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WHAT SHOULD YOU DO?

Presented by:
Toine Knipping
CEO Amicorp

NOVEMBER 2012

www.amicorp.com

Discussion points

- Key global developments
- FATCA, key implications and recent announcements by the Monitory Authority of Singapore
- What should you advise your clients ?
- Some case studies
- Where can Amicorp help

Key global developments

- Most major economies struggling to increase tax revenues, dealing with huge debts
- Global transparency is a fact
  - Automatic and enhanced exchange of information
  - More tax information exchange agreements
- Increasing enforcement of tax compliance
  - FATCA
  - Record numbers of TEIA's signed
  - Many countries redefine 'tax evasion' and increase powers of tax enforcement authorities
  - MAS: Tax crimes classified as money laundering predicate offence


“When the tide goes out,
you can see who is swimming naked”
-Warren Buffett

What will happen?

Tight ening Regulations

After the excesses of the past decade, some basic ethical principles need to be relearned – such as the importance of saving and how sustainable wealth comes from hard work and creativity, not gambling on rising asset prices or playing with other people's money.

-Bernard Madoff

How will financial systems move forward?

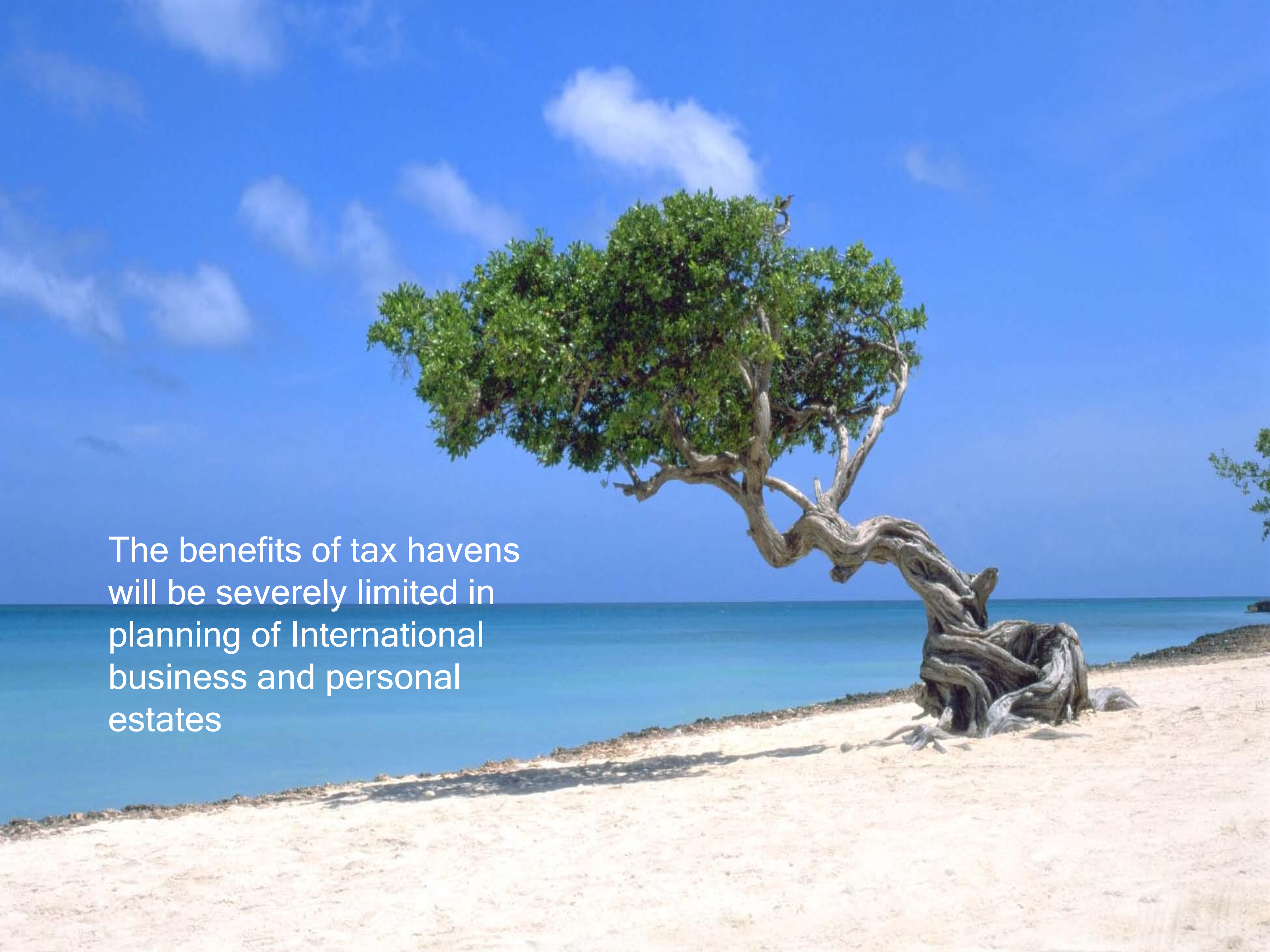
- All UBO's identified
- All transactions documented and linked to source of funds


Confidentiality is
Dead

Coming up...

“FATCA is just the beginning ”

What does it mean for Asia?


The benefits of tax havens
will be severely limited in
planning of International
business and personal
estates

What else is happening ?

- Singapore to criminalize the laundering of proceeds of tax evasion by 1 July 2013
- Weed out “uncooperative” tax havens
- A huge surge in intergovernmental agreements around information exchange and tax evasion
- i.e. Singapore and Germany
- i.e. UK and US
- But also agreements involving Cayman, BVI, and other zero/low tax jurisdictions

Germany and Italy have had talks with Singapore to prevent their citizens from evading taxes using solutions in Singapore

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S'pore cracks down on tax dodgers' funds

File photo: BT

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Siow Li Sen
The Business Times
Friday, Oct 12, 2012

Updated: 09/10/2012

MAS issues consultation paper to criminalise laundering of proceeds from serious tax offences

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The Monetary Authority of Singapore, MAS, says a broad range of serious tax crimes will be designated as money laundering predicate offences from July next year.

This means that laundering of proceeds from these tax crimes would be criminalised.

MAS Monetary Authority of Singapore

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MAS to Designate Tax Crimes as Money Laundering Predicate Offences

Singapore, 9 October 2012...The Monetary Authority of Singapore (MAS) has issued a consultation paper on the

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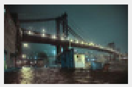
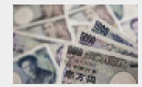

Waters Flood Blacked-Out NYC


Six Hong Kong Billionaires Lose $2.2 Billion


Romney Weakens Yen as U.S.-JGB Gap Widens

Singapore May Toughen Penalties for Money Laundering, Terrorism Financing

By Luzi Ann Javier - Oct 28, 2011 4:19 PM GMT+0800

3 COMMENTS · QUEUE

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- Buffett-Backed BYD's Profit May Plunge 98%
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- Nomura Trails Goldman in Return on Equity

Tax crimes could soon be money laundering predicate offences in Singapore

SINGAPORE BUSINESS REVIEW

Singapore Business Review – Tue, Oct 9, 2012 5:06 PM SGT

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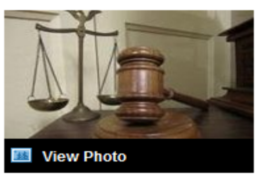
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Deadline for comments on MAS' consultation paper is 9 December 2012.

According to a release, the Monetary Authority of Singapore (MAS) has issued a consultation paper on the designation of tax crimes as money laundering (ML) predicate offences in Singapore.

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Singapore Fights Image as Tax Haven

By REUTERS

Published: October 15, 2012

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UK-US agreement strengthens UK ability to tackle tax evasion

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82/12

14 September 2012

UK-US agreement strengthens UK ability to tackle tax evasion

Exchequer Secretary, David Gauke signs an agreement with the United States to improve international tax compliance and implement FATCA.

The Government has this week signed an agreement with the United States to improve international tax compliance and implement FATCA.

This is the first agreement of its kind, benefiting UK financial institutions by addressing their legal concerns with complying with FATCA and reducing the burdens imposed on them. It also boosts HMRC's ability to obtain information from the US to help in tackling UK tax evasion.

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to fill a US$ 14 trillion deficit.

Celebrating 20 Years

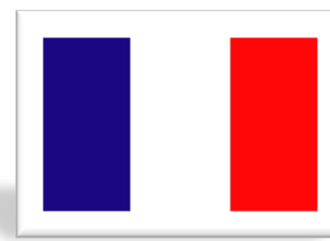
What is FATCA

- The Foreign Account Tax Compliance Act (FATCA) is a US law to improve tax compliance by US persons involving financial assets and accounts held outside of the US
- Enforces the exchange of information on US persons and US assets and indicia held by Foreign Financial Institutions
- FATCA affects all financial institutions that hold US denominated passive investments, BUT ALSO all investment vehicles that hold predominantly US dollar denominated passive investments

FATCA – Intergovernmental Agreements

- The US, UK, Germany, France, Italy, Spain, Switzerland and Japan have made joint statements to enter into intergovernmental agreements to implement FATCA
- Many other countries will join this MUTUAL effort by the end of 2013
- More currencies will be involved (Euro, Pound, Yen, Swiss Franc)
- Will FATCA be the new OECD norm?

Joint Statements



Am I my brother's keeper?

- In the US, since 2010, the advisor or service provider who has (wilfully or by accident) assisted his/her client to evade taxes is co-liable with the tax evader him/herself.
- ANY individual providing information that leads to the IRS recovering taxes that were not received as a result of tax evasion gets a reward of 30% of the amount recovered.
- France, Germany and several other countries are preparing similar legislation.

Am I my brother's keeper?

- A compliant structure is one that is NOT ONLY one that is fully in line with the (tax) legislation and regulations in the country where it is established or used, but ALSO FULLY in line with (tax) legislation and regulations in the country where the UBO(s) are legally resident of have a tax presence.
- Technology, political will (to increase tax base) and (exchange of information) agreements create the perfect storm to eliminate CONFIDENTIALITY for tax purposes.

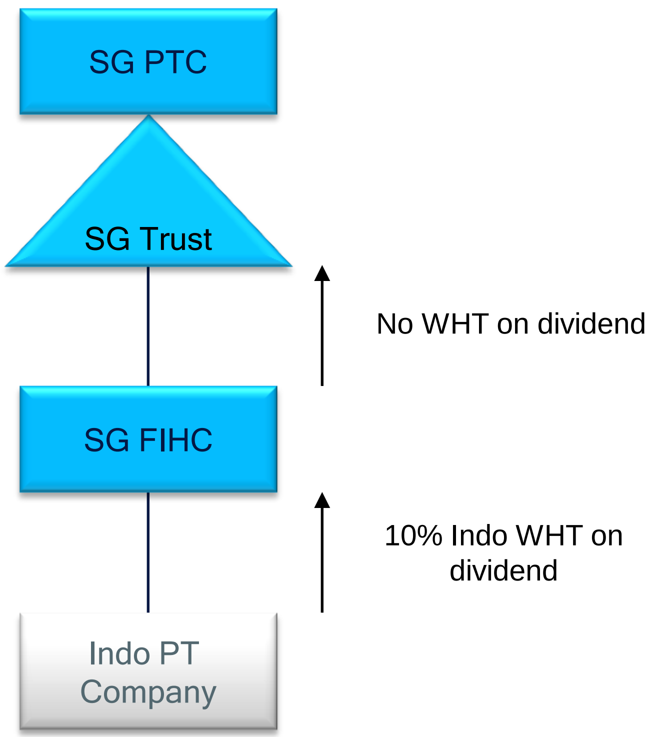
What should you advise your clients?

- Be proactive
- Stick to fully tax and legally compliant structures to hold and protect assets and to avoid consequences of non-compliance
- Advise your clients to hold assets and structure income in a manner that is compliant with the regulations in their country(or countries) of (tax) residence
- Make SURE you know all of the nationalities and tax residencies of your client (the US does not care whether the client HIMSELF knows)
- Make 100% sure you document and can PROVE that you checked on the structure being in line with legislation in the client's tax residence and that you have on file that you advised client regarding his PERSONAL obligations (like reporting the structure for tax purposes on his personal tax return)

WHAT YOU SHOULD NOT DO

- Be complacent
- Tell your client the storm will just pass (it will NOT, it will just be more difficult to outrun it)
- Hide behind banking secrecy and privacy laws, they will disappear
- Nominee structures won't help, they are defined in more and more cases as transparent

Illustrative case study – Singapore Structure



- SG PTC is a Private Trust Company established in Singapore to be the trustee of SG Trust.
- SG Trust is a Singapore Foreign Trust under the law of Singapore.
- SG FIHC is a Singapore incorporated company. The company is setup in order to enjoy tax scheme for a Family Investment Holding Company.

1. Singapore Co Structure

Advantages

- If Indo – SG tax treaty protection applies, dividend payment from Indo PT to SG Co will be subject to 10% Indo WHTa.
- Dividend income received by SG Co are tax-exempt in Singapore.
- Dividend payment by SG Co and received by SG Trust is tax-exempt in Singapore.
- Distribution made by SG Trust are not taxable in Singapore.
- Capital gains are not taxable in SG. Therefore, if SG Co sells the shares of Indo Co and it is treated as capital gain, this is not taxable in SG.
- SG PTC is a Singapore incorporated company to be the trustee of SG Trust.

1. Singapore Co Structure

Disadvantages

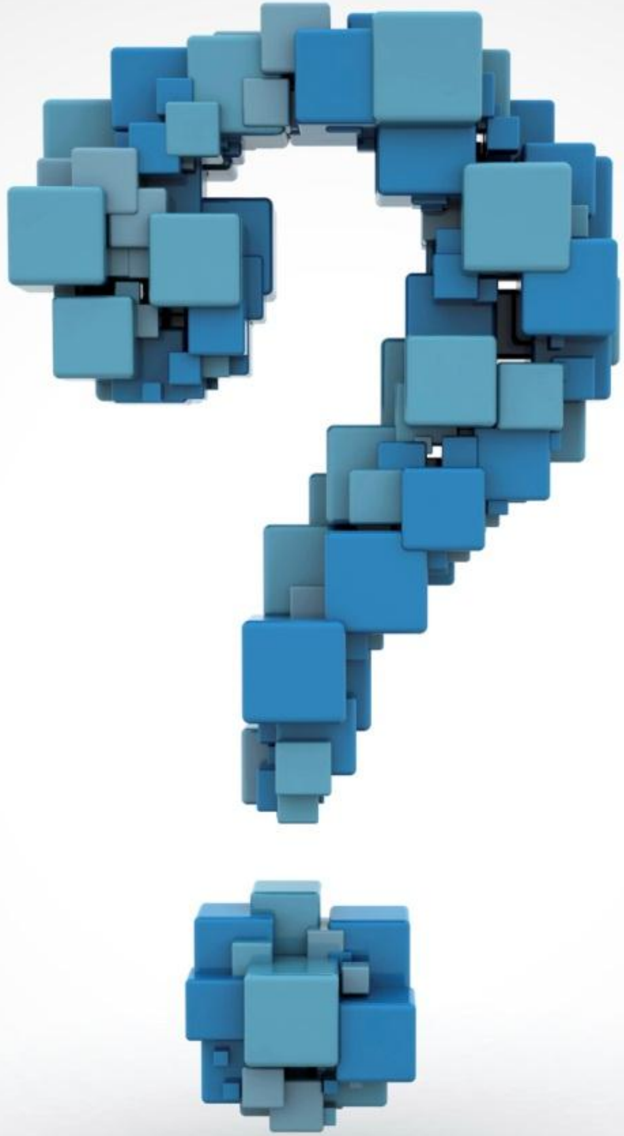
- If SG Co holds the shares of Indo Co for a short term, the sale of shares of Indo Co may be treated as trading transaction. This will trigger SG corporate income tax at 17%.
- Sale of shares of Indo Co by SG Co will be subject to Indo 5% WHT on sale price.
- To enjoy FIHC scheme, the SG FIHC must be established prior to 1 April 2013 and the UBOs must be a family related by blood / marriage / adoption.
- To enjoy SG Foreign Trust scheme, the settlor / beneficiaries of the trust must not be Singapore resident.

What makes Amicorp different

- Global but local
  - Network of 40 offices, covering 26 countries, including all major emerging markets, knowledge on all major locations used in international tax planning
- Specialist expertise
  - Global team of more than 700 professionals, including 150 (tax) attorneys, 150 CPA/CA's
- Solution driven approach
  - Experienced in tested standardized and bespoke offerings
- Dedicated Private Client unit to work with intermediaries

Open forum

Any questions?



Key contacts

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Hong Kong fires back at FATCA

FATCA:
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Founded in Curaçao, Netherlands Antilles in 1992


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“To render the highest possible QUALITY of company and trust management as well as related financial services to a broad range of clients globally.
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- Fund Administration (BPO)

Entity Management Services

- Establishment and Administration of Trusts
- Company Formation and Management Services
- Private Clients Management
- Corporate Clients Management

What is FATCA – a brief overview

- The Foreign Account Tax Compliance Act (FATCA) is a US law to improve tax compliance by US Persons (as defined by the IRS) involving financial assets and accounts held outside the US.
- Under FATCA, US taxpayers with specified foreign financial assets that exceed certain thresholds must report those assets to the IRS. This reporting will be made on Form 8938, which taxpayers attach to their federal income tax return.
- In addition, FATCA will require Foreign Financial Institutions (FFIs) to report directly to the IRS information about financial accounts held by US taxpayers, or held by Non-Financial Foreign Entities (NFFEs) in which US taxpayers hold a substantial ownership interest (10%).
- FATCA requires Foreign Financial Institutions (FFIs) to enter into an agreement with the IRS to provide information identifying US Persons.

What is FATCA – a brief overview

- Non-Financial Foreign Entities (NFFEs) do not have FATCA reporting or withholding obligations towards the IRS.
- NFFE will be asked by their FFIs or USFIs to provide FATCA certification on the US or non-US tax status of their ultimate direct or indirect owners
- US based financial institutions and their foreign branches (USFIs) are not required to enter into agreements with IRS
- USFIs will have similar FATCA obligations enforceable by IRS
- **FATCA** will coexist with other tax laws and reporting requirements (eg. Qualified Intermediary/ FBAR) of IRS

What is FATCA – a brief overview

- NFFEs must certify to FFIs or USFIs that the ultimate beneficial owners of the NFFEs are not US Persons.
- US based financial institutions and their foreign branches (USFIs) are not required to enter into agreements with the IRS.
- USFIs will have similar FATCA obligations enforceable by the IRS.
- FATCA will coexist with other tax laws and reporting requirements (e.g. FBAR) of the IRS.

Goal of FATCA

- The purpose is to prevent tax evasion and ensure that the IRS can identify and collect the appropriate tax from US Persons holding financial assets outside the US.
- This must be achieved by reporting requirements applicable to FFIs and NFFEs.
- FATCA will achieve this goal of identifying US Persons through:
  - FFIs
    - By imposing a 30% withholding tax on US source “withholdable payments” *Unless*
    - the FFI enters into an agreement with the IRS to identify its investors/ customers who are US Persons.
  - NFFEs
    - By imposing a 30% withholding tax on US source “withholdable payments” *Unless*
    - the NFFE certifies that it has no owners that are “Specified US Persons” or provides information on “Substantial US Owners” to the withholding agent (FFI).

Goal of FATCA put another way

Goal

- Information reporting of US persons investing through a foreign financial institution ("FFI"); identification of substantial US owners of non-financial foreign entities ("NFFE")

Sticks

- 30% withholding tax on certain US source payments to an FFI that does not participate, or NFFE who does not comply
- Passthru Payment Withholding by FFIs

Actions

- FFIs enter into an agreement with the IRS
- NFFEs identify substantial US owners

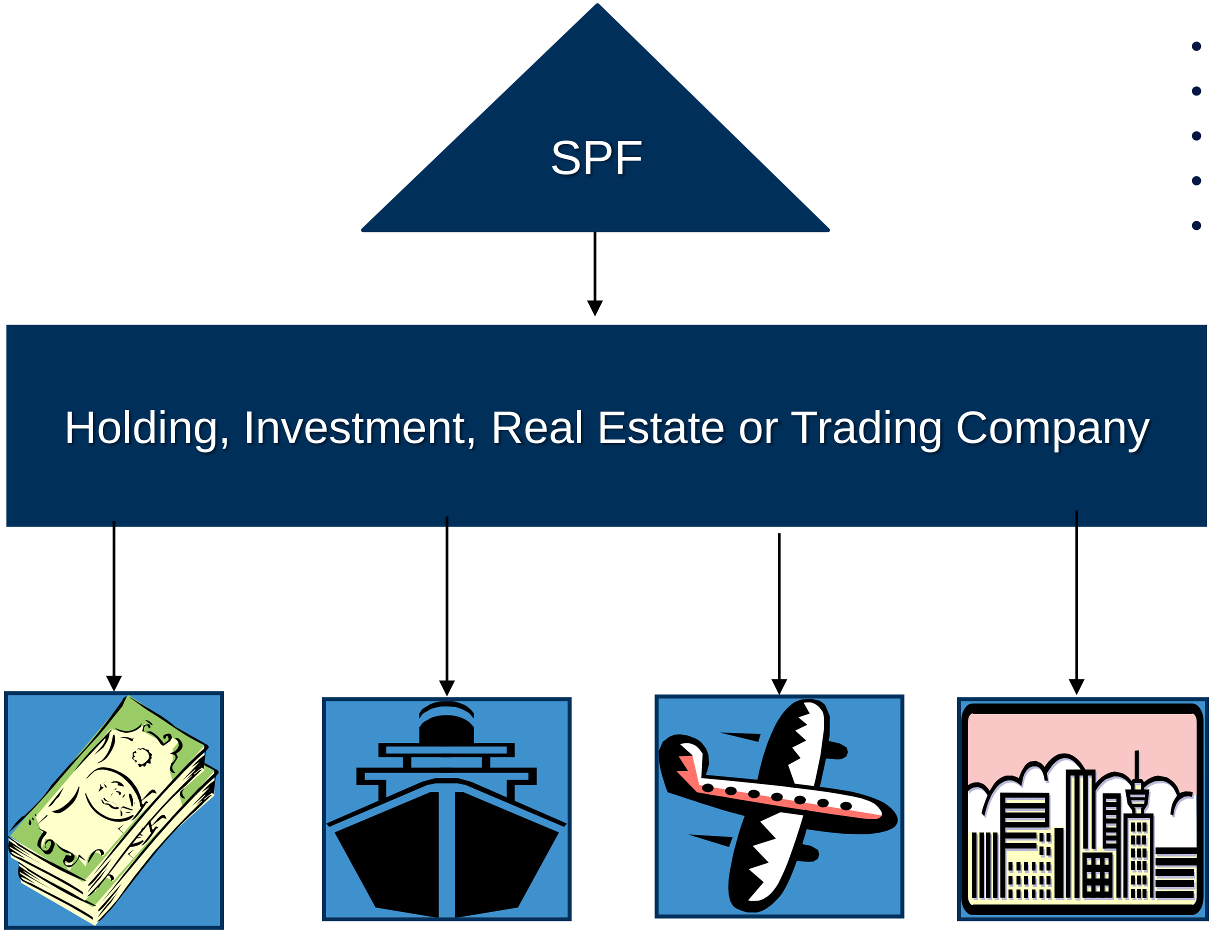
WHAT YOU SHOULD DO

IMPLEMENT ENTITIES AND STRUCTURES FOR MANAGED INVESTMENTS THAT ARE TOTALLY COMPLIANT WITH THE RESIDENCE OF THE CLIENT

COMPLIANT STRUCTURE EXAMPLES

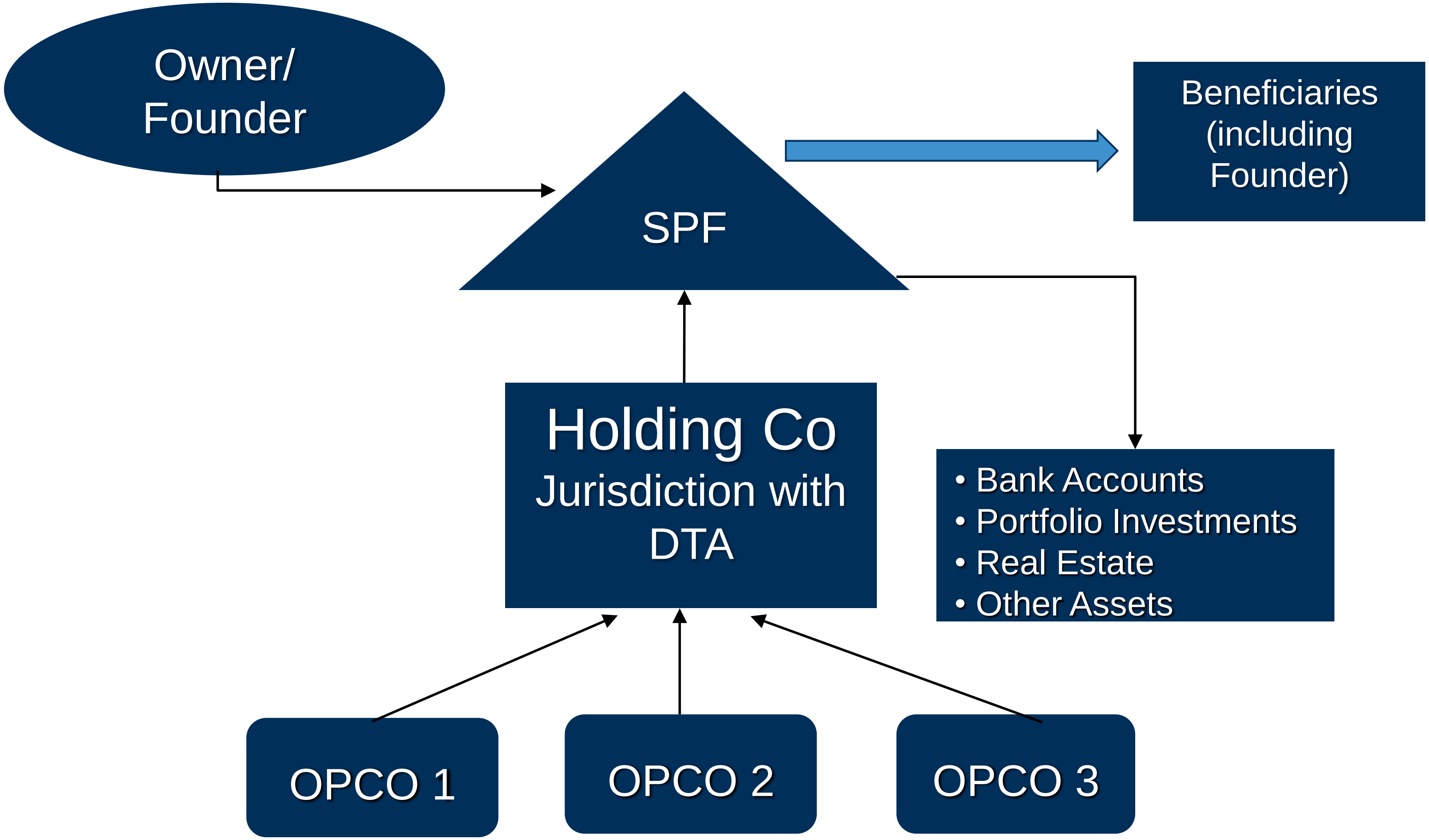
- The following are examples of compliant structures for various jurisdictions
- Through Amicorp's network of offices and professionals compliant structures can be efficiently organized and implemented
- International tax planning and financial structuring are subject to constant changes; therefore, Amicorp strongly recommends that each potential user of its services seeks professional tax and legal advice in his/her country of origin before deciding on the use of international structures

Curacao Private Foundation (SPF)



- No Gift Tax
- No Estate Tax
- No Income Tax
- No Capital Gains Tax
- No WHT

Estate Planning, the Owner/ Founder becomes a Beneficiary

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Managing succession in Asian family firms

Reseach shows such firms have had significant wealth loss during their succession processes

23 Feb 2012 16:11 by
Kathryn Yap


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Asia's Family Businesses Face New Challenges

February 01, 2012


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FAMILY BUSINESSES ARE THE BACKBONE OF ASIAN ECONOMIES, RESEARCH

ARTICLE | 3 OCTOBER, 2011 04:29 PM | BY GIULIA CAMBIERI

THANK YOU