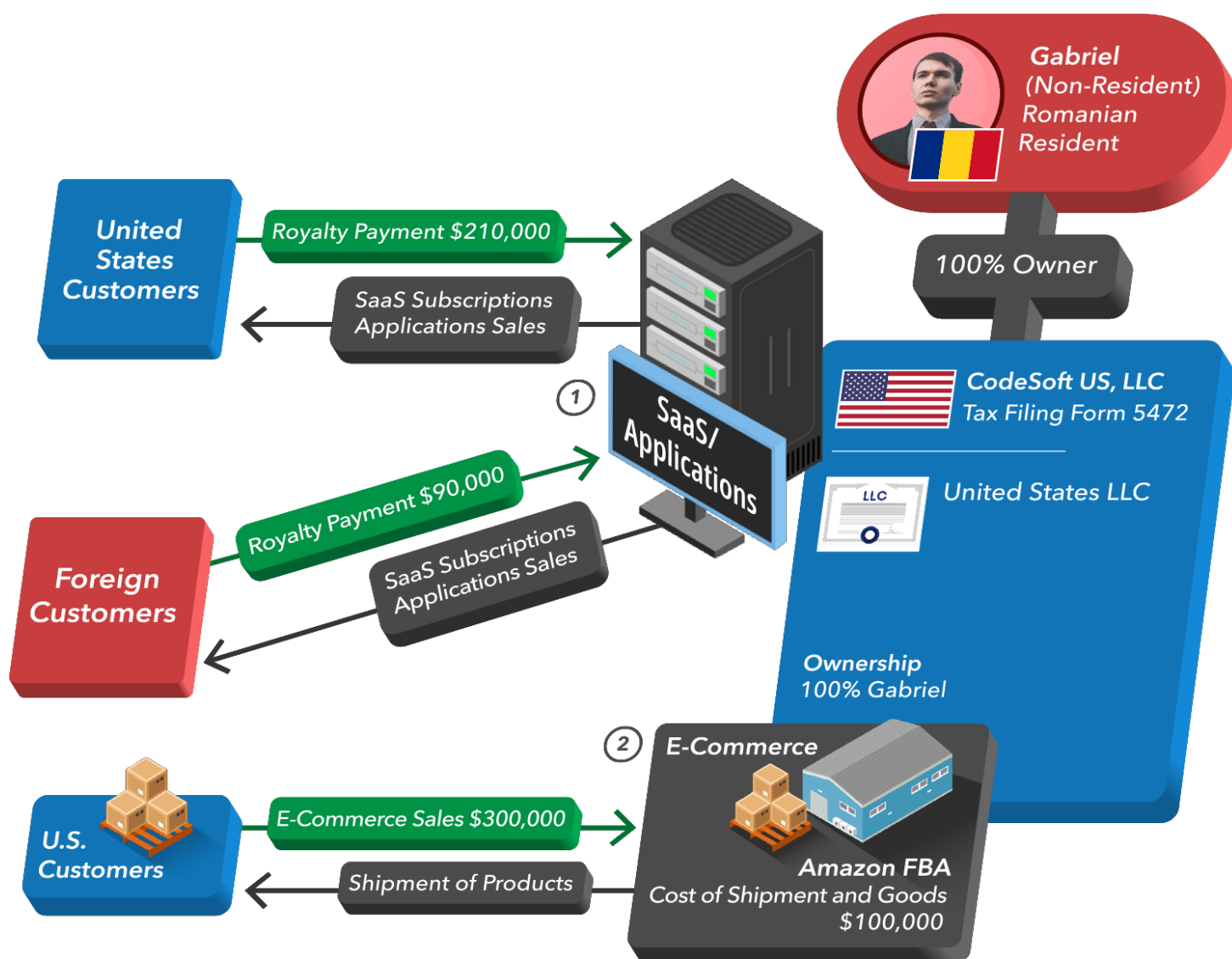


Romanian NRA SaaS, Digital Sales, and E-Commerce from DE LLC

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
Net Income	\$500,000

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