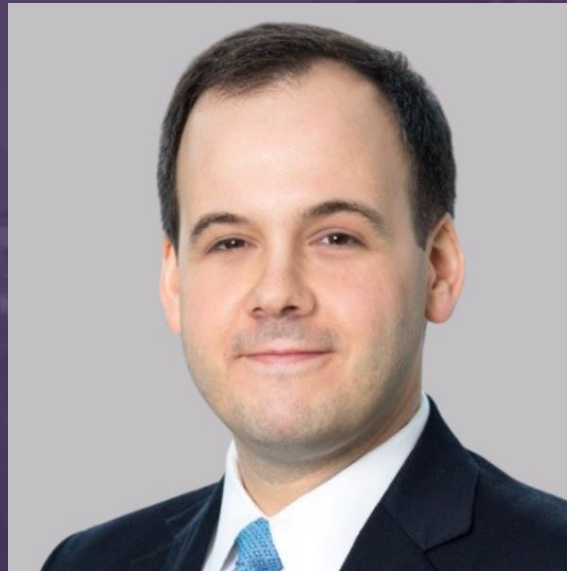




Exiting Family Office Investments: Cross-Border Dispositions



Paul DePasquale

BAKER & MCKENZIE

Saturday, October 4 | 9:50 AM - 10:45 AM



Exiting Family Office Investments: Cross-Border Dispositions

STEP WYOMING INTERNATIONAL ESTATE PLANNING CONFERENCE 2025

Paul DePasquale | October 3-4, 2025

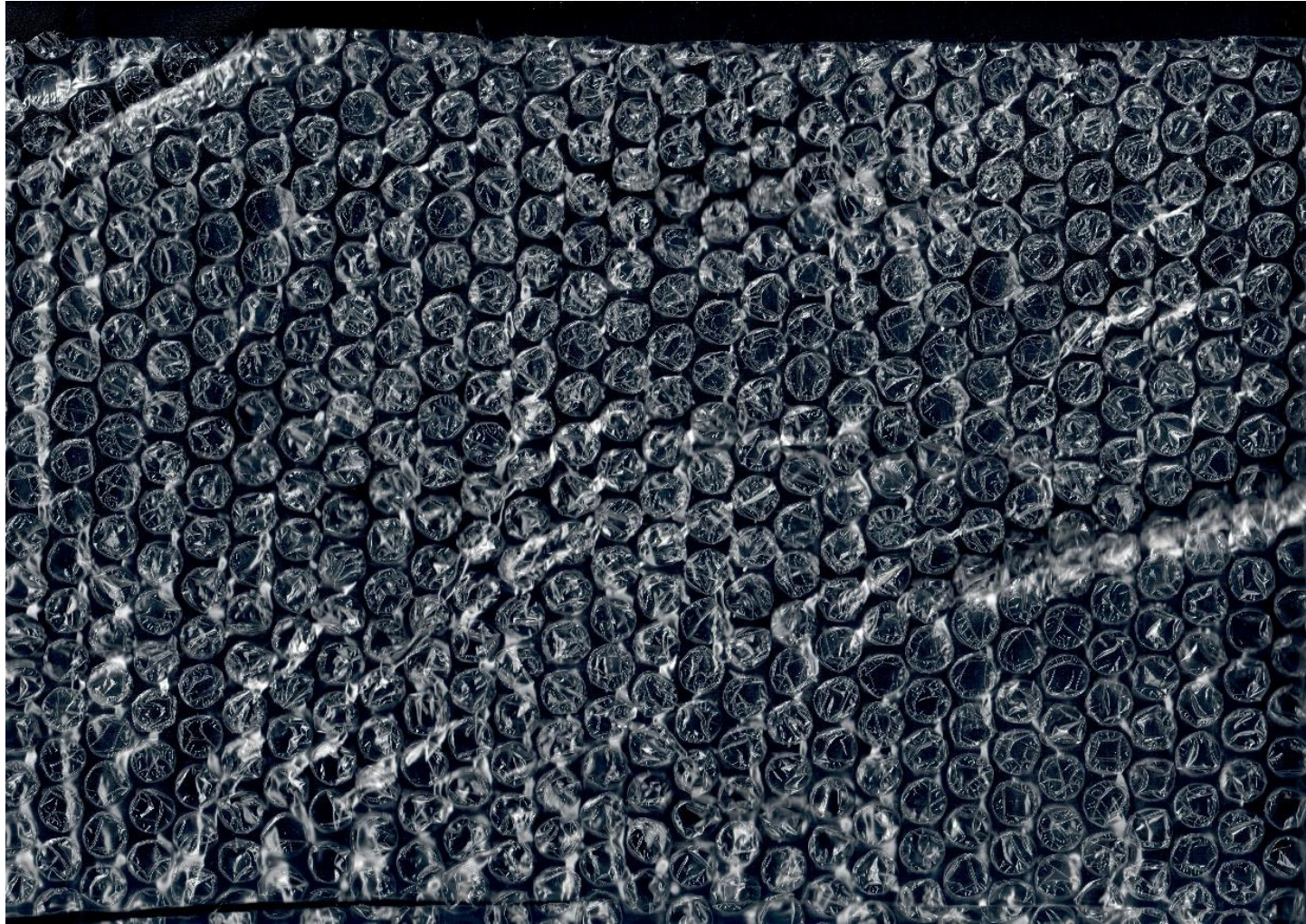
Speaker



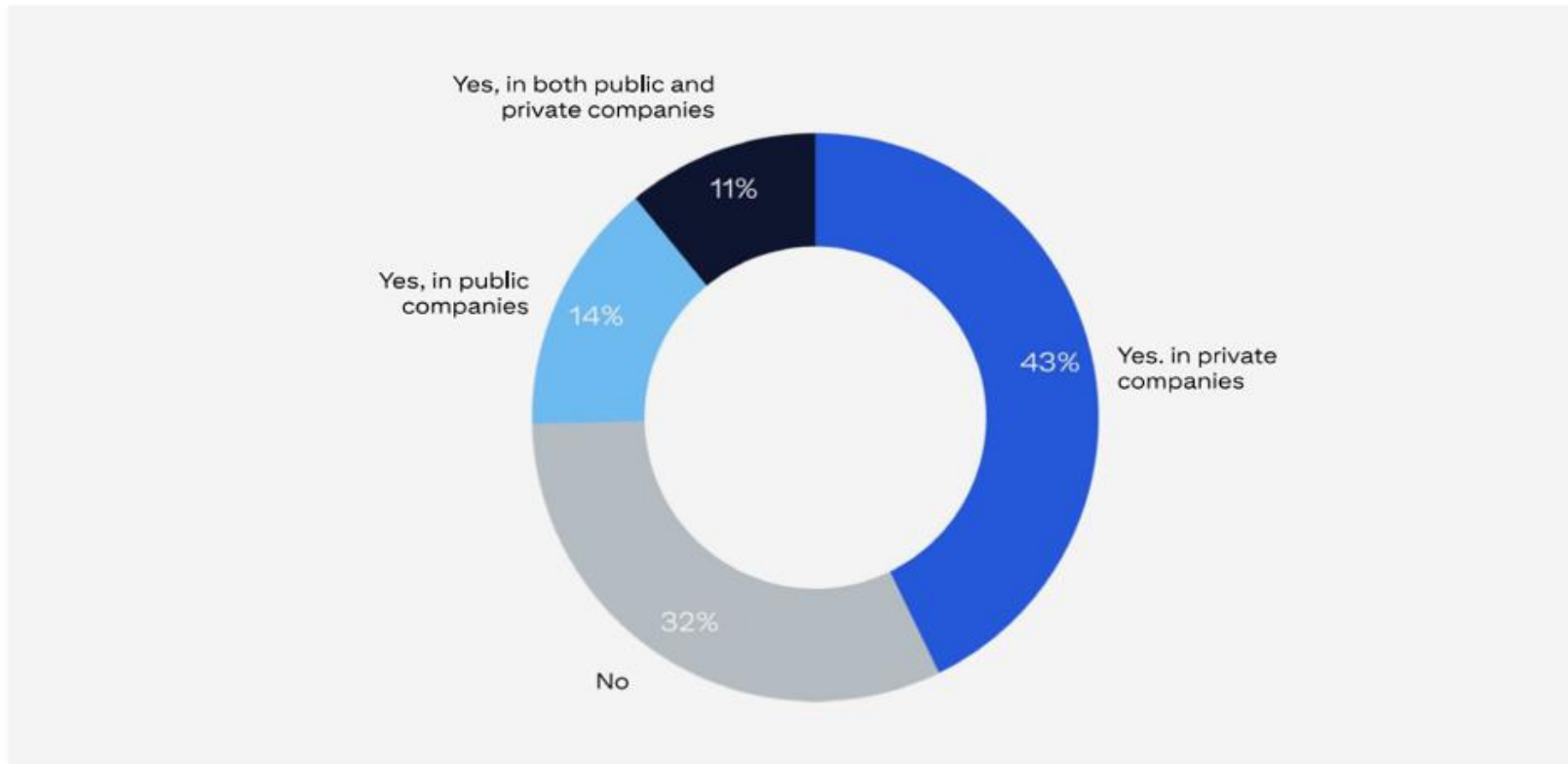
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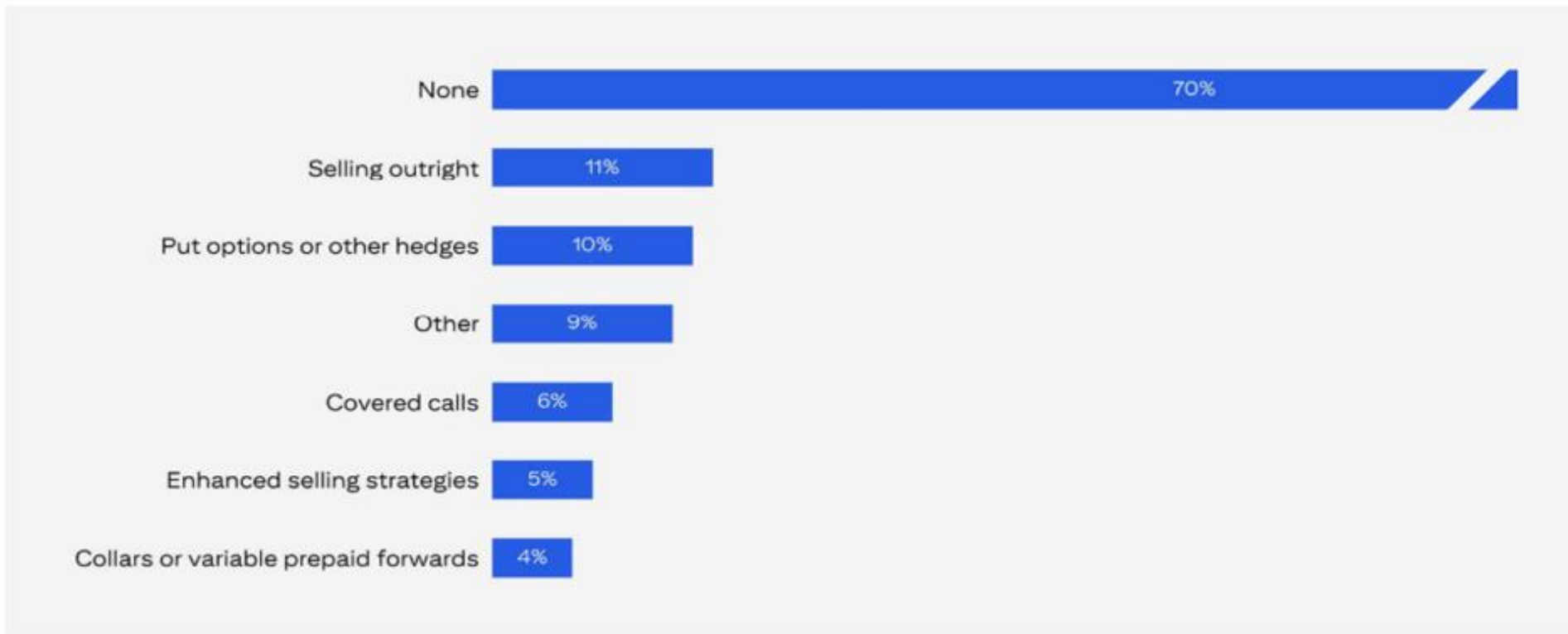
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Family Offices Holding Concentrated Positions



Strategies to manage risk of concentrated positions



Typical exit scenarios



IPO



**100% Share
or Asset Sale**



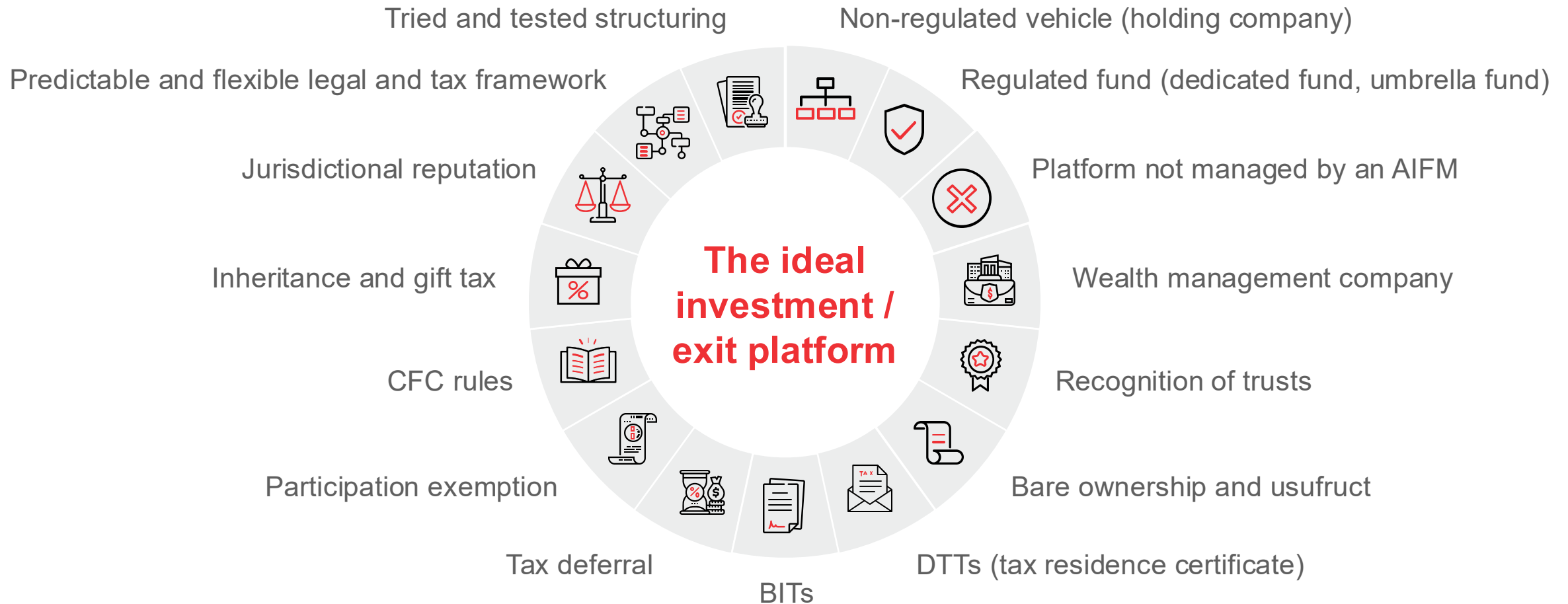
**Majority
Share Sale**



Minority Sale

Planning for an exit

The attributes of investment / exit platforms



Planning for an Exit

Preparing to separate the family from the family business



- Formalizing company-family relationships ahead of a sale.
 - Define economic relationships between the company and the family before a seller defines them for you.
 - Examples include intellectual property and real estate.
- Spinning out non-core assets ahead of sale.
 - Companies often own assets that are more for the benefit of the family than the business. Conversely family assets often are located on company property.
 - Examples include artwork, real estate, airplanes and even ancillary businesses and investments.
 - Buyers typically are focusing only on core assets when valuing a business; any non-core assets left in the business effectively is a gift to the buyer.

Direct Gifts to Non-US Person

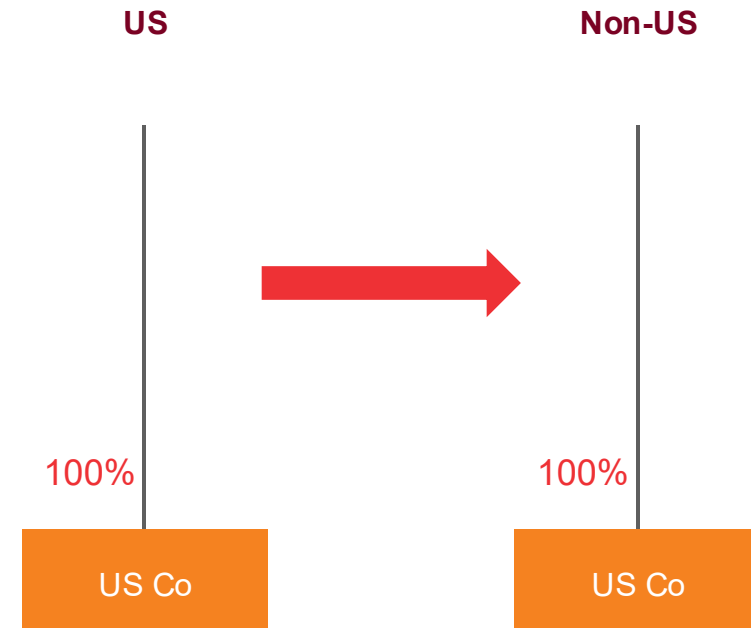
Income Tax

- Dividends from US co subject to 30% withholding (unless lower rate applies under an applicable treaty)
- Non-US persons may benefit from more favorable tax treatment on disposition of US Co shares

Gift Tax

- US citizens and domiciliaries are subject to US federal gift and estate tax at 40% rate
- Lifetime gift and estate tax exclusion of \$13.99 million for 2025 (\$15 million for 2026)

Gifts to Non-US Person



Direct Gifts to Non-US Person

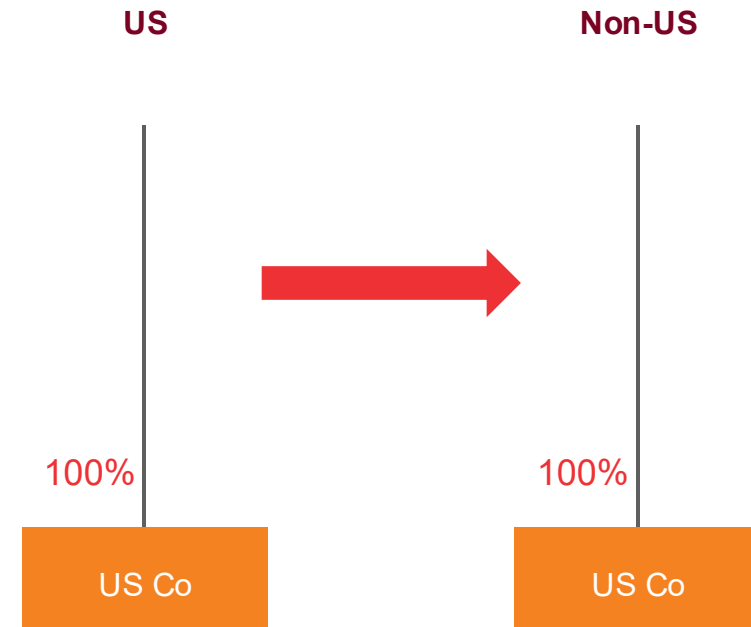
Estate Tax

- If US Co shares are held directly by a non-US person may be subject to US federal estate tax.
- If US Co shares are transferred to a non-US entity, then may be blocked from estate tax.

Disadvantage

- Upon passing of the non-US person, shares will pass subject to applicable heirship rules.
- Transactional matters

Gifts to Non-US Person



Exiting the US

Income Tax

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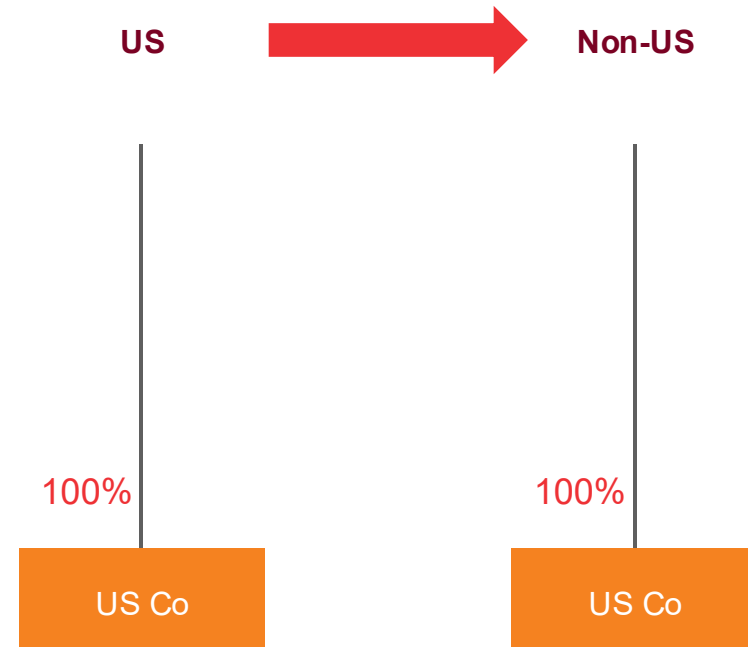
Estate Tax

- If US Co shares are held directly by a non-US person may be subject to US federal estate tax.
- If US Co shares are transferred to a non-US entity, then may be blocked from estate tax.

Disadvantages

- Upon passing of the non-US person, shares will pass subject to applicable heirship rules
- Transactional matters
- Life and business disruption
- Section 684

Relocating



CFC Considerations - Individuals

- An individual US shareholder investing is taxable at a 37% US federal income tax rate on all subpart F and GILTI income (plus state and local tax).
- No 50% deduction under Section 250(a)(1)(B) which applies to GILTI income of C corporations (unless 962 election).
- No indirect foreign tax credits for corporate-level taxes paid by CFC.
- Additional 3.8% net investment income tax on distributions of previously taxed income

Participation Exemption – Section 245A

- Certain US corporations are entitled to a 100% dividends received deduction on the foreign-source portion of a dividend from a specified 10% owned foreign corporation.
- Specified foreign corporation is non-US corporation (other than a PFIC) with a corporate US shareholder (as Section 245A shareholder).
- Foreign source portion of the dividend is equal to the portion of undistributed earnings that are foreign earnings (undistributed E&P other than ECI and REIT/RIC distributions).
- Holding period requirement: Must hold the stock of the SFC for more than 365 days during the 731-day period beginning 365 days before the ex-dividend date.
- No foreign tax credit on exempt dividend and no deduction for Section 901 tax (e.g. withholding tax)
- Extraordinary reduction and extraordinary disposition accounts

CFC Considerations – Individuals – Section 962 Election

- Allows individual US shareholders of CFC to elect to be taxed like domestic corporation for certain purposes.
- Individual is taxed on amounts included in gross income under Sections 951(a) and 951A at corporate tax rates.
- Individual is entitled to a deemed-paid foreign tax credit under Section 960 as if the individual were a domestic corporation.
- When actual distributions are included in gross income again to the extent they exceed the amount of US income tax paid at the time of the Section 962 election.
- US shareholders making Section 962 election are eligible to claim 50% deduction of GILTI under Section 250

Preserving Control in Minority

Governance and Information



Establish a framework that allows family to continue to exercise influence over the overall direction of the business despite having no positive control through:

- Appropriate board and observation rights, frequent board meetings
- Careful selection of independent director(s) / overall design of the board
- Active attendance and participation in key committees such as nomination and strategic committees
- Monthly reporting meetings with key managers
- Scope of reserved matters reflective of the retained interest



Preserve information rights which allow family to continue to be informed, with access to books and records

Disentangling the Family From the Family Business



- Use of company personnel and resources for family matters.
- Continued use after sale vs. transition period after sale vs. transition ahead of sale.
- Conflicted role of management after a sale hinders them from serving as trusted family advisers.
- Privacy concerns, including use of company email systems.
- Is the family ready for sudden liquidity?
- Is there pre-transaction planning necessary so that part of the liquidity goes to the right pockets in a tax efficient manner?
- Establish infrastructure.