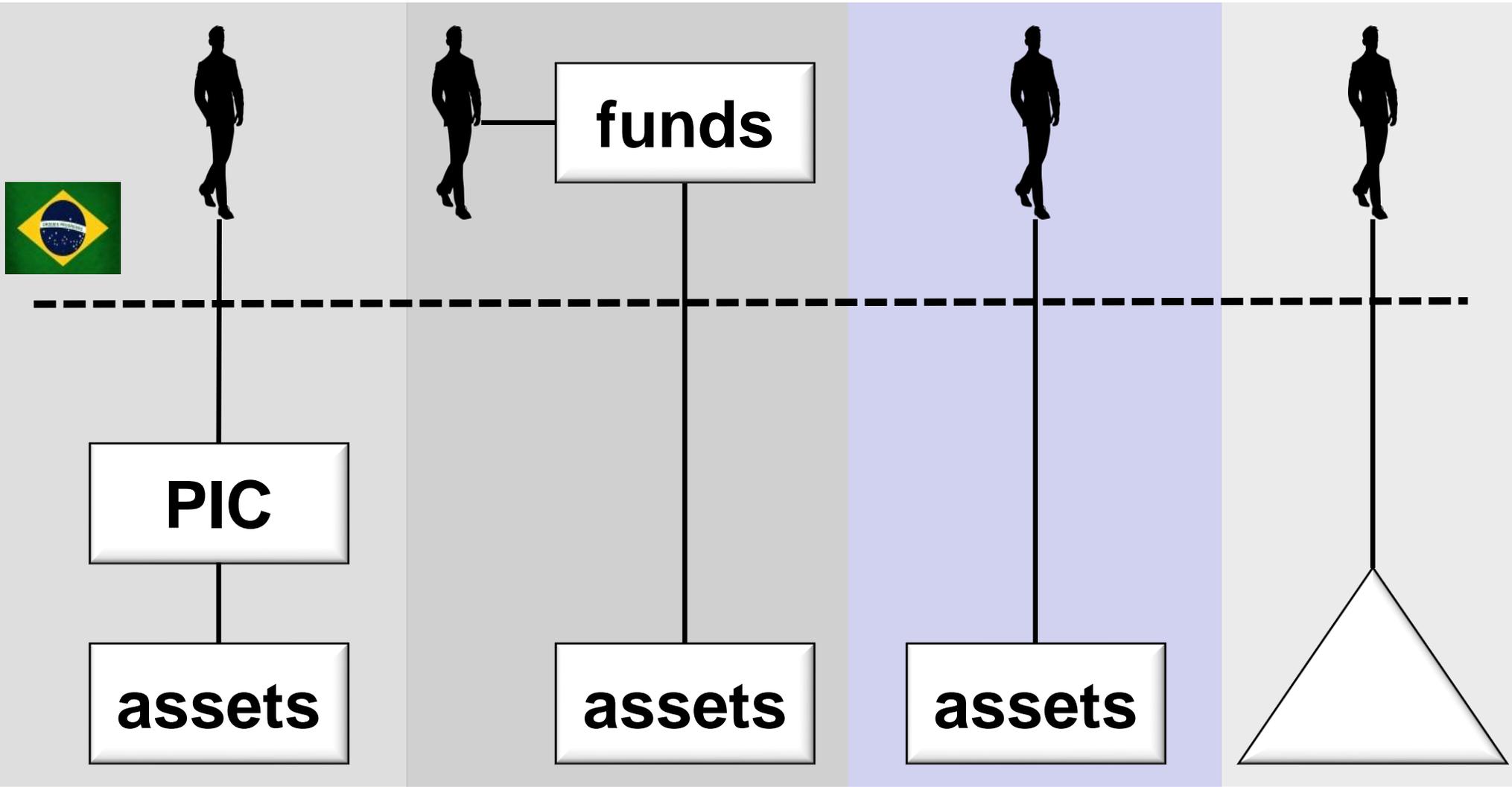

Tax treatment of direct foreign financial investments of Brazilian individuals:

A practical approach of the standing rules and trends

São Paulo
November 4th, 2017

Camillo Sicherle & Raul Leite

Foreign investment alternatives



Taxation on foreign investments



15 or 27,5%

\$



PIC

assets

15 to 22,5%

\$

Fund

assets

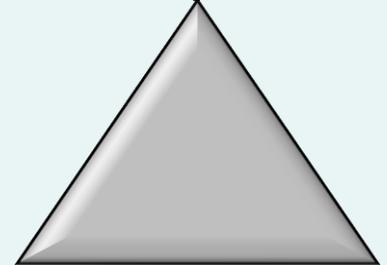
15 or 27,5%

\$

assets

15 - 27,5% ?

\$



- Voluntary disclosure programs: 2016 & 2017
- Massive Brazilian offshore base - U\$D 174,5 Bi
- Investing offshore: a culture outbreak in Brazil
- Domestic Public Debt: tax burden increase

- Introduction of CFC Rules for individuals (BEPS - Action 13)
- Sham and lack of substance doctrine
- Financial products: tax & compliance treatment

- Lack of legal definition
- Crossborder issues

“Securities - when publicly offered, any other collective investment instrument or agreement that creates the right of participation on profits or remuneration, including as a result of the rendering of services, and whose profits derive from the efforts of the entrepreneur or from the efforts of third parties”
(Article 2°, IX, Federal Law 6.385/1976)

When does an instrument qualifies as financial investment?

- Issued, distributed or managed by financial entity
- Registered before a Monetary Authority or Securities Commission (e.g.: IOSCO affiliated?)
- Discretionarily managed by an accredited professional?
- Equivalent instrument in Brazil?

SHOULD BE

- Instruments issued or intermediated by financial institutions
- Standard and discretionary contracts having a financial institution as a counterpart

CAN BE

- Shares of funds and collective investment vehicles, under professional and discretionary management, regulated, registered, administered and distributed by a financial institution in the country of origin

MAY BE

- Securities traded in exchange markets or OTC

RED FLAG



- Insurance policies and wrappers
- Private investment instruments
- Unregulated funds and collective vehicles
- Managed accounts under fiduciary arrangements

- **Brazilian SEC:** Distribution & Offer of foreign financial products and services in Brazil
- **Brazilian Insurance Commission (SUSEP):** limitations imposed by Complementary Law No. 126/2007.
- **Central Bank Returns (CBE):** full disclosure of underlying structures and classification between portfolio and equity

Financial investments: CD, Structured Notes, Derivatives

Regulated Investment Funds

Stock exchange traded securities

Participating Debentures

Insurance products

Closely-held companies, private placements

Direct investments: the simpler, the better?

Thank you!

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