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Single Purpose Entity

What is it and Why Does this Transaction Need One?

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What is it?

- A single purpose entity ("SPE"), also referred to as a single-asset or special purpose entity (defined hereinafter), is a legal entity created to satisfy a narrow, specific or temporary purpose.
- SPE's are typically used to isolate liability between companies and among other assets.
- Most often an SPE is a limited liability company that is treated as either a disregarded entity or partnership for income tax purposes.

Break-out the Terms

- Single Purpose Entity – typical in real estate transactions where one entity holds title to improved property as its sole asset, subject to a mortgage, that engages another entity to operate and manage
- Special Purpose Entity – typical in finance-driven transactions, where risk is spread out among entities for soliciting outside investors and leverage
- Special Purpose Vehicle – typical in parent-subsidiary context where risk is being isolated away from the parent by maintaining assets and liabilities on a separate balance sheet

Formation

- An SPE is formed by filing, for example, articles of organization, with the Secretary of the State.
- The SPE is capitalized by the contribution of assets or activities by the owner, typically another business entity, e.g. Parent Co. or GP.
- The isolation of these assets or activities from Parent Co. or GP such that the performance of the SPE will not be effected by the performance of Parent Co. or GP and vice versa.
- Note: the further the "distance" between Parent Co. or GP and the SPE the greater the protection.

Uses

- Parent Holding Company structure – SPEs are established to legally isolate business operations, S Corp with series of LLC subsidiaries
- Real Estate – having individual SPEs hold title to separate properties isolates those properties from liabilities, potentially even debt, from other properties, and owner can sell entity (or interests in entity) instead of underlying real estate than can create different tax treatment
- Financing – multiple layers of SPEs can be used to shift equity and debt, private equity transactions, or to isolate special asset pools in securitizations
- Joint Ventures – contribution of assets and services to SPE to carry out joint undertakings not involving either Parent Co. or its other obligations
- Regulatory Purposes – Federal and state law may restrict or limit operations to or from certain entities, "orphan" structure that ensures assets and liabilities are treated as off the balance sheet (also bankrupt "remote")
- Anonymity – provides protection from other people sticking their noses in others business

Why does this transaction need one?

- Who are the parties?
- What are the assets?
- What are the liabilities?
- What are the risks?
- What is the business or venture?
- What are the financing needs?
- What type of income, gain, loss, deductions or credits will be generated?
- What's the exit strategy?

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The Disregarded Entity

- In General: a limited liability company is a creature of state statute (“LLC”).
- For income tax purposes, the IRS uses entity classifications that would allow a single-member LLC to be taxed as either, upon election an association taxable as a corporation, or by default as a sole proprietorship or unincorporated division.
- As an SPE, the LLC is probably the most important entity structure that yields the most beneficial tax results.

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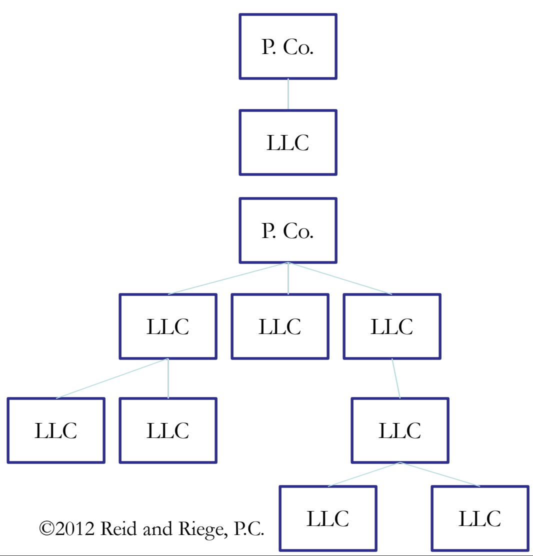
SPE Structures

- Simple:
- Complex:



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