



- Tax regime is very different from the UK
- It is easy to end up with an inefficient structure with:
 - Double taxation
 - The loss of some UK tax reliefs



- Am I liable for business tax in the USA?
- Should I have a US entity?
- If 'yes', which one?
- Who should own it?
- Who should be the directors?
- In which state should it be formed?
- What are the tax rates?
- Personal tax issues



- When do you have a place of business in the US – permanent establishment?
 - A place of management
 - A branch
 - An office
 - A factory
 - A workshop
 - A mine, an oil or gas well, a quarry etc.
 - A building site or construction site > 12 months



- Facilities for storage, display or delivery of goods
- Place of business for the purchase of goods or collection of information
- Maintenance of a stock of goods solely for the purpose of processing by another enterprise
- Place of business carrying on preparatory or ancillary services
- Independent agents



- Where a person:
 - Other than an agent of an independent status
 - Is acting on behalf of an enterprise and
 - Has and habitually exercises in a Contracting State (**USA**) an authority to conclude contracts that are binding on the enterprise.....
-that enterprise shall be deemed to have a permanent establishment in that State (**USA**)
- Care with what happens in practice!



- Sending staff to work on a client's premises in the USA can create a PE under US law if it is:
 - For long enough; or
 - Regular enough

Should I operate as a branch?



- Simpler
- Use of US tax losses against UK profits
- But overriding commercial issues:
 - Litigation protection
 - Visa applications
 - Renting property
 - US businesses like dealing with US entities
- But, **NO!**

What entities are available?



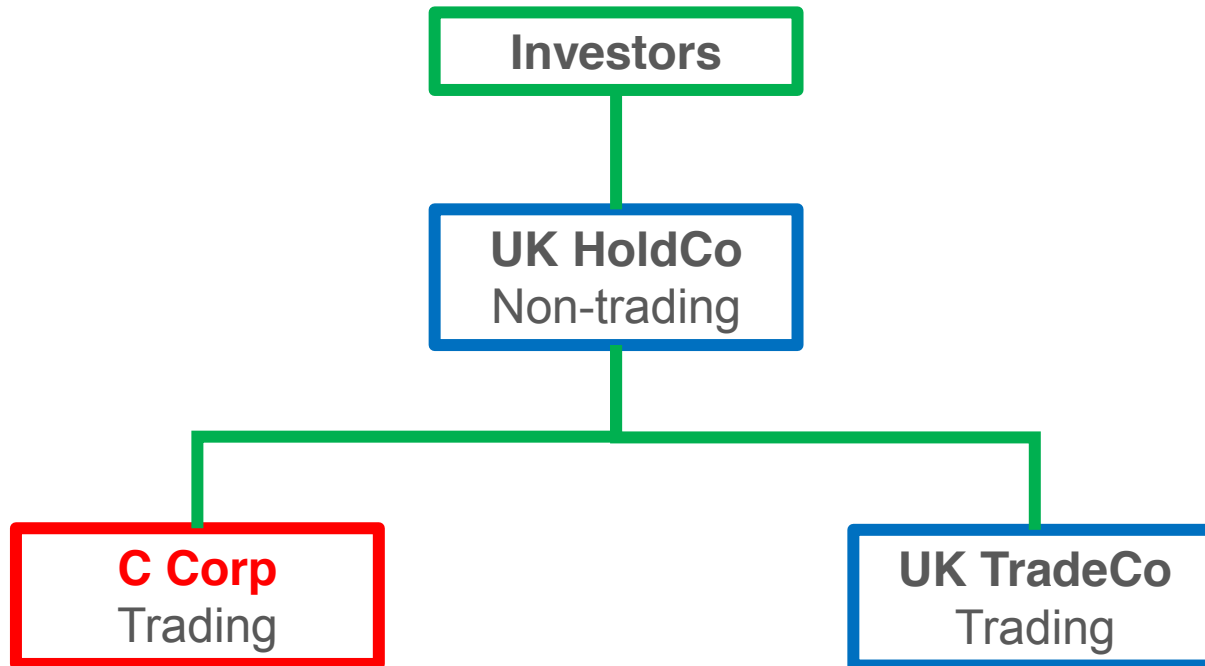
- Partnerships
- Limited partnerships
- Limited liability partnerships (LLPs)
- **Limited liability companies (LLCs)**
- **C corporations**
- S corporations
-and others

What's wrong with an LLC?



- Probable double taxation
- Is likely to disqualify a UK parent company from SEIS, EIS and EMI options

Suggested structure



Who should be directors?



- US entity will be taxable in US
- Could also be UK resident if 'central management & control' is exercised in the UK
- So, consider:
 - Composition of the Board
 - Where Board meetings are held
 - Does the US Board 'rubber stamp' parent company decisions?
- What if entity is resident in both countries?

Which state should I incorporate in?



- Choice of 50 plus DC
- Doesn't affect the tax
- Register for tax where you have a business presence
- Why Delaware?



- Federal corporate income tax:
- Flat rate 21% (was 15% to 35%)
- Local taxes can add up to another 12%
- Illustrative rates:
 - New York – 6.5%
 - New York City – 8.85%
 - California – 8.84%
 - Wyoming – 0%

Withholding taxes



	Withholding tax	With treaty relief
Dividends	30%	0% - \geq 80% votes for 12 months 5% - \geq 10% votes Otherwise 15%
Interest	30%	0%
Royalties	30%	0%
Branch profits	30%	0%



- State and city corporate income tax
- Sales taxes
- Use taxes
- Property taxes



- Transfer pricing
- Incentives:
 - Employment
 - R&D
 - Film, TV etc
- Share incentives



- US resident:
 - Green card?
 - Substantial presence test – present in US for
 - 31 days during the current year, &
 - 183 days during the 3-year period that includes the current year:
 - ❖ 100% of current year US days plus
 - ❖ 1/3 of the days in previous year plus
 - ❖ 1/6 of the days in year before that
- Double tax treaty?



- Special rules for secondments
- Possible to remain within the scope of:
 - UK income tax
 - UK social security (NIC)



- US does not have:
 - Entrepreneurs' relief
 - EIS capital gains tax exemption
 - Anything as generous as EMI options
- Note:
 - Long term capital gains in US taxed at 23.8%
 - Compare with 10% in UK with entrepreneurs' relief



- Exit charge if you give up Green Card held for at least 8 of the last 15 tax years & either:
 - Average annual net income tax for the 5 years ending before the date of expatriation or termination of residency is $> \$160,000$
 - Net worth $\geq \$2$ million
 - Fail to certify on Form 8854 complied with all U.S. federal tax obligations for the last 5 years
- Deemed disposal of property on day before you leave at market value

Who does what?



	Client	KS	Morison KSi	US attorney
Advice on UK structure		<input checked="" type="checkbox"/>		
Initial advice on type of US entity and state of incorporation		<input checked="" type="checkbox"/>		
Formation of US entity				<input checked="" type="checkbox"/>
US federal and state income taxes, sales taxes			<input checked="" type="checkbox"/>	
Secondment/transfer of UK personnel		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
US payroll – normally outsourced to a specialist firm			<input checked="" type="checkbox"/>	
Opening a US bank account	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Review of transfer pricing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Project management		<input checked="" type="checkbox"/>		

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