



# STEP Bahamas Conference Nassau, June 7<sup>th</sup>, 2012

William Heuseler, Esq. TEP©  
Chief Wealth Planning Officer  
Itaú Private Bank

**Itaú**PrivateBank  
International

## Planning tools for Ultra High Net Worth Families in Brazil

- ❑ Advantages of offshore funds (SMART Funds)
- ❑ Trusts and Foundations vs control issues
- ❑ Dealing with forced heirship and divorce aspects
- ❑ Gift and Transfer taxes when dealing with international planning

# Advantage of Offshore Funds



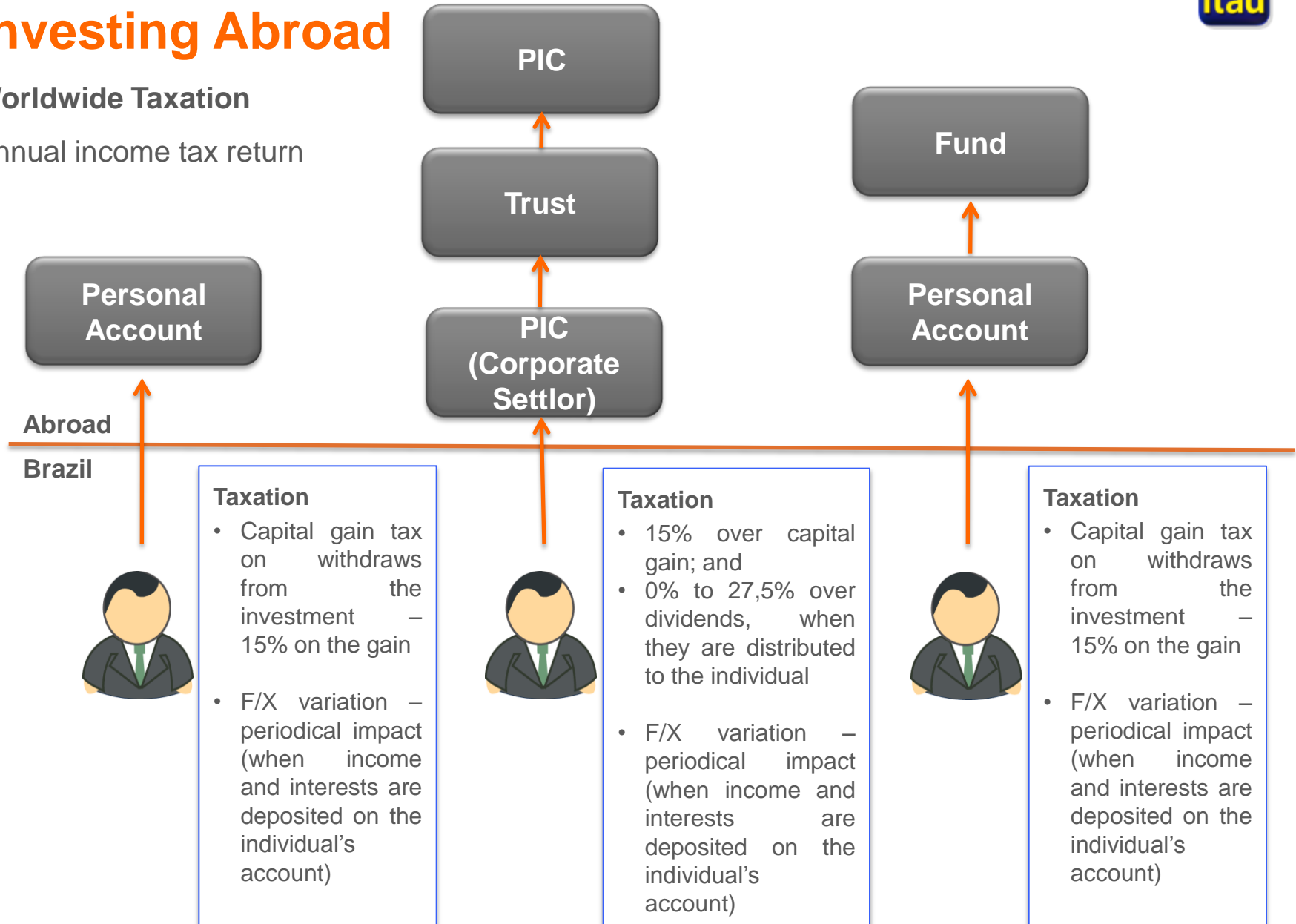
- Asset Protection;
- Confidentiality;
- Integration of all financial activities in an efficient operating structure;
- Simple and efficient consolidation, data gathering, aggregation and reporting;
- Detailed, flexible Performance Monitoring and Reporting;
- Ability to segregate investments by type, risk and asset or sub-asset class;
- Ability to mandate different asset managers;
- Efficient structure for estate planning purposes.

# Brazilians Investing Abroad



## Worldwide Taxation

Annual income tax return



# Trust / Foundation Brazilian Resident



## Main Issues

- When does the transfer of assets occur?
  - ✓ It occurs by the actual transfer of possession
  - ✓ Some assets require specific registration with proper authorities (e.g. real estate, interest equity, vehicles)
  - ✓ No provision preventing/limiting an offshore trust to hold assets in Brazil
  
- Nature of transfer of assets to the trust
  - ✓ Revocable trust (fiduciary transfer not typified under Brazilian civil law)
    - Taxation on transfer
    - Settlor may keep the basis for the assets in his income tax return
  - ✓ Irrevocable trust or foundation (donation or gift)
    - Taxation on transfer: ITCMD
    - Settlor does not keep basis for the assets in his income tax return

# Trust / Foundation (Cont.)



## Main Issues

- Limitations to the possibility of establishing Trusts:
  - ✓ Marital regime
  - ✓ Forced heirship
  
- Distribution of assets to the beneficiaries:
  - ✓ Real estate: subject to ITBI and generally characterized as ordinary income (27.5% income tax);
  - ✓ Other types of income (ex. Dividends): characterized as ordinary income;
  - ✓ Donation of real estate: subject to ITCMD (State Level Tax – 0% to 8%);
  - ✓ Life insurance proceeds distributed: non-taxable income (Brazilian legislation);

# Succession Laws in Brazil



- Forced Heirship rules in Brazil

Under Brazilian legislation 50% of the assets must be divided equally among the heirs (assuming that the deceased provided by Will how the remaining 50% of his/her assets should be distributed). See Brazilian Civil Code Article 1789:

*Art. 1.789. In case of legal heirs exist, the deceased can only dispose half of his/her assets by will.*

# Family Law

## Brazilian Marital Property Rules

### Partial Community Property

- Applicable when there are no legal restrictions or agreement

### Total Community Property

### Fully Separated Property

### Final Share of Property Acquired after the Marriage ("Participação Final dos Aquestos")

- Marital regime introduced by Brazilian New Civil Code

### Mandatory Fully Separated Property

- Mandatory in cases specified in law (ex.: people older than 70 years old, etc.)



**Pre-marital  
Agreement**



# Family Law

## Brazilian Marital Property Rules (Cont.)

### Stable Relationship

- A PUBLIC, CONTINUOUS and LASTING relationship between a man and a woman with clear FAMILY ESTABLISHMENT PURPOSE;
- The partial community property system will rule such relationship unless the partners agree upon another system;
- Most regulations are based on precedents.

# Succession Law

## Brazilian Legal Succession Order



### BEFORE 2002 Civil Code Reform

Descendents;  
Ascendants;  
Surviving spouse;  
Collateral relatives.

### AFTER 2002 Civil Code Reform

Descendents and the spouse are concurrent heirs – it will not occur (i) if the marital property system is the total community property; (ii) when the adoption of the fully separate property regime is mandatory; or (iii) if the deceased spouse married under the partial community property regime does not have any separate property.  
Ascendants and spouse are concurrent heirs – regardless of the marital property system;  
Spouse;  
Collateral Relatives – heirs, but not legal heirs.

# Brazilian Succession Law - Summary



Marital Property	Moiety	Succession in concurrence with spouse		
		With descendents	With ascendants	Without descendents nor ascendants
Total Community Property	Yes	No	Yes	Yes
Partial community Property	Yes (Common property)	Yes (Separate property, as the case may be)	Yes	Yes
Fully Separated Property	No	Yes	Yes	Yes
Mandatory Fully Separated Property	No	No	No	No
Stable relationship	Yes (Common property)	Specific rule*	Specific rule**	Specific rule***

\*Concurrent with common children: part equivalent of the children's part; concurrent with other descendents: half of the part of the children;

\*\*Concurrent with others succeeding relatives: 1/3 of the inheritance;

\*\*\*In the absence of succeeding relatives: whole inheritance.

# Brazilian Divorce Regime - Summary



<b>Marital Property</b>	<b>Assets acquired before the marriage</b>	<b>Assets inherited or received as donation</b>	<b>Assets acquired during the marriage</b>
Partial Community Property	No	No	Yes
Total community Property	Yes	Yes*	Yes
Fully Separated Property	No	No	No
Final Share of Property	No	No	Depends on the case
Stable relationship	No	No	Yes**

\*Except in case of clauses restricting communication of the assets with spouse;

\*\*Except in case of prior agreement.

## Disclaimer

This presentation does not constitute an investment offer or recommendation. All facts, and characters described in the case study are fictitious and any resemblance with the reality is entirely coincidental.



Itaú Private Bank International (“Itaú”) does not provide legal or tax advice and this presentation does not constitute such advice. Itaú strongly recommends to all persons considering the products or services described in this presentation to obtain appropriate independent legal, tax and other professional advice.

The data and information to which you shall become privy are provided in an informative and generic manner. They may not be reproduced or redistributed to third parties without the prior consent of Itaú Private Bank International.

The sources mentioned herein are deemed as trustworthy by Itaú, however, nothing in this presentation should be interpreted as a guarantee or assurance by the Itaú as regards the discernment criteria of each of the sources mentioned.

The data mentioned herein are valid for the date of the current document, therefore Itaú has no responsibility for updating them should they undergo any alteration.

The interest manifested by the recipient in becoming acquainted with the information contained herein does not imply any kind of commitment or obligation on the part of Itaú.

Itaú and its affiliates do not provide tax advice. Accordingly, any discussion of U.S. tax matters contained herein (including any attachments) is not intended or written to be used, and cannot be used, in connection with the promotion, marketing or recommendation by anyone unaffiliated with Itaú of any of the matters addressed herein or for the purpose of avoiding U.S. tax-related penalties.

**Itaú**PrivateBank  
International