



# Divorce – Finance & Taxes

Foreign Entities, Investments and Accounts:  
What to Look For and How to Locate

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# Today's Speakers

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# Challenges in International Divorce

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- ▶ Understanding the Marital Estate
- ▶ Valuing Foreign Businesses
- ▶ Determining Cash Flow for Support Purposes
- ▶ Tax Consequences to Asset Distribution

# Foreign Entity Consequences

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- ▶ US taxpayers often own interests in foreign entities. It is important to understand the classification of such entities for US income tax purposes, and ascertain the percentage ownership in such entities
- ▶ Foreign corporate entities, such as SA (sociedad anonima, societe anonyme) or corporations are treated as foreign corporations under US tax law. US shareholders of such corporation may be required to file a Form 5471 with their US income tax return
- ▶ Certain foreign entities that are taxed as corporations under foreign law may be eligible to make an election to be treated as “pass through entities” for US income tax purposes. This election may cause a US shareholder to have file either a Form 8865 or Form 8858 with their US income tax return
- ▶ Eligible entities are SrLs, Ltd Companies, foreign limited partnerships, SAS
- ▶ Whether a foreign entity is classified as a pass through entity or a corporation for US income tax purposes may carry different US income tax consequences

# Controlled Foreign Corporations – GILTI: General Rule

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- ▶ Current Year Inclusion of Global Intangible Low-Taxed Income by United States Shareholders
  - ▶ **IN GENERAL** — Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder's global intangible low-taxed income for such taxable year.

# Valuing Foreign Businesses – Valuation Theory

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## ▶ Risk and Return

- ▶ **Return** is represented by the proceeds or cash flow received by an investor from a particular investment
  - ▶ Periodic dividends/distributions
  - ▶ Proceeds when selling the investment
- ▶ **Risk** is based on the perceived amount, timing, and likelihood of receiving those returns
  - ▶ If the return is held constant, greater perceived risk results in lower value
  - ▶ If the perceived risk is held constant, lower return results in lower value
  - ▶ If perceived risk is higher and return is lower – that's not good

# Valuing Foreign Businesses - Conducting Site Visits

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- ▶ Important in Certain Industries to Understand the Condition of Facilities:
  - ▶ Manufacturing
  - ▶ Distribution
- ▶ Cost/Benefit Analysis
- ▶ Language Barriers
- ▶ Understanding Relative Businesses in that Country



# Valuing Foreign Businesses - Using the Correct Income Tax Rate

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- ▶ Get to After-Tax Cash Flow
- ▶ Understand Foreign Tax Regime

# Valuing Foreign Businesses - Country Specific Risk Premium

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- ▶ Idea is to Capture Additional Risk from Foreign Country
  - ▶ Damadaron
  - ▶ Duff & Phelps
- ▶ Should Not Assume US Risk
- ▶ Check Your Betas!

# US Tax Consequences – Foreign Pass Through

▶ Consider a US shareholder that owns a 100% interest in a foreign entity classified as a pass through for US income tax purposes. The entity's income statement for 2020 is as follows:

Sales	\$10M
Cost of Sales	(\$5M)
<u>Expenses</u>	
Depreciation (local)	(\$1M)
Salaries	(\$2M)
Income tax	<u>(.6M)</u>
Net Income	<u>\$1.4M</u>

- ▶ The US shareholder took a distribution of \$1M in 2020
- ▶ Income included on US tax return = \$2M. Shareholder may receive a foreign tax credit for \$600K
- ▶ Cash distribution of \$1M is ignored for US tax purposes

## US Tax Consequences – Foreign Corporation – No 962 Election

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Consider a US shareholder that owns a 100% interest in a foreign entity classified as a corporation for US income tax purposes. The entity's income statement for 2020 is as follows:

Sales	\$10M
Cost of Sales	(\$5M)

### Expenses

Depreciation (local)	(\$1M)
Salaries	(\$2M)
Income tax	<u>(\$.6M)</u>
Net Income	<u>\$1.4M</u>

- ▶ The US shareholder took a distribution of \$1M in 2020
- ▶ Income included on US tax return = \$1.4M under the GILTI rules.
- ▶ Cash distribution of \$1M is ignored for US tax purposes

## US Tax Consequences – Foreign Corporation – 962 Election

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- ▶ Consider a US shareholder that owns a 100% interest in a foreign entity classified as a corporation for US income tax purposes. The entity's income statement for 2020 is as follows:

Sales	\$10M
Cost of Sales	(\$5M)

### Expenses

Depreciation (local)	(\$1M)
Salaries	(\$2M)
Income tax	<u>(\$.6M)</u>
Net Income	<u>\$1.4M</u>

- ▶ The US shareholder took a distribution of \$1M in 2020 but made a Section 962 election on his US return
- ▶ Income included on US tax return under the GILTI rules = zero
- ▶ Taxpayer recognizes dividend income of \$1M on the cash distribution

# US Tax Consequences – Foreign Corporation Owned by US Corporation

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- ▶ Consider a US individual that owns a US Corporation that owns the shares of a foreign corporation.

Sales	\$10M
Cost of Sales	(\$5M)

## Expenses

Depreciation (local)	(\$1M)
Salaries	(\$2M)
Income tax	<u>(\$.6M)</u>
Net Income	<u>\$1.4M</u>

- ▶ The US corporation took a distribution of \$1M in 2020 – Exempt from tax at domestic corporation level
- ▶ Income included on US tax return of the domestic corporation as a result of GILTI = zero
- ▶ US individual includes income in personal return only if there is a distribution from the domestic corporation

# Understanding the Marital Estate – Information Disclosure

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- ▶ Financial Affidavit: CIS/Statement of Net Worth – Both Parties
- ▶ Interviews with your Client
- ▶ Asset Tracing

# Understanding the Marital Estate – Asset Tracing

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- ▶ Country Rules on Document Retention
- ▶ Intel on Information Sources (Government/Municipal)
- ▶ Foreign Languages
- ▶ Level of Corruption
- ▶ Marcum's Investigative Advisory Team



# Asset Tracing – Types of Engagements – Separate Property

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- ▶ Goal is to prove (or disprove) that property identified as being owned prior to a marriage should not (or should) be considered part of the marital estate.

# Asset Tracing – Types of Engagements - Transmutation

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- ▶ Goal is to prove whether or not the title of asset(s) was changed in order to divert the asset(s) from the rightful owner.

# Asset Tracing – Types of Engagements - Perquisites

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- ▶ Goal is to identify payments made to owners, officers, and/or employees that were personal expenses - not for a business purpose

## Discovery – Client Involvement

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- ▶ Initial Interview - Gather Background
- ▶ Periodic Meetings to Discuss Progress
- ▶ Discuss Deliverables / Results

**MOST IMPORTANTLY  
MANAGE EXPECTATIONS!**

# Discovery – Collect Information

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- ▶ Client Provided
- ▶ Request (from Individual / Business / Opposing Side of Litigation)
- ▶ Subpoenas (from Litigants / Source)
- ▶ Public Domain
  - ▶ Property Records (State / County)
  - ▶ Business Incorporation Records (State)
  - ▶ Freedom of Information Act (FOIA)
- ▶ Third Party Sources
- ▶ Non-Disclosure Agreements

# Forensic Accountant?

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- ▶ Volume of information
- ▶ Complexity of transactions
- ▶ Connectivity with multiple businesses, owners, and/or litigants
- ▶ Duration of analysis

# Forensic Accountant?

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Benefits of forensic accountant involvement early:

- ▶ Assistance with discovery specifics
  - ▶ Location of additional businesses, individuals, and/or banking institutions where information may need to be requested
- ▶ Assistance with depositions
  - ▶ Identification of questionable assets / transactions / etc. that may be questioned

# Sources of Information

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- ▶ Tax Returns
- ▶ Financial Statements
- ▶ QuickBooks / Internal Records
- ▶ Bank Data
- ▶ Other Personal Records



# Sources of Information – Tax Returns

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## ▶ Personal Tax Returns (Form 1040)

- ▶ Schedule B – Interest / Dividends
- ▶ Schedule C – Sole Proprietorship / 1099 Income
- ▶ Schedule E – Partnerships, S-Corps, Estates, Royalties
- ▶ Schedule K-1s (flow through items such as interest, dividends, etc.)

# Schedule B – Foreign Accounts / Trusts

<b>Part III</b>		<b>Yes</b>	<b>No</b>
<p>You must complete this part if you <b>(a)</b> had over \$1,500 of taxable interest or ordinary dividends; <b>(b)</b> had a foreign account; or <b>(c)</b> received a distribution from, or were a grantor of, or a transferor to, a foreign trust.</p>			
<p><b>Foreign Accounts and Trusts</b></p> <p><b>Caution:</b> If required, failure to file FinCEN Form 114 may result in substantial penalties. See instructions.</p>	<p><b>7a</b> At any time during 2019, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions . . . . .</p>	<input type="checkbox"/>	<input type="checkbox"/>
	<p>If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements . . . . .</p>	<input type="checkbox"/>	<input type="checkbox"/>
	<p><b>b</b> If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ► _____</p>		
	<p><b>8</b> During 2019, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions . . . . .</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>For Paperwork Reduction Act Notice, see your tax return instructions.</p>			

Cat. No. 17146N

Schedule B (Form 1040 or 1040-SR) 2019

# Reporting Requirements

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- ▶ FINCEN 114 – Signature Authority or Direct Financial Interest
- ▶ Form 5471 – different categories of shareholders
  - ▶ **As a general rule:**
  - ▶ US shareholders are defined as shareholders owning 10 percent or more of the vote or value of a foreign corporation
  - ▶ If the corporation is US controlled, US shareholders will be subject to GILTI and inclusion rules
  - ▶ If no US controlled, US shareholders will recognize income on distributions unless the company qualifies as a PFIC (Passive Foreign Investment Company)
- ▶ Form 8865 – filing requirements apply if the US person controls the partnership, owns 10 percent or more of the partnership that is US controlled, contributes property to a foreign partnership, or acquires or disposes of a 10 percent or greater interest in the partnership
- ▶ Form 8938 – Reporting required for foreign financial assets. Different reporting thresholds depending on filing status:

**Single/MFS – Year end value > \$200,000, or > \$300,000 during the year**

**MFJ – Year end value > \$400,000, or > \$600,000 during the year**

# Sources of Information – Financial Statements

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- ▶ Income Statement
- ▶ Balance Sheet
- ▶ Statement of Cash Flows
- ▶ Statement of Changes in Owners Equity

**DON'T FORGET TO READ THE FOOTNOTES!**

# Sources of Information – Financial Statements

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## 8 - RELATED PARTY TRANSACTIONS

The Companies engage in activities with two affiliated companies, Company Y of Puerto Rico (“P.R.”) and Company Z, S.A. (“S.A.”), each of which is wholly owned by the Company’s stockholder or his family.

The Companies operate under a verbal agreement with P.R. whereby each entity serves as agent for the other. The Companies service all destinations in the United States and the Dominican Republic, and P.R. services shipments to Puerto Rico. The Company charges P.R. a monthly management fee. Total management fees charged for each of the years ended December 31, 2017 and 2016 were \$140,040.

# Sources of Information – Financial Statements

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## 8 - RELATED PARTY TRANSACTIONS (Continued)

For the years ended December 31, 2017 and 2016, the Companies had revenues from P.R. approximating \$1,689,000 and \$1,952,000, respectively, and purchased delivery and haulage services from P.R. totaling approximately \$899,000 and \$795,000, respectively. At December 31, 2017 and 2016, the amount due from this affiliate was approximately \$2,412,000 and \$2,130,000, respectively.

For the years ended December 31, 2017 and 2016, the Companies had revenues from S.A. approximating \$52,000 and \$54,000, respectively, and purchased delivery and haulage services from S.A. of approximately \$34,000 and \$27,000, respectively. At December 31, 2017 and 2016, the amount due to this affiliate was approximately \$14,000 and \$13,000, respectively.

# Sources of Information – Financial Statements

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## 8 - RELATED PARTY TRANSACTIONS (Continued)

Loans receivable from the stockholder are payable on demand. The Company charges the stockholder interest at 6% a year. Interest income was approximately \$3,000 and \$8,000 for the years ended December 31, 2017 and 2016, respectively.

The Company pays rent to P.R. for its Orlando location. For each of the years ended December 31, 2017 and 2016, the rent expense was approximately \$228,000. There is no formal lease agreement.

# Sources of Information – Financial Statements

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## **E. Investments in Unconsolidated Affiliates:**

In addition to the consolidated entities described in Note A, the Company has the following investments:

Jedra Partners, Inc. owns four interests purchased from investors. The first is a \$110,000 limited partnership interest in Jedra's Fund for Health Care Alternatives, LP that was purchased from an investor in 2004, the second is an \$80,000 limited partnership interest in Jedra Properties, LP II that was purchased from an investor in 2006, the third is a \$100,000 limited partnership interest in Jedra's Fund for Health Care Alternatives, LP that was purchased in 2011, and the fourth is a \$422,676 limited partner interest in Jedra's Fund for Health Care Alternatives, LP II that was purchased in 2012.

In its capacity as general partner or managing member of all the Company's facility-owning entities, Jedra Partners, LLC has a small ownership interest in all the properties of which it is a general partner or managing member, as described in more detail below.

Jedra Partners, LLC serves as a general partner to two partnerships formed and/or activated in 1993: Jedra JC, LP and Jedra NYC, LP. Jedra Communities, LLC, a related party, is the sole limited partner of these two partnerships. In 1993, Jedra JC, LP acquired the JC Care Center, a 60- bed nursing facility located in Jersey City, New Jersey. In 1993, Jedra NYC, LP acquired NYC Nursing Center, a 60-bed nursing facility located in New York, New York. Commencing in 2002, these facilities are managed by Jedra Management, LLC. In September 2014, both facilities were sold to a publicly-traded REIT.



# Sources of Information – Financial Statements

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## ▶ Variable Interest Entities (“VIEs”)

### Principles of Consolidation

Accounting principles generally accepted in the United States of America (“GAAP”) require management to evaluate whether an entity or interest is a variable interest entity (“VIE”) and whether the Company is the primary beneficiary. GAAP requires the primary beneficiary to consolidate a VIE.

The stockholder of the Company is the sole stockholder of Roche & Roche, Inc. (“R&R”) and the managing member of Roche Bayonne, LLC (“Bayonne”). R&R and Bayonne are significant to the business activities of the Company, and the Company guarantees their debt. The Company also pays rent to R&R and Bayonne. Management concluded that R&R and Bayonne are VIEs and the Company is their primary beneficiary. Accordingly, the Company consolidates R&R and Bayonne (collectively, the “Affiliates”). The Company makes ongoing assessments to determine whether R&R and Bayonne are still VIEs.

The accompanying consolidated financial statements include the accounts of the Company, its subsidiaries and the Affiliates (collectively, the “Companies”). All significant intercompany transactions and balances have been eliminated in consolidation.

# Sources of Information – QuickBooks / Internal Records

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- ▶ Income Statement
- ▶ Balance Sheet
- ▶ General Ledger
  - ▶ Transactions involving shareholders / owners
  - ▶ Unusual transactions
  - ▶ In / out transactions
  - ▶ Unusual transaction types or amounts
  - ▶ Unusual transactions with large round numbers

# Sources of Information – Bank Records

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- ▶ Statements
- ▶ Check Copies (BOTH Sides)
- ▶ Deposits Slips (Corresponding Checks)

# Sources of Information – Other Personal Records

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- ▶ Pension and retirement account statements
- ▶ Credit card statements and applications
- ▶ Loan statements and applications
- ▶ Insurance policies and bills
- ▶ Revenue agent reports (IRS Findings)
- ▶ Social Media / LinkedIn
- ▶ Wills and other estate planning documents

# Uncovering Hiding Assets & Income

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- ▶ Analysis of Data
- ▶ Reconcile Income and Spending
- ▶ Asset / Other Searches
- ▶ Travel

# Uncovering Hidden Assets & Income – Analysis of Data

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- ▶ Input data in a smart fashion
- ▶ Referencing / supporting data
  - ▶ Source Document Names
  - ▶ Bates #
- ▶ Resources
  - ▶ Artificial Intelligence
  - ▶ Administrative Staff

# Uncovering Hidden Assets & Income – Analysis of Data

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- ▶ Every engagement is different!
- ▶ Client Concerns
  - ▶ Listen
  - ▶ Attempt to support / address
  - ▶ Keep them in the loop – they *likely* know more than you  
(But remember that this is **not** a wild goose chase!)
- ▶ Test internal records against source documents
- ▶ Make connections between different data sources
- ▶ Consider interviewing the opposing side / management / alleged fraudster

# Uncovering Hidden Assets & Income – Reconciling Income / Spending

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- ▶ Reconcile Transfers to Identify Bank Accounts
- ▶ Tie out CC payments to Identify Bank Accounts
- ▶ Change in / Accumulation Assets
- ▶ Modification if analysis involves a cash business



# Uncovering Hidden Assets & Income – Conduct Research

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## Asset / Other Searches

- ▶ Credit Check
- ▶ Real Estate Search
- ▶ Background Check
- ▶ Social Media / Business Profiles
- ▶ Other Searches

# Uncovering Hidden Assets & Income – Conduct Research

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## Travel

- ▶ EZ Pass
- ▶ Flight Info
- ▶ Passport

# Uncovering Hidden Assets & Income – Follow Connectivity

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## Deliverables

- ▶ Support the analysis
- ▶ “Unpeel the Onion” (Summary ----> Detail)
- ▶ Show the client all the work completed
  - ▶ ...without overwhelming them with all of the details
- ▶ Talk about the open items / risks / “soft” conclusions

# Complicating Factors

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## General Challenges

- ▶ You don't know what you don't know
- ▶ Demanding clients / expectations
- ▶ Expensive to have a limit-less scope
  - ▶ No guarantee that you will be able to prove what the client believes
- ▶ Difficult to identify the beginning, middle, and end without the “map”
- ▶ Every engagement has different facts and creative personalities

# Complicating Factors

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## General Legal Challenges

- ▶ Transfers to trusts / relinquishment of control
- ▶ Foreign currency
- ▶ Jurisdictional Inter-State Discovery
- ▶ Foreign Laws (especially discover related)

## Other Issues to Consider

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Share transfers pursuant to a divorce may be considered a taxable event in certain countries:

- ▶ Chile
- ▶ Brazil
- ▶ Mexico
- ▶ Treaty countries if the foreign entity holds predominantly US real estate
- ▶ Cross border alimony payments would require an examination of any applicable income tax treaty. For example in the case of a US payor spouse, certain treaties exempt alimony in the spouse's country of residence, or may tax it depending on the US treatment of the alimony payment. Withholding taxes should also be considered.
- ▶ Payments to non resident spouses pursuant to a divorce agreement will result in gain recognition.

# Contact Information

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# Thank You!

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