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Year-End Planning & Opportunities

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Agenda

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2. Deficit Planning
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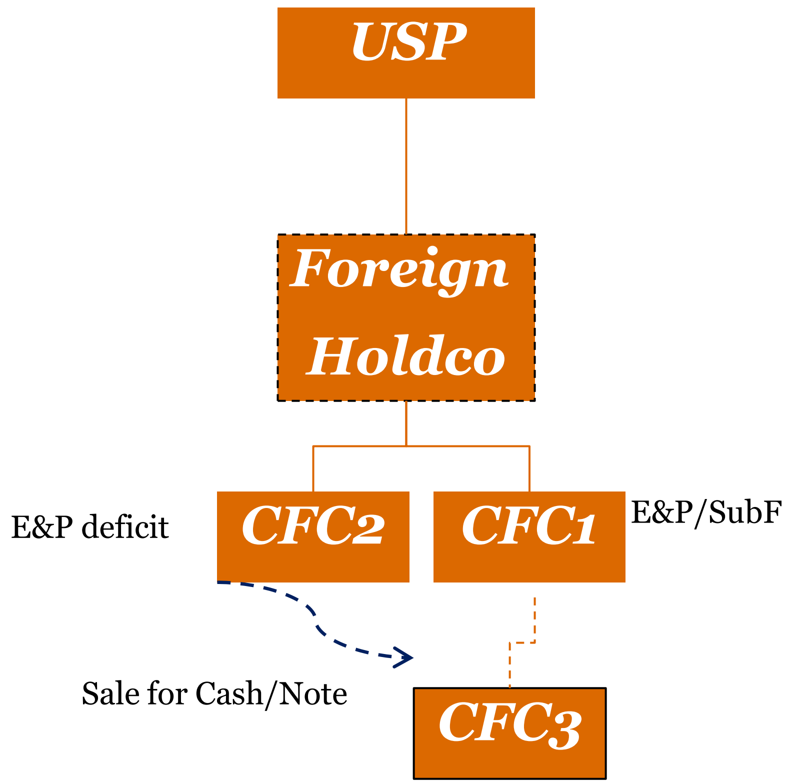
Anti Deferral Planning

Subpart F

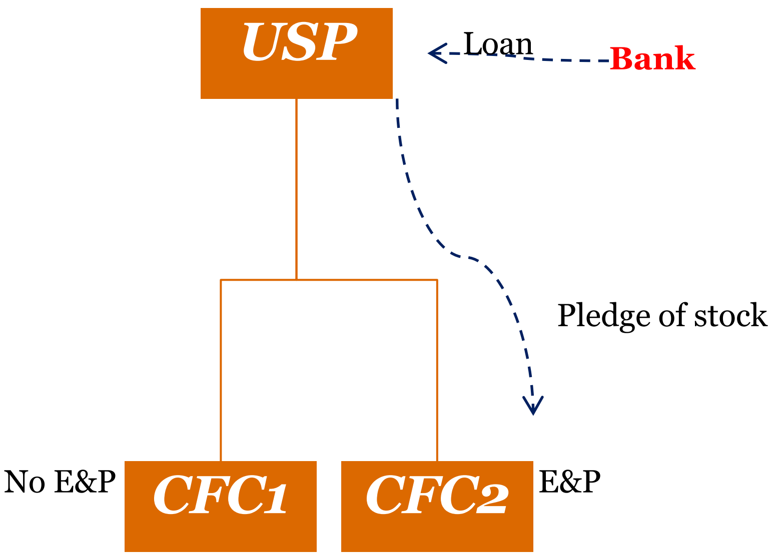
- Situation: CFC1 (Israel) has E&P and potential SubF. CFC2 has E&P deficit. Deemed dividend to USP.
- CFC1 acquires CFC3 from CFC2 in consideration for cash or a note.
- Reduction of CFC1's E&P and SubF inclusion at USP.
- "Moving" money from Israel (CFC1) to CFC2 (may be repatriated to the US by CFC2).



Anti Deferral Planning (Cont.)

Section 956 – Investment in US property

- Situation: CFC has "investment in US property" (e.g., loans to USP, stock in a US company, tangible property in the US, pledge of shares, right to use intangibles in the US), potentially resulting in deemed dividend to USP.
- General mitigation techniques: repay outstanding loans before year-end, reorganize structure, restructure IP and operations.
- ✓ <u>Example:</u> USP takes a loan from a bank. The stock of CFC2 is pledged to the bank, resulting in Section 956 pickup.
- ✓ <u>Solution 1:</u> limit the pledge to no more than 66.67% of the stock total voting power (other rules apply).
- ✓ <u>Solution 2:</u> release the pledge or pledge the stock of CFC1 instead of the stock of CFC2.



E&P Planning: CFC Deficit – F Reorganization

Steps:

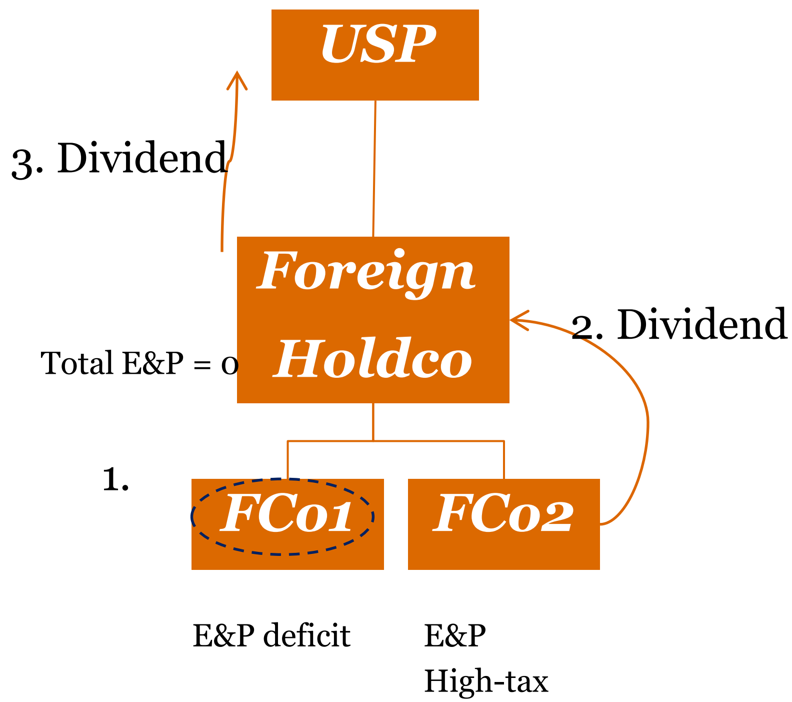
- FCo1 is contributed to new Foreign Holdco and FCo1 elects to be treated as a DE (F reorganization).

- FCo2 is contributed to Foreign Holdco and subsequently pays a dividend to Foreign Holdco.

- Foreign Holdco distributes dividend to USP.

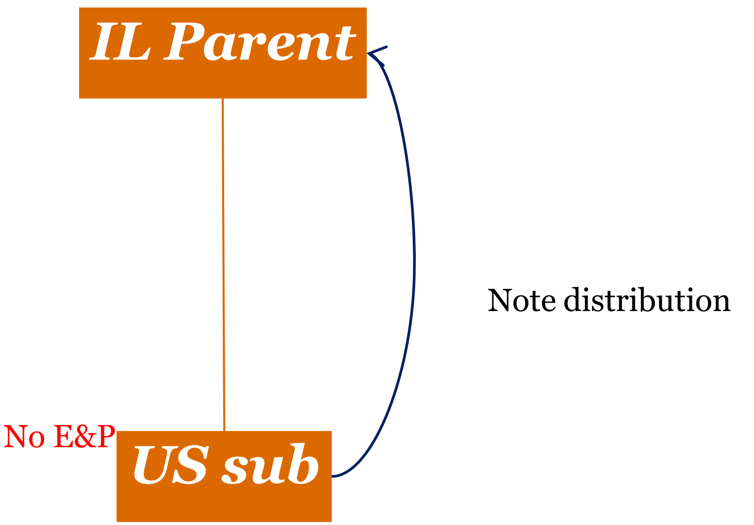
Tax Effects:

- Foreign Holdco should inherit FCo1's E&P deficit (and associated foreign taxes) but such deficit should not hover (i.e., it can reduce pre transaction E&P).



Enhancement of Capital Structure

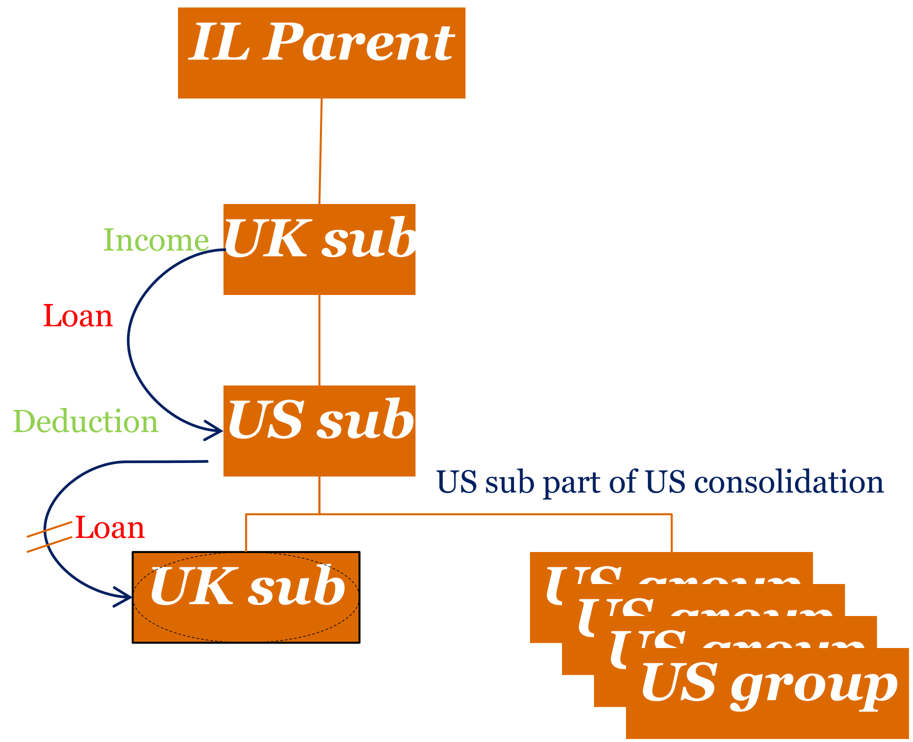
- US Sub distributes a Note Payable to IL Parent.
- No US WHT.
- In view of “nimble dividend” rule, benefit of completing in <u>deficit</u> year.
- Israeli implications should be examined.



Enhancement of Capital Structure (Cont.)

"UK Tower"

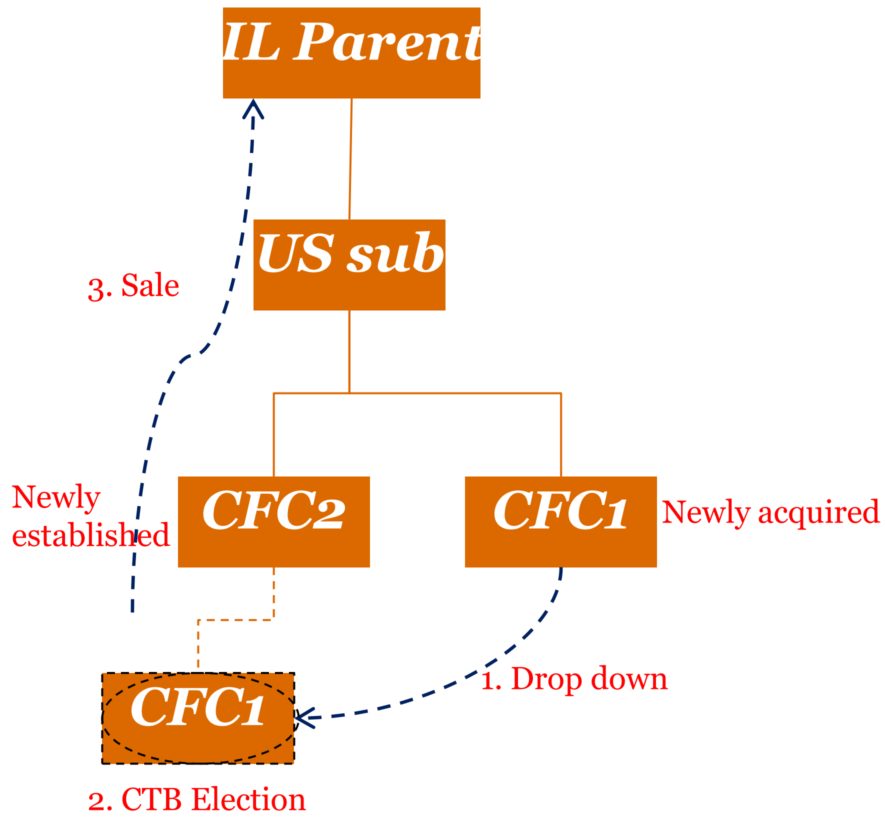
- DPD (real debt)
- Creating interest deduction without pickup
- No UK tax due to group relief
- No Israeli CFC implications



CFC Extraction

Situation: IL Parent acquires US Sub which owns CFC1 (= potential SubF implications)

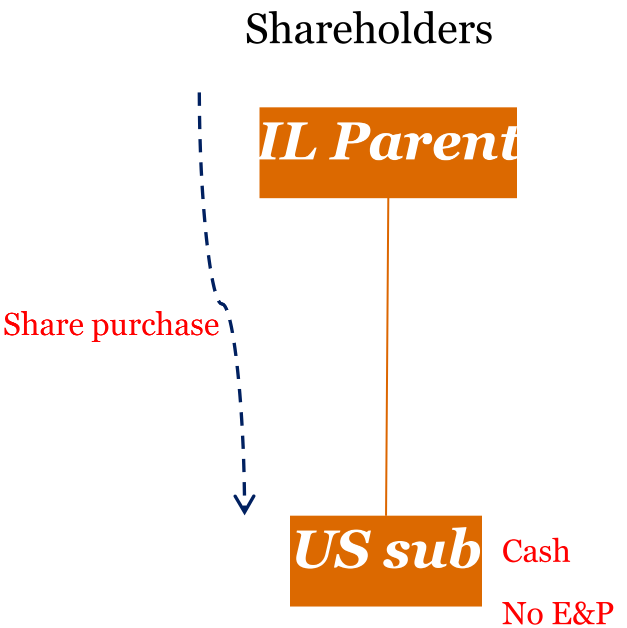
- US Sub drops CFC1 down to newly established CFC2 (with no E&P)
- Check-the-box election is made with respect to CFC1 to treat it as a DE (F reorg.)
- CFC2 sells CFC1 to IL Parent – treatment as a sale of assets – no SubF.
- Consider on-going Sub F implications (interest on note).



Cash Repatriation

Situation: Cash in US sub. No E&P at US sub. IL Parent intends to distribute dividend / perform buy-back

- US sub purchases shares of IL Parent from IL Parent's existing shareholders for cash.
- Potentially avoids Israeli tax on repatriation of cash from the US.
- If US Sub has E&P, potentially treated as dividend to the extent of E&P.



Year End Tax Tips – Corporations

- The following slides cover selected items with respect to which tax benefits were generally available in prior years and are expected to expire as of 1/1/2013.

Year End Tax Tips – Corporations (cont.)
Bonus Depreciation

- A special 50% first year bonus depreciation allowance is provided with respect to certain qualified property (certain property may be eligible for 100% first year depreciation allowance).
- Generally, this allowance is scheduled to expire after 2012 (2013 for certain property).
- Method of depreciation must be MACRS.
- The property must be new and placed in service before January 1, 2013 (1/1/2014 for certain property).
  - Placed in service = installation and readiness to be used in the business.
  - Title should pass.
  - Installment purchase can be made.

Year End Tax Tips – Corporations (cont.)
Section 179 Expensing

- Section 179 allows a business to opt between (i) claiming a deduction for the cost of qualified property all in its first year of use; and (ii) claiming depreciation over a period of years.
- Dollar limitation for 2012:$ 139k (max amount that can be spent on equipment before the 179 deduction begins to be reduced - $ 560k).
- The dollar limit is scheduled to drop to $ 25k for 2013 (max purchases - $ 200k).
- Acceleration of purchases to 2012 may be advantageous.
- Qualified property must be newly purchased tangible personal property, actively used in the business, and for which a depreciation deduction would be allowed.

Year End Tax Tips – Corporations (cont.)
Interplay between Section 179 Expensing and Bonus Depreciation

- In cases where property is qualified for 179 expensing and for bonus depreciation, Section 179 expensing should be taken first, followed by bonus depreciation and regular first-year depreciation.
- Example:
  - A 2012 purchase of $ 500,000 (depreciable over 5 years)
    - Section 179 expensing = $139,000
    - Bonus depreciation = $180,500
    - Regular depreciation = $36,100 (assuming half year convention)

Year End Tax Tips – Corporations (cont.)
Checklist

✓ Project *Taxable Income,* take steps as needed

- Review accounting methods; can be used to accelerate income or defer income as needed
- Fixed assets; Section 179 and bonus depreciation (consider electing out)
- Consider Section 267 – cash basis deduction
- Estimated taxes

✓ Review corporate structure to identify foreign reporting requirements

✓ Review inter-company balances

✓ NOL limitations – Section 382, NUBIG

✓ TP update/ inter-company agreements/implementation

✓ Prepare for new UTP schedule threshold

✓ State taxes

- Nexus ; take steps to reduce
- Review corporate structure for existence of "unitary group"
- Consider making *Water's Edge* Election

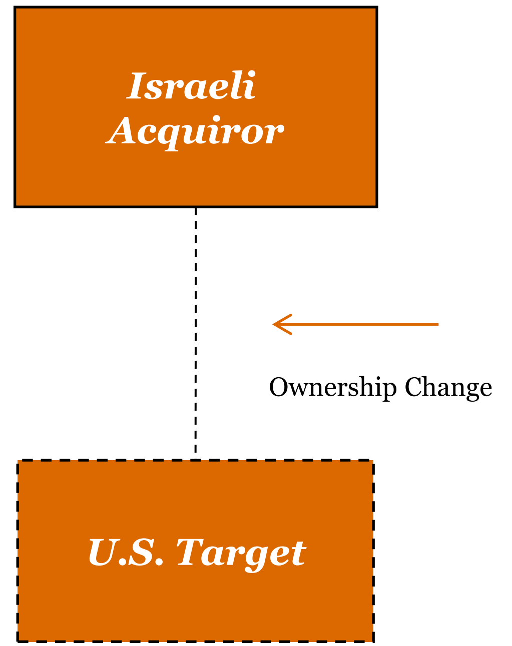
Increase of IRC Section 382 Loss Limitation

Acquisition Price	$100m
LTTER	3%
Pre-Acquisition NOLs	$80m

Annual Base Limitation (3%*100m=) $3m

Limited to 20 years!

$20m of NOLs – permanently lost!



Increase of IRC Section 382 Loss Limitation (Cont.)

- A built-in gain is gain that accrues economically before an ownership change, but is recognized following the ownership change.
- When a built-in gain is recognized during the five year period following the ownership change, the corporation's ability to use pre-ownership change NOLs is increased. Therefore, acceleration of assets disposal should be considered.
- The increase cannot exceed the amount of the “unused” “net unrealized built in gain” (NUBIG).

Increase of IRC Section 382 Loss Limitation (Cont.)

- Under Notice 2003-65, which provides guidance regarding the identification of built-in items, a built in gain may be realized, *inter-alia*, upon the following events:
  - Disposition of a built-in gain asset.
  - Depreciation and/or amortization of assets, following a notional IRC Section 338 election.

Example

	Basis	**FMV**	
Asset A (depreciable)	$100	$1,100	
Built-in Gain in Asset A			($1000)

- Upon sale of Asset A – IRC Section 382 loss limitation may be increased by $1,000 (up to the amount of NUBIG).
- By making a notional 338 election – IRC Section 382 loss limitation per each year (until the disposition of Asset A) may be increased by an annual amount of ($1,000/depreciation rate), up to the amount of NUBIG).

Remarks

- Complex rules apply to consolidated groups. Therefore, costs and timing constrains should be taken into account.
- "Allowable" but not claimed built-in gain could be permanently lost.
- Detailed Purchase Price Allocation study as of the date of an ownership change, including allocation of value to classes of tangible assets.

Year-end Tips for Individuals - Highlights

- Expiration of Bush-era income tax rates.
  - The current 10, 15, 25, 28, 33 and 35% rates would be replaced by the higher pre-Bush rates 15, 28, 31, 36 and 39.6%. [the 39.6% may still apply only to individuals earning more than $1 million]
- Sun-setting of Bush-era rates on qualified capital gains and dividends.
  - The current favorable rates – 0% for taxpayers in the 10% and 15% brackets, and 15% for all others – will be replaced by the pre 2003 rates – 10% for taxpayers in the 15% bracket and a maximum 20% for all others. Dividends will be subject to ordinary income rates.
  - Consider accelerating recognition of long term capital gain or increase carryover losses into higher rates after 2012.
  - For controlling shareholders of C Corporations, consider declaring dividends to be distributed before 2013 [potential increase of rates from 15% to up to 43.4%].

Year-end Tips for Individuals – Highlights (Cont.)

- Investors in the higher tax bracket must plan for the 3.8% Medicare Contribution Tax on investment income [starts in 2013].
  - Applies to higher-income individuals, estates and trusts.
  - Imposed on net-investment-income (NII) – generally passive income. Will also apply to capital gains from the disposition of property. For individuals – applies to the lesser of the taxpayer's NII or the amount of "modified" adjusted gross income (AGI with foreign income added back) above a specified threshold.
  - IRS guidance pending.

Year-end Tips for Individuals – Highlights (Cont.)

- 0.9% additional Medicare tax for high-income wage earners [starts in 2013].
  - Effective 1/1/2013, higher income individuals will be subject to an additional 0.9% HI Medicare Tax.
  - Consider accelerating service-related income into 2012.
  - Check whether separate filing may be more beneficial (check thresholds).

Year-end Tips for Individuals – Highlights (Cont.)

Traditional income acceleration / deduction deferral strategies

- Income Acceleration
  - Receive bonuses before January 2013
  - Sell appreciated assets
  - Accelerate debt forgiveness income
  - Accelerate billing and collection
  - Take corporate liquidation distributions in 2012
  - Avoid mandatory like-kind exchange treatment
  - Declare special dividends
  - Consider AMT
- Deduction/Credit Deferral
  - Postpone bill payments until 2013
  - Match passive activity income and loss
  - Bunch Itemized Deductions into 2013 / Standard Deduction into 2012
  - Postpone economic performance
  - Pay last state estimated tax installment in 2013

Year-end Tips for Individuals – Highlights (Cont.)

Estate/Gifts Tax

- Reduction in thresholds: in 2012 - $5.12 million; in 2013 - $1 million.
- Increase in tax rate: in 2012 – max 35%; in 2013 – max 55%.
- Possible “compromise”: $3.5 million / max 45%.
- Annual Gift Tax exclusion: $ 13k for 2012; $ 14k for 2013 (married couple: $ 26k and $ 28k).
- Consider accelerating gifts to 2012.

Scope and Limitations

- The information contained in this presentation is for general guidance on matters of interest only. As such, it should not be used as a substitute for consultation with professional tax advisors.
- This document was not intended or written to be used, and it cannot be used, for the purpose of avoiding any U.S. federal, state or local tax penalties.

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Thank you!

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