DELAWARE STRUCTURE INVESTING IN UNITED STATES. STOCK MARKETS

Withholding Tax. For a client that is neither an American citizen nor a resident in the U.S.

It's impose a 30% tax on several types of American source non-business income of foreign and non-resident citizens. This law would be applied by means of U.S. people that remit the income abroad and who must withhold the tax from the income.

Therefore, income of a foreign non-resident citizen that is not efficiently connected with a U.S. trade or business but it is from sources within the U.S. will be subject to a flat 30% tax, provided that falls within certain designated classes. Such classes include dividends, interests, rents and royalties, but usually not capital gains and other income realized on sales of property.

However, interest income is exempted from the 30% withholding tax when it is generated on bank deposits.

Portfolio Interests
Interest on US bank deposits is not the only exempted. Moreover, foreign investors are not subject to 30% withholding tax on "portfolio interests." This exemption was passed in order to permit American companies to participate directly in the Eurobond market and nowadays applies to almost all interest on obligations (except interest received from related persons and interest received by banks and financial institutions.)

So, interest on American bonds is exempted from the 30% withholding tax.

Under the guidelines, interest must be payable only outside of the United States, and the instrument must state on its face that a U.S. holder is subject to U.S. tax laws".

Moreover, when a foreign single owned LLC has invested on bonds or other debt instruments, the "portfolio interest" exemption is harmonized with Regulation 1.1441-1(b)(2)(iii), which states that "a payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under section 301.7701-2(c)(2) of this chapter as an entity separated from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity." Therefore, when the financial institution –which should be the withholding agent- pays portfolio interest to such a kind of LLC, it should not withhold the 30% tax.

Dividends
Stocks on the US market by means of an LLC might produce income to its owner either by the payment of dividends by the issuer or as a result of disposition of the stock.

However, dividends paid by American companies to foreign non-resident citizens are always taxed by the 30% tax -Sections 871(a)(1) and 881(a). Therefore, a withholding agent should withhold the 30% flat tax on the dividends that it will remit to the foreign investor. The same solution should be applied when the foreign investor receives dividends through a single owned LLC because payment to the company "shall be treated as a payment to the owner of the entity."

On the other hand, when the LLC has more than one member, it will be considered a partnership, have a Taxpayer Identification Number and it will be able to provide a Form W-9. According with Section 1.441-5(b)(1) "a payment to a person that the withholding agent may treat as a domestic partnership is treated as a payment to a U.S. payee. Therefore, a payment to a domestic partnership is not subject to withholding under section 1441 even though it may have partners that are foreign persons. A withholding agent may treat the person to whom the payment is made as a domestic partnership if it can reliable associate the payment with a Form W-9 furnished by the partnership."

Consequently, a domestic partnership –including a LLC- is not subject to the withholding tax, but the tax applies to any portion of the income that is included in the distributive share of the foreign partner. The domestic partnership will be required to withhold "as a withholding agent" for the distributive share of the foreign partner.

Disposition of Stock or Securities
Foreign non-resident investors generally are not subject to US tax on gain realized on the disposition of stock or securities (other than certain gains from the sale or exchange of a U.S. real property interest), unless the gain is effectively connected with the conduct of a trade or business in the US.

In contrast with the 30% withholding tax on interest, dividends, and other fixed or determinable income, non-resident aliens -and foreign corporations- engaged in trade or business within the US are taxed by Code Sections 871(b) and 882(a) at graduated rates on taxable income effectively linked with a US trade or business.

However, trading in stocks, securities and commodities "through a resident broker, commission agent, custodian, or other independent agent" is not a trade or business within the US if the taxpayer does not have an office in the U.S. through which the trades are directed. This rule applied to brokers and dealers in securities and commodities, as well as to casual investors and the volume of the taxpayer’s securities and commodities transactions in the U.S. is irrelevant to its application.

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