

Post CRS: Staying Relevant

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In The News

- ▶ Credit Suisse: 4.2B lost in 2015
- ▶ Decline in number of Swiss banks
- ▶ “Shuttered Geneva Offices Show Impact of Lost Banking Secrecy” – *Chicago Tribune, June 19, 2016*
- ▶ “Billionaire Seeing Swiss Lose Luster for Rich” – *Bloomberg, July 26, 2016*



CRS

- ▶ Automatic Exchange of Information – treaties applying CRS require exchange of detailed data among multiple jurisdictions
- ▶ Broader standard: based on residence (vs. citizenship)
- ▶ Same data being exchanged multiple times
- ▶ Risk of data being “lost” or “stolen”



Quick Review of CRS

- ▶ Like FATCA – tax-related information sharing, *plus*
- ▶ Controlling persons reporting – expansive reporting without regard to whether account/income is taxed



US Participating in CRS?

- ▶ Lack of regulatory authority
- ▶ Persuading Congress?
- ▶ US election?



Restructuring as a Response to CRS:

- ▶ US as Tax “Neutral”
- ▶ “Domesticating” Structures to the US



Domesticating Structures: Choices for Trusts

- ▶ US Trusts – taxed on worldwide income
- ▶ Foreign Trusts – taxed like NRAs



US Trusts Taxed as “Non-US” Person

- ▶ Trust “resident” in the US can be taxed as a “foreign” taxpayer
- ▶ Default Rule: all trusts are foreign
- ▶ “Court Test” / “Control Test”
- ▶ Easy to fail



US Estate Tax

- ▶ Non-US persons are subject to US estate tax on “US-situs” assets
- ▶ \$60,000 exemption
- ▶ 40% tax
- ▶ Use of “blockers”

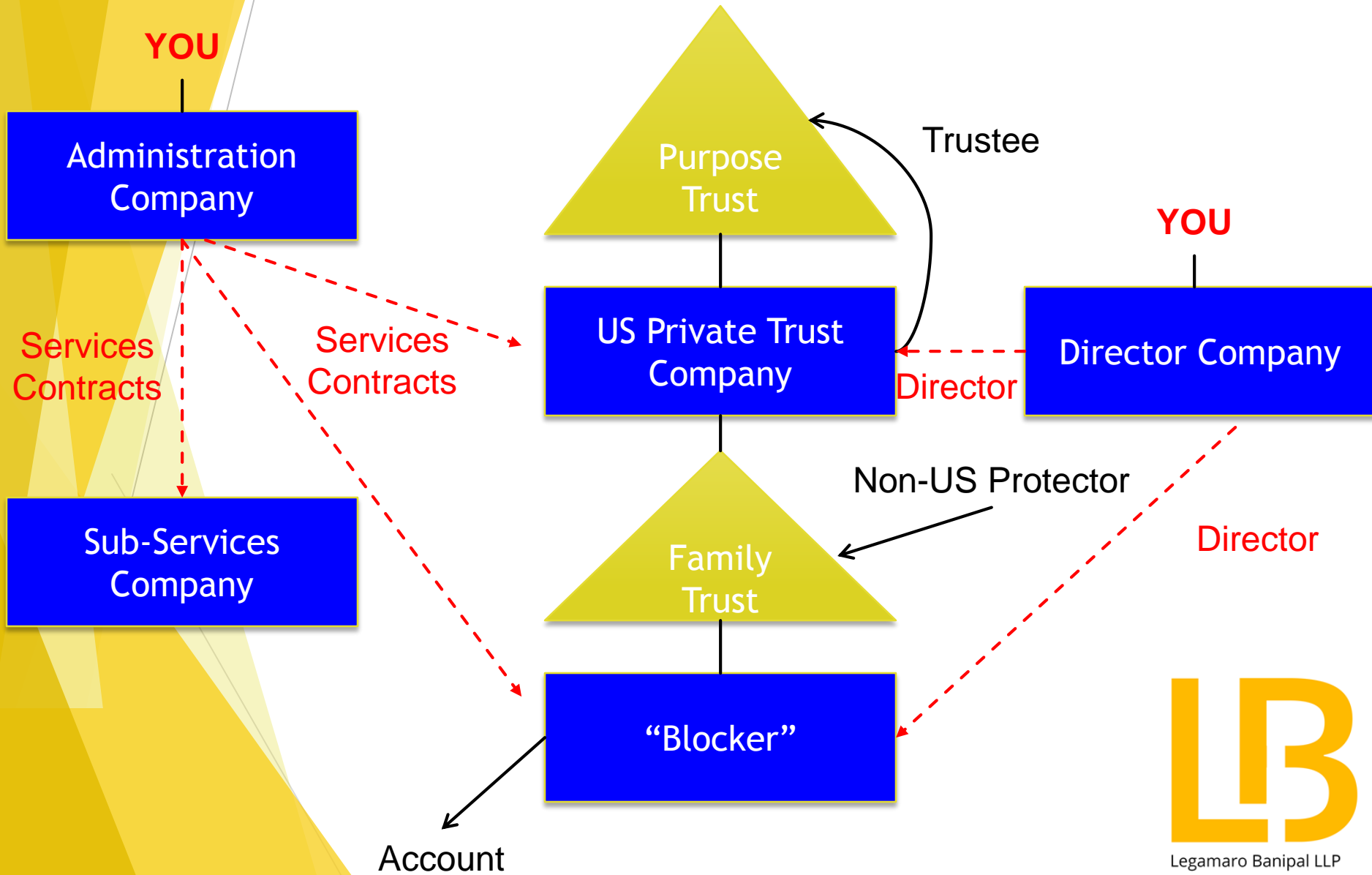


CRS-Friendly Structure

- ▶ Many other “solutions” involving the US are inadequate
- ▶ Domesticating structures
- ▶ Solving for estate tax



Solution



Purpose & Benefit

- ▶ Opens opportunity to administer new clients with world-wide assets and family members
- ▶ Administrator/director activities are not regulated by State/federal banking authorities
- ▶ Continuity of administration of trust assets
- ▶ PTC not subject to SEC regulation – qualifies for “family office” exemption

Services Income

- ▶ “Director” company – compensated on an arms-length basis
- ▶ “Administration” company – compensated on an arms-length basis for administrative and back-office services
- ▶ Services provided “offshore” not subject to US income tax.
- ▶ Separation of activities = delineation of tax

Ethical Considerations: Practitioners Beware!

- ▶ Planners must be especially vigilant -- particularly where secrecy is client goal
- ▶ Must avoid assisting in tax evasion, drug trafficking, terrorism, or use of international asset transfers to launder funds traced to illegal sources
- ▶ Engage in due diligence before accepting clients -- screening so as to avoid participation in activities that may violate planner's ethical or legal obligations.
- ▶ Get home country legal/tax support from jurisdiction in which trust settlor and beneficiaries reside
- ▶ Have clients certify that are tax compliant in home jurisdictions and planning engaged will not change that compliance