TAX 101:
TRICKY ISSUES WHEN A NON-U.S. PERSON INVESTS IN AN L.L.C. OR PARTNERSHIP OPERATING IN THE U.S.

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INTRODUCTION

A U.S. L.L.C. is usually treated as a partnership for U.S. Federal income tax purposes.[1]

Generally, a partnership is treated as an aggregation of its partners, meaning a flow-through treatment applies as to the partnership's income. However, for certain purposes, a partnership is treated as a separate entity from its partners, treated as if it were a corporation.

As a result of this inconsistency, various complicated and somewhat counterintuitive tax consequences may arise from the acquisition or the disposition of interests in a U.S. L.L.C. by a foreign member.

This article is intended to introduce the reader to two partnership concepts that are often encountered when a non-U.S. person invests in a U.S. partnership that engages in a U.S. trade or business.

- The first relates to withholding tax exposure when a foreign person sells an interest in a U.S. partnership or L.L.C. and encounters Code §1446(f) withholding tax. For various reasons, the withholding tax may have no connection to the ultimate tax on the gain.
- The second involves U.S. tax accounting for partnerships that take in additional members after operations have been conducted for several years. The new members may invest directly in the partnership or they may acquire a partnership interest by purchase from an existing member.

Often, the concepts are not well understood by foreign corporations and individuals who are first time investors in U.S. partnerships and L.L.C.'s.

In the balance of this article, we will assume that the form of the entity is a U.S. L.L.C. which defaults to a partnership for U.S. income tax purposes.

WITHHOLDING TAX ON A SALE OF AN L.L.C. INTEREST BY A FOREIGN MEMBER

It is not unusual for a non-U.S. investor to own units in a U.S. L.L.C. For purposes of the discussion in this section, assume two foreign corporations, A and B, and that

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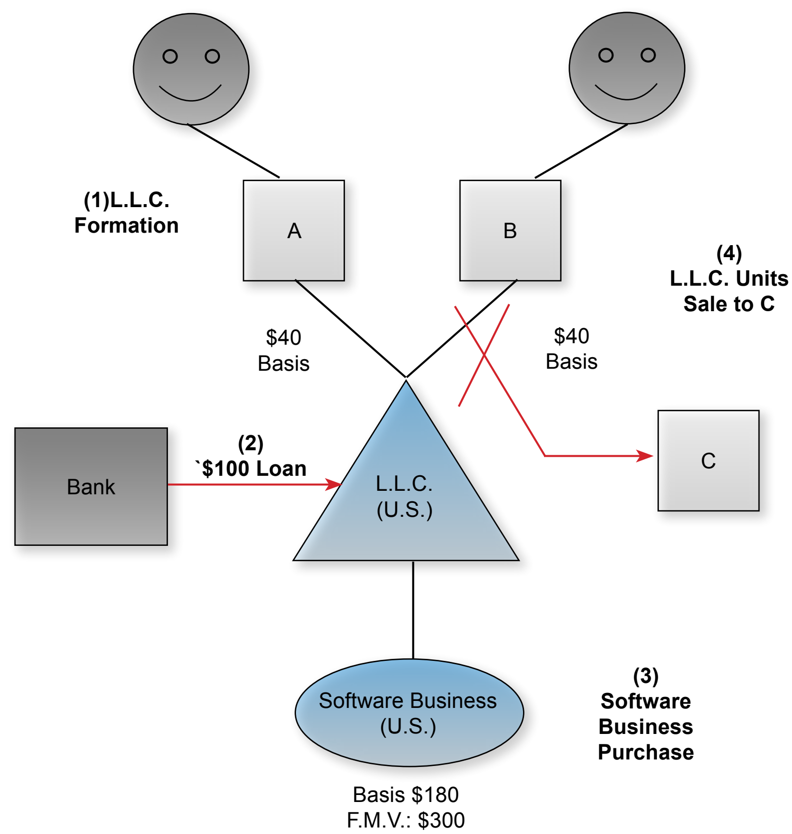
[1] Nonetheless, each may elect to be as an entity for U.S. income tax purposes that is separate from its owners.

each is owned by individuals who are neither tax resident the U.S. nor citizens of the U.S. ("N.R.N.C.").

A and B form a U.S. L.L.C. ("L.L.C."), with each contributing $40 in return for a 50% interest in capital, profits and losses. See item (1) in Example A below. The L.L.C. then borrows $100 from a bank under terms that provide no recourse to the members in the event of a default and are not guaranteed by any of the members.[2] See item (2) in Example A below. Pursuant to the contribution and the loan, the L.L.C. holds cash in the amount of $180.

The L.L.C. uses its cash to purchase a U.S. software engineering business for $180. See item (3) in the Example A below. When the fair market value ("F.M.V.") of the software business reaches $300, B sells its units in the L.L.C. to U.S. investor "C" for $150. See item (4) in the Example A below. The L.L.C. has no other assets, the L.L.C. has no losses, all profits are distributed in full to A and B, and 0% Branch Profits Tax is imposed by reason of an applicable income tax treaty.

Example A



2 If the L.L.C. is debt-financed, the allocation of portions of the debt to the members of the L.L.C. depends on the particular facts related to the partnership and the loan. The allocation of debt amongst the members of an L.L.C. or partnership is beyond the scope of this article.

B's Basis in the Units of the L.L.C.

Even though B invested only $40 in the L.L.C., B's basis in the units is $90. For U.S. income tax purposes, B's basis is comprised of the investment of $40 made at the time of the formation of the L.L.C. plus B's share of the L.L.C.'s liability arising from the $100 bank loan ($100 x 50% = $50) loan.[3]

> ***"The key questions are (i) whether gain arising from B's sale of L.L.C.'s units is U.S. source income, and if so, (ii) whether the gain should gain treated as effectively connected income."***

Exposure to U.S. Income Tax on Gain From the Sale of a Partnership Interest

The U.S. tax system generally provides that foreign corporations and N.R.N.C. individuals generally are subject to tax only on income and certain gains derived from sources within the U.S.[4]

The key questions are (i) whether gain arising from B's sale of L.L.C.'s units is U.S. source income, and if so, (ii) whether the gain should be treated as effectively connected income ("E.C.I."). E.C.I. is the domestic law equivalent of "business profits" when applying an income tax treaty.

The general source of income rules under Code §865(a) provides that income and gain arising from the sale of personal property by a foreign corporation or N.R.N.C. individual will be treated as foreign-source income. Under the general rule, the sale of L.L.C's units by B, an N.R.N.C. individual, should give rise to foreign source income.[5] This was the holding in *Grecian Magnesite v. Commr*.[6] The holding in the case was legislatively reversed on a go-forward basis by the Tax Cuts and Jobs Act, which enacted Code §864(c)(8).[7]

Code 864(c)(8) provides that all or a portion of the gain recognized in connection with a sale of an interest in an L.L.C. is treated E.C.I. when the L.L.C. is engaged in a trade or business in the U.S. The portion of the gain treated as E.C.I. is equal to the selling member's distributive share of the amount of gain that would have been E.C.I. had the L.L.C. sold all of its assets at fair market value as of the date of the sale or exchange of the interest in the L.L.C.[8]

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3 Code §§ 722 and 752(a).

4 Code §§871, 872, 881, 882. As an exception, limited categories of foreign source income can be treated as income that is effectively connected with the conduct of trade or business in the U.S. Foreign source income may be categorized as E.C.I. if a business is conducted in the U.S. through a fixed place of business and the income arises from one of three categories of activity, including (i) rents or royalties for the use of intangible property, (ii) dividends, interest, guarantee fees derived in the active conduct of a banking or financing business, and (iii) sales of inventory where a U.S. office materially participates in arranging the sale. See Code §864(c)(4).

5 Treating the units of the L.L.C as a separate asset reflects the theoretical approach that an L.L.C. is an entity separate from its partners. It can sign contracts, own property, sue, and be sued, doing each in its name.

6 *Grecian Magnesite Mining v. Commr.,* 149 T.C. 63, (2017), aff'd, 926 F.3d 819 (D.C. Cir. 2019).

7 Pub. L. No. 115-97, §13501. See also Rev. Rul. 91-32.

8 General guidance appears in Treas. Reg. §1.864(c)(8)-1.

Computation of Withholding Tax to be Collected by the Purchaser

Pursuant to Code §1446(f)(1)(a), any gain on the sale of an L.L.C. interest that is treated as E.C.I. under Code §864(c)(8) generally is subject to U.S. withholding tax at the rate of 10% of the amount realized by B.

Two important remarks should be made on this point. First, the amount realized on the sale includes not only the money received by B as consideration for the L.L.C.'s units, but also

- the F.M.V. of any property received by B, plus
- all liabilities of B that are assumed by the purchaser, plus
- the amount by which B's share of L.L.C. liabilities are reduced as a result of the sale.[9]

In the example above, the amount realized by B on its sale of the units includes not only the $150 in cash or its equivalent received as consideration for the L.L.C.'s units, but also $50, which represents B's share of the L.L.C.'s liabilities to the bank that was fully reduced pursuant to the sale. Because B 's cost basis in the L.L.C. units was increased to reflect its share of the underlying bank borrowing, it is consistent to increase the amount realized from the sale to reflect the reduction in that share by reason of the sale of the L.L.C. units. Therefore, the amount realized is $200 and the withholding tax is $20.

Second, since the withholding tax of 10% is levied on the amount realized and not on the net gain, neither basis nor expenses incurred in arranging the sale should be taken into account in computing the purchaser's withholding tax liability. Moreover, while Code §864(c)(8) applies only to a portion of the gain, as explained above, Code §1446(f)(a) applies to the entire consideration involved in the transaction, not just the gain recognized.

Consequently, the tax base for computing the withholding tax could be significantly higher than the tax base for computing the ultimate tax liability. In some cases, this results in a withholding tax greater than the actual U.S. tax liability, even though the rate of withholding tax (10%) is lower than tax rate for corporations. In such case, the seller is required to apply for a refund, assuming exceptions to withholding tax are not applicable.

For example, had B calculated its gain on the sale of the L.L.C. units, B would take into account a cost basis of $90.[10] Gain is the excess of the "amount realized" over the "adjusted basis."[11] Therefore, B's gain on the sale is expected to be $110. If the L.L.C. conducts an operating business in the U.S., it is likely that all or most of that assets of the L.L.C. will be taken into account.[12] Taking into account a corporate tax rate of 21%, B's U.S. Federal tax liability would have been $23.10 This amount is greater than the withholding tax amount of $20 that was calculated above. The balance must be paid under ordinary payment rules regarding estimated tax.

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9 Treas. Reg. §1.1446(f)-2(c)(2).

10 The sum of the investment of $40 B made on the formation of the L.L.C. and the L.L.C.'s liability B assumed in the amount of $50, is $90. Code §§752(a) and 722.

11 Code §1001(a).

12 *Supra* note 8.

Withholding Tax Obligation of the Purchaser

The purchaser must report and pay the tax withheld within 20 days of the date of sale by filing Form 8288. Typically, reporting and payment is effected immediately after the closing. The form is mailed to the I.R.S. at the following address:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

The withholding agent must also certify to the L.L.C. the extent to which it satisfied its obligations. Residual liability for the withholding tax is imposed on the L.L.C. to collect unpaid withholding tax from future distributions payable to C, the purchaser.

Exceptions That Can Eliminate the Collection of Withholding Tax

Several exceptions exist to eliminate the withholding tax requirement.

First, in appropriate facts and circumstances, a selling-member may be able to provide the purchaser with a certification that the sale would not result in realized gain or that the seller is not required to recognize gain or loss on the sale. Presumably, this certification is applicable when a sale results in a loss.

Second, in appropriate facts and circumstances, a selling-member may be able to provide the purchaser with a certification confirming that (i) the seller was a member throughout the 3-year period preceding the year of the sale, (ii) its share of the L.L.C.'s gross E.C.I. was less than $1.0 million for each taxable year in the 3-year period, (iii) its share of the L.L.C.'s gross E.C.I. was less than 10% of the seller's share of gross income from the L.L.C. for each taxable year within the 3-year period, and (iv) its distributive share of the L.L.C.'s E.C.I. has been timely reported and all tax due was timely paid.

Third, in appropriate facts and circumstances, a selling-member may be able to provide the purchaser with a certification that it is not subject to tax pursuant to an income-tax treaty in effect.

Fourth, a Certification by L.L.C., confirming that (i) the L.L.C. would have no gain that would be E.C.I. on a sale of assets, or (ii) the amount of any E.C.I. would be less than 10% of the total net gain, or (iii) the selling member would not have any distributive share of net gain that would be E.C.I. had the L.L.C. sold its assets, or (iv) the amount of such E.C.I. would be less than 10% of the seller's share of the total net gain of the L.L.C.

It is not likely that any of the exceptions are applicable.

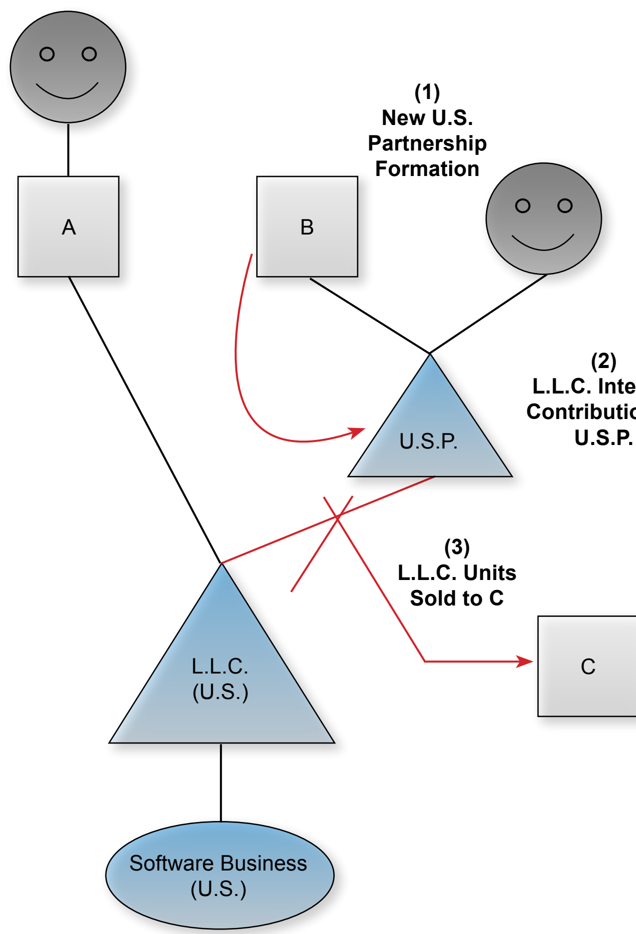
Potential Planning Alternative That May Eliminate the Withholding Tax Obligation Imposed of the Purchaser

In principle, a two-step tax planning alternative may be available to eliminate the withholding tax obligation imposed on the purchaser. Under the two-step plan, the first step is a nonrecognition transaction that makes Code §1446(f) inapplicable to the purchaser, thereby eliminating excess withholding tax for the seller. A withholding tax would still be collected, but it would be partnership withholding under Code §1446(a), calculated on a tax base composed of the net gain recognized rather than the gross amount realized.

Step 1 includes B and a related party, perhaps its foreign owner or a special purpose vehicle ("S.P.V.").[13] They form a new U.S. partnership ("U.S.P."). See item (1) in Example A1, below. B will contribute the interests in L.L.C to U.S.P. and B will certify to U.S.P. that gain is not recognized on the transfer by reason of Code §721, in accordance with Treas. Reg. §1.1446(f)-2(2)(b)(6)). See item (2) in Example A1. For partnership accounting purposes, B's capital account in U.S.P. would be equal to the net F.M.V. of its partnership interest. The second partner would contribute cash or other assets having an F.M.V. that will be equal to the F.M.V. of its partnership interest.

In step 2, U.S.P. sells the L.L.C interest to C, providing the purchaser with a non-foreign affidavit. See item (3) in Example A1.

Example A1



Code §1446(f) is not expected to apply to the transfer of L.L.C. units from B to U.S.P. because such a transfer is eligible for a nonrecognition treatment under Code §721. Code §1446(f) is also not expected to apply to the sale of L.L.C. units by U.S.P. to

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13 The S.P.V. can be a U.S. corporation or a foreign corporation. In broad terms, the choice of entity should not affect the plan. However, the choice has carry-over effects that must be taken into account, such withholding tax collected by U.S.P. and branch profits tax if S.P.V. is a foreign corporation. Those consequence are beyond the scope of this article.

C, because U.S.P. is not a foreign entity. Code § 864(c)(8) is expected to apply to the gain realized by U.S.P. from the sale to C and therefore the gain realized on the sale is expected to be treated as E.C.I. B and its foreign owner (the other U.S.P. partner) both have E.C.I. gain through their distributive share in L.L.C.'s gain. U.S.P. is expected to collect withholding tax for each foreign member's share of E.C.I. gain under Code §1446(a) at highest rate of tax for its members, 37% for individuals and 21% for B. In principle, the second partner of U.S.P. should have relatively little gain. If properly executed, the restructure aligns the amount of withholding tax that must be collected with the final income tax due and payable by the foreign members.

ADMITTING A NEW MEMBER TO THE L.L.C.: CAPITAL ACCOUNT BOOK-UP, BASIS ADJUSTMENTS AND ALLOCATIONS OF GAIN

Overview of the Capital Account Maintenance Rules

The admission of a new member to the L.L.C. generally affects the capital accounts of the members when those accounts are maintained in accordance with U.S. income tax regulations. The result ensures that the appreciation in value of the membership interests prior to the admission of the new member will ultimately be taxed in the hands of those existing members.

An L.L.C., is not a taxpayer under the U.S. Federal income tax system. Rather, its income is determined and calculated at the level of the L.L.C. and then flows through to the members. Those members report their respective distributive shares of income, gains, losses, expenses, and credits, and pay the resulting tax in their individual capacities.[14] Where the members are foreign, the partnership has an obligation to collect quarterly withholding tax on the foreign partner's distributive share of E.C.I.[15]

A principal concern is how to determine each member's share in the L.L.C.'s income, gain or loss. The members are generally free to determine their economic relationship. L.L.C. agreements are negotiated agreements, affording significant flexibility in setting the terms and conditions for sharing revenue and expenses.[16]

However, less flexibility is given when it comes to the allocation of tax items, such as tax basis and taxable income. To prevent shifting of taxable income or loss from one member to another without any effect on cash flow, a complicated set of rules promulgated under Code §704(b) applies to ensure that the taxable income of the L.L.C. is allocated in accordance with the economics of the L.L.C., and not in accordance with tax planning considerations.

I.R.S. regulations generally provide that, for allocations to be respected for income tax purposes, one of three standards must be met:

- The allocation must have substantial economic effect, broadly meaning that it affects cash distributions.

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[14] Code §701.

[15] Code §1446(a).

[16] Code §704(a).

- Taking into account all facts and circumstances, the allocation is in accordance with the member's interest in the L.L.C.
- They follow I.R.S. capital account maintenance regulations so that allocations are deemed to be in accordance with a member's interest (the "Capital Accounts Maintenance Rules").[17]

Very broadly, the capital accounts reflect the members' equity in the L.L.C., which more or less is the excess of the L.L.C.'s assets over the L.L.C.'s liabilities. In comparison to the balance sheet of a corporation, the balance sheet of an L.L.C. lists the capital account of each member separately. Therefore, the balance sheet is used to present each member's ratable share in the L.L.C.'s assets and liabilities. The capital accounts, if maintained correctly, should accurately reflect the financial relationship and the economic agreement among the members.

In general, the assets are reflected in the books at their cost. This is the "book value" of the assets. In the simple case of an L.L.C. formed by cash contributions that are used to purchases assets, the book value would also reflect the basis in the assets for tax purposes. However, there are some instances when the L.L.C. will have a tax basis in its assets which is different from the assets' respective book values ("Tax/Book Disparity"). Some of these instances will be reviewed in the balance of this article. When Tax/Book Disparity occurs, the capital accounts do not reflect the members' real share in the taxable income of the L.L.C. Where that occurs, two separate sets of books must be kept, one for tax purposes and the other for books purposes.

"Very broadly, the capital accounts reflect the members' equity in the L.L.C., which more or less is the excess of the L.L.C.'s assets over the L.L.C.'s liabilities."

In this section, we will address the application the Capital Accounts Maintenance Rules in some of the more common instances when a Tax/Book Disparity exists.

Test Case

For purposes of the discussion in this section, assume that foreign investors A and B form a U.S. L.L.C. ("L.L.C."), with each contributing $40. A and B share the L.L.C.'s profits and losses equally. See item (1) in Example B below. The L.L.C. agreement provides that the I.R.S. capital account maintenance regulations will be followed. In comparison to the facts in Example A, above, L.L.C. purchases a U.S. software engineering business for only $80. See item (2) in Example B. Consequently, it does not take out a loan. After a few years, when the F.M.V. of the software business is $300, B sells her units in the L.L.C. to C for $150. See item (3) in Example B. Soon afterwards, D contributes $150 to the L.L.C. in exchange for newly issued units. See item (4) in Example B. When the F.M.V. of the software business increases to $390, the L.L.C. sells the software business to an unrelated purchaser. See item (5) in Example B.

The L.L.C. has no other assets, no losses, and all profits are distributed in full to the members.

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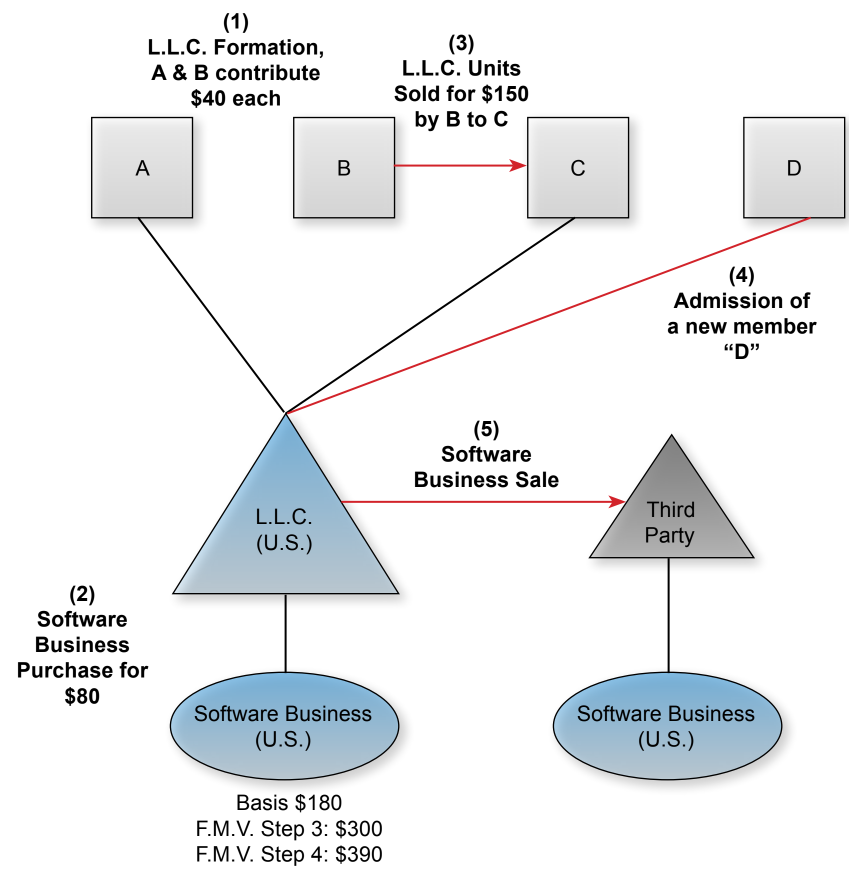
[17] The Capital Account Maintenance Rules are set forth in Treas. Reg. §1.704-1(b)(2)(iv).

Example B



The main question to be analyzed in this case relates to the way the L.L.C.'s gain on the sale of the software business will be allocated among its members, A, C and D. The first step is to determine the capital accounts of each of the L.L.C.'s members.

A's Capital Accounts

Under Code §723, an L.L.C. takes a transferred basis in contributed property. Since A and B contributed cash equal to $80, and since the value of cash also reflects its basis, L.L.C. has total assets having a book value and a tax basis of $80. When the L.L.C. purchases the software business for $80, the L.L.C. still has an asset with a book value and a tax basis of $80.

Pursuant to the agreement between A and B, A's share in the L.L.C. was exactly 50%. Therefore, A's tax capital account is $40 and his book capital account is $40.

Also relevant to this discussion is the rule under Code §722, which provides that a member's basis in the L.L.C. interest (the "outside basis") is equal to the amount of the contribution made by the member. Since A contributes $40 to L.L.C., her basis in the L.L.C.'s interest is $40. Because no debt exists in the L.L.C., A's basis is not affected by any share of debt.

Effect of Purchase on Basis in L.L.C. Assets and Purchaser's Capital Accounts

C purchases her interests in the L.L.C. from B and makes no further contribution to L.L.C. Generally, the basis that is maintained in property owned by an L.L.C. is not adjusted as a result of a transfer of an interest in the L.L.C. by an existing member to another person in a sale or exchange.[18] However, an election can be made by the L.L.C. to step-up the basis in its assets solely to reflect the purchase price paid by the new member for purposes of determining her share of partnership taxable income.[19]

As previously mentioned,, A's tax capital account is $40 and her book capital account is $40, also. Since B was an equal member that contributed exactly the same amount to the L.L.C., B similarly had a tax capital account and a book capital account of $40. As a result of the sale to C, the same tax and book capital accounts of $40 are attributed to C.

However, C paid B $150 for the L.L.C. interest. C's capital account of $40 does not reflect the premium paid by C. As a result, when the L.L.C. sells its assets and gain is allocated to C, C is expected to be overtaxed because the inside basis in the business assets does not reflect the F.M.V. paid by C for the units. To illustrate, assume a sale of the L.L.C.'s assets for $300, effected prior to the admittance of D as a member of the L.L.C. The L.L.C.'s gain on the assumed sale is $220 (the excess of the amount realized of $300 over the basis of $80). C's share of the gain would be $110 (50% of $220). As a result, C will report a gain of $110 in her tax return even though C paid $150 for the units in the L.L.C., and B previously recognized gain of $110 on the sale of those units. Nonetheless, C realize no economic gain.

As a matter of fact, the transaction described above will create a potential built-in loss for C's interests in the L.L.C. This arises because the allocation of $110 of income to C causes her outside basis in the L.L.C. units to be increased by $110. C's outside basis is now $260.[20] Since the F.M.V. of the L.L.C. units remains $150, C will have a built-in loss of $110 (the excess of $260 over $110).[21] In principle, that loss should be available at such time as C's interest in the L.L.C. is disposed of, which may not be in the same year as the sale of the L.L.C.'s assets.

In order to eliminate the mismatch between the outside basis in the L.L.C. units and the inside basis in the assets owned by the L.L.C., the L.L.C. may elect[22] to increase the basis of its assets pursuant to Code §743(b) solely as to C. In this way, the premium paid for the L.L.C. units (in this case, $110) is pushed down to C's share of the assets owned by the L.L.C. without affecting other members. As a result, for C, the gain resulting from the sale will be reduced by the premium paid for the units acquired from B.

The adjustment will not be reflected in the L.L.C.'s balance sheet. It will only come into play to determine C's distributive share of the L.L.C.'s income and gains.

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[18] Code §743(a).

[19] Code §754.

[20] Code §705(a)(1).

[21] Note that such built-in loss is a potential tax benefit, if C ever sells her interests in L.L.C.

[22] Code §754.

D's Capital Accounts

On the day of D's admission into the L.L.C., L.L.C.'s sole asset (the software business) is worth $300. That reflects a value of $150 to each of A and C.

Under such circumstances, to become an equal member, D must contribute to L.L.C. the same amount of $150.

Based on Code §723, as explained above, D's tax capital accounts and book capital accounts are $150.

A's and C's Capital Accounts are Adjusted to Reflect D's Admission

As explained above, the book value of assets purchased by an L.L.C. generally is the cost (subject to depreciation where applicable), and no adjustment is usually made when the F.M.V. of the assets is increased or decreased. Therefore, in the simple case, the balance sheet and capital accounts of the L.L.C. and A, C and D would look like this:

Assets		Liabilities & Capital		
	Tax/Book		Liabilities	
Soft. Bus.	$80		0	
Cash	$150	Capital Accounts		Outside Basis
			Tax/Book	
		A	$40	$40
		C	$40	$150
		D	$150	$150

". . . the book value of assets purchased by an L.L.C. generally is the cost (subject to depreciation where applicable), and no adjustment is usually made when the F.M.V. of the assets is increased or decreased."

As an exception to the general rule, the regulations allow the L.L.C. to "book up" the L.L.C.'s assets to their F.M.V on the admission of a new member.[23]

In the example provided above, the book-up will result in an increase of the book value of the software business from its cost amount, $80, to its F.M.V., $300. In addition, the book capital accounts of each of A and C will be increased from $40 to $150. As a result, A's and C's book capital accounts ($150) will no longer match their tax capital account, which will continue to reflect the cost ($40). It is at that point that a Tax/Book Disparity will be created, and separate records will need to be maintained, as illustrated in the following balance sheet:

Assets			Liabilities & Capital			
	Tax	Book		Liabilities		
Soft. Bus.	$80	$300		0		
Cash	$100	$150	Capital Accounts			Outside Basis
				Tax	Book	
			A	$40	$150	$40
			C	$40	$150	$150
			D	$150	$150	$150

[23] Treas. Reg. §1.704-1(b)(2)(iv)(f).

Once the asset book-up is made, the L.L.C.'s books will reflect a gain for book purposes in an amount of $220 (the excess of $300 over $80) with respect to L.L.C., and a corresponding built-in gain of $110 (the excess of $150 over $40) with respect to each of A and C. However, no gain is recognized at this point for tax purposes.

Allocation of L.L.C.'s Gain on the Sale of the Software Business Allocated Among A, C and D for Income Tax Purposes

When the L.L.C sells the software business to a third party for $390, L.L.C.'s taxable gain on the sale will be $310 (the excess of the fair market value of $390 over the basis of $80).

The taxable gain of the L.L.C. will be divided equally among the equal members, with adjustments taking into account the built-in gain accrued in previous years in the software business assets, in the following manner:

- The built-in gain will be allocated only to A and C, the members to whom gain was allocated for book purposes at time of revaluation.[24]
- The L.L.C.'s total built-in gain is $220, and each of A and C will be allocated an equal share, *i.e.*, $110 of the gain.
- The remainder of the gain will be allocated equally among all members. Since the remainder amount is $90 (the excess of the realized gain of $310 over the built-in gain of $220) and each member has equal share, each of A, C and D will be allocated with additional $30.

As a result, A's allocable share of the gain will be $140. C's allocable share of the gain will initially be $140, also. However, as a result of the Code §743(b) Adjustment previously elected, C's share of the gain will be offset by $110 to remain $30. D's allocable share of the gain will be $30.

CONCLUSION

Investing in an L.L.C. or partnership having business operations exposes a foreign person to a set of complex rules that apply at the time of formation, during the life of the investment, and at the time a liquidity event is realized. This article was written as an introduction to those concepts. Real life calculations will be substantially more complex.

[24] See, Code §704(c), Treas. Reg. §1.704-1(b)(2)(iv)(f)(4).