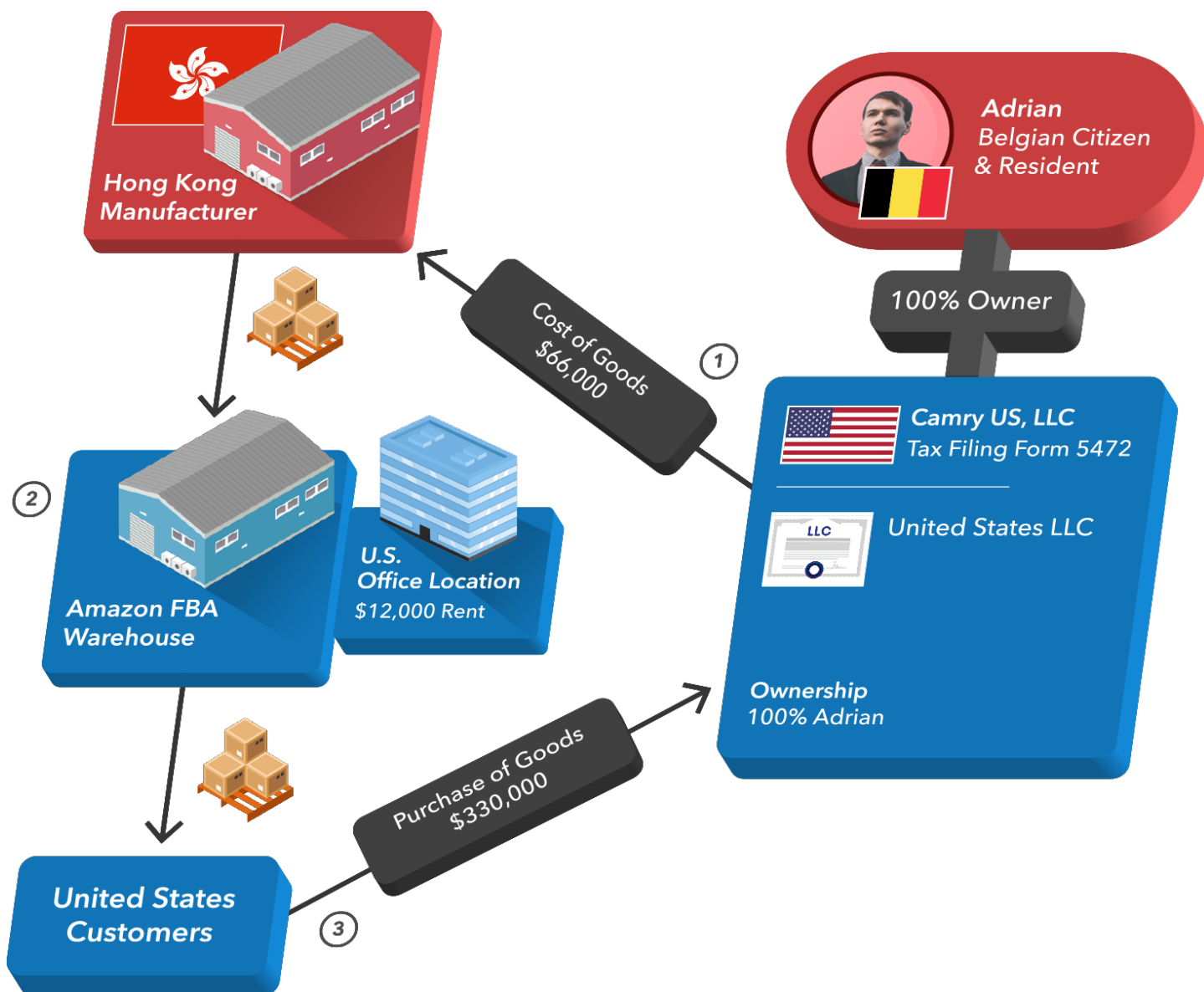
As a result of this structure, the U.S. tax liability of BG Widgets BV (and BG Widgets US, LLC, by extension, as a disregarded entity) is \$0, as long as a Permanent Establishment is not present in the United States.

# Belgian NRA LLC Owner with Office Permanent Establishment

*Tax Structures of United States Foreign-Owned LLCs - Structure #8*

## Structure Summary

A Non-Resident owner of a U.S. LLC selling goods and maintains a U.S. office location is subject to tax in the United States as a result of a Permanent Establishment.





## Belgian NRA LLC Owner with Office Permanent Establishment

### Structure Background

Adrian is a Belgian citizen and resident, and also the sole owner of Camry US, LLC, a Delaware Limited Liability Company which sells widgets in the United States.

As a Single-Member LLC (SMLLC), Camry US, LLC is disregarded for Federal tax purposes<sup>1</sup> per Treasury Regulation § 301.7701-3. An election was not made to treat the LLC as a C-Corporation for U.S. tax purposes.

The widgets are first produced in Hong Kong, which are then shipped to an Amazon FBA warehouse, then subsequently sold and fulfilled through the same Amazon FBA held by an account of Camry US, LLC. Additionally, the LLC operates an office in a New York Office Location where employees perform marketing and administrative services.

Once sold to a U.S. customer, the goods are then shipped from Amazon's warehouse directly to customers throughout the United States. Payment for the purchase of goods to customers is made to the U.S. LLC's bank account.

### *Permanent Establishment*

Although the sale of goods from Amazon FBA warehouse to the U.S. customer is considered Effectively Connected Income (ECI) earned by the foreign corporation per IRC §864(c)(3), as the result of sale of inventory attributable to a U.S. shipping and destination location (Amazon FBA) per Internal Revenue Code §865(e)(2) and §882, the business profits of the Belgian normally company qualifies for a Tax Treaty Exclusion under the Belgian-U.S. Income Tax Treaty Articles 5 and 7<sup>2</sup>.

However, Article 5 of the Belgian-U.S. Tax Treaty describes the definition of a Permanent Establishment, which meets the criteria given the office location in New York. Although Article 5(4)(a) explicitly describes a warehouse strictly for the purpose of storage and delivery of goods, indicating a Permanent Establishment does not include “the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise,” the office location where employees perform marketing and sales does include the definition of a Permanent Establishment.

In this instance, Article 7 of the Tax Treaty does not apply, and income attributable to United States' Effectively Connected Income is subject to tax on Adrian's personal non-resident U.S. tax return reportable on Form 1040NR.

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<sup>1</sup> <https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies>

<sup>2</sup> <https://www.irs.gov/pub/irs-trty/belgiumtt06.pdf>

## Belgian NRA LLC Owner with Office Permanent Establishment

### Monetary Transactions & Accounting

1. Camry US, LLC pays a third-party Hong Kong company \$66,000 for the manufacture of the widgets.
2. The widgets are then shipped from Hong Kong to the Amazon FBA warehouse in the United States. Camry US, LLC is the Amazon account holder and title owner of the goods.
3. The United States customers pay for the purchase of the widgets totaling \$330,000. This payment is processed through Amazon's payment system.

### U.S. Tax Filing Compliance

4. **Form 1040NR (Adrian).** Based on this structure, Alain files a personal non-resident tax return [Form 1040NR, U.S. Nonresident Alien Income Tax Return](#), and reports net income from the business on [Schedule C, Profit and Loss from Business](#) totaling \$252,000 (Gross Income of \$330,000 - \$66,000 Cost of Goods Sold - \$12,000 Rent for U.S. Office Location). No tax treaty exemption applies as there is a Permanent Establishment in the United States. The resulting tax is \$61,751.
5. **Pro Forma 1120, with Form 5472 (Camry US, LLC).** Foreign Owned Disregarded Entities must generally file [Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business](#) to report certain reportable transactions per Internal Revenue Code §6038.

## Belgian NRA LLC Owner with Office Permanent Establishment

### Summarized Tax Returns and Financial Statements

4	<table><tr><td>Form <b>1040NR</b></td><td>Adrian</td></tr><tr><td>Taxable Income (Schedule C)</td><td>\$252,000</td></tr><tr><td>U.S. Tax</td><td>\$61,751</td></tr></table>	Form <b>1040NR</b>	Adrian	Taxable Income (Schedule C)	\$252,000	U.S. Tax	\$61,751
Form <b>1040NR</b>	Adrian						
Taxable Income (Schedule C)	\$252,000						
U.S. Tax	\$61,751						
5	<table><tr><td>Form <b>5472</b></td><td>Camry US, LLC</td></tr><tr><td colspan="2">Foreign Owned DE</td></tr></table>	Form <b>5472</b>	Camry US, LLC	Foreign Owned DE			
Form <b>5472</b>	Camry US, LLC						
Foreign Owned DE							

### Resulting Tax Implications

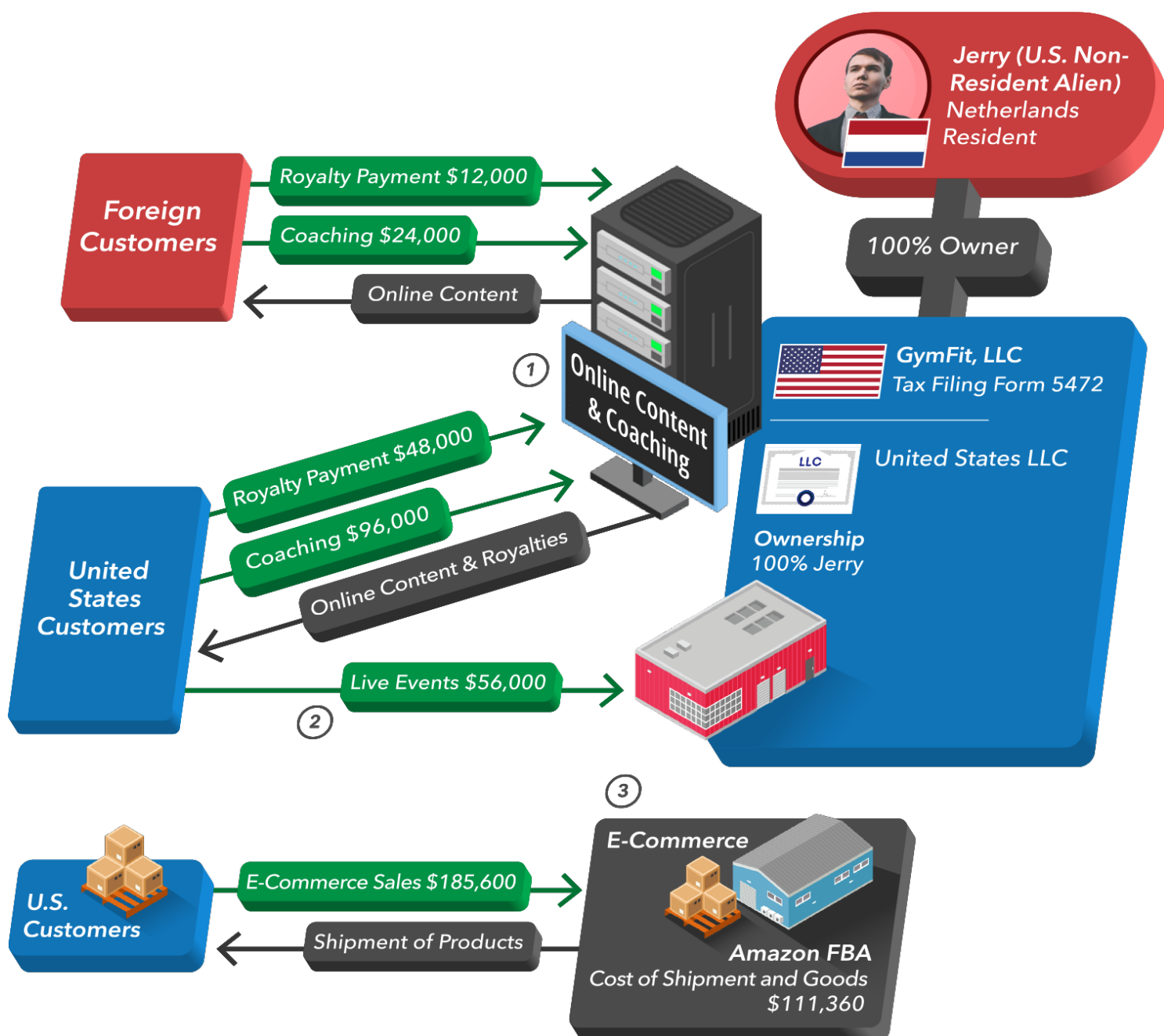
As a result of this structure, the U.S. tax liability of Adrian (by extension of Camry US, LLC, as a disregarded entity) is \$61,751, assuming a Permanent Establishment is present in the United States.

# Netherlands NRA Royalties, E-Commerce, and Events from SMLLC

*Tax Structures of United States Foreign-Owned LLCs - Structure #9*

## Structure Summary

A Non-Resident Alien residing in the Netherlands is exempt from U.S. income tax based on a tax treaty exclusion and no Permanent Establishment in the United States. Additionally, online coaching content sold to U.S. customers is subject to a special 0% tax rate for Dutch residents.



## **Netherland NRA Royalties, E-Commerce, and Events from SMLLC**

### **Structure Background**

GymFit, LLC, a United States limited liability company, offers a variety of online content, physical goods, online coaching, and hosts live fitness events in the United States.

Jerry is a resident of the Netherlands and the sole owner of GymFit, LLC. He maintains his offices in the Netherlands and is not physically present in the United States. As a Single-Member LLC (SMLLC), GymFit, LLC is classified as a disregarded entity for Federal tax purposes per Treasury Regulation § 301.7701-3.

The following is a summary of the products sold:

1. Online Content. The majority of online content sold is to U.S. customers, with the remaining portion going to foreign customers.
2. Coaching Services. Jerry provides online coaching services from his working location in the Netherlands.
3. Live Events. Throughout the year, there are live events locations in the United States.
4. E-Commerce: Physical products are sold and shipped through Amazon FBA warehouse located in the United States and directly to U.S. customers.

#### *Source and Taxation of Royalty Income (Online Content)*

For the use of copyrighted content (either used as a web application subscription or one-time purchase), royalties are sourced where the property was used per Internal Revenue Code § 861.

Based on the Tax Treaty rate of Royalties earned in the United States, residents of the Netherlands are taxed at a flat rate of 0%.

#### *Source and Taxation of Coaching Services*

As Jerry provides coaching services while in the Netherlands, the source of income is a foreign source based on the location of the service provided.

## **Netherland NRA Royalties, E-Commerce, and Events from SMLLC**

### *Source and Taxation of Live Events*

As Jerry provides live events locations in the United States, the source of income is U.S.-source based on the location of service provided.

### *Source and Taxation of Physical Goods (E-Commerce)*

All sales in the United States are sold and fulfilled through Amazon FBA. Once manufactured, the widgets are shipped directly from the supplier to an Amazon FBA warehouse in the United States. Once sold to a customer, the goods are then shipped from Amazon's warehouse directly to customers throughout the United States. Amazon then pays GymFit, LLC for the revenue related to the purchase of goods (less any fulfillment/shipping fees).

Although the sale of goods from Amazon FBA warehouse to the U.S. customer is considered Effectively Connected Income (ECI) earned by the LLC per IRC 864(c)(3), as the result of sale of inventory attributable to a U.S. shipping and destination location per IRC, §865(e)(2) and 882, the business profits of the Limited Liability Company (and that of its Sole Non-Resident Owner) qualifies for a Tax Treaty Exclusion under the Netherlands-U.S. Income Tax Treaty Articles 5 and 7.

Article 5 of the Netherlands-U.S. Tax Treaty describes the definition of a Permanent Establishment.

Article 7 of the Tax Treaty states, "Industrial or commercial profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless the resident has a permanent establishment in that other Contracting State."

### **Monetary Transactions & Accounting**

1. GymFit, LLC sells Online Content and Coaching Services. From foreign customers the LLC receives Royalties for content of \$12,00 and Coaching of \$24,000. From U.S. customers, the LLC receives Royalties of \$48,000 and Coaching of \$96,000.
2. GymFit, LLC hosts live events in the United States of which \$56,000 was earned.
3. E-Commerce Sales to U.S. customers were \$185,600 with Cost of Goods Sold of \$111,360.
4. GymFit, LLC has Net Income of \$254,240

## Netherland NRA Royalties, E-Commerce, and Events from SMLLC

### U.S. Tax Filing Compliance

5. **Form 1040NR (Jerry).** As a sole owner of the disregarded LLC, Jerry files [Form 1040NR, U.S. Nonresident Alien Income Tax Return](#), to report the live events on Schedule C of \$56,000, resulting in an effective tax rate of 10% and resulting income tax of \$5,600. Additionally, U.S. source royalty income of \$48,000 is taxed at a 0% rate for \$0 of withholding tax. Additionally, a Tax Treaty exclusion is claimed on [Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701\(b\)](#) for the E-Commerce widget sales. The tax treaty article that directly applies is Article 7, Business Profits.

### Summarized Tax Returns and Financial Statements

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GymFit, LLC Income Statement	
Online Content (Foreign Royalties)	\$12,000
Online Content (U.S. Royalties)	\$48,000
Coaching Services to U.S./Foreign Clients	\$120,000
Live Events in U.S.	\$56,000
E-Commerce Sales (U.S Locations)	\$185,600
Cost of Goods	- \$111,360
<b>Net Income</b>	<b>\$254,240</b>

5

Form 1040NR	Jerry
<b>Schedule C</b>	
Live Events	\$56,000
Federal Income Tax	\$5,600
<b>Schedule NEC</b>	
Total U.S. Source Royalty Income	\$48,000
Royalty FDAP Withholding (Netherlands)	0%
Withholding Tax	\$0

Form 8833
Tax Treaty Exemption (Article 7) E-Commerce Sales

### Resulting Tax Implications

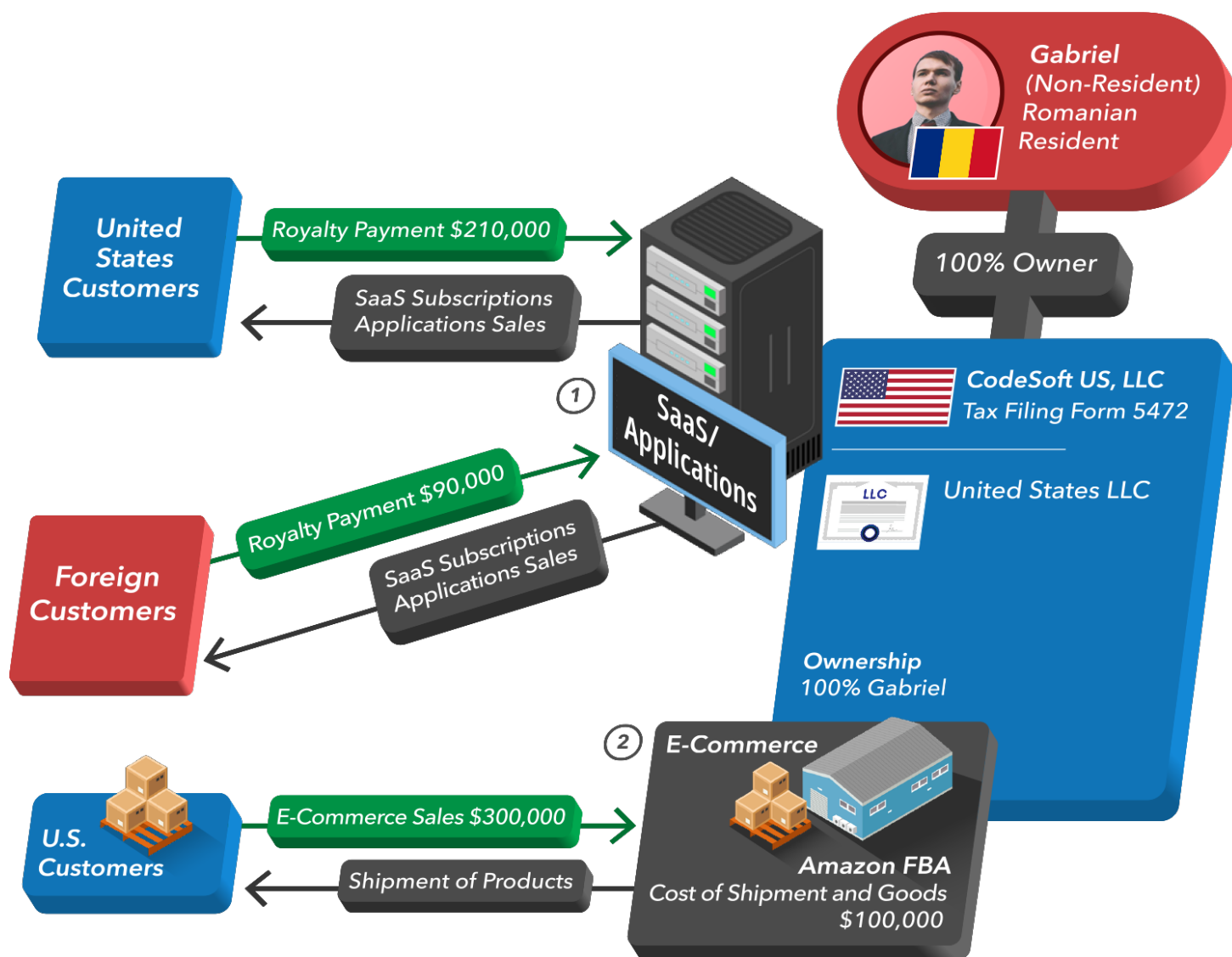
As a result of this structure, the U.S. tax liability of Jerry (as a Disregarded Entity Single Member LLC owner of GymFit, LLC) is \$5,600, as the result of U.S. source income from live events within the country.

# Romanian NRA SaaS, Digital Sales, and E-Commerce from DE LLC

*Tax Structures of United States Foreign-Owned LLCs - Structure #10*

## Structure Summary

A Non-Resident Alien conducts business worldwide through a U.S. LLC, selling both physical products through e-commerce and royalty income through the sale of SaaS subscriptions. Royalties from U.S. customers are subject to a withholding tax based on a special tax treaty rate, whereas the royalties from foreign customers are not. Additionally, the E-Commerce sales have a tax treaty exemption.





## Romanian NRA SaaS, Digital Sales, and E-Commerce from DE LLC

### Structure Background

CodeSoft US, LLC is a United States Limited Liability Company that sells a variety of software and physical goods to U.S. and foreign customers. Gabriel is a citizen and resident of Romania and the sole owner of CodeSoft US, LLC. He maintains his offices in Romania and is not physically present in the United States. As a Single-Member LLC (SMLLC), CodeSoft US, LLC is classified as a disregarded entity for Federal tax purposes per Treasury Regulation § 301.7701-3.

The following is a summary of the products sold:

1. Software as a Service (SaaS) offers monthly web application subscriptions and one-time purchase applications. The majority of the software sold is to U.S. customers using the software in the United States, and the remaining portion to foreign customers.
2. E-Commerce: Physical Widgets are sold and shipped through an Amazon FBA warehouse located in the United States and directly to U.S. customers.

#### *Source and Taxation of Royalty Income (SaaS Applications)*

For the use of copyrighted software (either used as a web application subscription or a one-time purchase), royalties are sourced where the property was used per Internal Revenue Code §861.

Based on the Tax Treaty rate of Royalties earned in the United States, residents of Romania are taxed at a flat rate of 10%.

#### *Source and Taxation of Royalty Income (SaaS Applications)*

All sales in the United States are sold and fulfilled through Amazon FBA. Once manufactured, the widgets are shipped directly from the supplier to an Amazon FBA warehouse in the United States. Once sold to a customer, the goods are then shipped from Amazon's warehouse directly to customers throughout the United States. Amazon then pays CodeSoftUS, LLC for the revenue related to the purchase of goods (less any fulfillment/shipping fees).

Although the sale of goods from Amazon FBA warehouse to the U.S. customer is considered Effectively Connected Income (ECI) earned by the LLC per IRC 864(c)(3), as the result of sale of inventory attributable to a U.S. shipping and destination location per Internal Revenue Code §865(e)(2) and §882, the business profits of the Limited Liability Company (and that of its Sole Non-Resident Owner) qualifies for a Tax Treaty Exclusion under the Romanian-U.S. Income Tax Treaty Articles 5 and 7.

## **Romanian NRA SaaS, Digital Sales, and E-Commerce from DE LLC**

Article 5 of the Romanian-U.S. Tax Treaty describes the definition of a Permanent Establishment.

Article 7 of the Tax Treaty states, “Industrial or commercial profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless the resident has a permanent establishment in that other Contracting State.”

### **Monetary Transactions & Accounting**

1. CodeSoftUS, LLC sells SaaS Subscriptions totaling \$300,000, of which \$210,000 is by U.S. customers using the software in the United States and \$90,000 of foreign customers using the software outside the United States.
2. CodeSoftUS, LLC pays a third-party supplier company to manufacture widgets for \$100,000, which are then shipped to the Amazon FBA warehouse. The widgets are then sold to U.S. customers for \$300,000, resulting in a net profit from this activity of \$200,000.
3. On its Income Statement, CodeSoftUS, LLC reports Net Income of \$500,000 (\$210,000 U.S. SaaS Subscriptions/Applications + \$90,000 U.S. SaaS Subscriptions/Applications + \$300,000 Product Sales through Amazon FBA E-Commerce - Less \$100,000 Cost of Goods Sold).

### **U.S. Tax Filing Compliance**

4. **Form 1040NR (Gabriel).** As a sole owner of the disregarded LLC, Gabriel files [Form 1040NR, U.S. Nonresident Alien Income Tax Return](#), to report the royalty income of \$210,000 taxed at a 10% rate or a \$21,000 withholding tax. Additionally, a Tax Treaty exclusion is claimed on [Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701\(b\)](#) for the E-Commerce widget sales. The tax treaty article that directly applies is Article 7, Business Profits.

Summarized Tax Returns and Financial Statements

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CodeSoft, LLC Income Statement	
SaaS Subscriptions (U.S. Royalties)	\$210,000
SaaS Subscriptions (Foreign Royalties)	\$90,000
SaaS Subscriptions (Foreign Royalties)	\$300,000
Cost of Goods	- \$100,000
<b>Net Income</b>	<b>\$500,000</b>

4

Form 1040NR	Gabriel
<b>Schedule NEC</b>	
Total U.S. Source Royalty Income	\$210,000
Royalty FDAP Withholding (Romania)	10%
<b>Withholding Tax</b>	<b>\$21,000</b>

Form 8833
Tax Treaty Exemption (Article 7) E-Commerce Sales

Resulting Tax Implications

As a result of this structure, the U.S. tax liability of Gabriel (as a Disregarded Entity Single Member LLC owner of CodeSoftUS, LLC) is \$21,000 based on the flat tax of U.S. source Royalty income.