



New developments in structuring investments in and expansion of start-ups

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Annual IBA The New Era of Taxation Conference

Rio de Janeiro, Brazil

Agenda

- PHASE 1 – Formation, Initial Structure and Funding
- PHASE 2 – Operation, Growth and Restructuring
- PHASE 3 – IPO or Other Exit
- Other Issues
 - Founder Compensation
 - Worker Classification



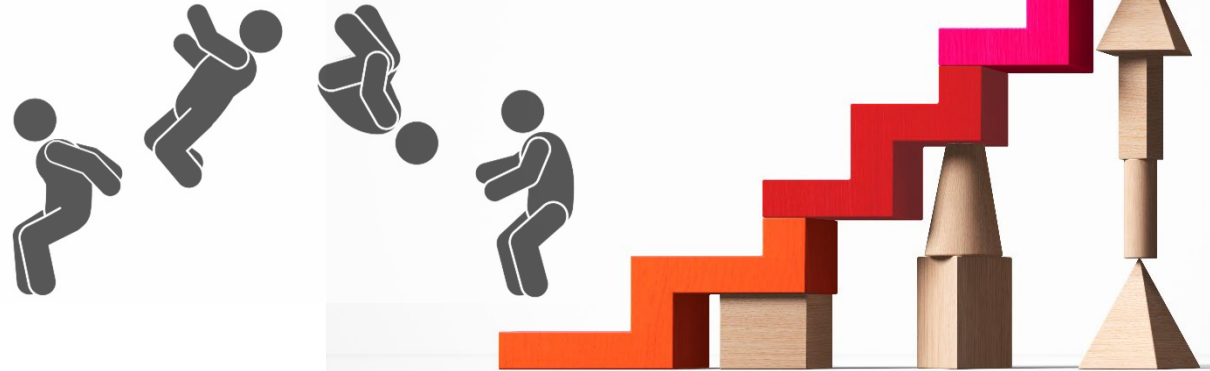
PHASE 1: Formation, Initial Structure and Funding

- Choice of entity
 - Corporates vs. pass-throughs
 - Exit considerations
- Funding
 - Equity vs. debt
 - Special instruments (SAFEs, convertible notes, etc.)
- Startup tax incentives
 - IP considerations (patent box, FDII, etc.)



PHASE 2: Operation, Growth and Restructuring

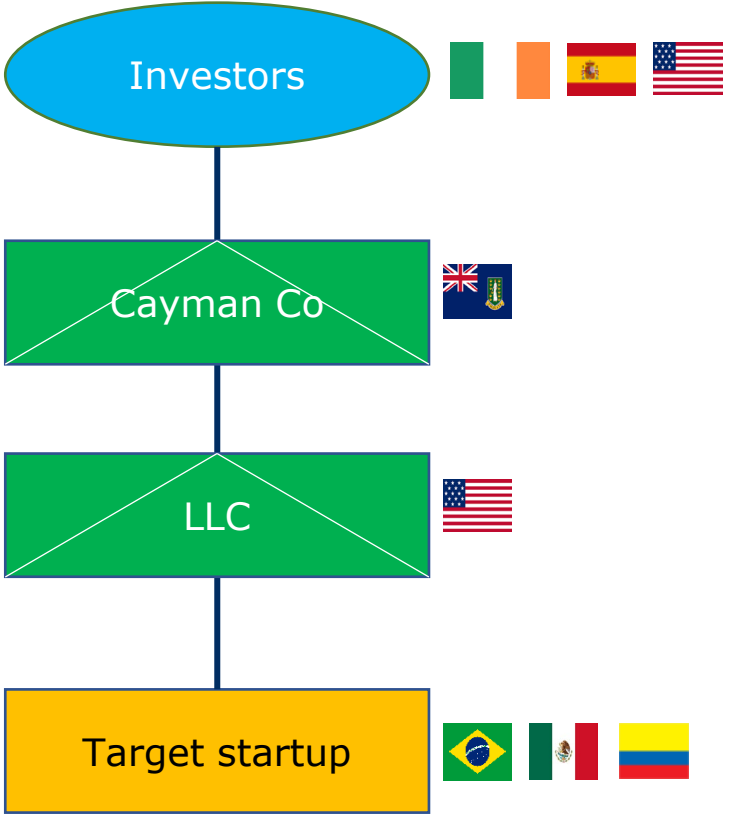
- Company “flips”/restructuring
 - Tax consequences of flip
 - Realization with no cash flow?
 - Target jurisdiction treatment
 - Investor jurisdiction treatment
 - Place of management/tax residence
 - Treaty network
- Operational tax incentives





Common Structure – Cayman Sandwich

Cayman Sandwich

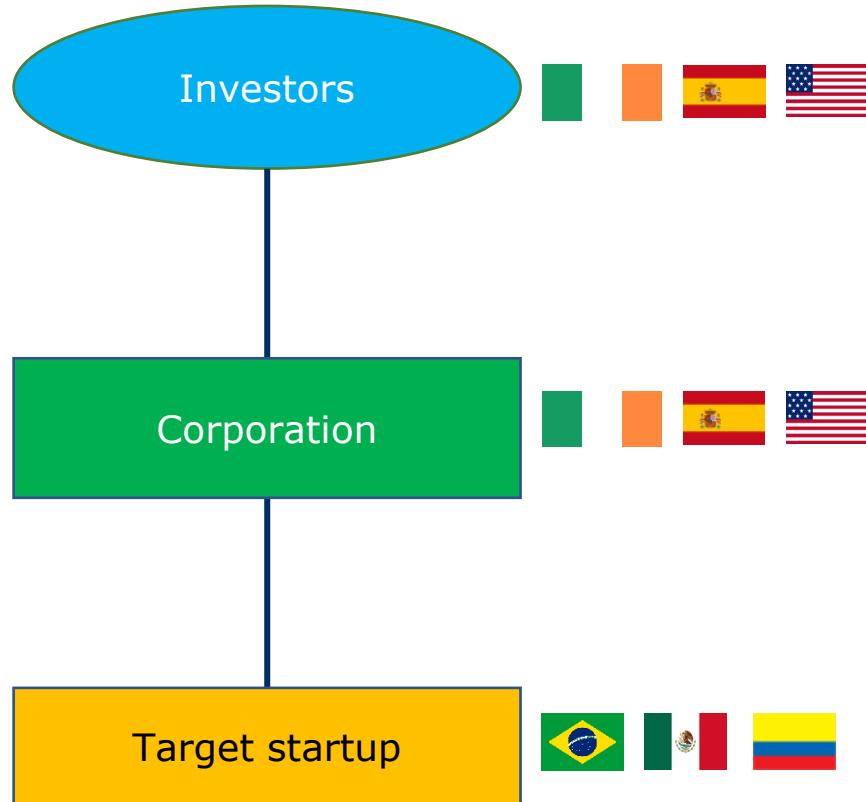





ISSUES			
Indirect transfer of shares	No taxation if substance and business purpose tests are satisfied	No taxation of indirect transfer of shares (except for MX real estate shares)	Taxation on indirect transfer of shares (commercial value less fiscal cost) CIT: 35% Capital Gain: 15%
Tax residency	Cayman Co or LLC treated as offshore entities (LLC is in BR grey list)	Cayman Co or LLC may be MX resident if managed from Mexico	Effective place of Management rule
Tax Treaty eligibility	IE: none SP: yes US: none	IE: yes SP: yes US: yes (subj. to LOB, treatment of Cayman Co as transparent)	IE: none SP: yes US: none
Founders' issues	New provisional measure, introducing CFC and PFIC rules for individuals.	Founder can fall under the Mexican CFC regime or lose FTC; reporting obligations.	CFC regime; reporting obligation; Central Bank informative fillings



Common Structure – Intermediate Holdco

Intermediate Holdco



ISSUES			
Indirect transfer of shares	No taxation if substance and business purpose tests are satisfied	No taxation of indirect transfer of shares (except for RE shares)	Taxation on indirect transfer of shares (commercial value less fiscal cost) CIT: 35% Capital Gain: 15%
Tax residency	US Corporation is US tax resident	US Corporation may be MX tax resident if managed from Mexico (dual-resident corporation)	Effective place of Management
Tax Treaty eligibility	IE: none SP: yes US: none	IE: yes SP: yes US: yes (subj. to LOB)	IE: none SP: yes US: none
Founders' issues	New provisional measure, introducing CFC and PFIC rules for individuals.	Founder can fall under the Mexican CFC regime or lose FTC; reporting obligations.	CFC regime; reporting obligation; Central Bank informative fillings

PHASE 3: IPO or Other Exit

- Dividends
- Redemptions
- Mergers, Acquisitions, Divestments
 - Earnouts
- IPOs
 - Timing
 - US vs. non-US markets



Other Issues Affecting Startups

- Founder/Key Employee Compensation
 - Equity
 - Options
 - Other instruments
- Worker Classification
 - Employees vs. independent contractors (non-employees)



Panelists

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