



# — AIWM Sharing Session

December 2022

**withers KhattarWong** LLP

**withersworldwide**  
The law firm for success

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We champion our clients' interests, locally and globally, from offices across the US, Europe and Asia-Pacific.

We are proud to help many of our clients use their success to make the world a better place.

The law firm for success.

1896  
Founded

1100+  
People

17  
Offices

65  
Languages



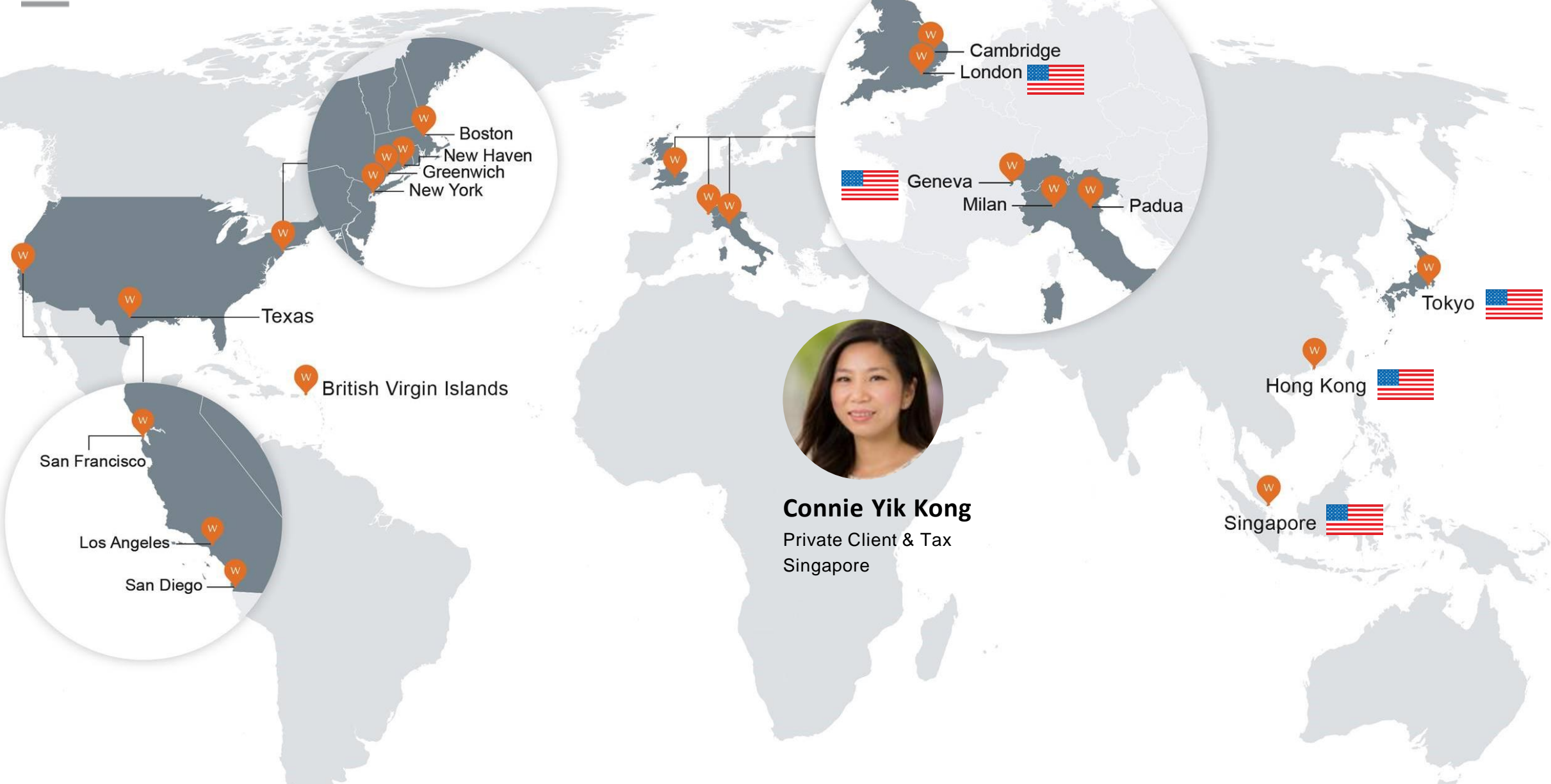
# Withers offices



Withers office



Non-US offices with US-qualified lawyers



**Connie Yik Kong**  
Private Client & Tax  
Singapore

# Outline

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1. US tax residency rules
  - Overview of US tax residency and implications
2. US tax and reporting considerations for non-US clients with US assets
3. Estate and trust planning considerations for non-US clients with US beneficiaries
  - Will planning
  - Lifetime trust planning





## Part 1: US Tax Residency Rules

# Who is a US tax resident?

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- **US Citizens**

- The “natural born American”
- The “accidental American”
  - One American parent who has lived in the US for at least 5 years, two of which must be after the age of 14.

- **Non-US Citizens**

- US green card holder
- The substantial presence test:
  - 183 days in a calendar year; or
  - $1/6$  days in 2020 +  $1/3$  days in 2021 + all the days in 2022 (to determine residency in 2022)

# Overview of US Taxation

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- **How is a US Person taxed?**

- Income tax: on worldwide income, up to 37%
- Gift tax & estate tax: on worldwide assets, at 40% over the “exemption amount”
- Exemption amount: US\$12.96 million

- **How is a non-US Person taxed?**

- Income tax: on US source income only, at 30% (or sometimes up to 37%)
- Gift tax & estate tax: on US-situs assets (e.g. US real property), up to 40%
- Exemption amount: US\$60,000 for US federal estate tax only

# Exceptions to the US tax residency

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- **The closer connection exemption**
  - May only be useful for a limited duration (i.e., one or two years)
- **Treaty relief – (e.g., the US/Indonesia Income Tax Treaty)**
  - No treaty between the US and Singapore
- **Certain US visa status**
  - F student visa
  - J scholar visa

# Expatriation – Surrender Green Card / Renounce US Citizenship

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- **Stop Being a US Person – i.e., Expatriation**


- The “Expatriation Tax Regime”

- Who does it apply to?

A US citizen or a “long-term” US green card holder (i.e. someone who held the green card for at least 8 years out of the last 15 years), and:

1. has US\$2 million or more worldwide net worth;
2. has an average US income tax liability of US\$171,000; or
3. has not been tax compliant for 5 years pre-expatriation

- Dual Citizen exemption

An aerial night view of a city skyline, likely New York City, with numerous skyscrapers and buildings illuminated. A large, semi-transparent orange circle is centered over the image, containing white text.

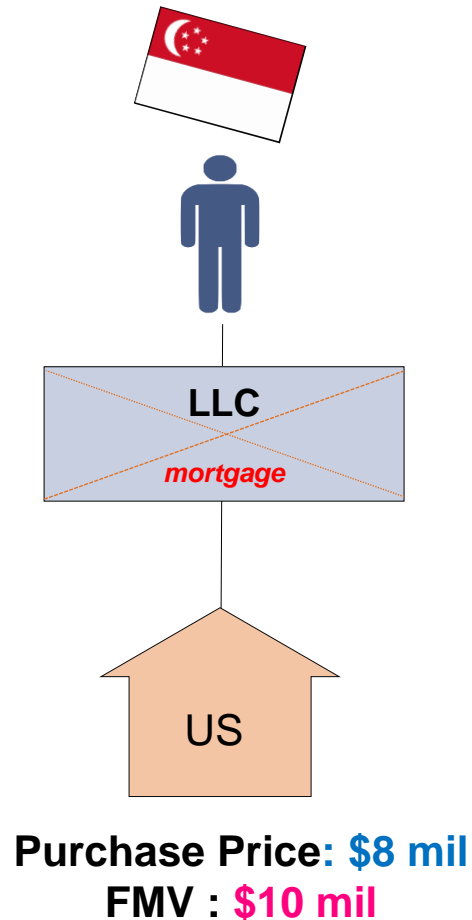
## Part 2: US tax and reporting considerations for non-US clients with US assets

# Non-US persons acquiring US real estate

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- US federal income tax
  - Non-US persons are taxed on rental income and gains from the sale of US real estate
  - Withholding tax applies on the property sale under the US “FIRPTA” rules
- US federal estate tax
  - Non-US decedents are subject to US estate tax **only** on US situs assets
  - This includes real property located in the US
  - Tax of up to 40% of the FMV of the US property applies at the time of death
  - Nominal exception amount of US\$60,000

# Property held in personal name / LLC

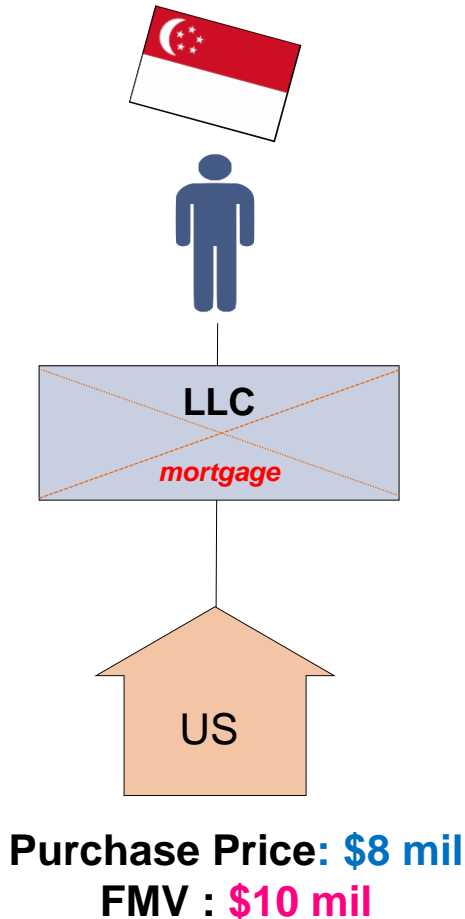


Scenario: An SG client owns an LLC that holds a \$10 million US property. What is her US federal tax exposure?

## US federal income tax

- Annual US tax return filing to report any rental income
- US capital gains tax: \$400k
  - 20% of \$2 mil gains
- FIRPTA withholding \$1.5 mil –
  - 15% of \$10 mil FMV
  - \$400k > \$1.5 mil - Often triggers cash flow issues. Can seek exemption

# Property held in personal name / LLC

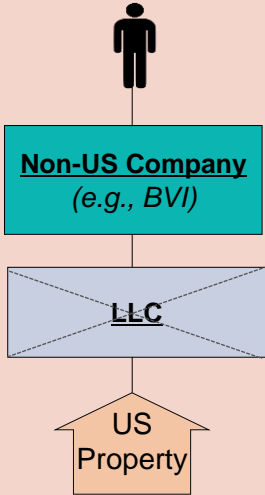
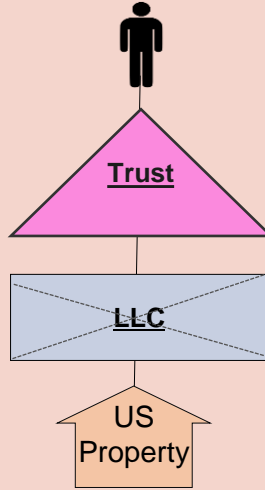


Scenario: An SG client owns an LLC that holds a \$10 million US property. What is her US federal tax exposure?

## US federal estate tax

- US estate tax exposure: \$4 mil
  - 40% of \$10 million FMV
- Mortgage or financing required - Time sensitive and simplicity preferred
- Insurance planning is feasible

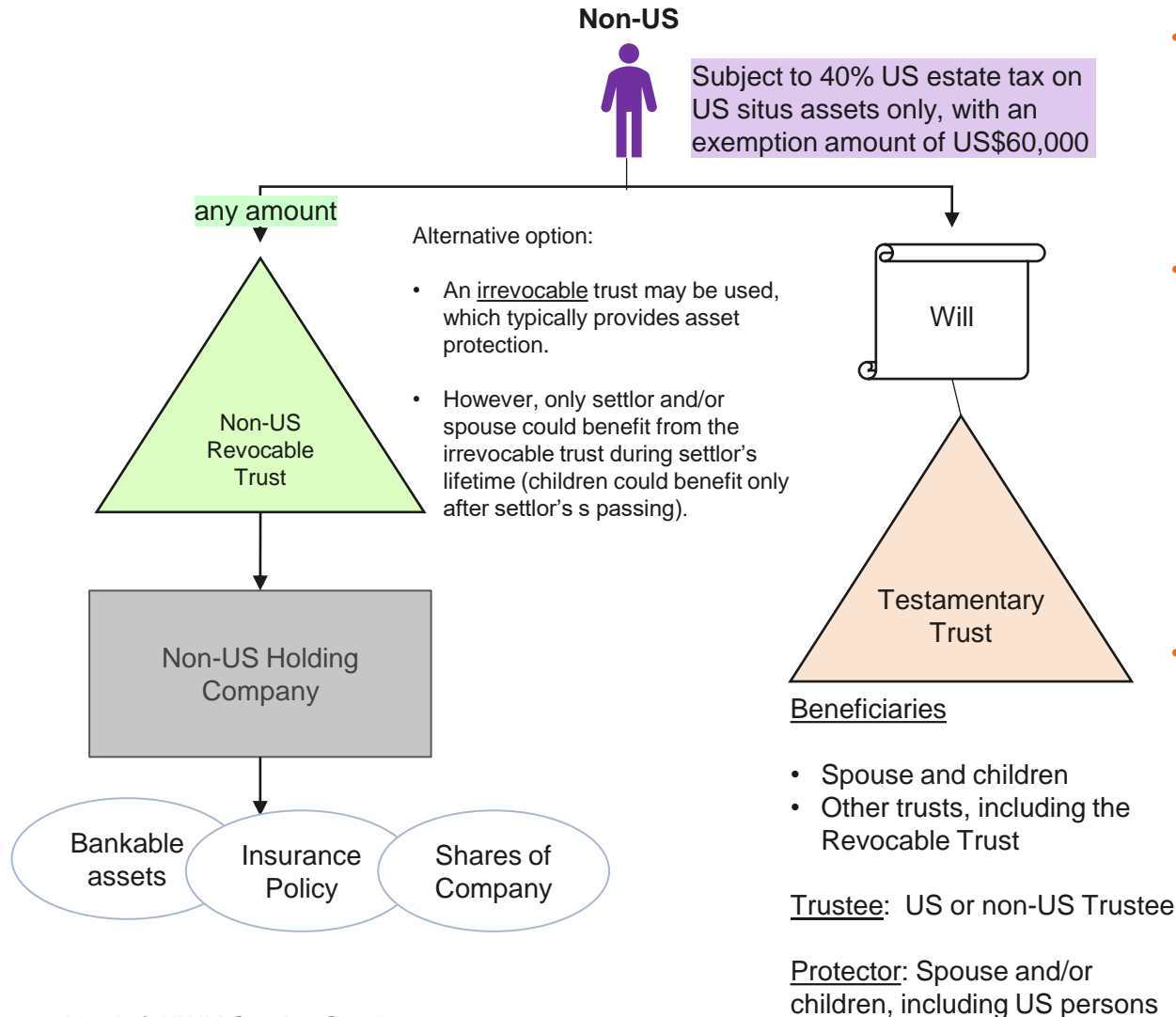
# Holding options

	Option 1 (Non-US Corporate Structure )	Option 2 (Irrevocable Trust Structure)
Structure diagram	 <pre> graph TD     Person[Person] --- Company[Non-US Company (e.g., BVI)]     Company --- LLC[LLC]     LLC --- Property[US Property]           </pre>	 <pre> graph TD     Person[Person] --- Trust[Trust]     Trust --- LLC[LLC]     LLC --- Property[US Property]           </pre>
Income tax on rental income	<ul style="list-style-type: none"> <li>• 21% on a net basis</li> <li>• Importantly, the Holdco will also be subject to an additional layer of tax under the so-called “branch profits tax,” resulting in marginal taxation of 44.7%</li> </ul>	<ul style="list-style-type: none"> <li>• Graduated (up to 37%) on a net basis</li> <li>• No branch profits tax would apply</li> </ul>
Capital gains tax on sale	<ul style="list-style-type: none"> <li>• 21%</li> <li>• The branch profits tax would apply, resulting in a marginal taxation of 44.7%. However, the branch profits tax can be avoided</li> </ul>	<ul style="list-style-type: none"> <li>• 20%</li> <li>• No branch profits tax would apply</li> </ul>

A scenic view of San Francisco, featuring the city skyline with the Transamerica Pyramid in the background and the 'Painted Ladies' row of Victorian houses in the foreground. A large orange circle is overlaid on the center of the image, containing the title text.

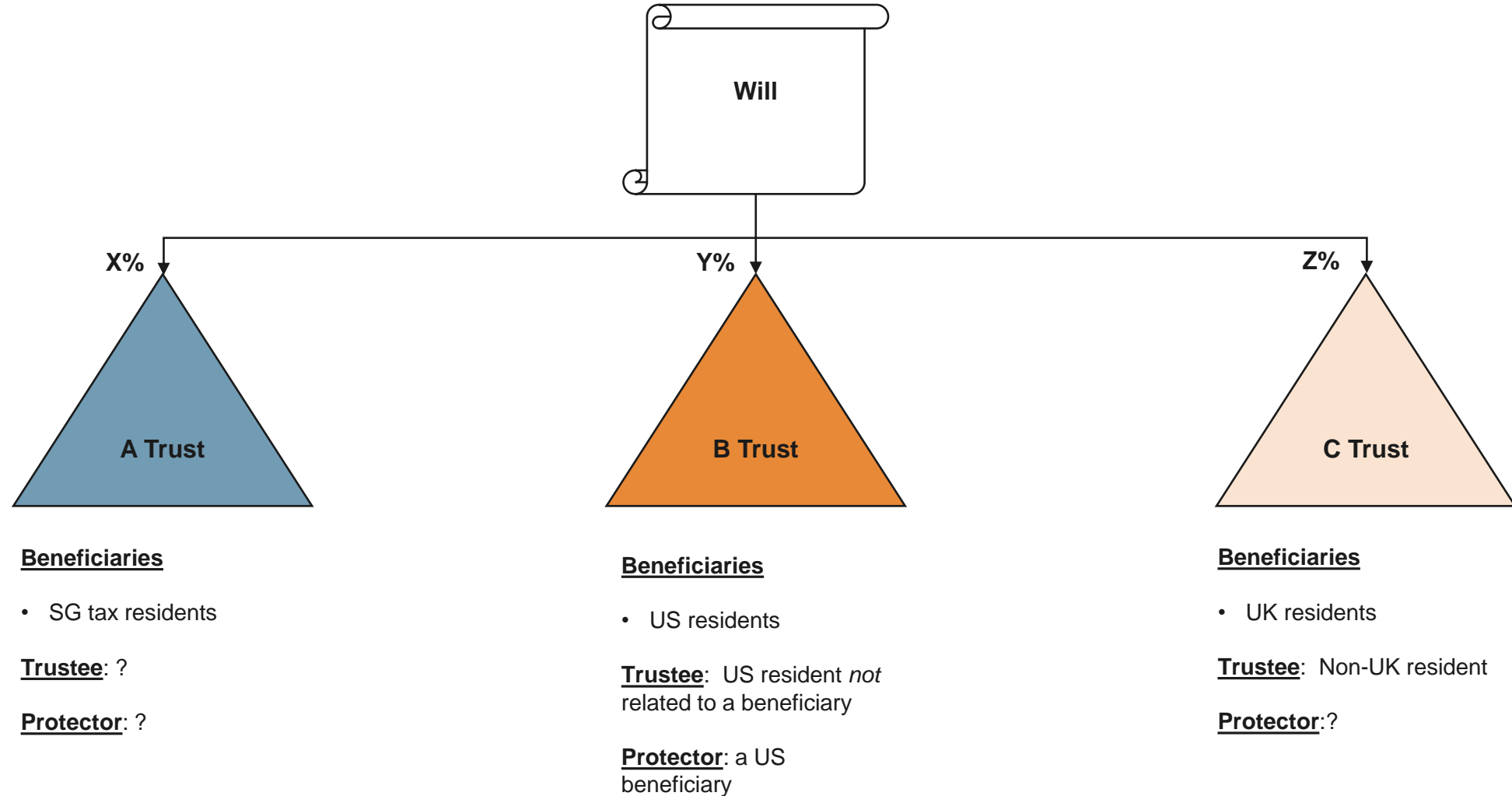
## Part 3: Estate and trust planning considerations for non-US clients with US beneficiaries

# Trust and Succession Planning by Non-US Person with US Beneficiaries



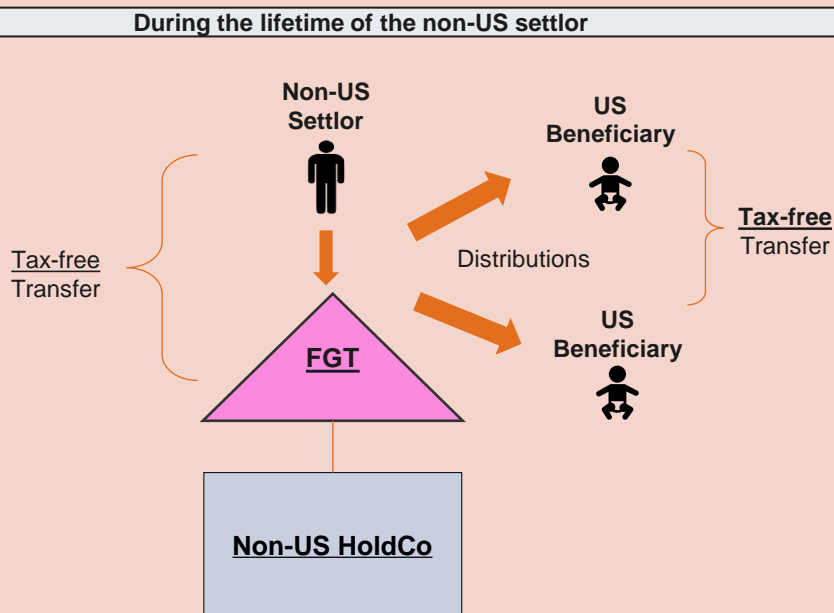
- A non-US person is subject to US estate tax on US situs assets only. US situs assets would include US stocks held in a personally-held financial account, even if such account is outside the US.
- A US person will be subject to US estate tax on his/her worldwide. Thus, to the extent that you (as a non-US person) gifted any of your assets outright to your US children (either during your lifetime or at *death*), *those assets would fall within the scope* of US federal estate tax and accordingly become potentially subject to US estate taxation upon his/her subsequent demise.
- Because of this potential estate tax exposure, your US child's share should be held in a discretionary trust for his/her benefit. Such trust could be established during your lifetime and/or after your passing (see diagram). This use of a trust will keep such assets out of your US child's taxable estate and continue to be held for US child and his/her US descendants free of US transfer taxes.

# Will Planning with US beneficiaries



# Trust planning with US beneficiaries

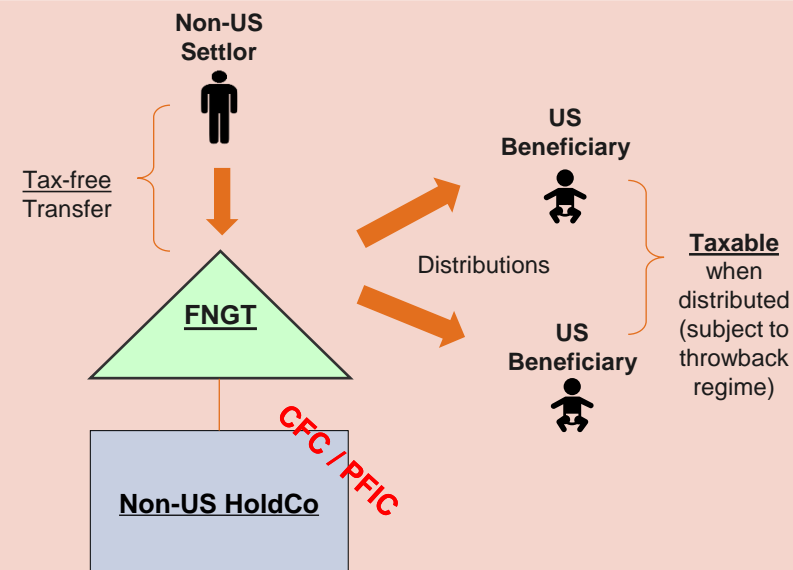
## Foreign Grantor Trust



### US Tax and Reporting Implications

- Distributions to a US beneficiary are generally not taxable.
- Distributions must be reported by the US beneficiary on the IRS Form 3520, based on information provided by the trustee on a *Foreign Grantor Trust Beneficiary Statement*.
  - If a US beneficiary does not receive a beneficiary statement from the trustee, then the entire distribution could be taxable.
  - Failure to properly report could make the distribution taxable and result in an additional penalty in the amount of 35% of the distribution.

## Foreign Nongrantor Trust



### US Tax and Reporting Implications

- Distributions to a US beneficiary are generally taxable.
- Distributions must be reported by the US Beneficiary on the IRS Form 3520, based on information provided by the trustees on a *Foreign Nongrantor Trust Beneficiary Statement*.
  - Failure to properly report results in a penalty in the amount of 35% of the distribution (in addition to any back taxes).

# Thank you!

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