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# U.S. TAX PLANNING FOR CHINESE INVESTMENT IN U.S. REAL ESTATE 中国在美房地产投资的美国税务策划

by

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# Common Objectives Addressed through Ownership Structuring 通过所有权构建解决共同目标

- Maintain anonymity (real property not titled in one's name)
- Personal use (no rent payment)
- Avoid U.S. estate tax
- Avoid U.S. gift tax
- Minimize U.S. income tax on rental income
- Minimize U.S. income tax on sale of real property
- Minimize U.S. tax filings

# I. Potentially Applicable U.S. Taxes (2017)

## 可能适用的美国税收（2017）

- Federal Income Tax 联邦所得税
  - Individual (10% - 39.6%)
    - Net Investment Income Tax (3.8%) - NA
  - Corporate (15% - 35%)
    - Branch Profits Tax (30% reduced to NIL per the China-United States Income Tax Treaty)
- State Taxes 州税
  - State of Washington
    - Individuals – no income tax
    - Businesses – Business and Occupation Tax (up to 1.50% of gross receipts)
    - Income from the sale or rental of real estate – generally exempt
  - State of Oregon
    - Individuals – 5% - 9.9% tax
    - Businesses – 6.6% - 7.6% tax
  - State of California
    - Individuals – up to 12.3% tax
    - Businesses – 8.84% tax
- Other Taxes 其它税
  - State of Washington – real estate excise tax (1.78%)

## II. U.S. Tax Classification of Chinese Persons 美国对中国的税务分类

- Chinese Nationals:
  - Income Tax -
    - Resident alien: green card or substantial presence test
      - U.S. taxes “resident alien” on worldwide income
    - Nonresident alien: fails test for resident alien
      - U.S. taxes “nonresident alien” only on U.S. source income
- Chinese Corporations:
  - Per se corporation
    - U.S. taxable entity
  - Foreign eligible entities
    - Elects whether flow-through or taxable entity

# III. U.S. Taxation of Chinese Owners of U.S. Rental Property

## 美国对中国业主在美租赁物业的征税

- Rental income from U.S. real property held for investment by a Chinese person is taxed at a flat 30 percent rate with no allowance for deductions
  - Tenant withholds 30 percent tax and remits to IRS
- Rental income from U.S. real property that constitutes a trade or business by a Chinese person is taxed at U.S. graduated tax rates after deduction for expenses and depreciation
  - No withholding by tenant
  - Chinese taxpayer files U.S. tax returns and pays U.S. tax
- China-United States Income Tax Treaty does not override U.S. income tax on rental income

# III. U.S. Taxation of Chinese Owners of U.S. Rental Property (cont'd)

## 美国对中国业主在美租赁物业的征税（续）

- Classification of Rental Income as Investment or Business Income
  - Certain real property holdings create uncertainty as to the existence of U.S. trade or business
    - Chinese ownership of a single piece of U.S. real estate subject to a net lease generally not considered to constitute the conduct of a U.S. trade or business
    - Chinese ownership of property managed by an independent company pursuant to a management contract should not result in a U.S. trade or business to Chinese owner
  - Election available to treat passive real estate holdings as trade or business

## IV. U.S. Taxation of Chinese Owners Selling U.S. Rental Property

### 美国对中国业主在美出售租赁物业的征税

- Capital gains realized by a Chinese taxpayer from U.S. investments usually not subject to U.S. tax
- However, U.S. tax law treats gain or loss of a Chinese taxpayer from the disposition of a U.S. real property interest as income or loss which is effectively connected with the conduct of a U.S. trade or business
- Effectively connected income is subject to U.S. income tax and return requirements

# Foreign Investment Real Property Tax Act of 1980 – FIRPTA

## 1980年的外商投资不动产税法

- U.S. Withholding on Sale of U.S. Real Property
  - Section 1445 requires that on the disposition of a U.S. real property interest by a foreign person, the transferee must withhold 15% of the total amount realized by the foreign seller
    - Disposition means any transfer that would constitute a disposition by the transferor for any purposes of the Internal Revenue Code
    - Amount realized is the sum of cash, fair market value of property received by transferor, and any liability assumed
  - Withheld tax applied to U.S. tax liability due from sale of U.S. real property



# Foreign Investment Real Property Tax Act of 1980 - FIRPTA

## 1980年的外商投资不动产税法

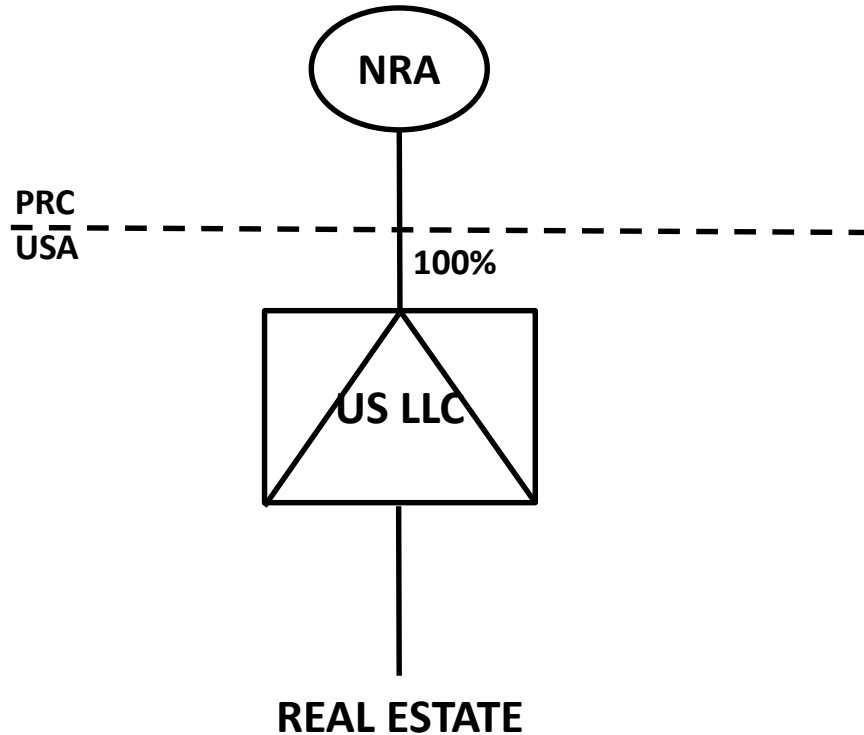
- Exemptions to FIRPTA Withholding
  - Personal residence with a cost under \$300,000
  - Transferor provides certification of non-foreign status
  - Reduced withholding certification obtained from IRS
- China-United States Income Tax Treaty does not override U.S. taxation of dispositions of U.S. real property interests

## V. U.S. Tax Considerations for Alternative Investment Structure: Operation and Disposition of U.S. Real Estate Properties

对可选择的投资结构的税务考量：美国房地产物业的经营和配置

# Ownership Using US LLC

## 美国的有限责任公司的所有权



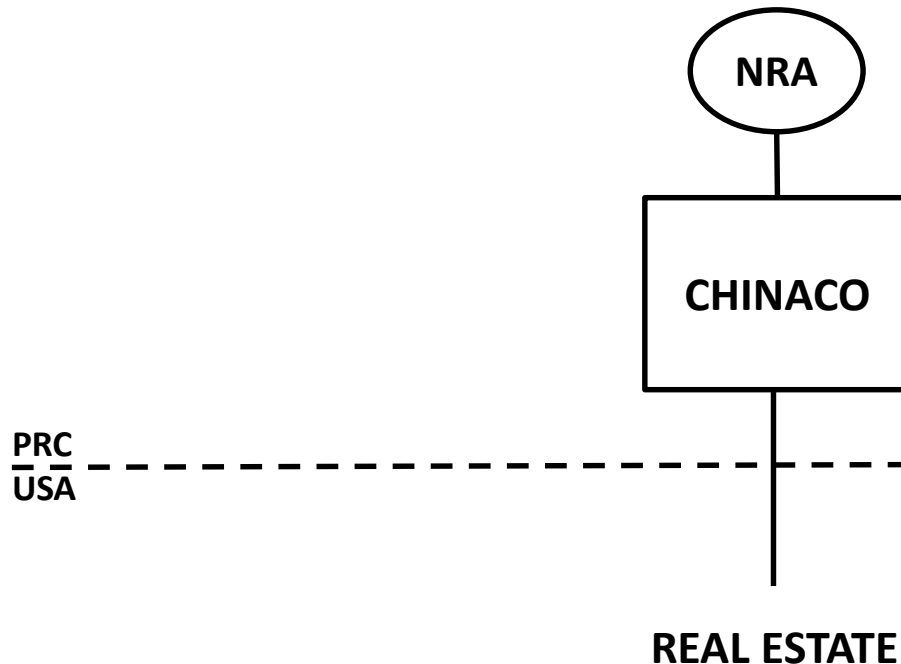
### Advantages:

- Property liability protection
- NRA treated as direct owner of real property for U.S. taxation
- Long term capital gain tax (20%) available
- FIRPTA withholding on disposition of real property or interests in US LLC

### Disadvantages:

- Privacy concerns
- Income and gain borne by NRA
- Estate tax exposure
- Gift tax exposure
- NRA files U.S. tax returns

# Ownership of U.S. Real Property Through Foreign Corporation 外国公司对美国不动产的所有权



## Advantages:

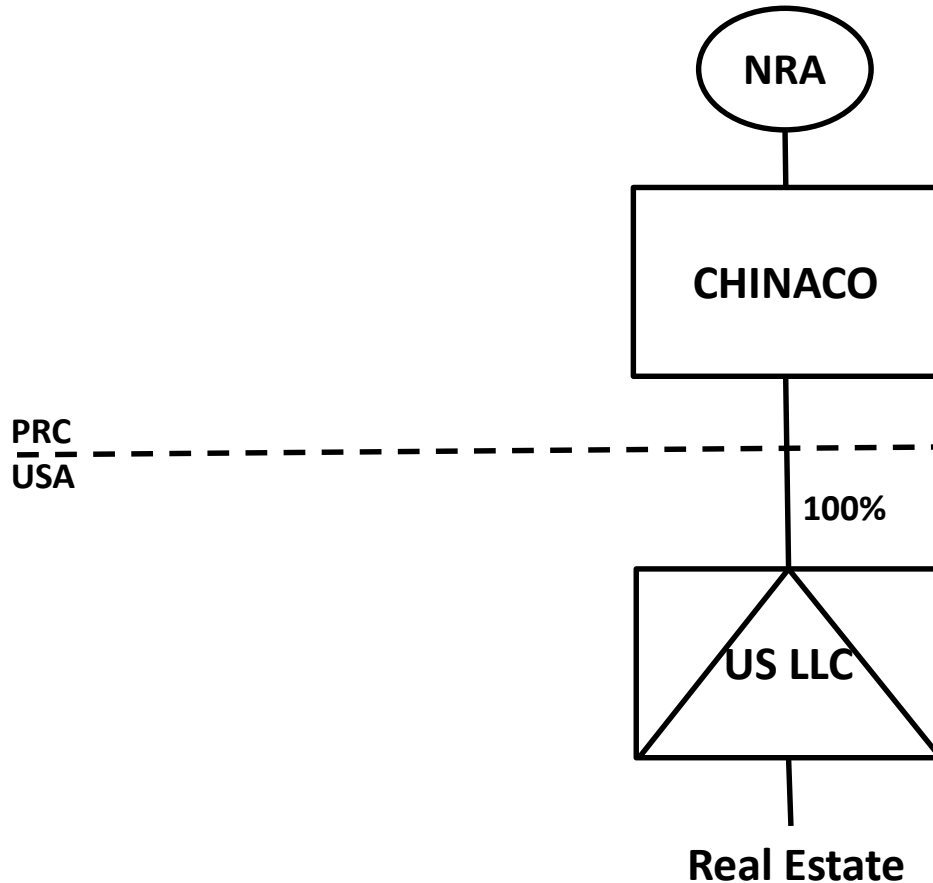
- Chinaco provides property liability protection
- No estate tax
- Gift tax protection
- Privacy protection
- Shares of Chinaco not USRPI

## Disadvantages:

- Chinaco taxed on rental income
- 35% capital gain tax (2017)
- Interest deduction for related party debt subject to limitation
- Chinaco files U.S. tax returns (disclosure of owners and balance sheet)

# Ownership of U.S. LLC Holding Real Estate

## 美国的有限责任公司持有房地产的所有权



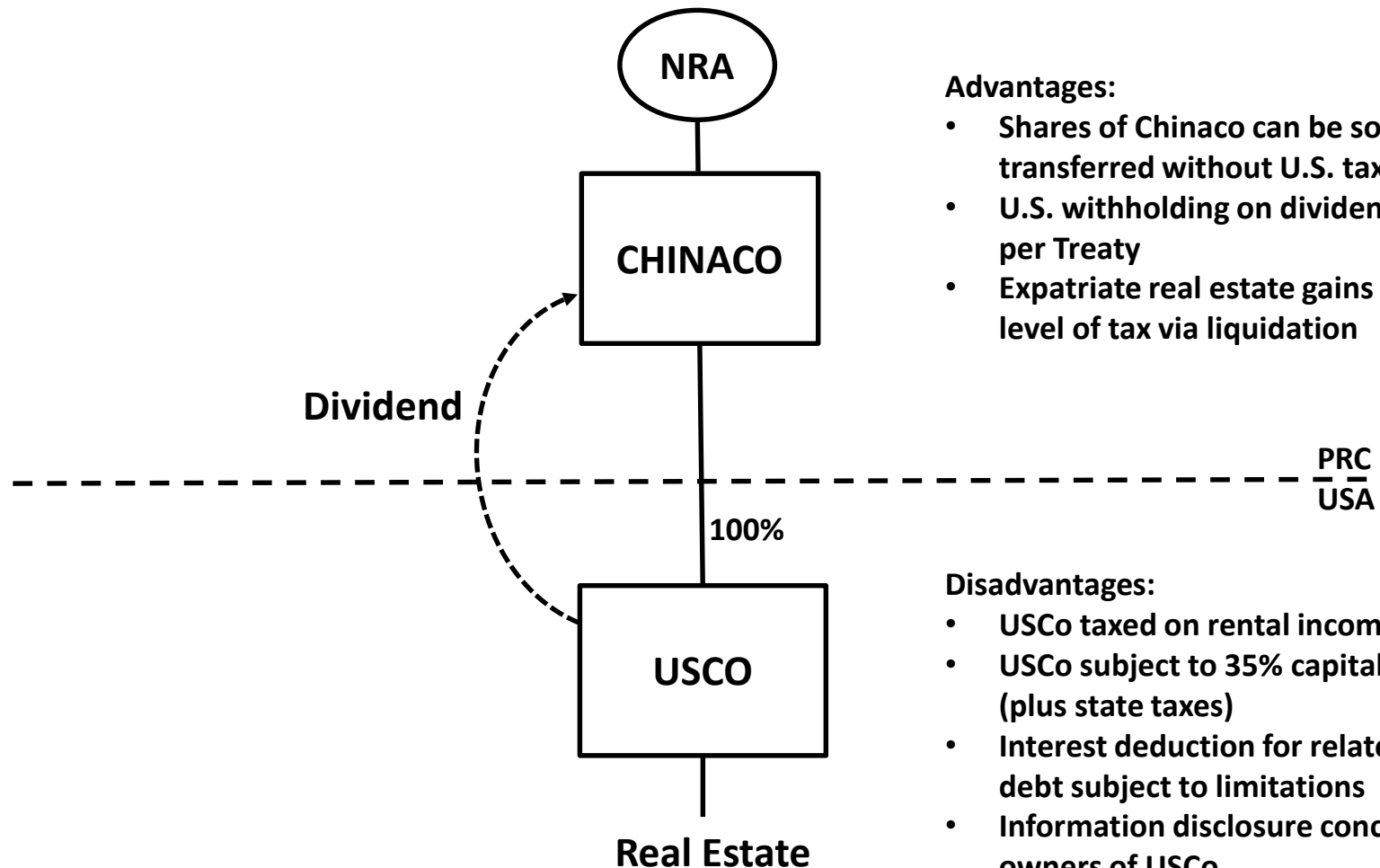
### Advantages:

- Same as those indicated on preceding slide

### Disadvantages:

- Same as those indicated on preceding slide

# Ownership of U.S. Corporation Holding Real Property 美国的股份有限公司持有房地产的所有权



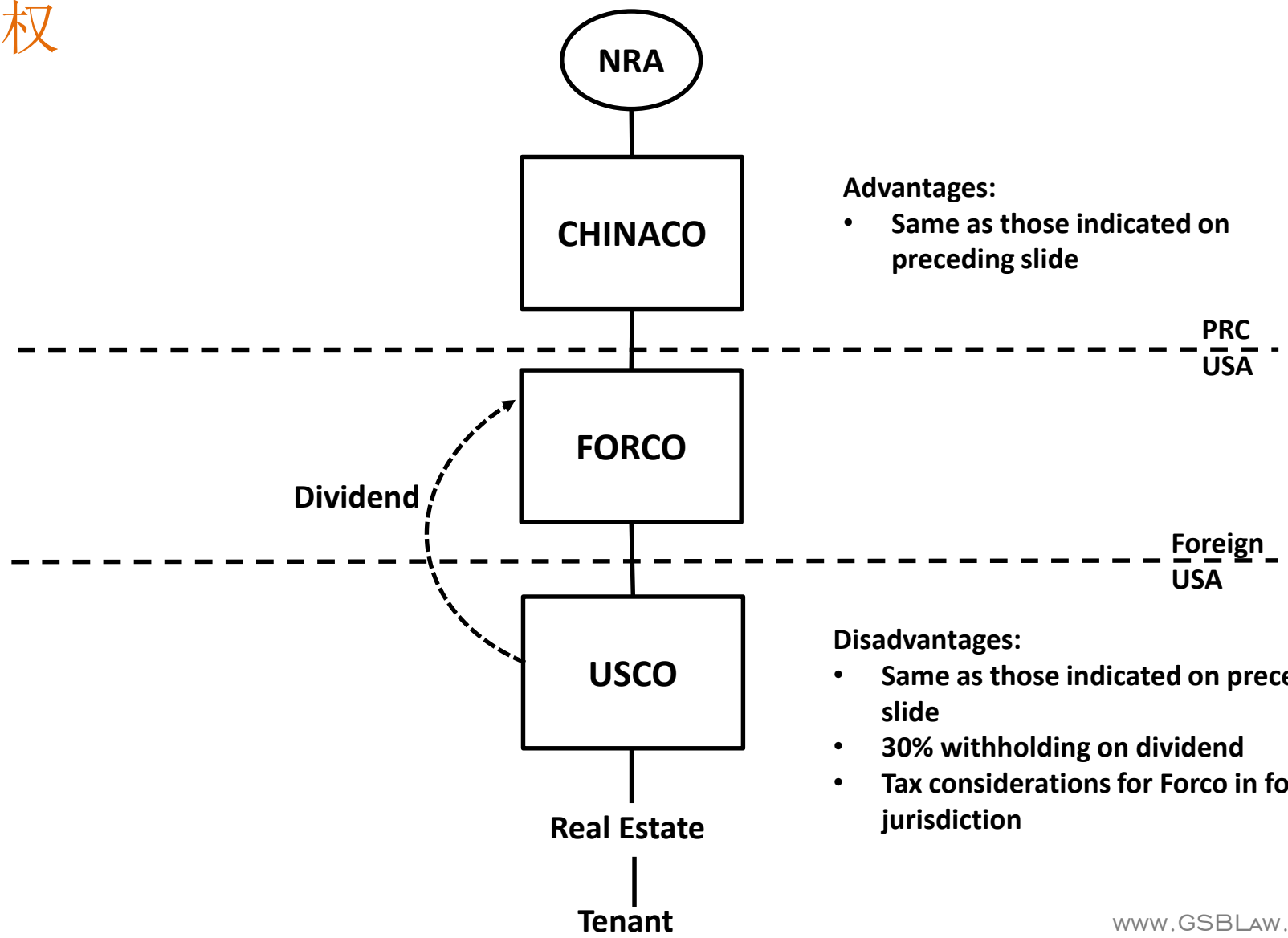
## Advantages:

- Shares of Chinaco can be sold or transferred without U.S. tax
- U.S. withholding on dividend at 10% per Treaty
- Expatriate real estate gains with one level of tax via liquidation

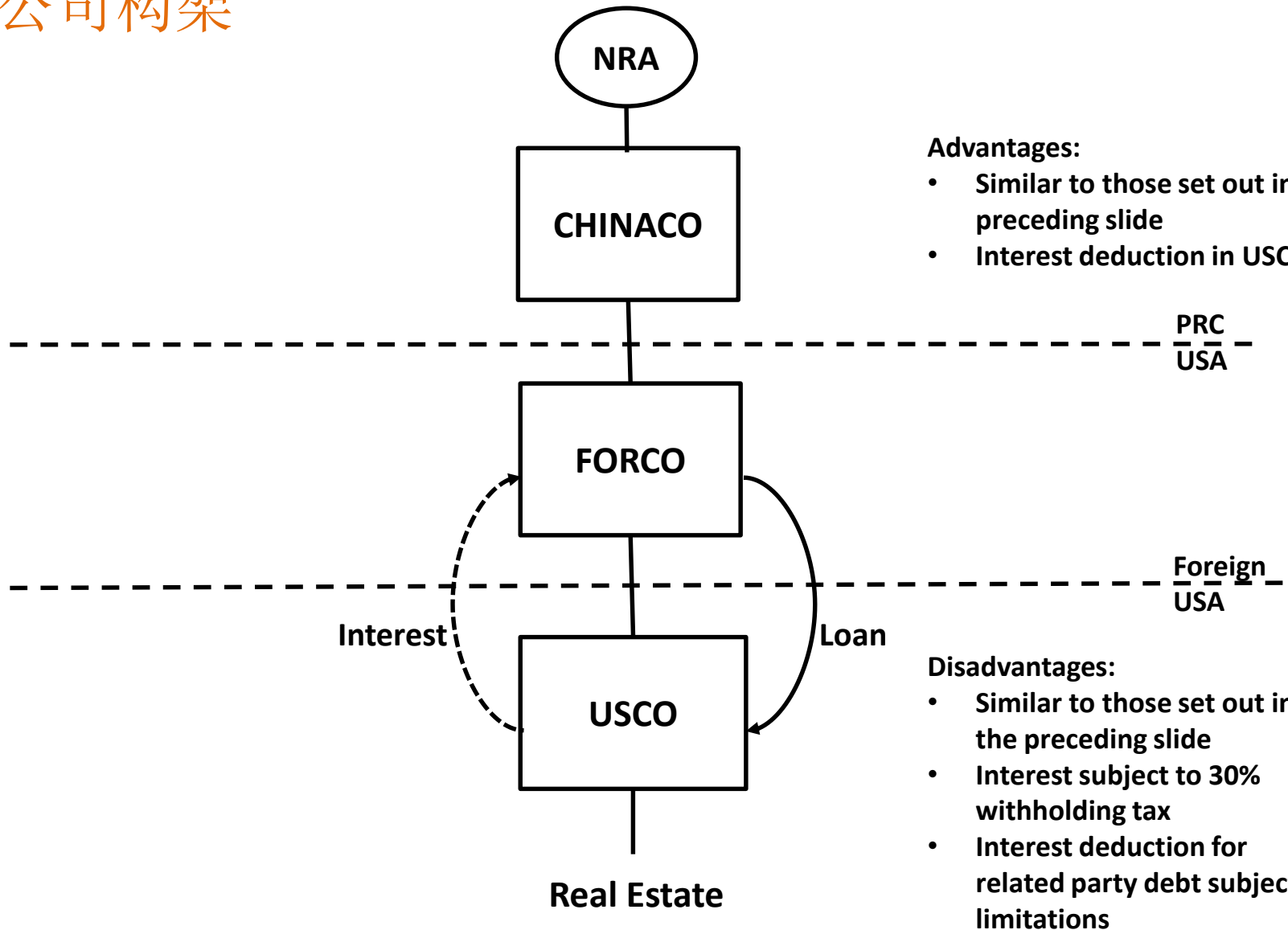
## Disadvantages:

- USCo taxed on rental income
- USCo subject to 35% capital gain tax (plus state taxes)
- Interest deduction for related party debt subject to limitations
- Information disclosure concerning owners of USCo

# Ownership of U.S. Real Estate Via Parent/Subsidiaries Arrangement 通过母/子公司的安排对美国房地产的所有权

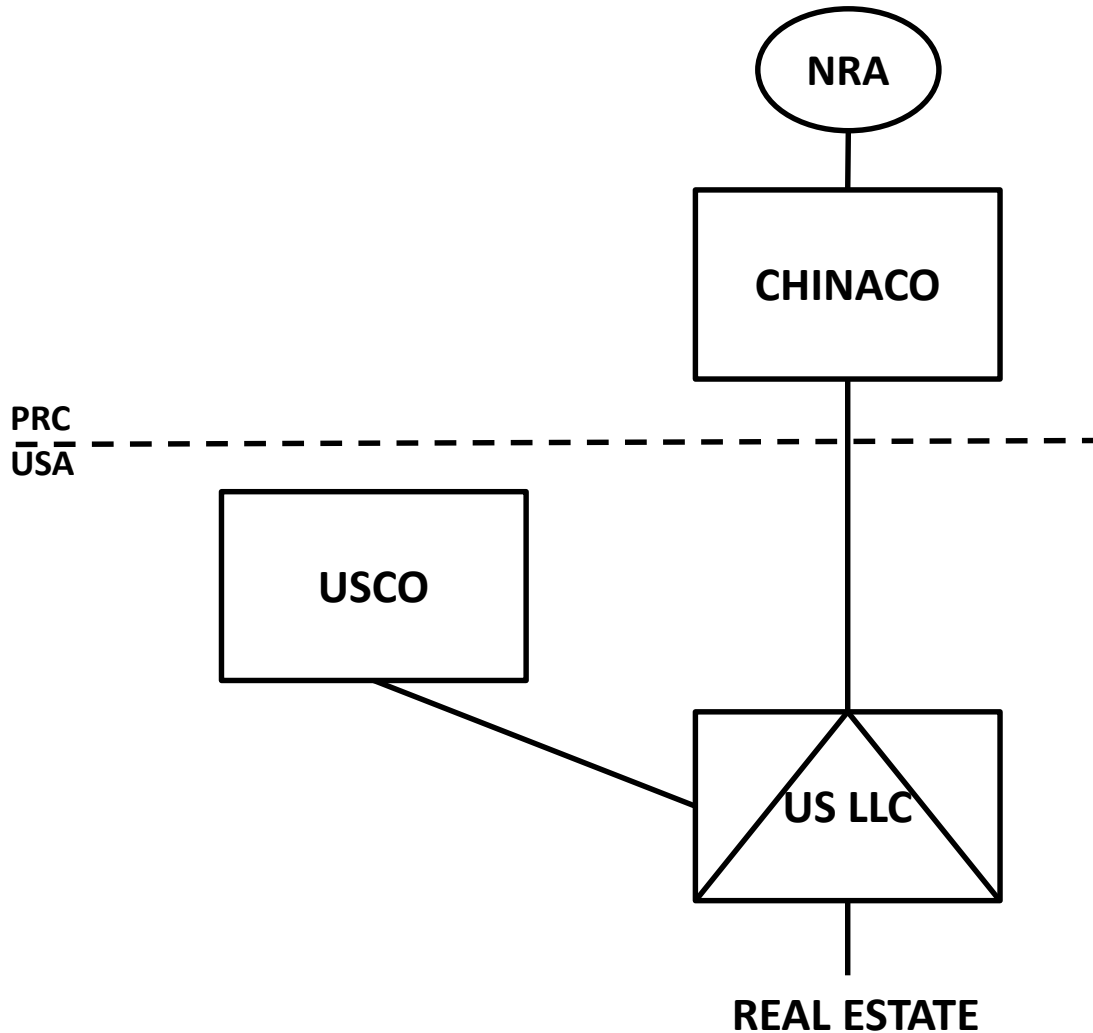


# Foreign Corporate Structure with Debt 持有外债的外 国公司构架





# Joint Venture Structure 合资企业构架



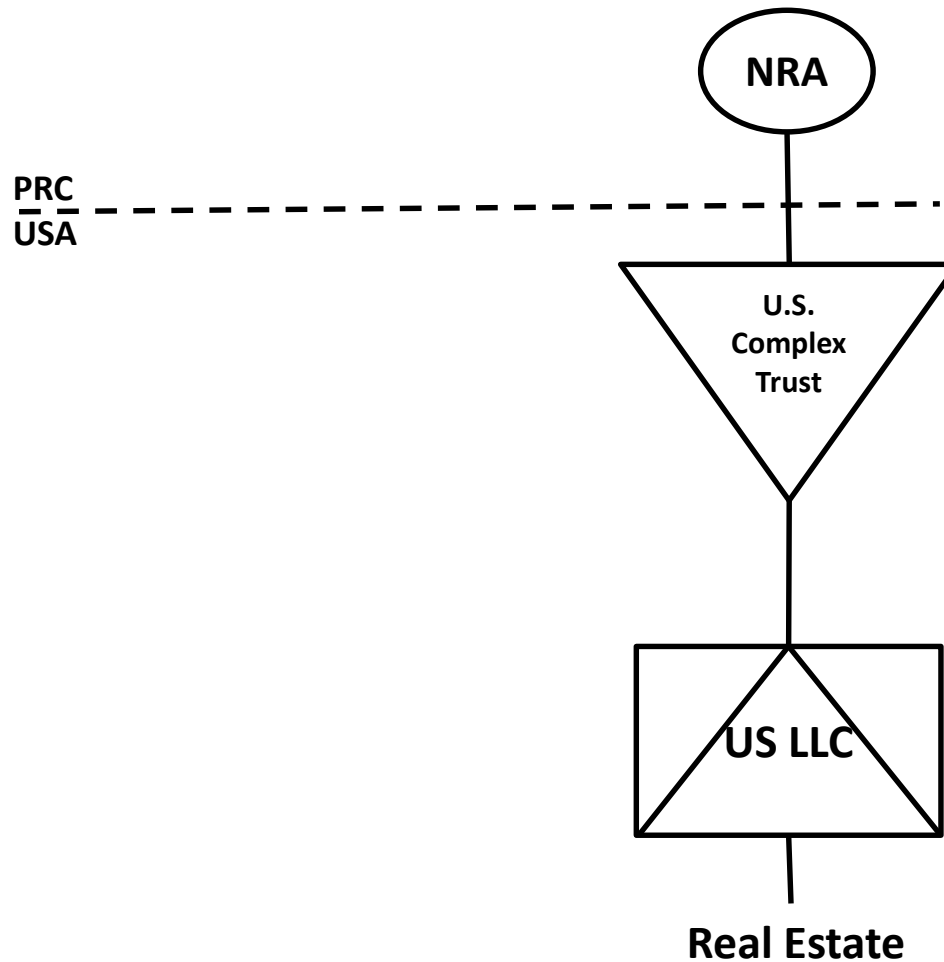
## Advantages:

- US LLC transparent for U.S. tax
- Shares of Chinaco can be sold or transferred without U.S. tax

## Disadvantages:

- U.S. withholding on income allocable to Chinaco
- Chinaco files U.S. tax returns and pays taxes

# Trust Arrangement 信托安排



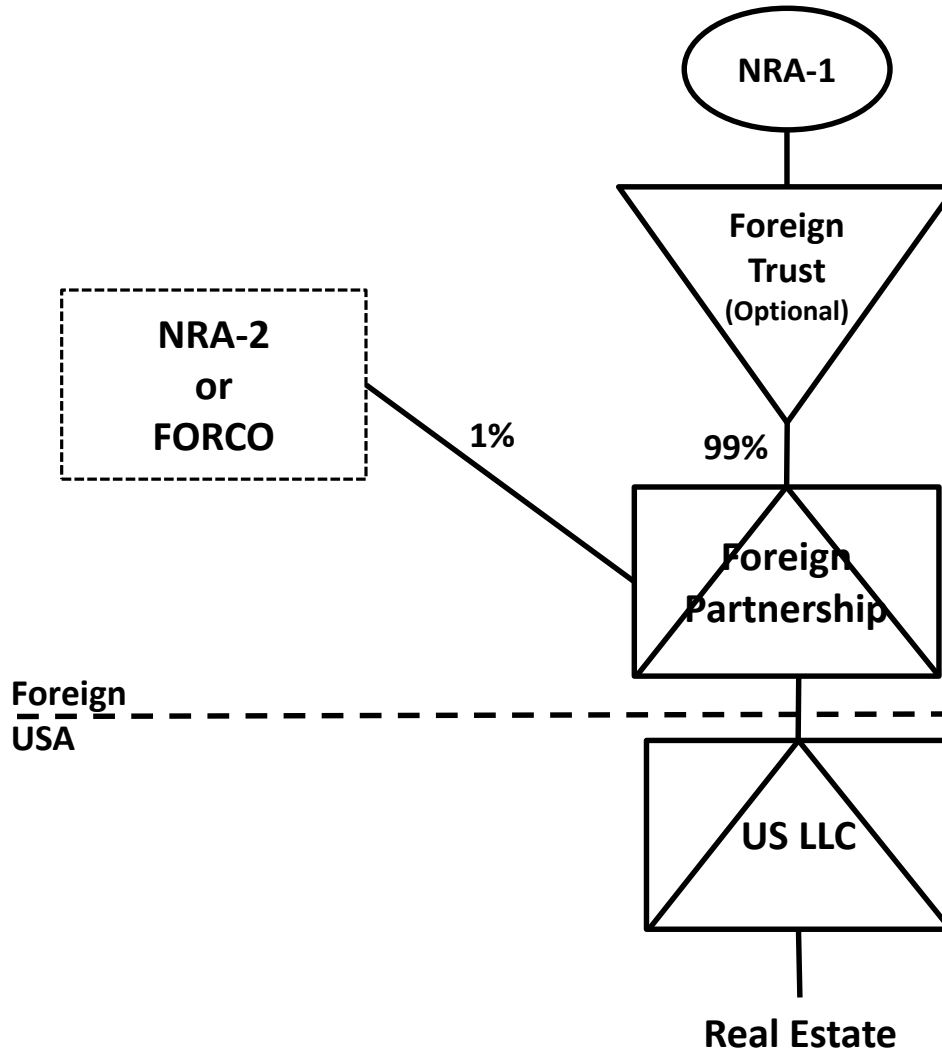
## Advantages:

- No estate tax
- Privacy protection
- Long term capital gains tax available

## Disadvantages:

- U.S. Complex Trust files tax returns and pays tax
- Trustee has fiduciary duties
- Tax consequences to trust beneficiary needs to be carefully planned

# Two-Tier Partnership 双层伙伴关系



## Advantages:

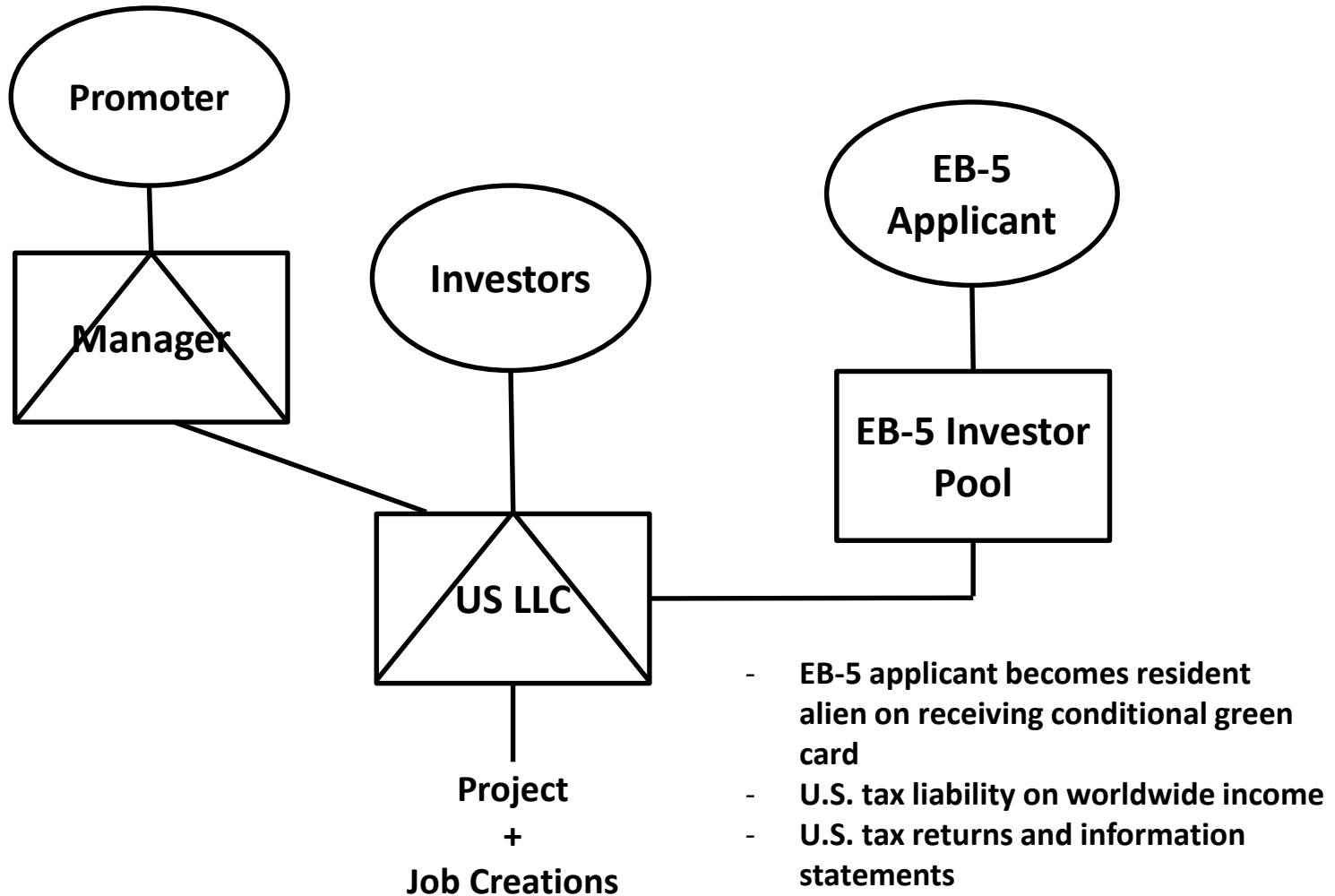
- Single level of U.S. tax
- Credit for U.S. tax withheld by US LLC
- Preferential capital gains rate (20% - 2017)
- Foreign partnership insulates U.S. estate tax
- Privacy protection

## Disadvantages:

- No corporate income tax (2017) on US LLC
- US LLC – withholds ECI allocable to foreign partner(s)
- Foreign Trust (or NRA-1) files U.S. returns and pays tax

# EB-5 Investment Project

## EB-5投资项目



# Investment Via Domestically Controlled REIT

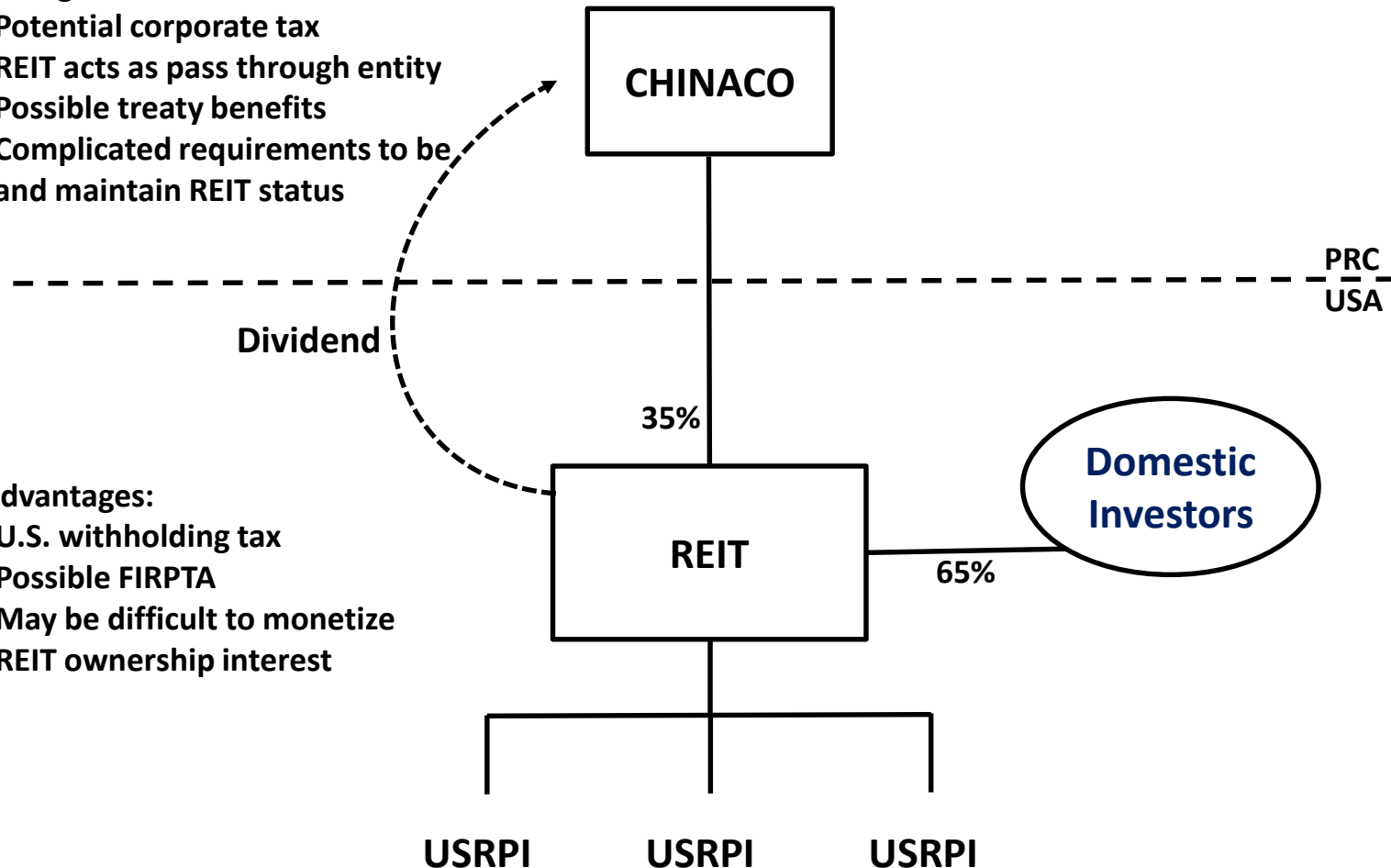
## 国内控制的房地产投资信托的投资

### Advantages:

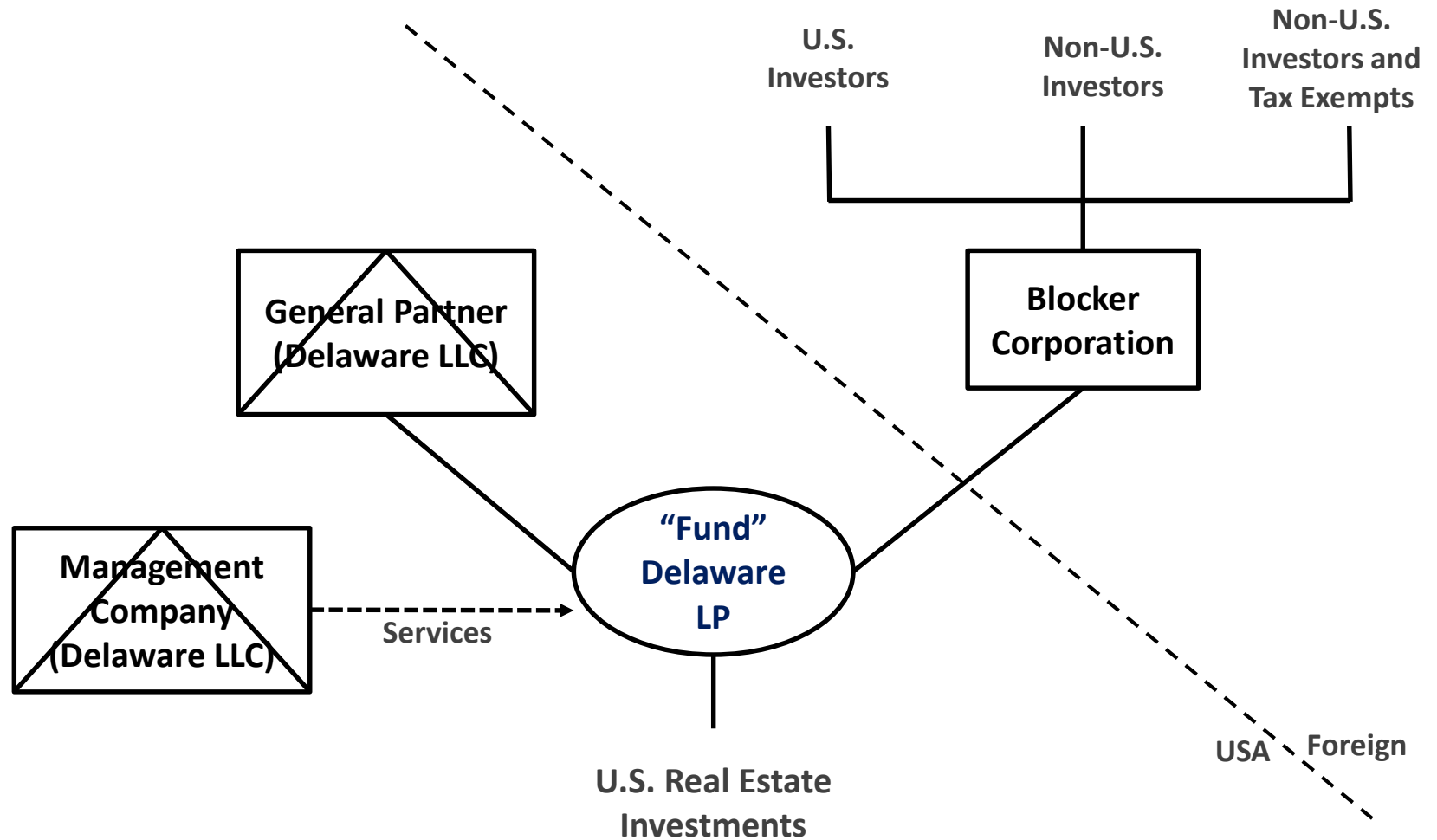
- Potential corporate tax
- REIT acts as pass through entity
- Possible treaty benefits
- Complicated requirements to be and maintain REIT status

### Disadvantages:

- U.S. withholding tax
- Possible FIRPTA
- May be difficult to monetize REIT ownership interest



# Fund Structure 基金构架





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