



The Corpag Group

Corporate Management & Fiduciary Services

Recent Regulatory Changes in the ~~Offshore~~ Onshore Scene

TTN Hong Kong
9 February 2015



General Trends

1) Transparency

“The Transparency Dividend”

The end of secrecy will generate an economic windfall for practitioners delivering tax advice in line with multi-jurisdictional exposure*

2) Substance

3) Risk analyses, risk mitigation, reviewing

* STEP Report “Offshore Evolution”



Transparency

- Transparency
 - Information exchange treaties
 - Keeping of financial records
 - (Semi) public UBO reporting
- Action 5 OECD Action Plan BEPS*
 - *“transparency and substance”*
- Tax Justice Network – Secrecy Index (Nov 13)**

* OECD Action Plan on Base Erosion and Profit Shifting, July 2013

** www.financialsecrecyindex.com



Substance (Netherlands)

- Local tax decrees (e.g. Netherlands)
- “BEPS” (OECD)



Risk Analyses, Mitigation, Audit

1) Identify

- PEPs
- Funds with undisclosed participants
- UBO from high risk country
- Feeder from high risk country
- Subsidiary in high risk country
- External directors
- Negative press
- World-check “hit”
- External signatory on bank account

2) Mitigate

3) Audit

- Little equity, bankruptcy risk
- Board Powers or Attorney
- Minority shareholder, outside directors
- People on payroll
- Operational business
- Operational subsidiaries
- Branch or permanent establishment
- Real estate development
- Back to back loans



And we thought things went fast.....



Changes (US)

- Obama tax plan “offshore” profits
- FATCA in full force
 - Funds
 - Trusts
 - PIC’s
 - Holding companies
 - Banks taking action
 - Guess which banks are most active...



Changes (EU 1/3)

• The Fourth Money Laundering Directive (4MLD)

- To be implemented by EU countries within two years
- Introduce a risk-based approach
- Exemptions from customer due diligence requirements based on third country equivalence
- PEP will always be high risk and domestic individuals occupying prominent public positions, in addition to those from abroad
- Cash transactions from EUR 7,500 and more
- (Public) UBO information on trust and companies
- Tax evasion to become serious offence in all EU countries
- More identification requirement on wire transactions above EUR 1,000 (also if done by credit card or phone) and 5 year record keeping
- Last but not least: More administrative sanctions!



Changes (EU 2/3)

- EU Parent Subsidiary Directive
 - Hybrid Loans
 - General anti-abuse
- Continuation formal EU competition law investigation into tax rulings Netherlands (Starbucks), Ireland (Apple), Luxembourg (Fiat, Amazon)
 - Results expected Q2 2015
- Request European Committee to all member states to provide details overview of all activities relating to tax rulings
 - Welcome Malta, Cyprus, UK and Belgium...
 - Could lead to above mentioned investigation, but not clear if results will be made public



Changes (EU 3/3)

- Proposal on automatic information exchange of (international) tax rulings between members states
 - Promise of Juncker
 - Expected spring 2015
- Action plan tax avoidance, evasion and fraud
 - Based on BEPS
 - Special interest into digital economy
 - Status: in preparation, timing of results unknown
- Proposal for CCCTB
 - Common Consolidated Corporate Tax base
 - Aimed and sharing the taxes based on where activities take place



Offshore vs Onshore



OIL Offshore Report 2020

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So why still offshore?



White list - Black list

- Sometimes it still just works
 - Transfer Pricing
 - Expense Deduction (cash basis)
 - Withholding Tax on Interests
 - Presumption on Inflows from Tax Havens
 - Anti-Deferral Rules
 - Central Bank FX Controls / Anti-Money Laundering
 - Setting up a Local Subsidiary

Argentina Whitelist

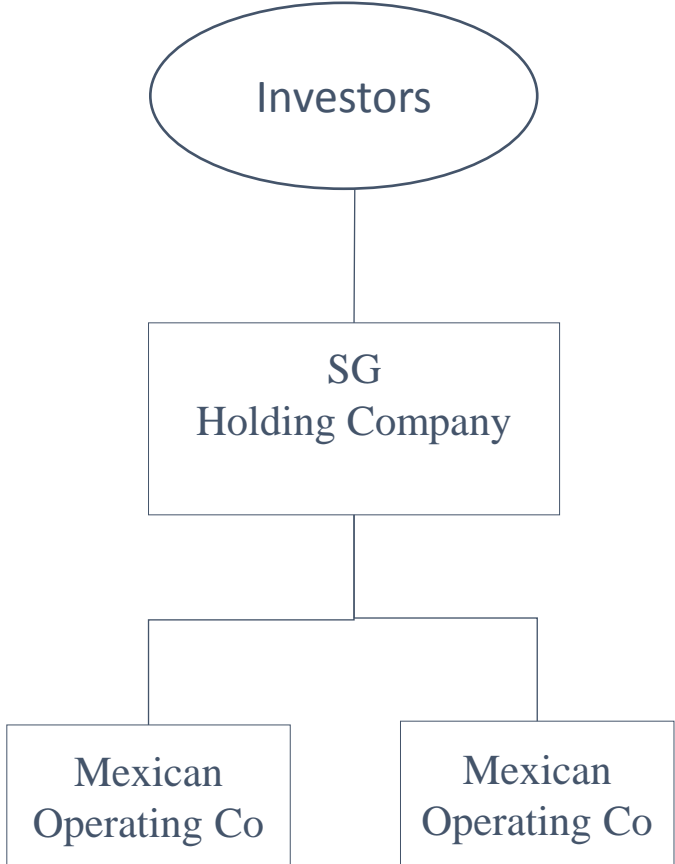
Some Examples...			
Andorra	Angola	Anguila	Aruba
Bahamas	Belize	Bermuda	BVI
Cayman Islands	Curacao	Cyprus	Greenland
Isle of Man	Kuwait	Mauritius	Monaco
Panama	Qatar	San Marino	Turks & Caicos Islands
Tunisia	United Arab Emirates		

Argentina Whitelist

Some Examples...			
Antigua y Barbuda	Barbados	Cabo Verde	Hong Kong
Jordan	Oman	Seychelles	Sri Lanka
St Lucia	St Kitts & Nevis	Swaziland	Tonga
Western Samoa	Yemen		

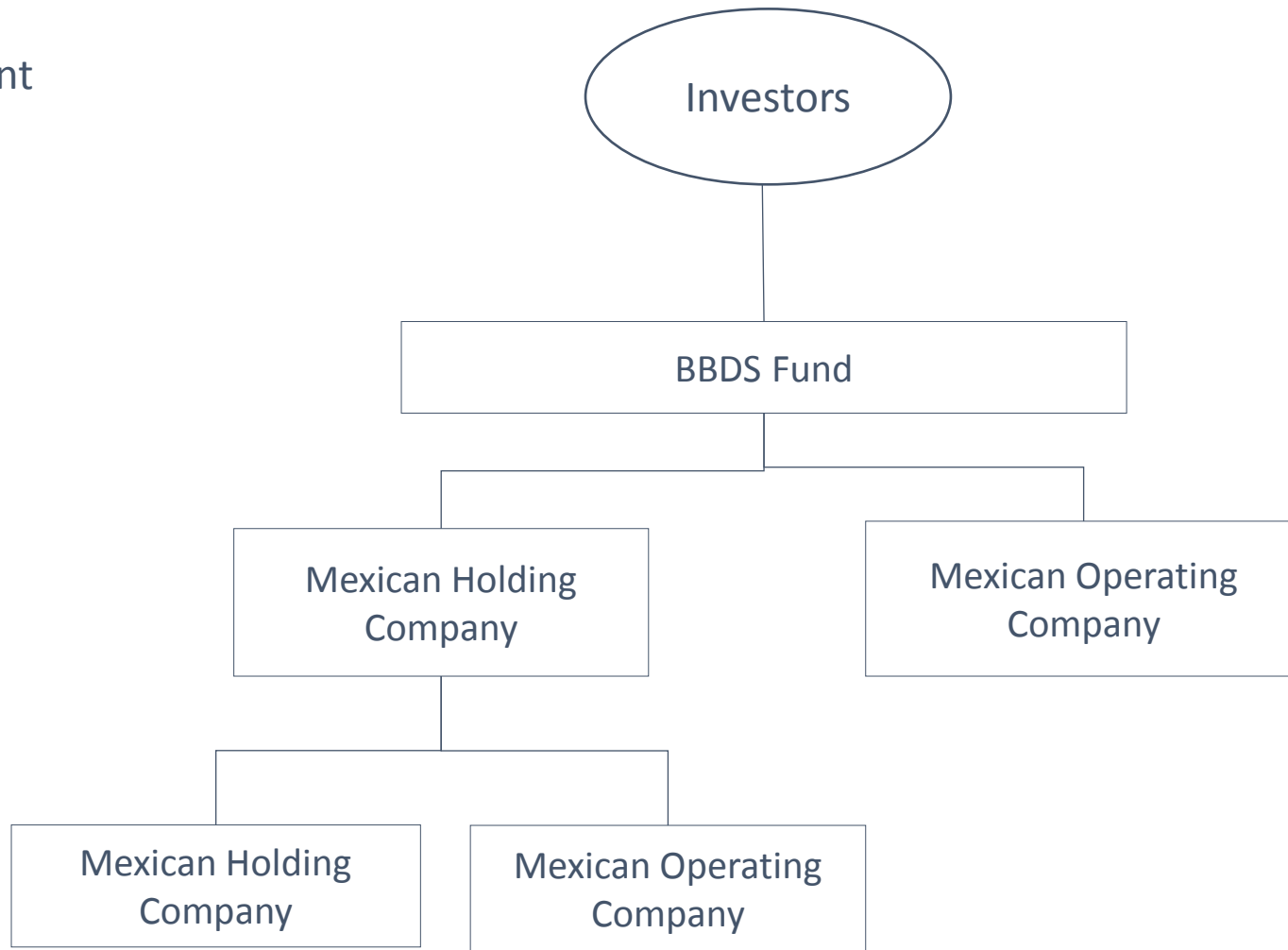
Mexico White List – Black List

- From a territorial blacklist regime to a transactional regime
 - existence of a blacklisted jurisdiction is no longer the sole criterion
- Subject to tax:
 - on the income obtained by entities resident in a blacklisted territory,
 - passive income obtained by entities considered to have a preferential tax regime.
- The preferential tax regime will be applicable if:
 - >20% of the total income comes from passive income
 - Effective tax lower than 75% of Mexico
- This regime is also applicable to income obtained through fiscally transparent foreign legal vehicles or entities
- Not applicable when does not have effective control (either directly or indirectly) over the foreign entity, provided it is not a black listed jurisdiction. Control as defined as the ability to decide the timing of distributions



Treaty benefits

Investment



Treaty benefits

Others

- US Real Estate
- Offshore trusts for efficiency and asset protection
- Offshore Funds or other international pooling entities
- Currency restrictions
- Listing entities
- SPV (yacht, airplane, one-time transactions)
- Anonymity...



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