

US Reorganization

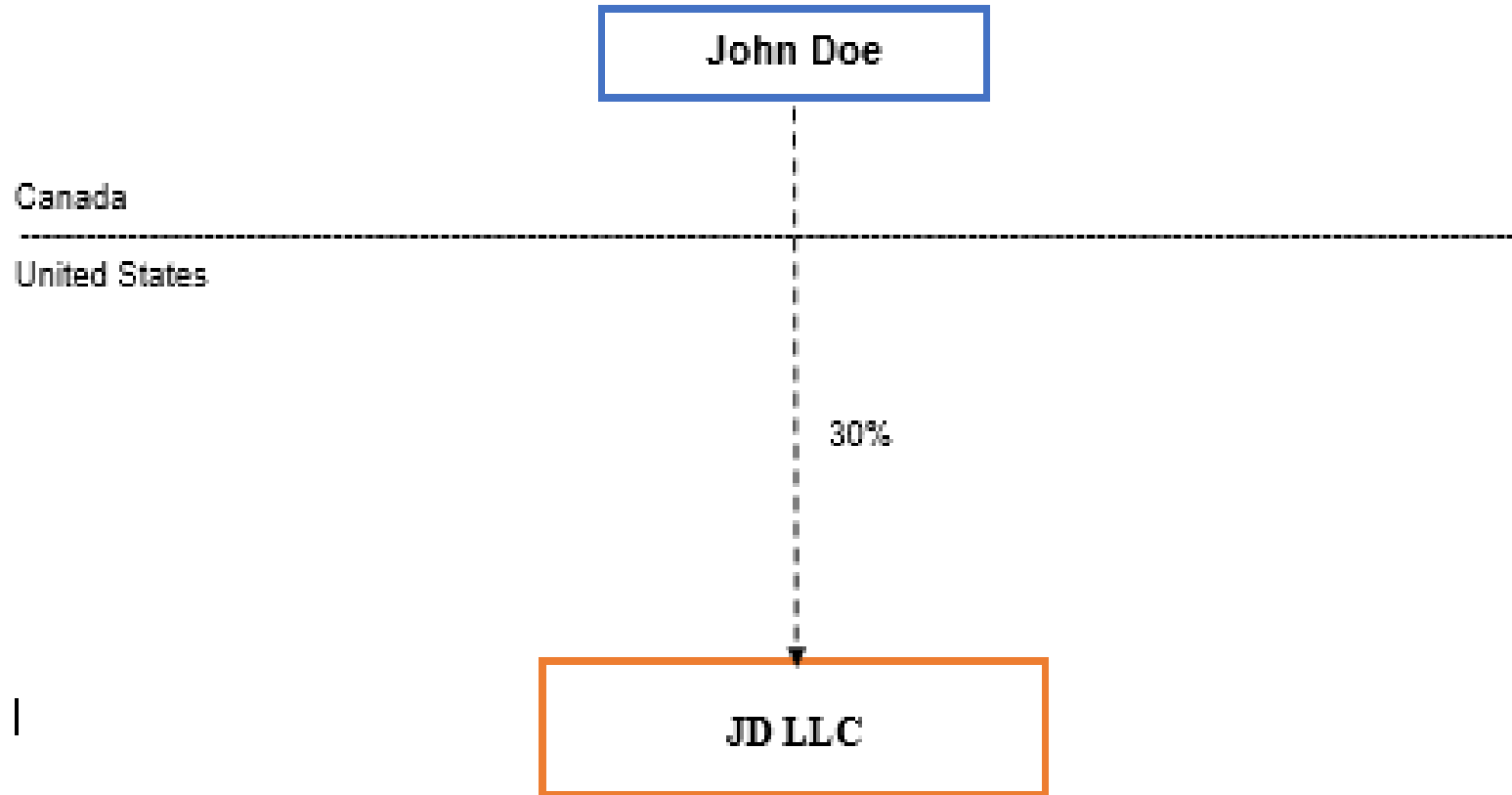
Why do we do US Reorganizations?

- To create a optimum cross boarder business structure that lowers the risk of double taxation.

CASE STUDY

- Client is John Doe
- Resident of Canada
- Owns shares of a US LLC (30% of JD LLC)

CURRENT STRUCTURE



Current Structure: Issues

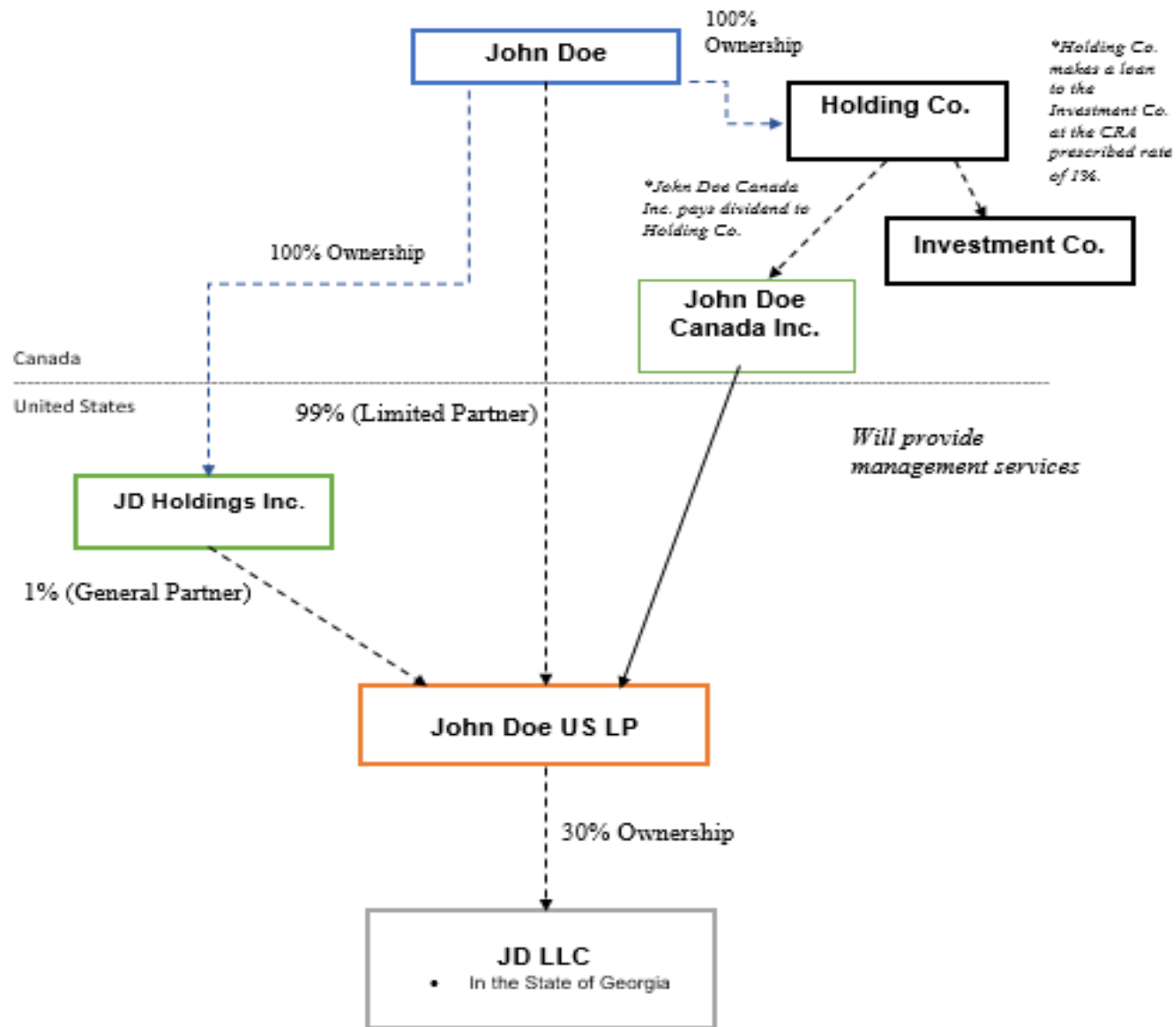
- Results in double taxation of Income :
 - US recognizes JD LLC as a Partnership, so business income is taxed on the individual level (i.e. 1040NR)
 - Canada recognizes JD LLC as a foreign corporation, so any distributions made by the LLC to John will be treated as foreign dividend taxable to John Doe.

RECOMMENDATION

- John should set up a US Limited Partnership (LP) and transfer ownership from JD LLC to the newly formed LP.
 - LP is recognized both in US and Canada as a partnership, hence it is treated as a flow-through entity.
- John should set up a C-corporation in the US to act as a general partner.
 - General partner manages the affairs of the partnership and fully bares all the risk.

PROPOSED STRUCTURE

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SETTING UP THE ENTITIES

1. CLIENT CAN APPOINT A LAWYER TO FORM THE ENTITIES

- A list of current lawyers are available under the tab “Tax Training>2017>US Reorganization” in CCH

2. CORPORATE CREATIONS INC.

- Contact Person: Taide Sanchez,
Email:taide@corpcreations.com
- Incorporation fees per State is different; contact Taide for fees before quoting client
- Corporate Creations Inc. invoices the client separately.

- Order of formation:
 1. C-Corporation
 2. Limited Partnership
 3. Canadian Management Corporation
 4. Holding Co. and Investment Co.

US ENTITIES: REGISTERED AGENT

- In order to form a company in a state, U.S. law requires that the company have a registered agent and a registered agent address within the state of formation.
- The registered agent's address is where the State will send annual reports, annual tax notices or other notices
- Corporate Creations Inc. provides registered agent services for a fee.
- Some lawyers also provide these services.
 - If the client has their lawyer forming the entities, check to see if they provide it.

FORM W-8ECI

- Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States
- Foreign persons are generally subject to US tax at a 30% rate on income received on foreign sources.
- No withholding is required on income that is deemed to be "Effectively Connected" with the conduct of trade or business in the US.

FORM W-8ECI cont'd...

- Client must provide form W-8ECI to:
 - Establish that they are not a US person
 - Claim that they are a beneficial owner of that income
 - Claim that the income is Effectively Connected to a Trade or Business in the US.
- Each non-resident partner must complete and provide this form to the U.S. LP
- John Doe would need to complete this form and provide it to John Doe US LP. The LP would then keep this form in their records in case of IRS audit.
 - Form is not filed with the IRS.

CANADIAN MANAGEMENT COMPANY

- **Minimizes overall taxation:**
 - Management Corp will charge a reasonable fee to John Doe US LP
 - John Doe can take advantage of the Canadian small business corporation tax rate of 15%

HOLDING COMPANY

- 100 common shares of the Holding Co. will be owned solely by John Doe.
- Holding Co. will be the sole owner of 100 common shares in the capital stock of John Doe Canada Inc.
- John Doe Canada Inc. will pay a dividend to the Holding Co. to protect the retained earnings of John Doe Canada Inc. from potential creditors.

INVESTMENT COMPANY

- 100 common shares of the Investment Co. will also be owned by the Holding Co.
- Holding Co. will make a loan to the Investment Co. at the CRA's prescribed interest rate of 1% per annum.
- The Investment Co. will reinvest the loan proceeds into income producing assets.

HOW DOES IT FUNCTION?

ANNUAL TAX REPORTING

- K-1 Slips:
 - JD LLC will issue a K-1 slip to John Doe US LP
 - John Doe US LP will issue K-1 slips to General Partner JD Holdings inc. (1%) and Limited Partner John Doe (99%)

ANNUAL TAX REPORTING

- John Doe US LP will report its share of income on form 1065
- JD Holdings Inc. will report its percentage (1%) of John Doe US LP's income/loss on form 1120
- John Do will report his percentage (99%) of John Doe US LP's income/loss on form 1040NR

WITHHOLDING TAX REQUIREMENT

- Section 1446 of the Internal Revenue Code requires John Doe US LP to withhold tax on the income allocable to John as non US resident partner.
 - This withholding tax (39.6% of the partnership's income) will be remitted quarterly to the IRS on behalf of the foreign partners
 - The quarterly payment due dates are 15th day of April, June, September, and December.
 - Form 8813 (Partnership Withholding Tax Payment Voucher) must be submitted along with the payment.
- John Doe US LP will prepare Form 8804 ("Annual Return for Partnership Withholding Tax [Section 1446]") to report total taxes withheld in the US. This form is due by 15th day of the 3rd month following the year end (i.e. March 15).

Additional notes...

- A Limited partnership agreement will need to be drafted for each LP. This will need to be done with a lawyer that is able to practice in the state of formation. (Please refer to list of lawyers in CCH)
- Canadian corporations can be set up by Madan CA through Cyberbhan.

TAX DEADLINES

- US LIMITED PARTNERSHIP – MARCH 15TH
- US CORPORATION – APRIL 15TH (FOR YR END DEC 31ST)
 - 15TH DAY OF THE 4TH MONTH AFTER THE CORPORATION YEAR END
- CANADIAN CORPORATION – 3 MONTHS FOR PAYMENT, 6 MONTHS FOR FILING
- PERSONAL US RETURN – APRIL 15TH
- PERSONAL CANADIAN RETURN – APRIL 30TH