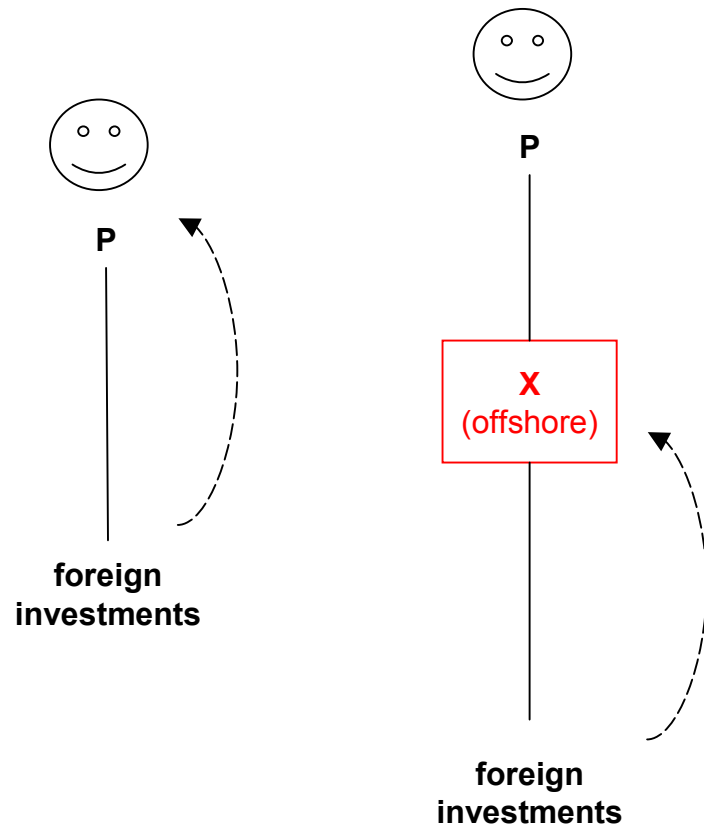


**RODRIGO,
ELIAS
& MEDRANO**
ABOGADOS

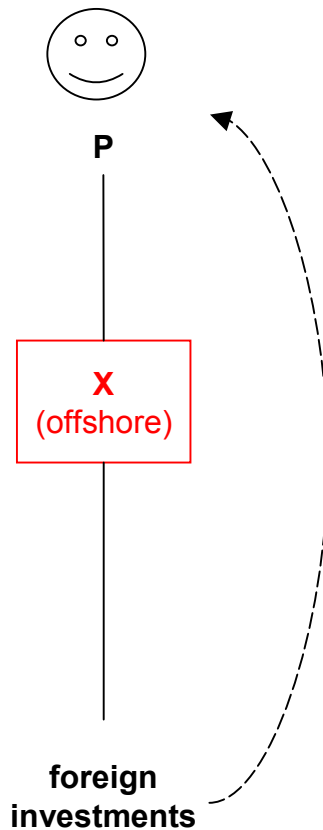
Peruvian CFC rules: practice and pitfalls

November 2014

Until December 31, 2012

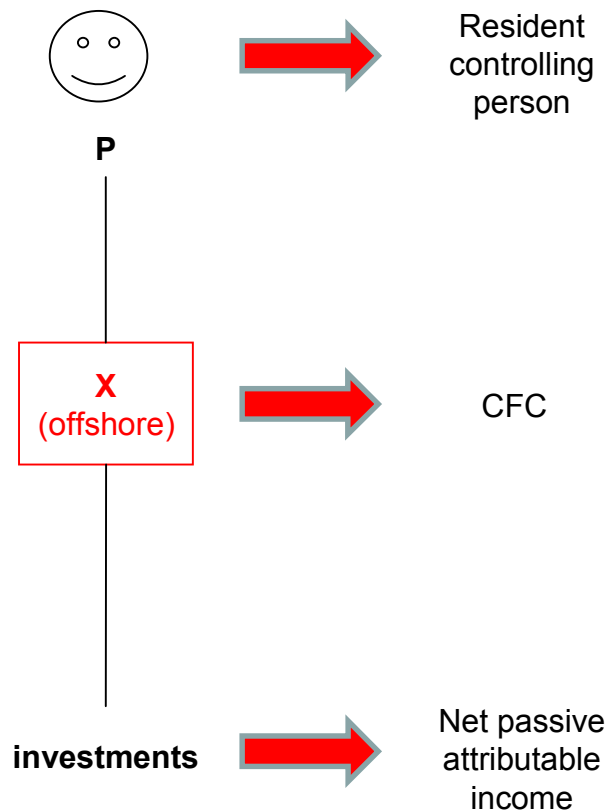


- “P” is a Peruvian resident individual
- P has accounts in foreign banks
- Foreign source income earned by P (cash basis): subject to an Income Tax in Peru (marginal rate of 30% above US\$ 80k)
- If an offshore vehicle (X) was interposed? The obligation to pay Income Tax was deferred



- “Controlled-Foreign-Entity” (CFC) rules
- P shall pay Income Tax in Peru on the passive income obtained by X, regardless of whether the latter effectively distributes the corresponding dividends
- New GAAR – “artificial” or “improper” scheme

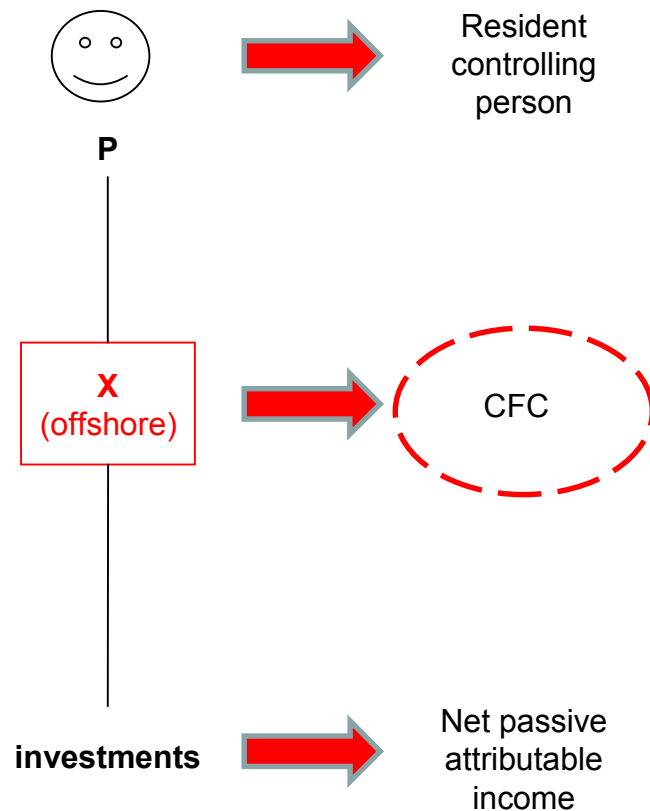
Basic concepts



CFC rules

- Apply to Peruvian resident taxpayers
- Controlling certain non-resident entities (CFC)
- With respect to passive income earned by the CFC

CFC

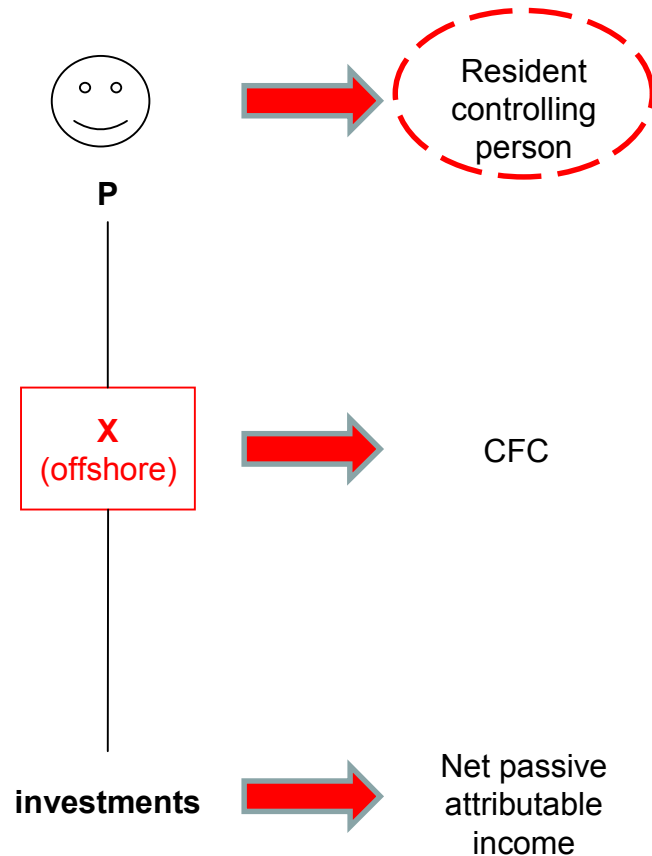


CFC

- Non-resident entities of any nature (companies, funds, partnerships, associations, trusts, foundations)
- Incorporated and/or resident in a tax haven or in a country where passive income is subject to an Income Tax lower than 22.5%

Regulations: comparison must be made with the tax effectively paid

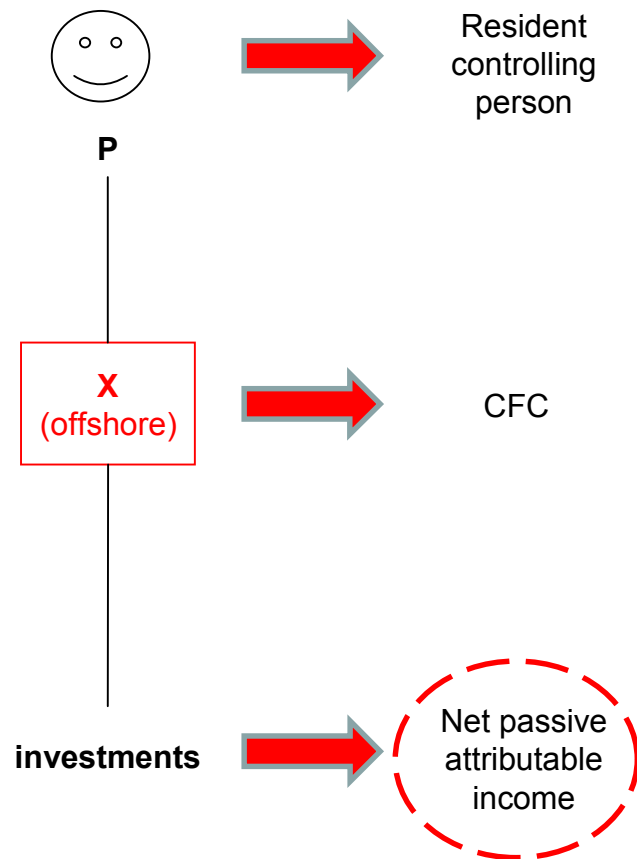
Resident controlling person



Resident controlling person – 50% Test

- If at the end of the year has a participation of more than 50% in:
 - paid-in capital; or,
 - voting rights; or,
 - profits
- Alone or together with resident related parties (includes family members to a certain level e.g. cousins, brothers-in-law)

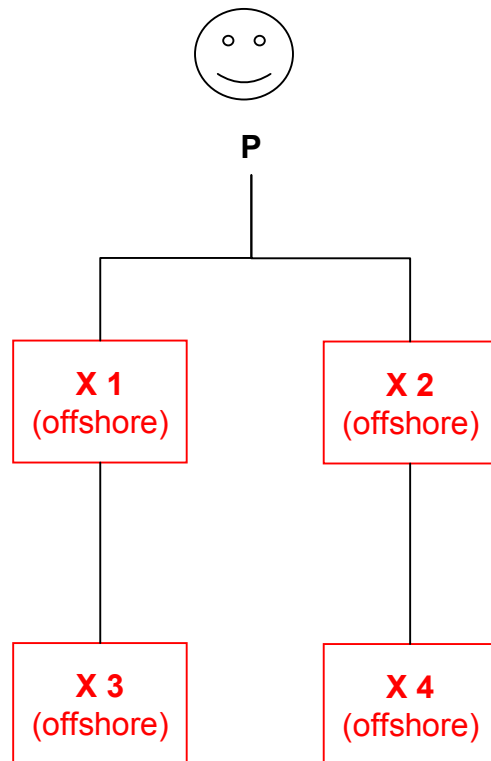
Attributable passive income



Attributable passive income

- Dividends (except those distributed by one CFC to another)
- Interest (unless obtained by a bank)
- Royalties
- Capital gains arising from transfers of intangibles, real estate, securities

Attributable passive income (contin.)

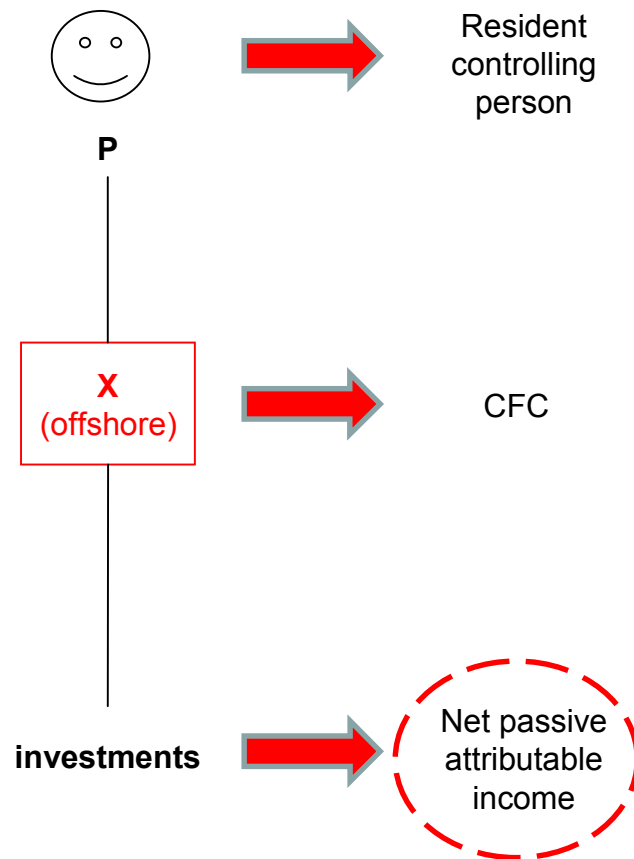


Attributable passive income (contin.)

- The determination must be made considering each CFC on a separate basis, excluding dividends distributed by one CFC to another

i.e. those paid by X3 to X1 and by X4 to X2

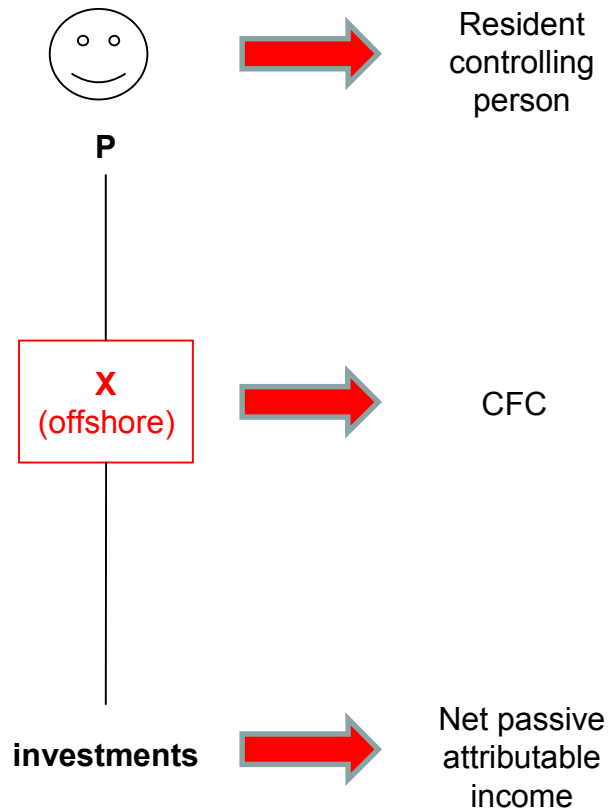
Non-attributable passive income



Non-attributable passive income

- Income from Peruvian sources (unless it derives from transactions with Peruvian residents and certain conditions are met)
- That levied with an Income Tax higher than 22.5% in a third jurisdiction

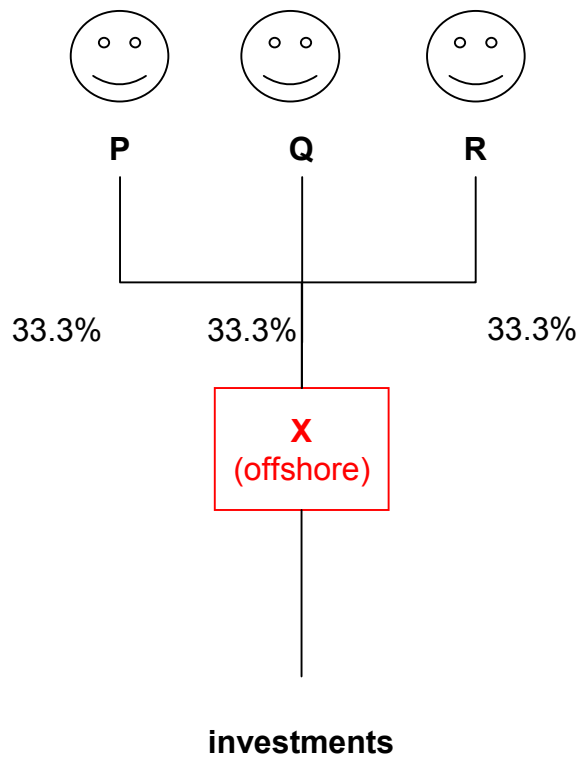
Formal obligations



Formal obligations

- Resident taxpayers shall keep books and records for tax purposes, detailing the income attributed, the dividends and taxes paid abroad
- The Peruvian tax authorities may determine the scope of this information and request its filing

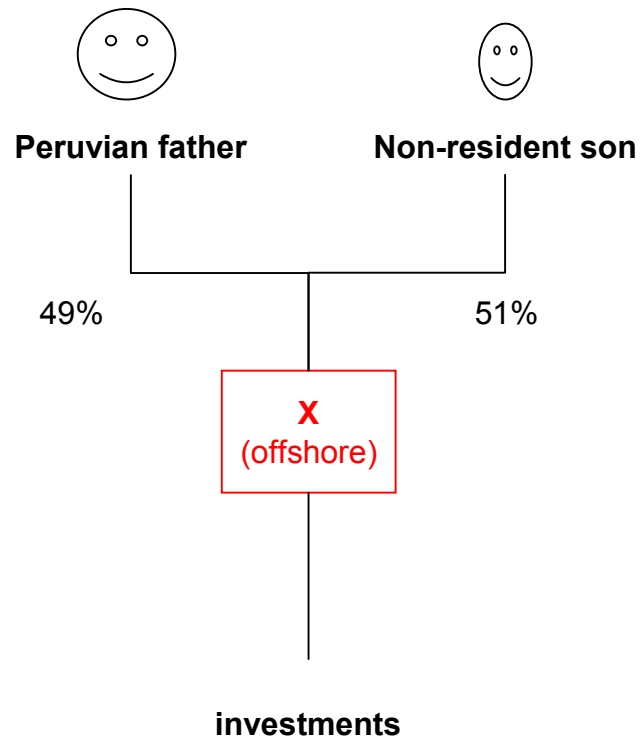
Practical cases



Friends each owning 33.3% of an offshore vehicle

- P, Q and R are Peruvian resident individuals
- P, Q and R are not related
- The 50% test is not verified and, therefore, X is not a CFC of P, Q and R
- Cell companies?

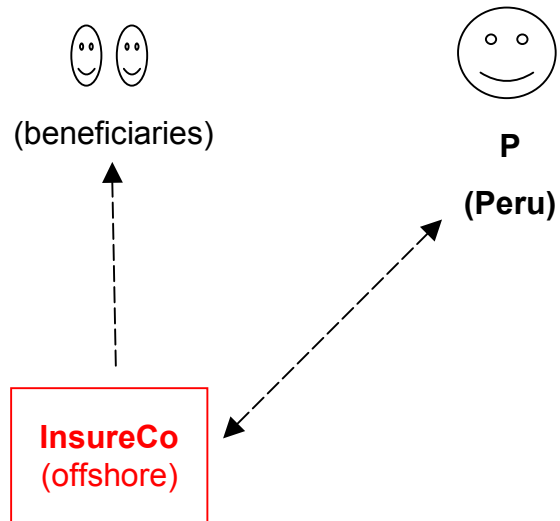
Practical cases (contin.)



Families with non-resident members

- Peruvian resident father and his non-resident son own together 100% of X
- The Father, including resident related parties, only own 49%
- The 50% test is not verified and, therefore, X is not a CFC of the Father

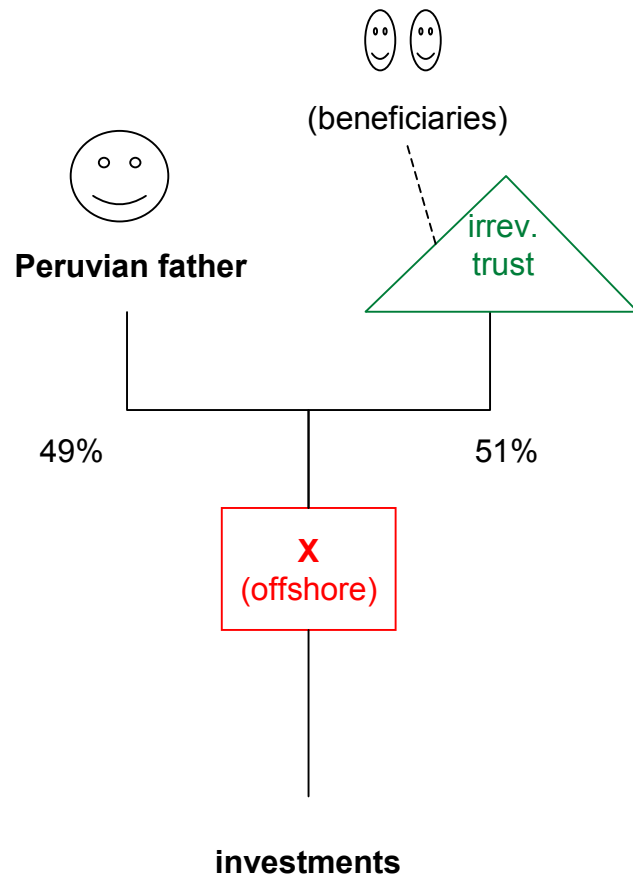
Practical cases (contin.)



Life insurance policies

- Life insurance benefits are not subject to Income Tax in Peru
- Payments of premiums to non-resident insurance companies are subject to an effective 2.1% withholding tax
- Point of attention: the insurance company must carry out an insurance activity and assume a risk (structures where a portfolio of investments are managed?)

Practical cases (contin.)



Irrevocable trusts

- Peruvian resident father owns 49% of an offshore vehicle (X)
- An irrevocable trust owns the remaining 51%
- The sons are the sole beneficiaries of the irrevocable trust
- Is the 50% test verified?

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