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Virtual **Coffee Talk**

A discussion of the latest tax updates

The Opportunities and Pitfalls of Doing Business in Latin America

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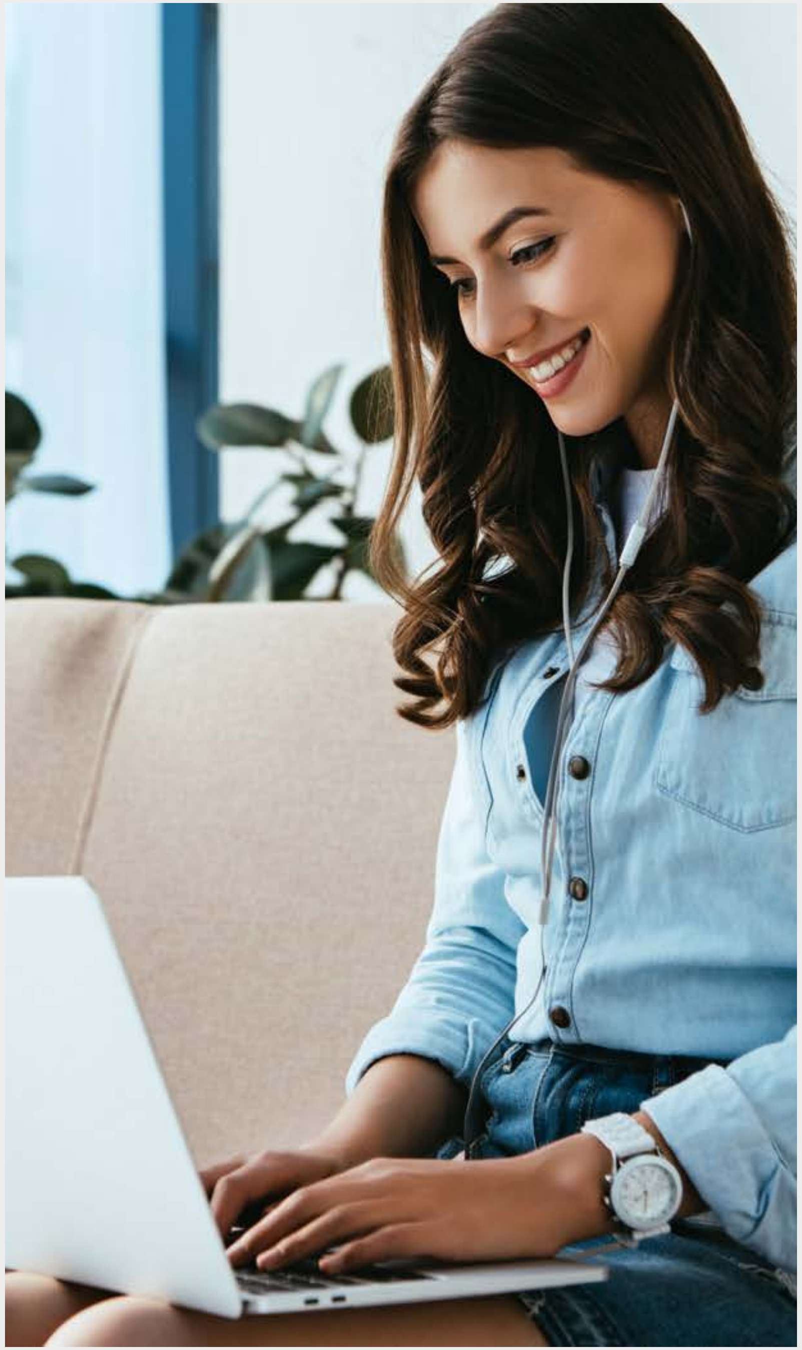

Today’s speakers

Kevin M. Jacobs
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Agenda

- **Acquisition and structuring considerations**
  - Including investment vehicles and debt push down in Latin America
- **Selected U.S. tax considerations while doing business in Latin America**
  - Including potential FTC and PFIC concerns
- **Efficient exiting strategies from Latin America investments**
  - Including non-resident capital gains mitigation

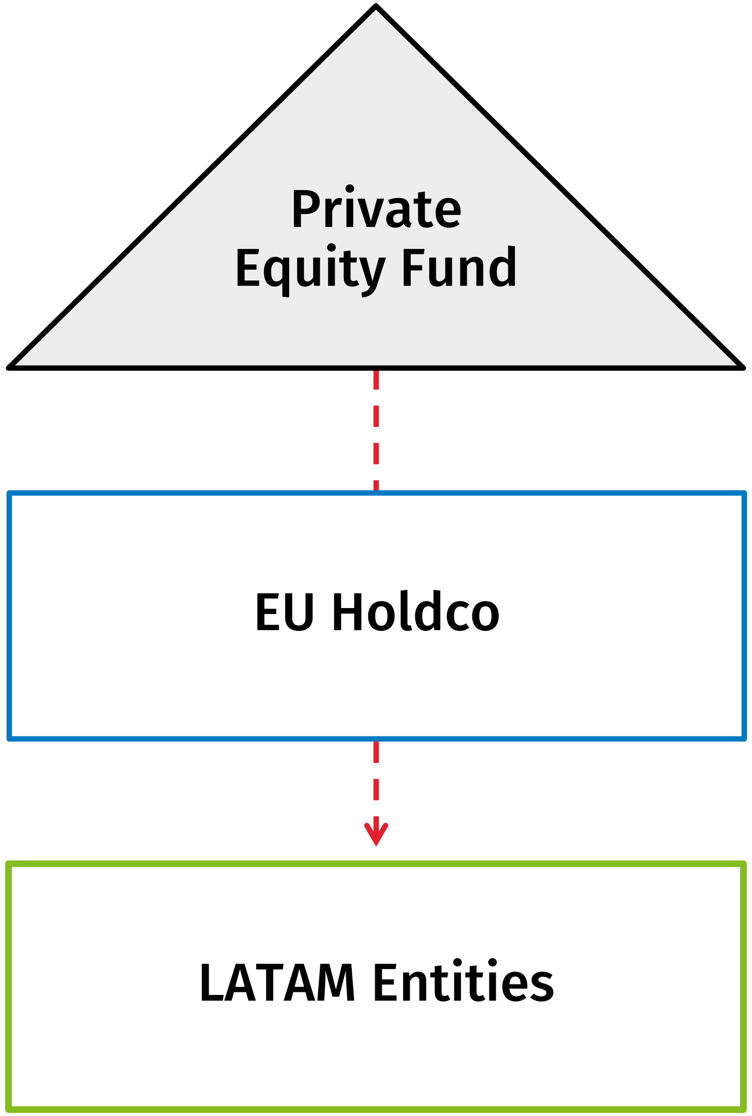
Polling Question #1

Does your company currently operate in Latin America?

- Yes
- No, but my company is currently thinking of doing so
- No
- Not applicable — I am a lawyer, accountant, or consultant

Acquisition and structuring considerations

Common Acquisition Structures into LATAM



Most used jurisdictions:

- NL
- Spain
- UK

In the case of Brazil, a FIP is commonly used

Acquisition Structures, European Holdings

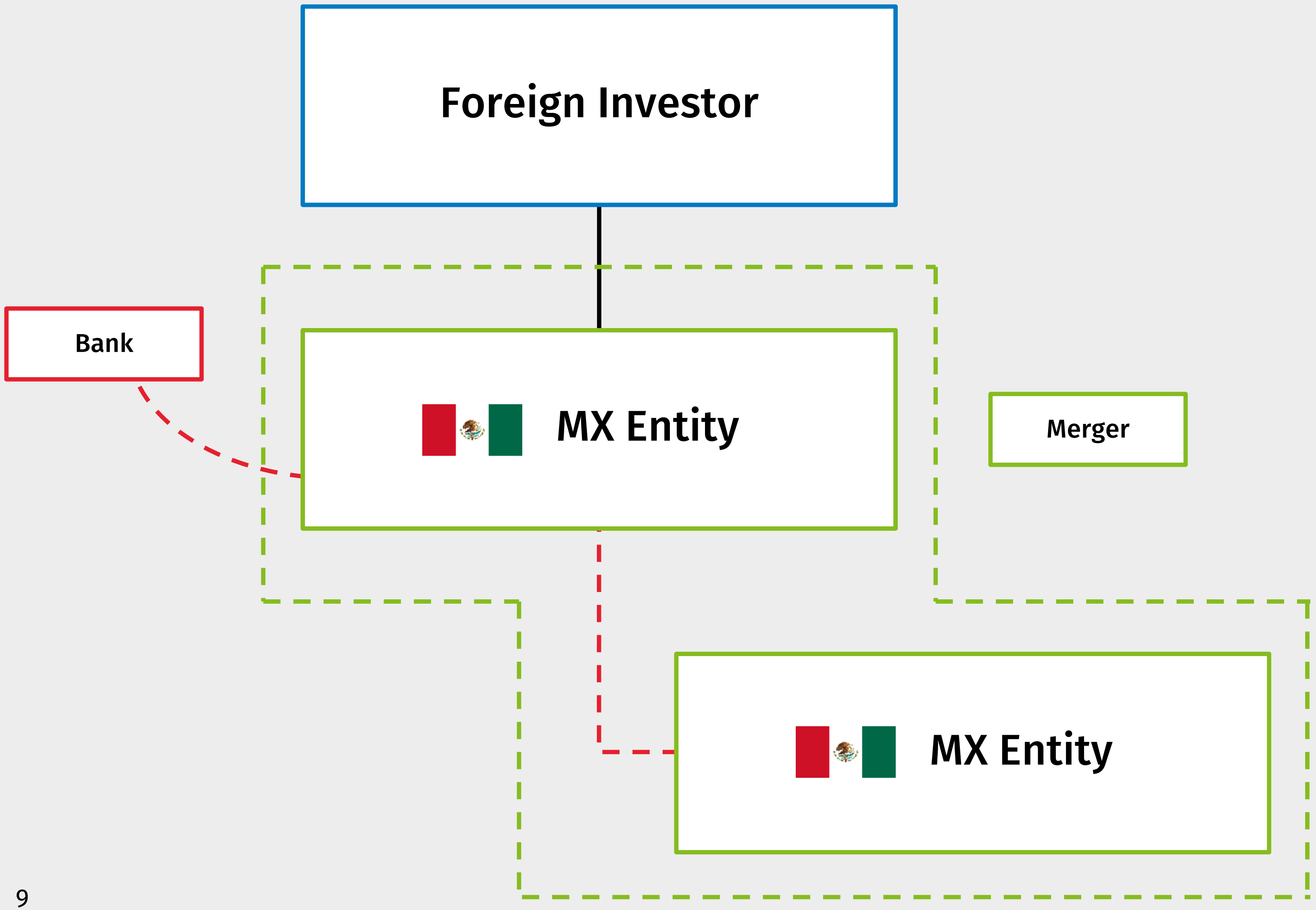
Traditional structures under review and new players

Main considerations:

- New treaties with LATAM
- Domestic law changes
- MLI and Substance requirements (entity/country level)
- Additional (non-tax) benefits BIT

Spain	UK	NL
Partial Participation Exemption	Full Participation Exemption	Full Participation Exemption
* 0% Dividend withholding tax on distribution to shareholder	* 0% Dividend withholding tax on distribution to shareholder	Applicable DTT may reduce domestic withholding tax on dividends
14 Double Tax Treaties in the region	9 Double Tax Treaties in the region	5 Treaties in the region (3 under negotiation)
17 BIT Treaties in the region	18 BIT Treaties in the region	18 BIT Treaties in the region

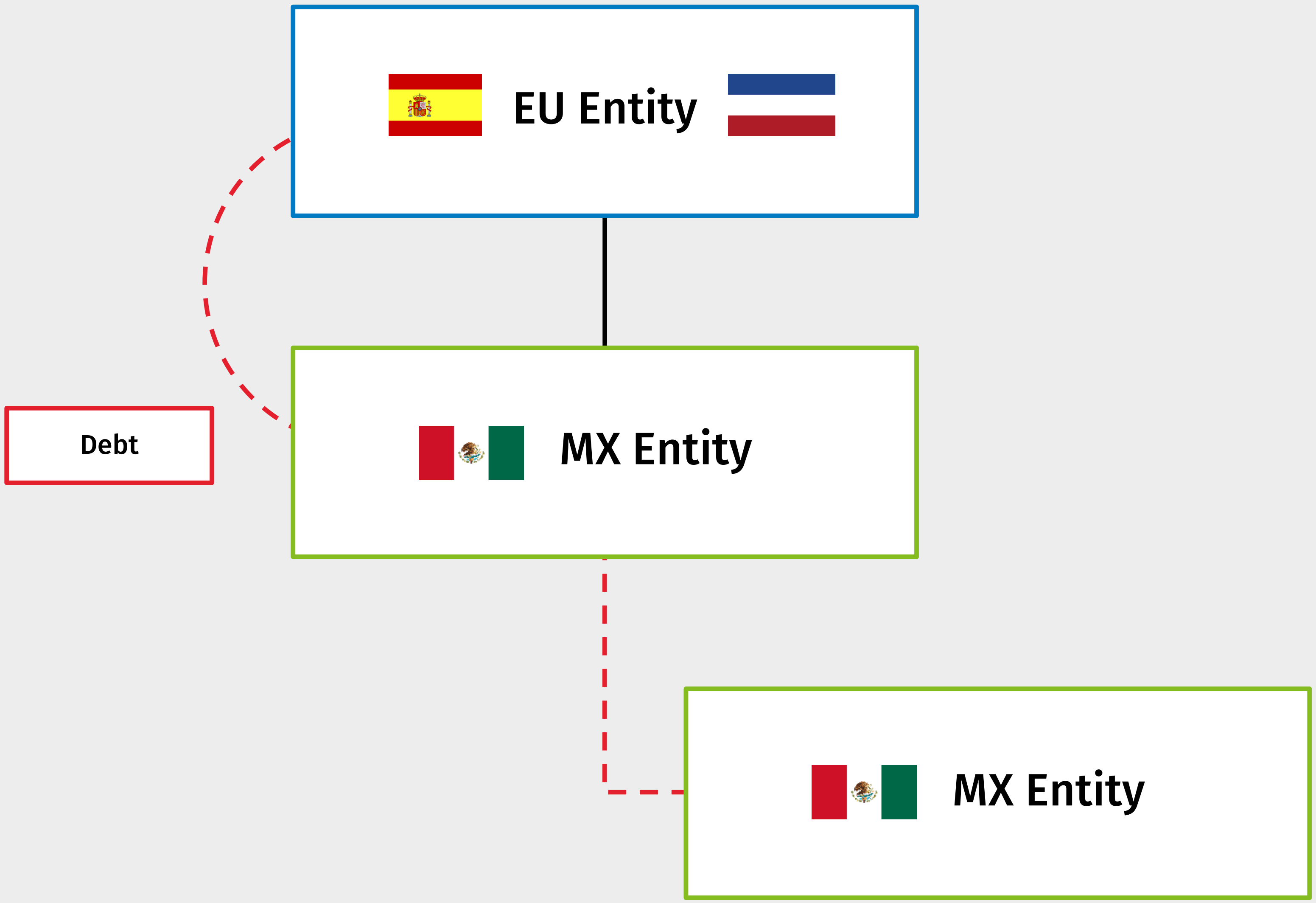
Acquisition structures Mexico Financing



Main Considerations:

- Leverage buyouts only through merger (no consolidation regime in Mexico)
- Interest deduction challenged by Mexican Tax Authorities as expense is not considered as strictly needed for the business (debt to purchase a company's own shares is not "strictly indispensable" for the business).
- Withholding tax considerations in interest payment

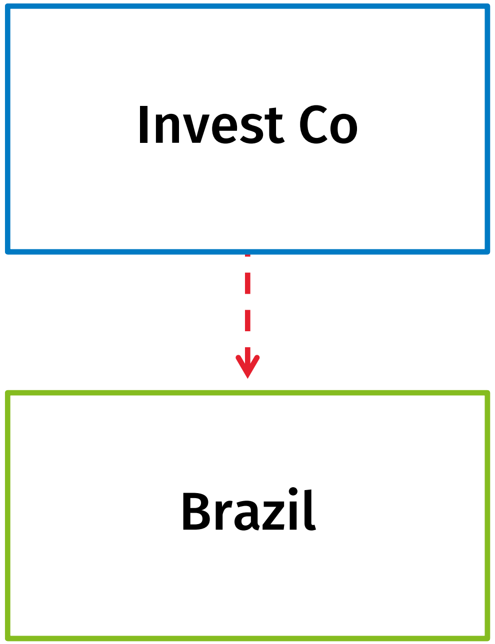
Acquisition structures Mexico Financing



Main Considerations:

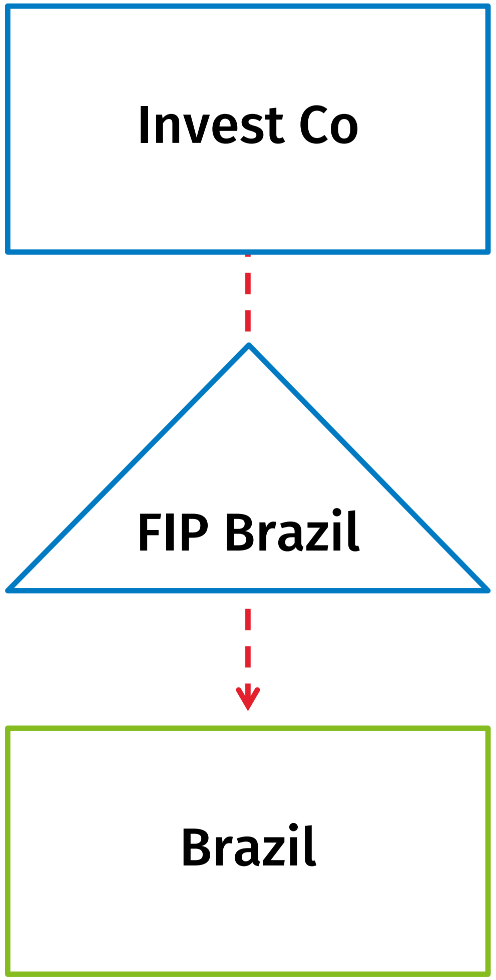
- Favorable treaty application on exit strategies
- Substance requirements at the level of Holdco
- Interest deduction challenged by Mexican Tax Authorities as expense is not considered as strictly needed for the business (debt to purchase a company's own shares is not "strictly indispensable" for the business).
- Withholding tax considerations in interest payment

Common Acquisition Structures in Brazil



Invest Co selling Opco

Progressive Capital Gain from 15 to 22.5% depending on amount. 25% flat rate if Invest Co is resident in a tax haven.



Sell of Invest Co*

Capital Gain 15% pro rata the Value invested in FIP.

Exempt if Invest Co has less than 40% of FIP and not located in Tax haven jurisdiction

IOF zero rated on the outflow of funds from FIP

FIP selling Opco*

FIP is currently tax exempt of capital gains and CIT.

Profit distributions and other payments from FIP to Invest Co may be taxed.

** Draft tax reform under discussion in Brazil may impact FIP taxation*

FTC Considerations — in Mexico

Pursuant to the FTC Regs, Mexico's income tax would need to meet certain tests in order to be considered an "income tax" in the US sense and thus creditable. Specifically, it would need to meet a: (i) Realization Requirement; (ii) Gross Receipts Requirement;(iii) Cost Recovery Requirement and;(iv) an Attribution Requirement.

The Regs provide that a foreign levy treated as an income tax under a DTT is considered an "income tax. Although Mexico has an income tax treaty and thus would obviate the tests above, the treaty cannot be relied for purposes of claiming indirect FTCs in the context of Subpart F or GILTI inclusions.

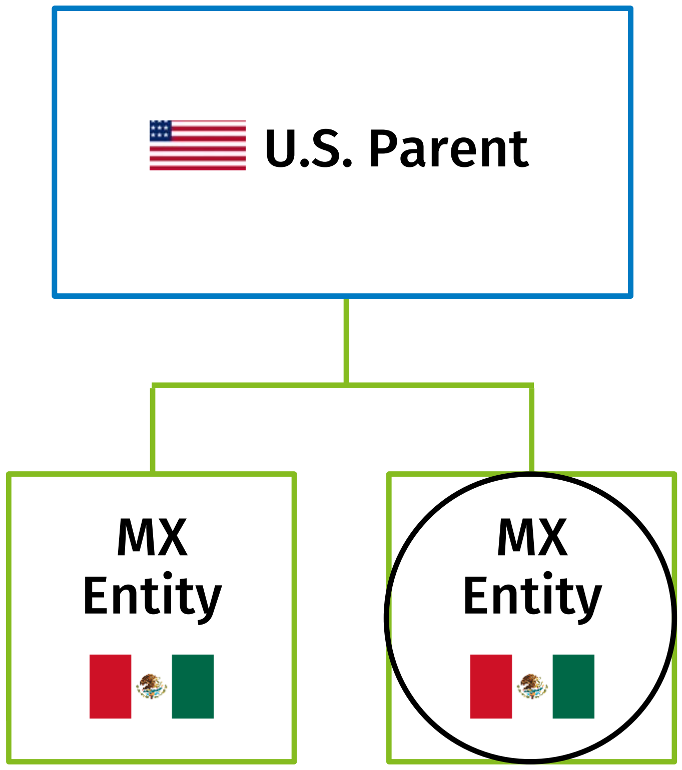
As any other jurisdiction, Mexico has several provisions which differ substantially from other US rules. This would seem to put a premium in operating in branch form out of Mexico by checking open any SRLs.

- Annual Inflationary adjustment — By requiring inclusions or allowing deductions with respect to any inflationary effects on A/P and A/R, seems to be inconsistent with the Realization Requirement as the U.S. does not have a similar standard.

- Goodwill — Since goodwill is not deductible in Mexico (nor is there a provision recognizing tax basis in goodwill) the provision seems to be inconsistent with the Cost Recovery Requirement.

- Undertaxed Payment Rule — Disallows deductions for "significant Cost and Expenses" (i.e., interest, rents, royalties, services and R&E). While the provision is based on BEPS Action 2, it is inconsistent with Section 267A of the IRC. Therefore, may be inconsistent with the Cost Recovery Requirement.

- Thin Cap — Disallows interest expense on related party debt. It may be inconsistent with the Cost Recovery Requirement given that the US does not have thin cap rules.



Polling Question #2

Which provision of the Inflation Reduction Act of 2022 is of most interest to you?

- Excise tax on stock redemptions
- Corporate alternative minimum tax
- Energy tax provisions
- None of the above

Selected U.S. tax considerations while doing business in Latin America

Section 901 Creditable Foreign Taxes — In General

- An income tax must either:
  - Satisfy the net gain requirement, or
  - Be a ‘surtax’ with respect to an amount that qualifies as an income tax.
- Predominant character of an income tax no longer sufficient. Analysis is generally limited to foreign law, not how it tends to apply in practice

Net Gain Requirements **OR** **Surtax**

Realization | **Gross Receipts** | **Cost Recovery** | **Attribution**

Attribution Requirement

- "Jurisdictional nexus requirement" renamed the "attribution requirement" in Final Regulations
  - No longer a separate requirement — now part of net gain requirement
  - Basically requires certain nexus between the income and the taxing jurisdiction
- Separate rules for taxes imposed on nonresidents vs. residents

Residents	Non Residents
Arm's length principle (no destination based criteria)	**Activities** OR **Source** OR **Property Situs**

Attribution Requirement (cont'd)

Arm's length principle
(no destination based criteria)

Residents

- Jurisdictions may tax their residents on a worldwide or territorial basis, as long as they apply arm's length transfer pricing principles, which do not include destination-based criteria.
- Consider the Brazilian corporate income tax, which uses formulary transfer pricing rules.

Covered Withholding Taxes

- **Generally Imposed Net Income Tax —**
  Same foreign country imposes a general income tax that would qualify as creditable
- **Nonresident Gross-Basis Tax —**
  WHT must be a gross-basis tax imposed on non-residents
- **No Duplication —**
  No income tax is imposed with respect to any portion of the tax base of the in lieu of tax
- **Source-Based Attribution —**
  - WHT must be imposed on gross income from gross receipts (other than gross receipts on dispositions of property) that is included in the base of the foreign tax on the basis of source
  - Foreign sourcing rules are reasonably similar to U.S. sourcing rules

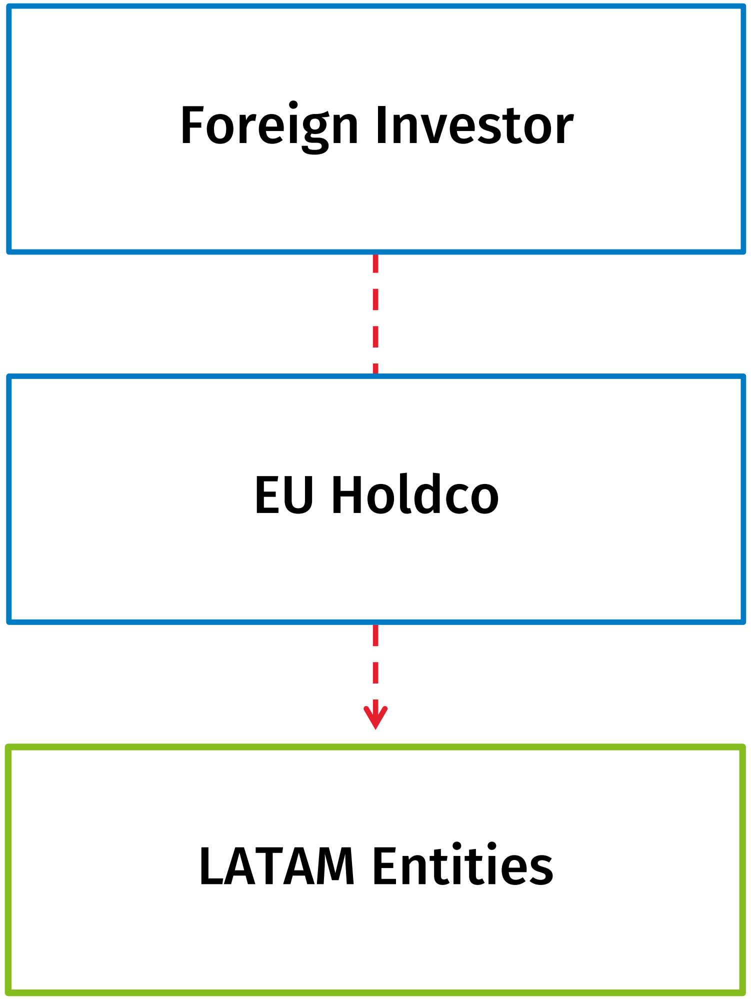
Polling Question #3

Would you like to be contacted by Alvarez & Marsal or Weil Gotshal to further discuss doing business in Latin America?

- Yes
- No

Efficient exiting strategies from Latin America investments

Exit Strategies



Capital Gain —
Treaty Application

- NL — Mexico
- Spain — Mexico, Chile

Other Considerations — Post acquisition structuring

- Supply Chain — LATAM (excl. Brazil)
- Supply Chain — Brazil
- IP Planning — LATAM (excl. Brazil)
- IP Planning — Brazil
- Fx considerations
- Cash Pooling
- Labor considerations