

Wealth Structuring for European Clients

STEP Bahamas

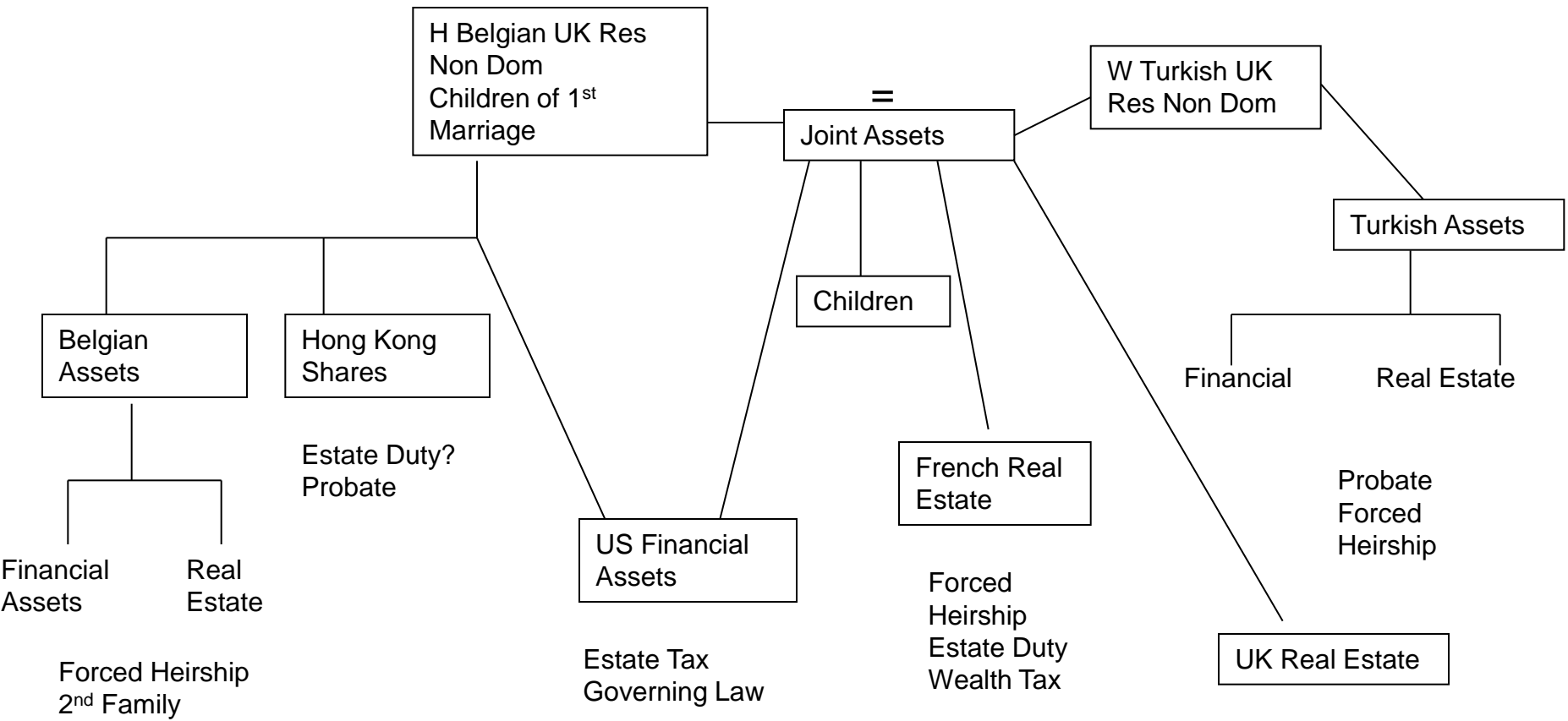
Michael Evans

Burges Salmon LLP

24 October 2006

Coming to the UK

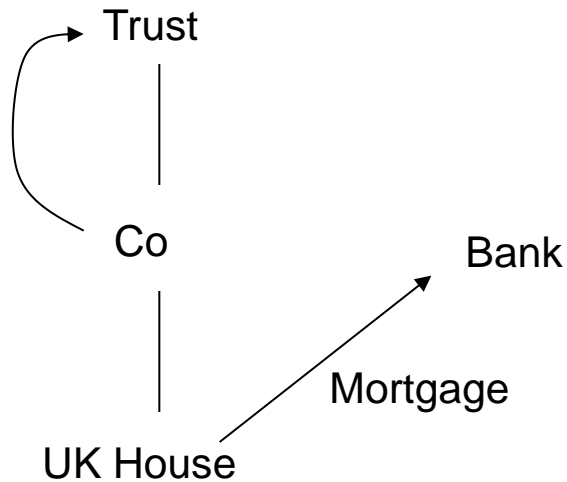
Multi-Jurisdictional Family



Coming to the UK

UK Real Estate

Classic Structure



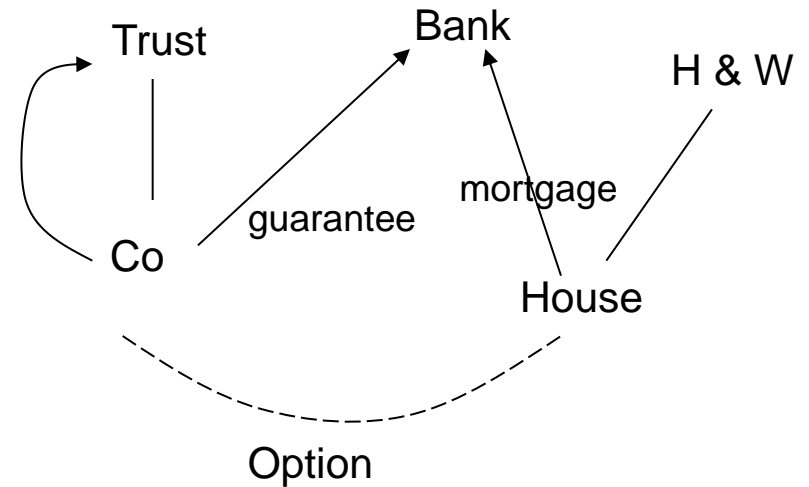
IHT

CGT

IT – Benefit in kind

- Pre-owned Assets

Option Scheme



IHT

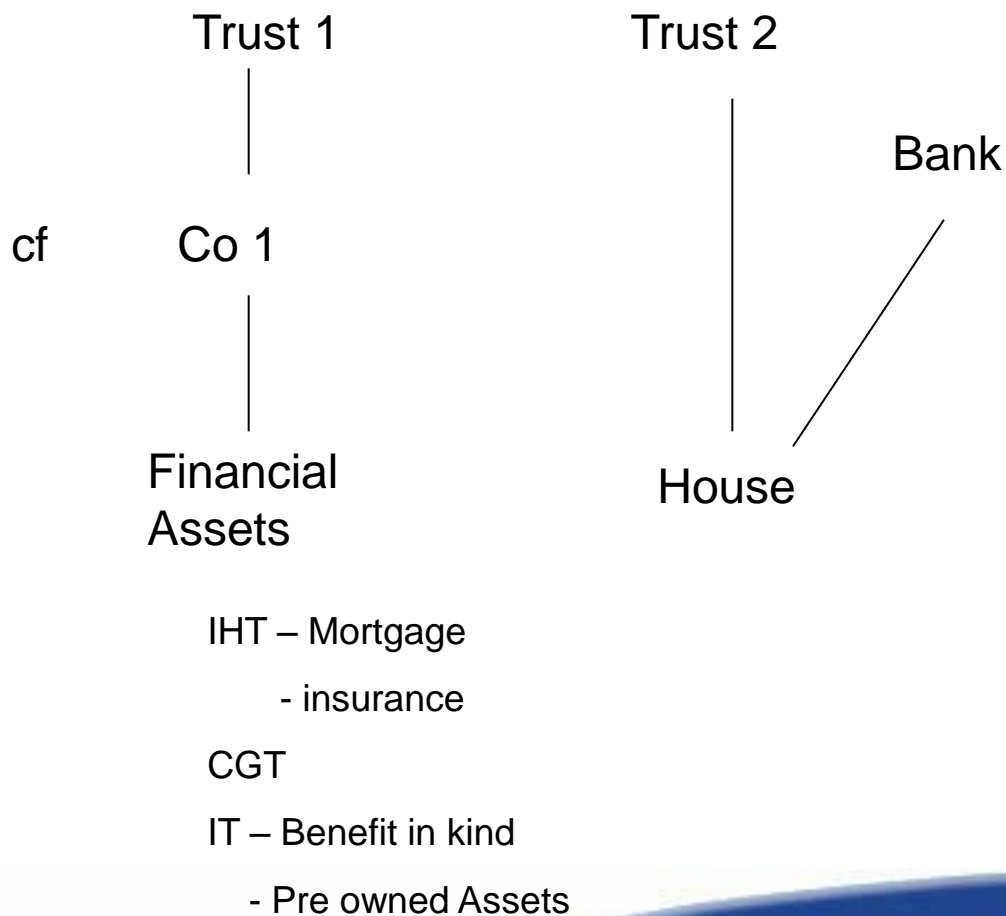
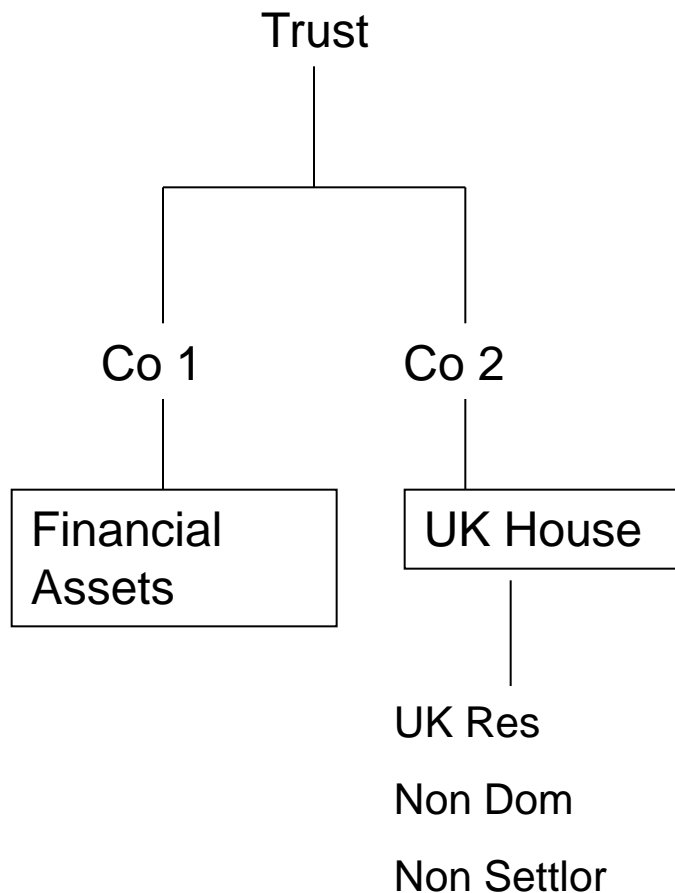
CGT

IT – Benefit in kind

- Pre-owned Assets

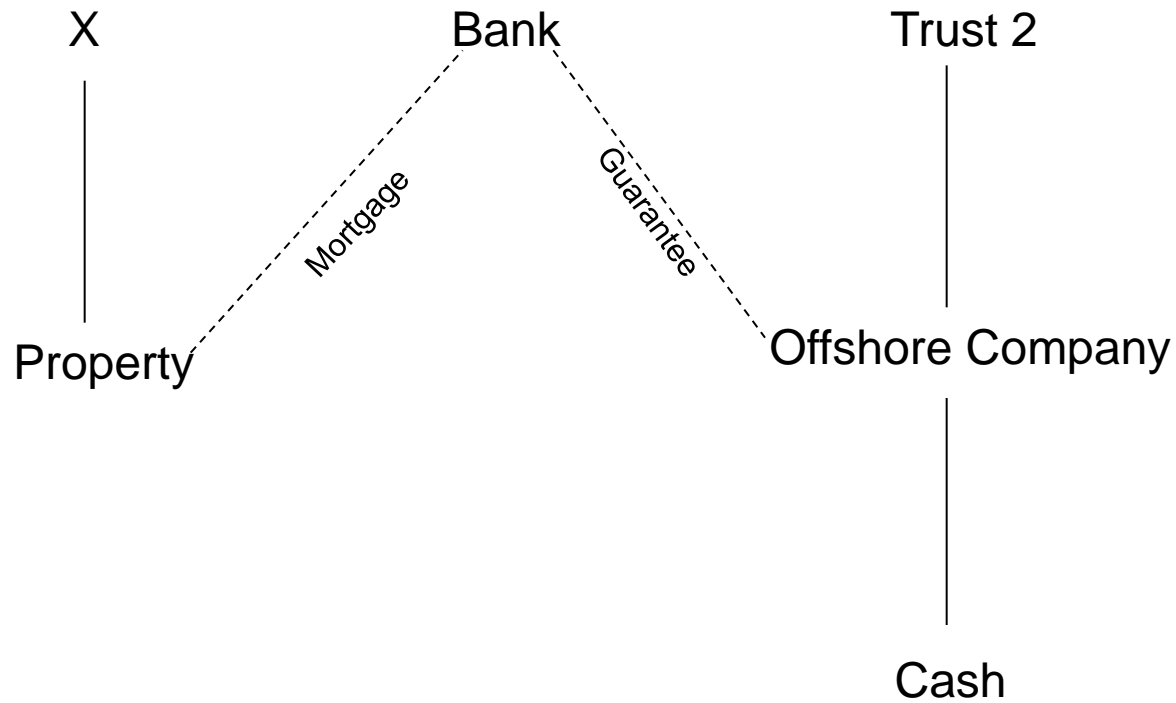
Coming to the UK

UK Beneficiaries & Real Estate



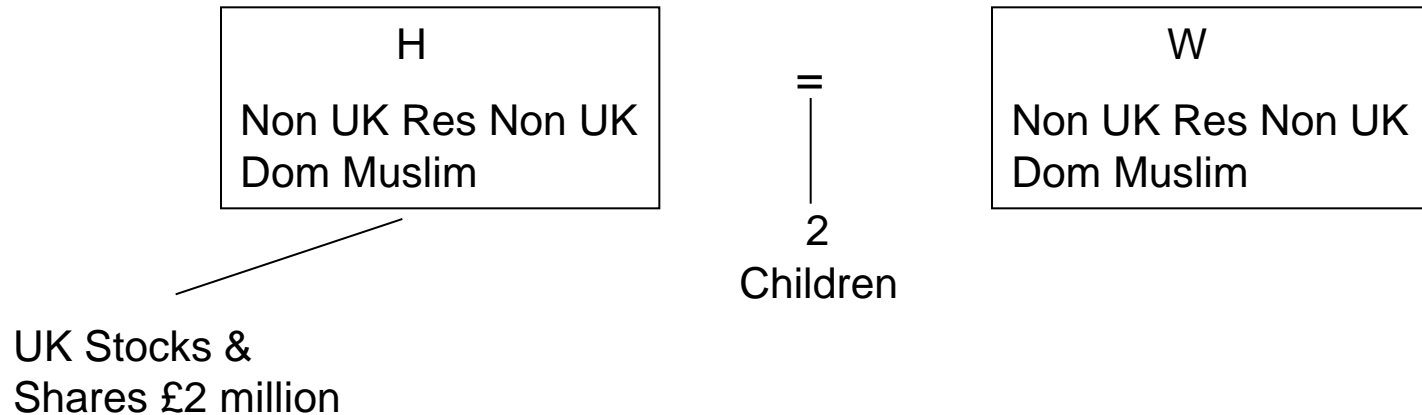
Coming to the UK

UK Real Estate – Third Party Loan



Coming to the UK

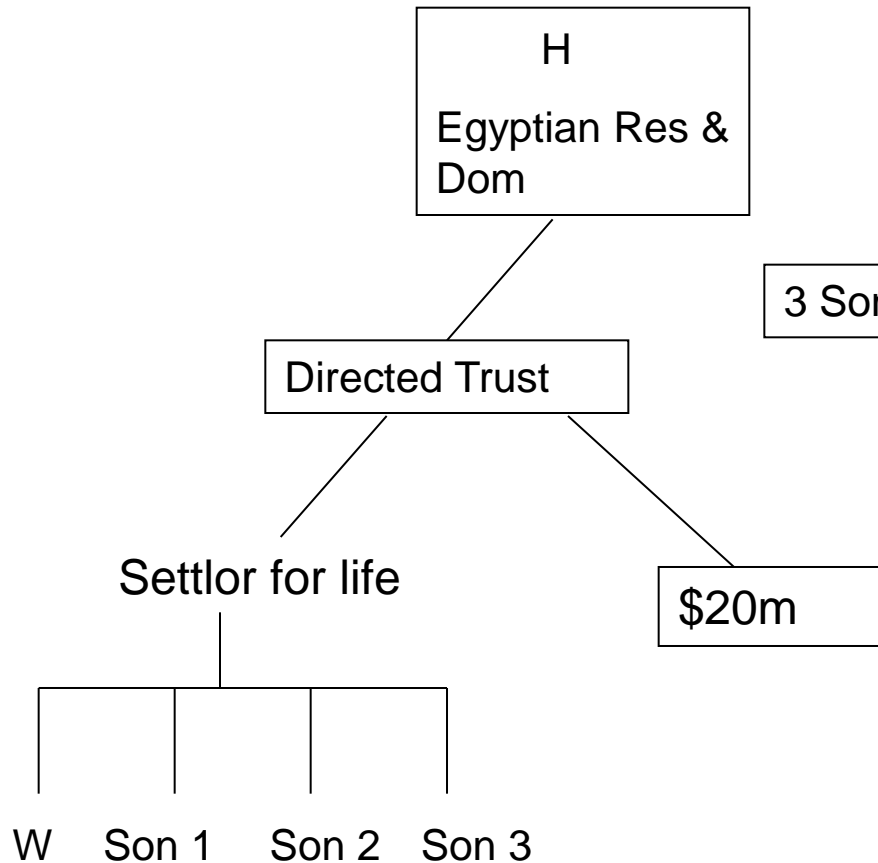
Sharia'h Inheritance



- H Dies
- UK law looks at Law of Domicile = Sharia'h
- 1/8 to W (250K) 7/8 to Children (£1.75m)
- £250K spouse exempt + £285K nil rate band
- IHT = £1.465m x 40% = 586K
- Trust + Company ?

Coming to the UK

UK Beneficiaries



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W
UK Res & Dom

3 Sons = UK Res & Dom

IHT ✓

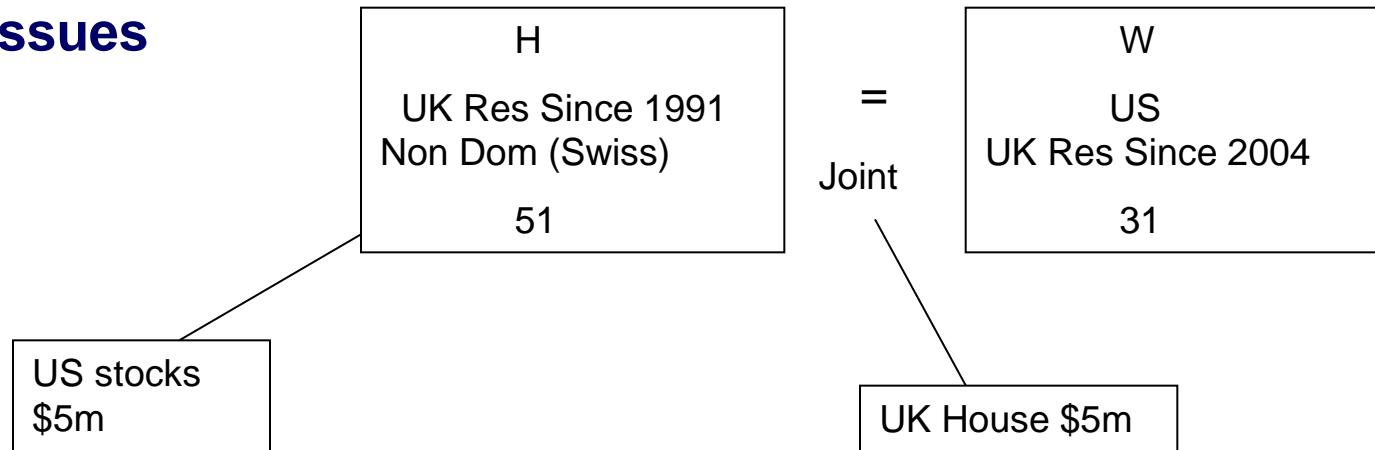
IT – 40% on rolled up
income

CGT – up to 64% rolled up
+ unrealised gains

Amend Trust

Coming to the UK

US Issues



H:

UK – Deemed Domicile?

Worldwide

- IHT
- Limited Spouse Exemption

US - No unified Tax Credit from Estate Tax

- Limited Marital Deduction
- Double Tax Treaty

Trust ?

- Non US Grantor

W:

US – Joint property - assumed 100% W

- mortgage non-deductible?
- Limited Marital deduction

UK - Full Spouse Exemption

Tax Efficient Will

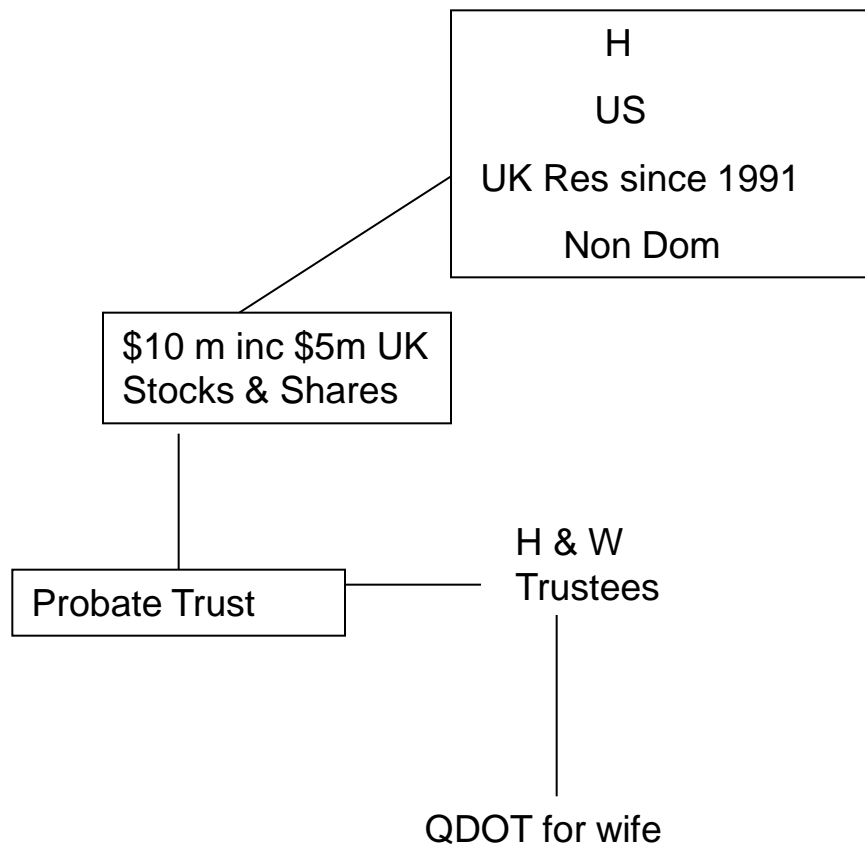
Annual Gifts

QDOT

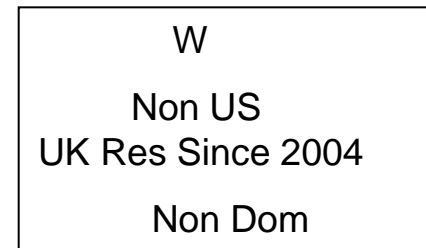
US compliant insurance

Coming to the UK

US Issues Cont'd – Probate Trust



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CGT – on set up

- on subsequent disposals

IHT - on UK situs assets

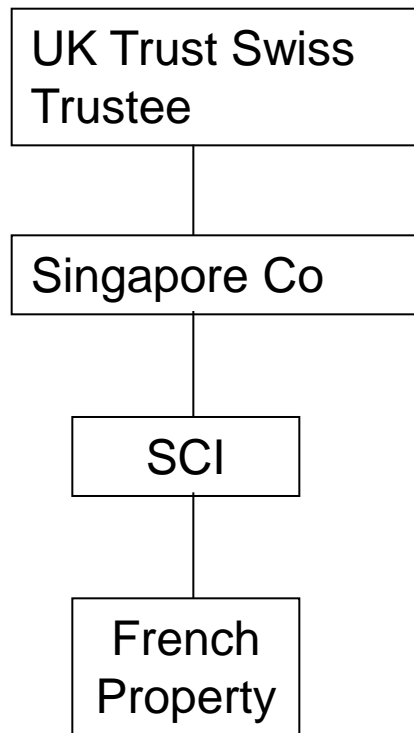
IT - on UK source income

France

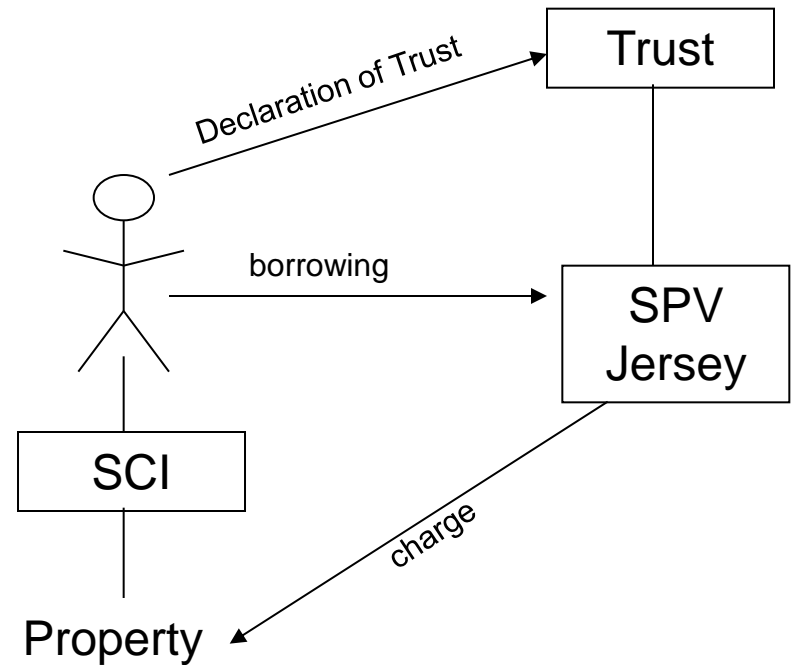
- Real Estate Main Problems
 - Wealth Tax
 - Inheritance Tax
 - Forced Heirship Rules
 - Joint Ownership (tenants in common, en tontine, marriage contract)
 - 3% tax
 - Capital Gains Tax – 2% depreciation problem
 - Income Tax

France cont'd

- Structure



- Lending Structure



France cont'd

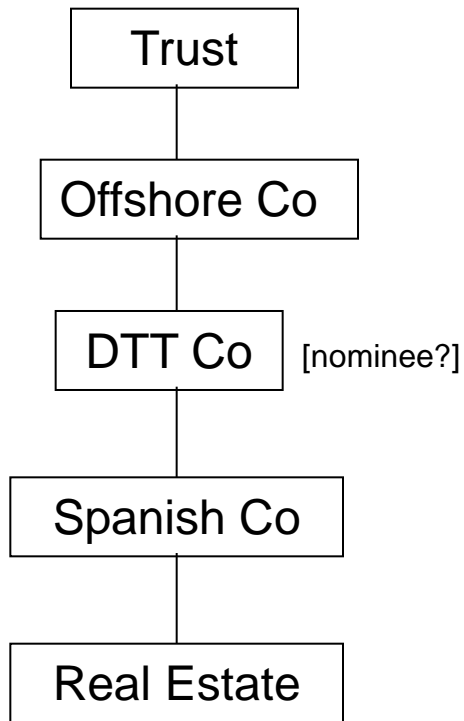
- Discretionary Irrevocable Trust
 - Signed but not ratified Hague Convention
 - Problem if Settlor is beneficiary?
 - Income Tax on payments of income

Spain

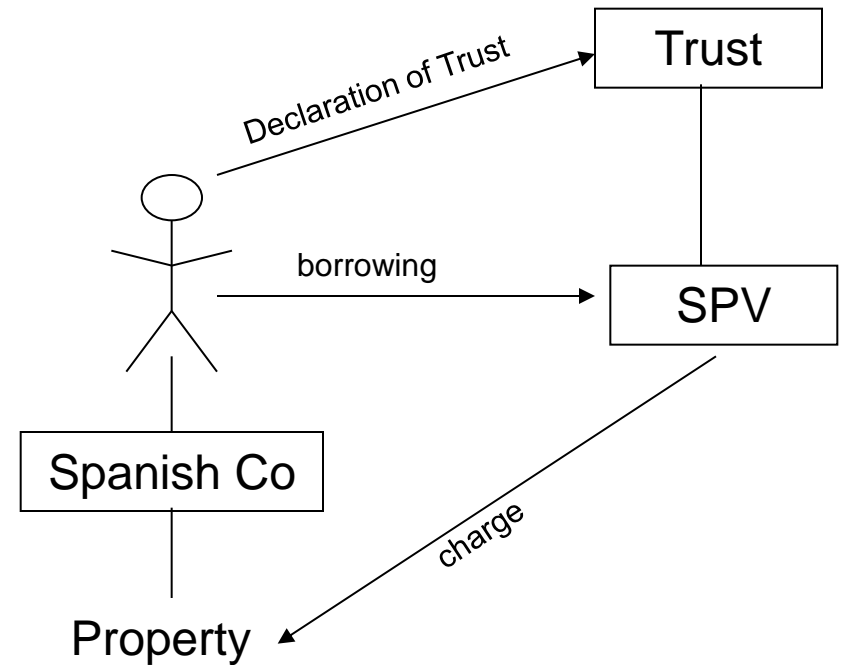
- Real Estate Main Problems
 - Wealth Tax – lending solution
 - Inheritance Tax – lending solution
 - No Forced Heirship Problem
 - Discretionary Irrevocable
 - UK Company Nominee – DTT Company
 - 3% tax
 - Income Tax

Spain cont'd

- Structure



- Lending Structure



Spain cont'd

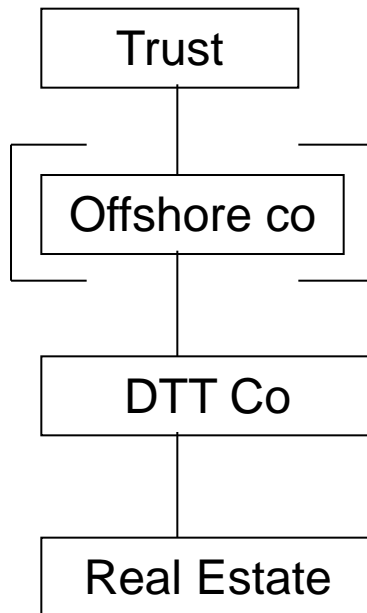
- Discretionary Irrevocable Trust
 - Signed but not ratified Hague Convention
 - Gift tax consequences of payments to Spanish resident individuals

Italy

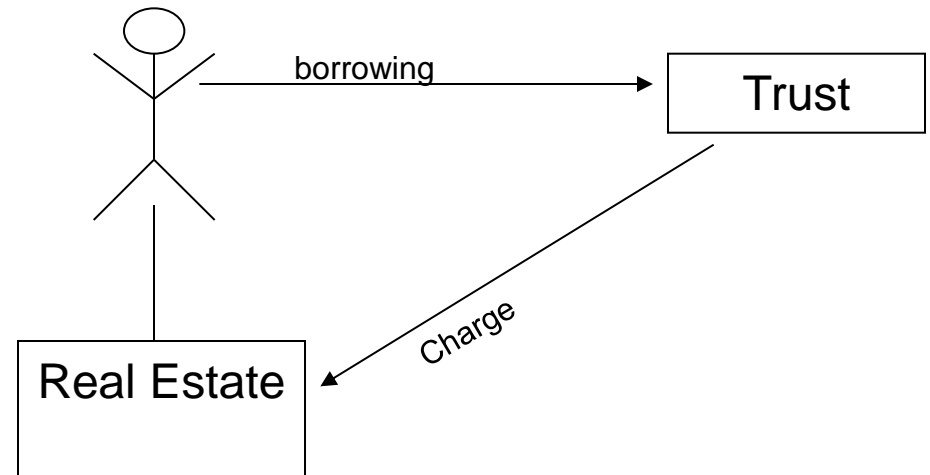
- Real Estate
 - No Wealth tax
 - No Inheritance Tax
 - Signed and ratified Hague Convention
 - Forced Heirship Rules

Italy cont'd

- Structure



- Lending Structure



Italy cont'd

- Income Tax
- Capital Gains Tax
- No tax on payments into or out of Trust
- Italian residents can settle

Investments – Reserved Powers

- Different types of reserved powers
- Why?
 - Trustee too cautious
 - Trustee too speculative
 - Special assets

Investments – Reserved Powers cont'd

- Do they work?
- Trustee Supervision
- UK Residents
 - Quasi-trustee
 - General administration
 - Holding companies
 - Limited power of attorney
 - FSMA Regulation

New Inheritance Tax Rules

- “Alignment” of IHT treatment of trusts
 - Discretionary Trusts
 - Accumulation and Maintenance Trusts (children/grandchildren trusts)
 - Life interest trusts (fixed right to income)
- Three charges:
 - Entry charge (40% on death/20% on lifetime transfers)
 - Periodic charge (6% every 10 years)
 - Exit charge (0.15% per quarter)
- Subject to exceptions

IHT & Trusts - International

- Excluded Property Settlements
- Pre 91 Trusts
- Deemed Domiciliaries
- Immigrants to France and Spain
- European Property Structuring

IHT & Trusts - International

- UK Assets
- US Clients
- Pre-owned Asset Charge
- Wills
- Transfers between Trusts
- Distributions to UK Beneficiaries

Asset Structuring on Divorce

- Miller and McFarlane – Matrimonial and Non-Matrimonial Property
- Charman – information from Trustees
- Minwalla – challenging the Trust

Case - Miller

- Mr and Mrs Miller
- Marriage 2 years and 9 months no children
- House of Lords approved CA and original decision
- Wife received £5 million

McFarlane

- Mr and Mrs McFarlane
- 18 Years of Marriage and 3 children
- House of Lords overturned CA and upheld original decision
- Capital divided 50/50
- Wife received £250,000 per annum arguably for life

Family

- Non matrimonial property and matrimonial property
- Reasons for departure from equality (short marriages)
- Emphasis on how parties manage their affairs

What is matrimonial property?

- Assets accumulated during the marriage
- Jointly owned – by husband and wife
- Family Home - regardless of history/ownership
- Divided equally

What is non-matrimonial property

- Gifts
- Inheritance
- Assets owned pre-marriage
- Presumably not divided equally?

Charman

- Information from Trustees
- Trust as a resource of the husband
- Enforcement?

Minwalla

- Sham argument
- Jersey proceedings
- Amendment to Jersey Trust Law

Bahamian law advantages

- Reserved Powers Trusts
- Anti-forced heirship
- Asset protection
- Personal claims
- Long trust period
- Purpose trusts

Bahamian law advantages cont'd

- Foundations
- Common law
- STEP
- IBC's
- EU Savings Directive
- Independence

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