

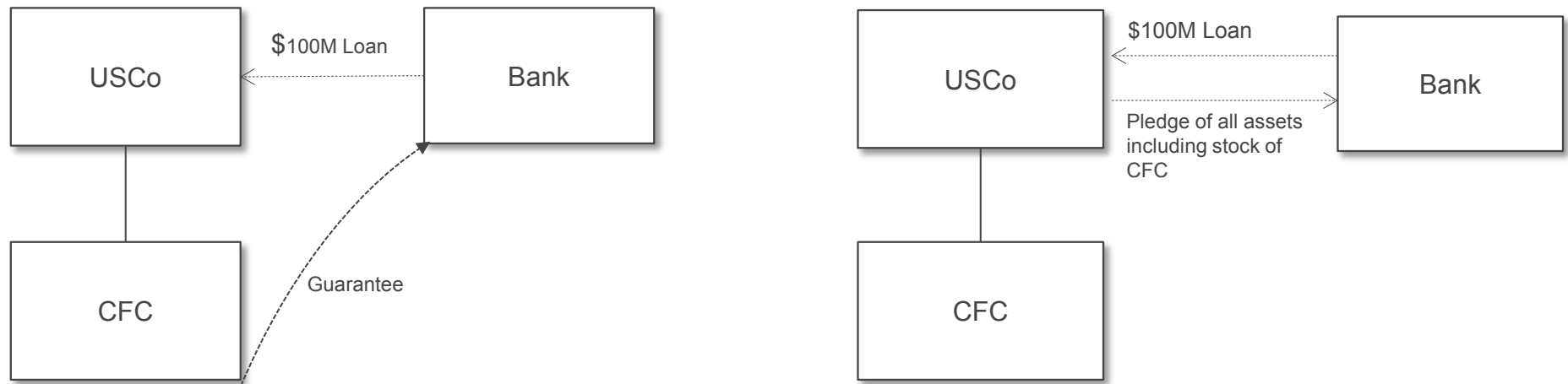
Cross Border Financing Issues After Tax Reform

Presented to the Pepper Hamilton Finance Group
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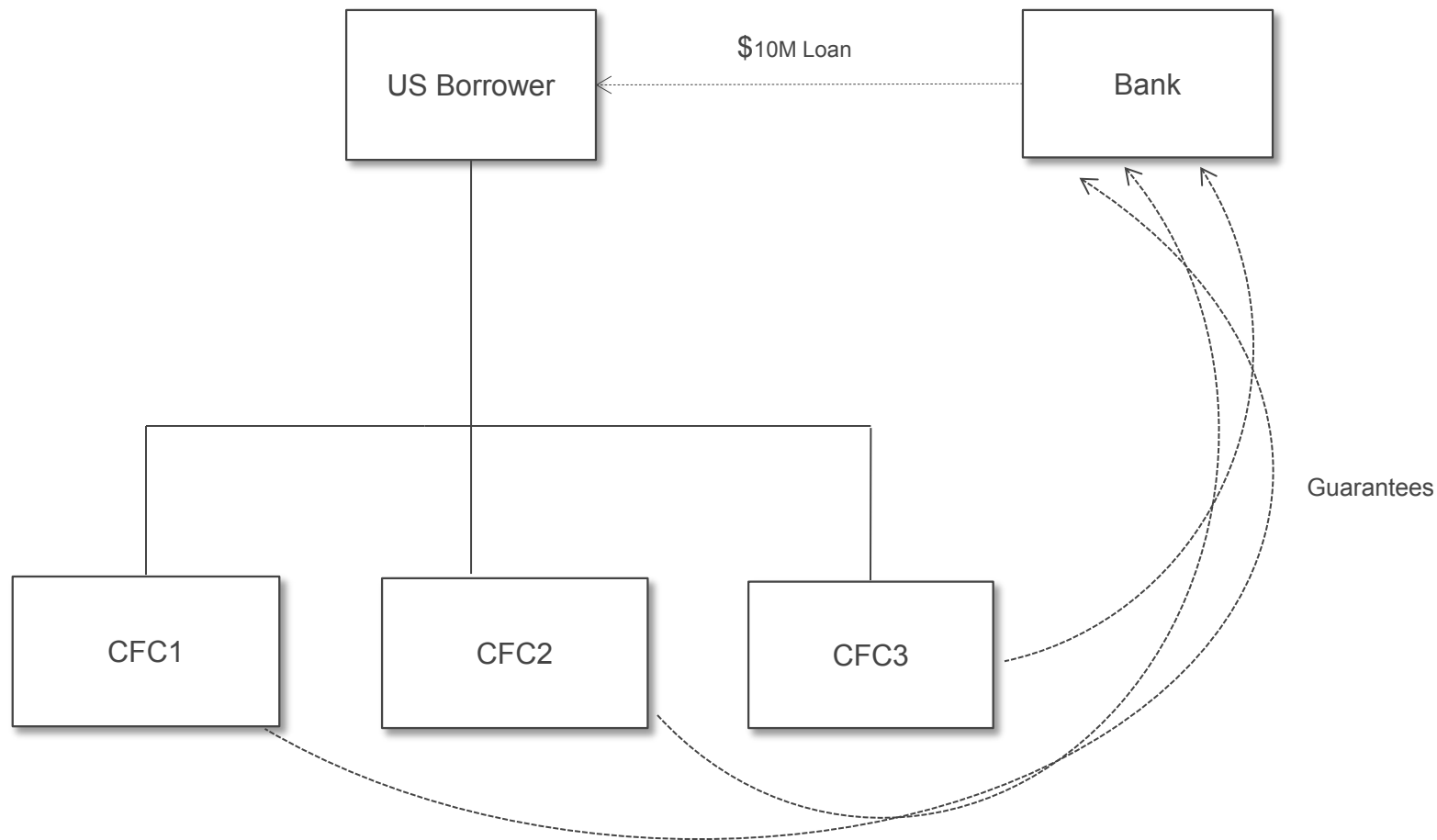
July 19, 2018

CFC Pledges and Guarantees – Pre 2018



- Pledge or guarantee – Deemed distribution of CFC E&P – Like a deemed dividend
- E&P “fills up” amount of debt on which CFC provides guarantee or stock is pledged

Multiple Guarantors



- 2002 FSA – Allocate among guarantors?
- 2015 Preamble – Inclusions may exceed debt
- SIH Partners Case – CFCs and non-CFCs guaranteed debt. Full inclusions w/respect to CFCs

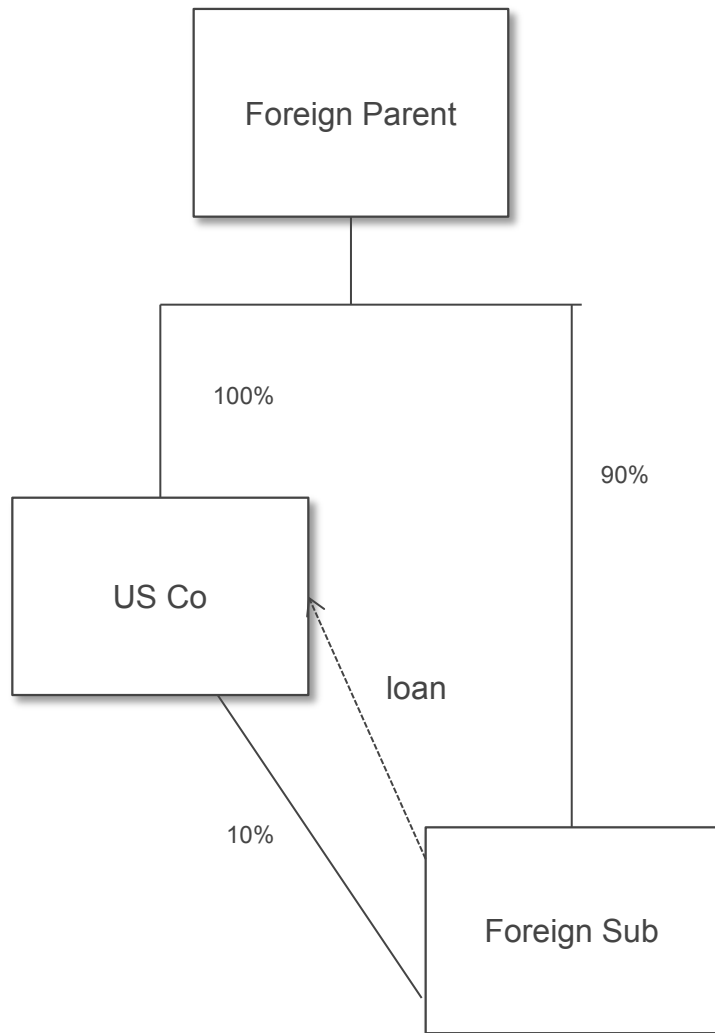
956 Still the Law After 2017

- ▶ Proposals to eliminate 956 inclusion for US corporations (not individual(s))
- ▶ NOT adopted
 - 956 remains in tact

Broader Application of Subpart F (CFC Rules)

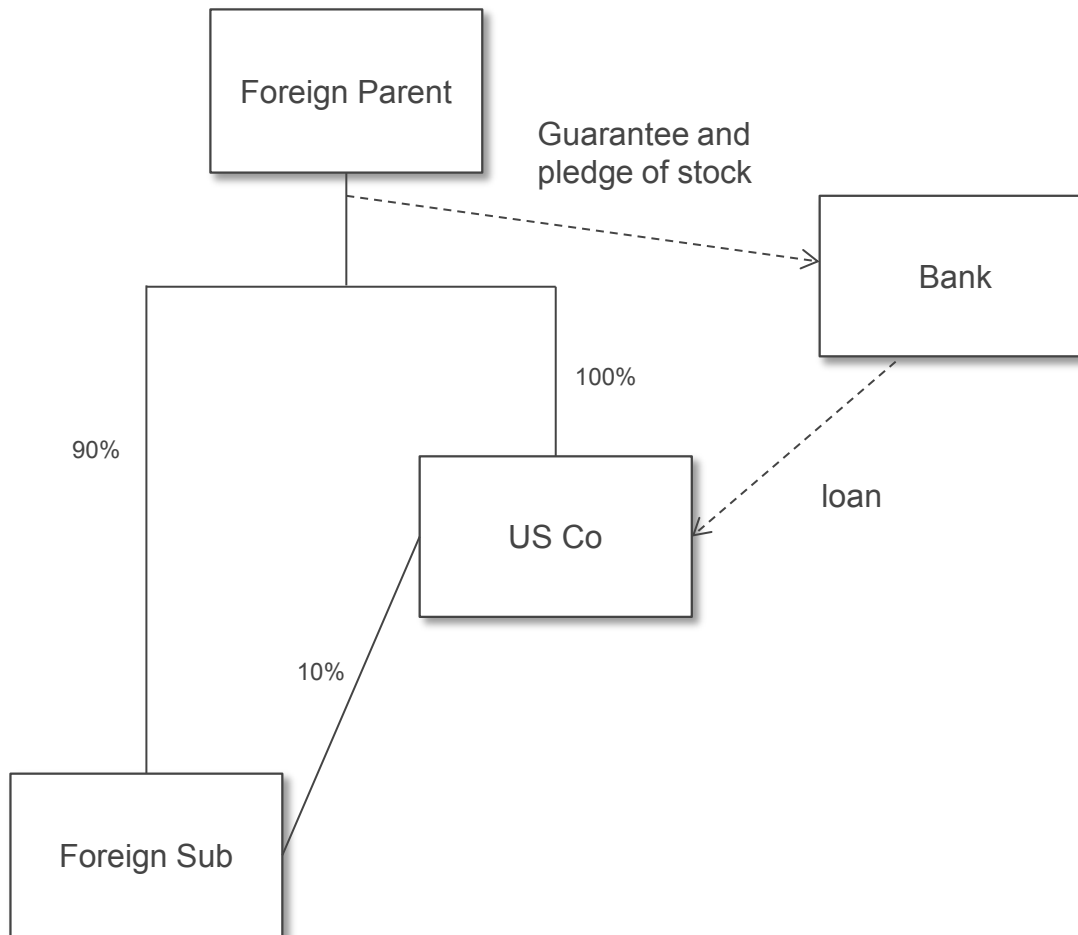
- ▶ Eliminated requirement that the foreign corporation be CFC for at least 30 days
- ▶ 10% shareholder – determined by vote or value (used to be just vote)
- ▶ Attribution from foreign to US persons now required

Extra Diligence Required – Unexpected CFCs



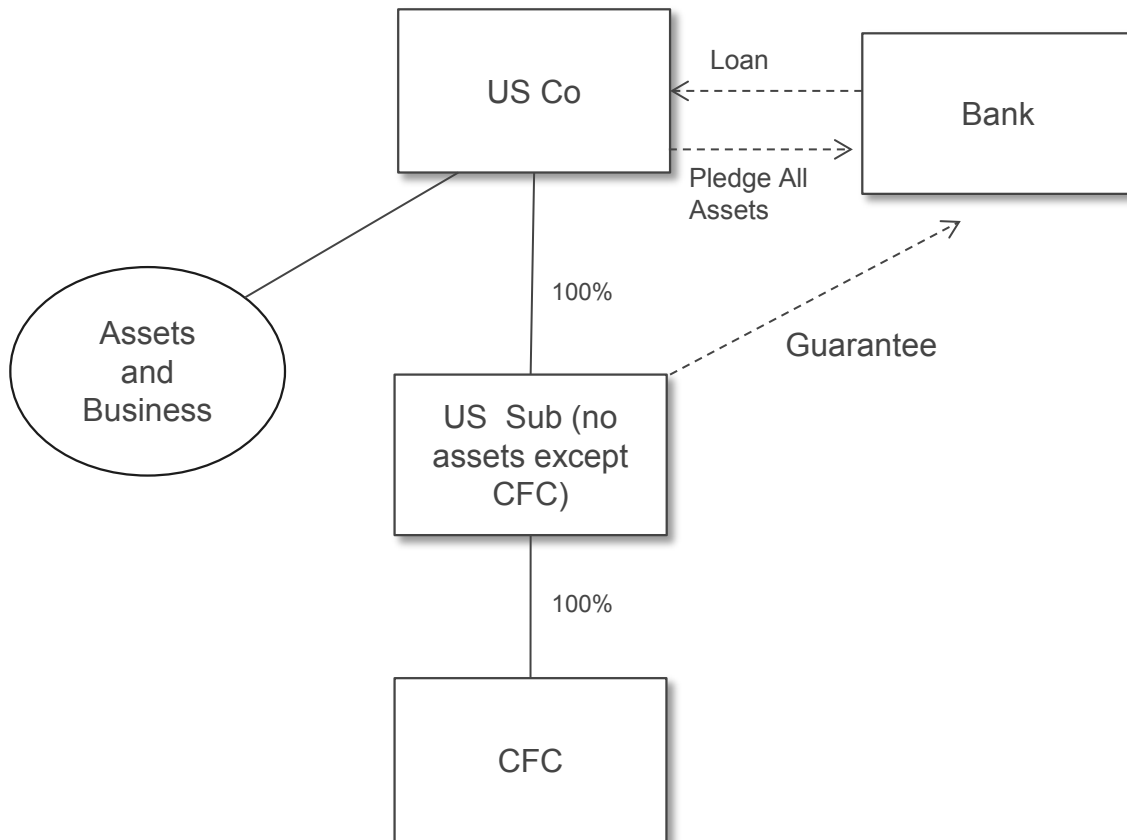
- Pre-2018 – in determining CFC status no attribution from foreign to US person
- Post 2017 – Attribution from foreign to US
 - US Co deemed to own foreign sub
 - Foreign sub = CFC
 - Loan = Investment in US property so 956 applies
 - Interest on loan taxable unless treaty applies (No portfolio interest because Foreign Sub now a CFC)
- Any different if US Co owned no stock?

Extra Diligence Required



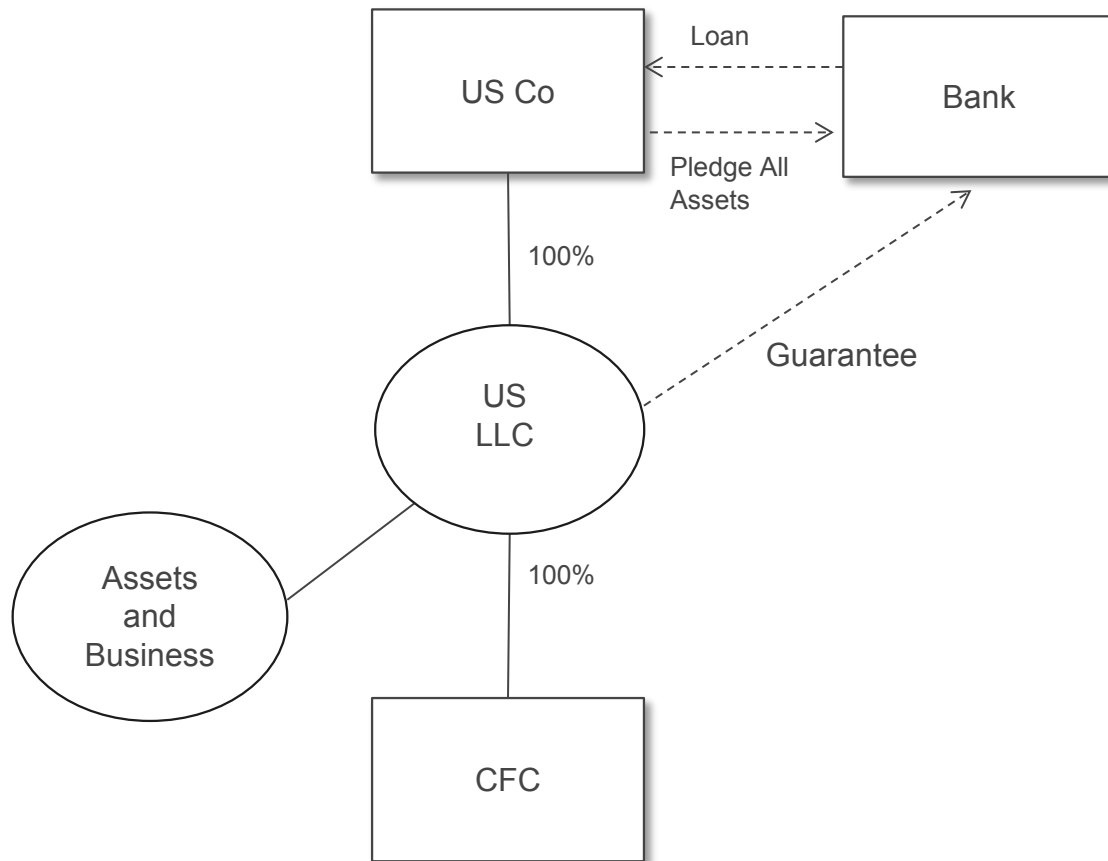
- Foreign Sub is a CFC
- Foreign parent pledged 100% of stock of Foreign Sub
- 956 applies
- Any different if US Co owned no stock?

CFC Holding Company Issue



- US sub's only asset is CFC
- Same as CFC guarantee or pledge?
 - Market position?
 - Pepper position.
- Is it relevant if US Sub is old and cold versus new?

CFC Holding DRE Issue

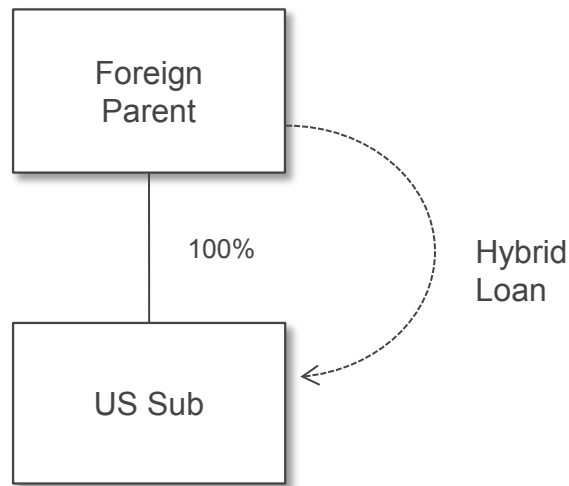


- US LLC has operating business
- Different from CFC holding company issue - US LLC has business and assets
- Treat as direct pledge / 100% of CFC stock since US LLC is disregarded?
- Consider partnership fix!

956 Still the Relevant After GILTI

- ▶ 956 picks up:
 - Pre-1986 E&P
 - Return on tangible property
 - High-tax kickout income

Inbound Hybrid Arrangements

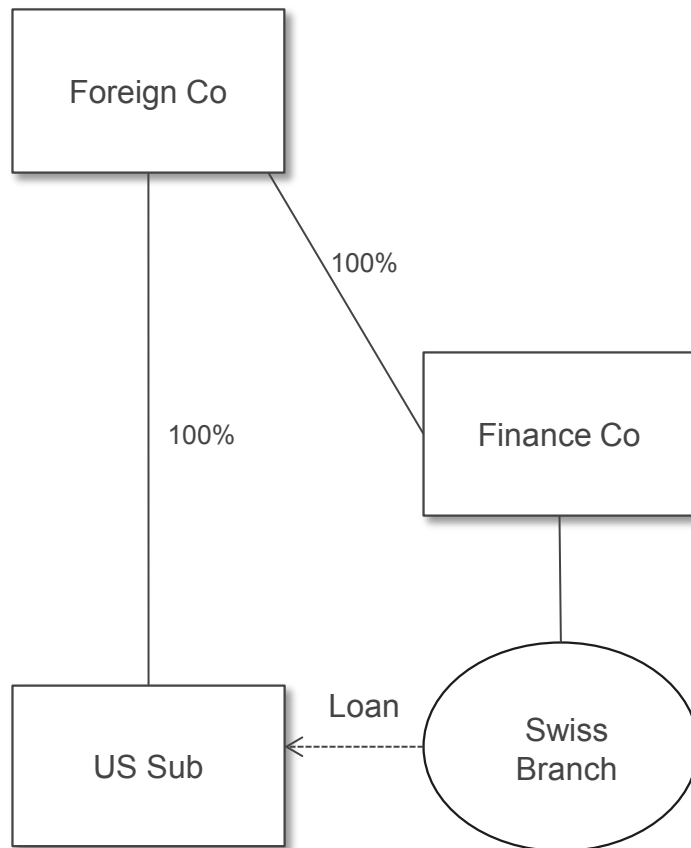


- Foreign Parent lends to US Sub under a loan treated as debt for US tax purposes but equity for foreign purposes
- Pre-2018
 - Interest deductible in US
 - Interest treated as dividend for foreign purposes, possibly exempt under a participation exemption regime

New Law

- Hybrid interest not deductible at all
- Consider converting loans into “plain vanilla” loans
 - Consider whether jurisdiction of Foreign Parent would tax interest on plain vanilla loans

Inbound Hybrid Arrangements



- Foreign Co organizes Finance Co in a favorable treaty jurisdiction. (Assume limitation on benefits clause is satisfied.)
- Finance Co lends to US Sub through a foreign branch
- Interest deducted in US with usually zero withholding tax

New Law

- Anti-hybrid rule applies
- Interest not deductible by US Sub