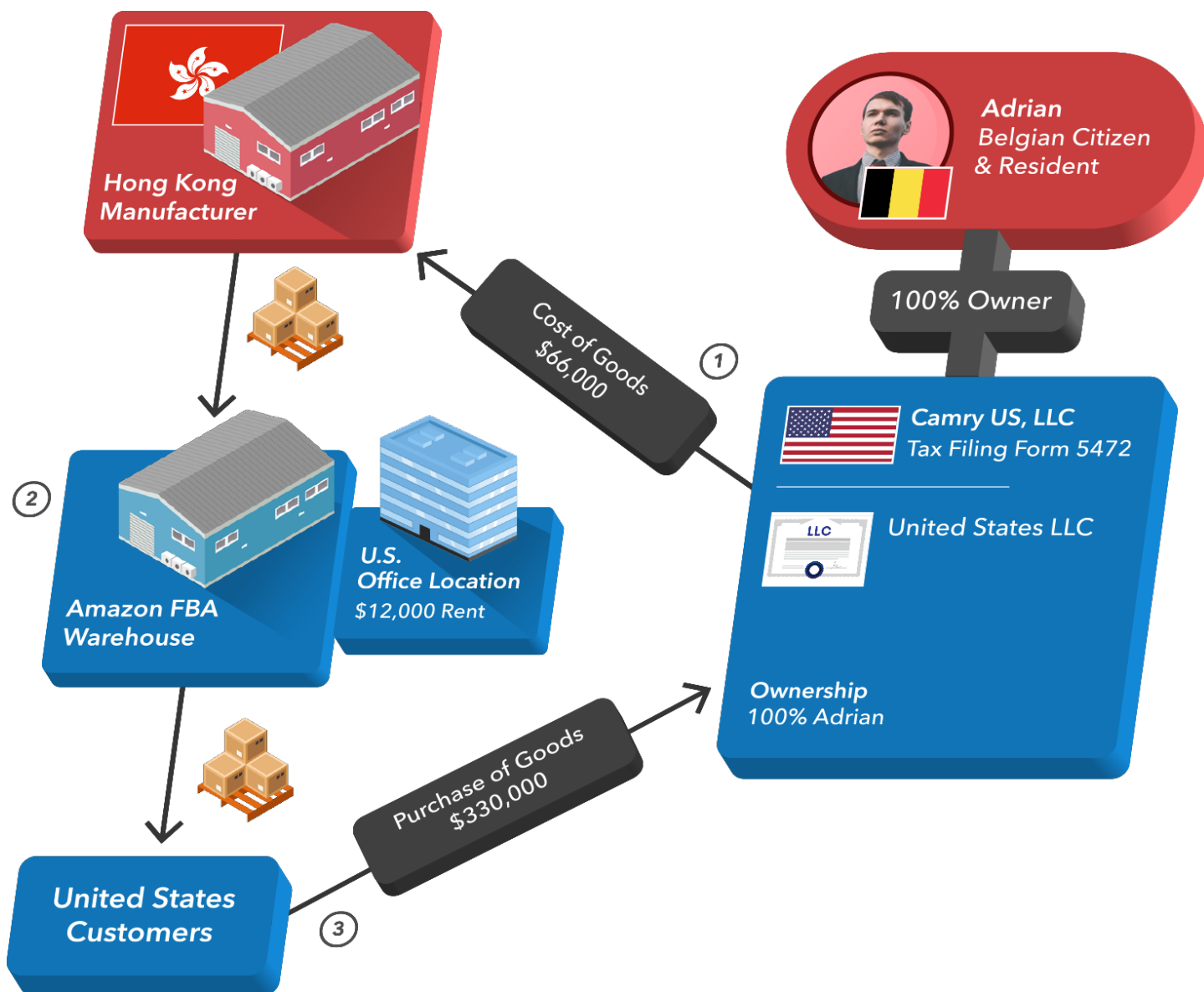


Belgian NRA LLC Owner with Office Permanent Establishment

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 purposes¹ 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 7².

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.

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

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