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MEXICO CITY, MEXICO

LATAM FAMILIES WITH U.S. CHILDREN: CROSS-BORDER ESTATE PLANNING

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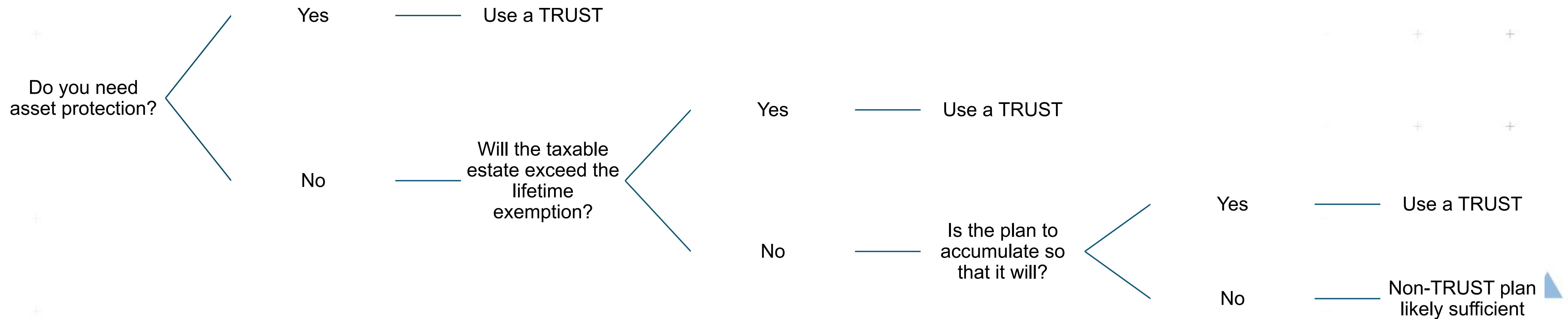
BUILDING KNOWLEDGE ACROSS BORDERS
ADVISING FAMILIES TODAY AND TOMORROW



LATAM Families with U.S. Children: Cross-Border Estate Planning

The organizing question for this session is simple: how do LATAM parents structure ownership and succession so that U.S. children can receive wealth efficiently, with clarity of control and minimal tax friction, across borders?

(SIMPLIFIED) THRESHOLD QUESTION: DO I NEED A TRUST?



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SECTION 1 – GENERAL PLANNING

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U.S. TRANSFER TAXES: DOMICILE V. RESIDENCY

- Domicile test (facts & circumstances) differs from income-tax residency. A taxpayer may reside in the U.S. for years without being a domiciliary. Having a Green Card is a strong indicator of U.S. domicile.
- The estate tax regime and the gift tax regime function separately. Marginal rates for each reach 40 %. The lifetime exemption amount for non-US domiciliaries is only US \$60k.

Non-domiciliary gift tax: only U.S.-situated tangible property; US \$19k annual exclusion per donee.

Non-domiciliary estate tax: U.S.-situated property.

- The generation-skipping transfer tax is generally relevant for non-domiciliaries only if a U.S. skip-person is involved.
- A careful choice of holding vehicle and timing of transfers can remove assets from the transfer-tax base.

U.S. SITUS SCHEDULE (GIFT TAX V. ESTATE TAX)

- Tangible property:
always U.S. situs if
physically located there
(both taxes).
- Stock in U.S. corp.:
U.S.-situs for estate tax;
not for gift tax
- Debt obligations are
U.S. situs for estate tax
purposes if not subject
to portfolio interest
exemption

Non-Domiciled	Estate Tax		Gift Tax	
Property Type	Yes	No	Yes	No
Tangible Personal Property	X		X	
Cash Deposits in a US Bank		X	Maybe	
U.S. Real Estate	X		X	
Non-U.S. Real Estate		X		X
U.S. Stock	X			X
Non-U.S. Stock		X		X
U.S. Bonds		X		X

SITUS RULES REFRAMED FOR SUCCESSION

Think of inheritance buckets:

Always problematic at the parent's death:

- U.S. real estate held directly or through disregarded entities
- Tangible property located in the U.S.

Estate-tax exposed but gift-tax flexible (useful for lifetime transfers)

- Stock in U.S. corporations
- U.S.-based intangible assets

Often neutral

- Stock in foreign corporations
- non-U.S. based intangibles

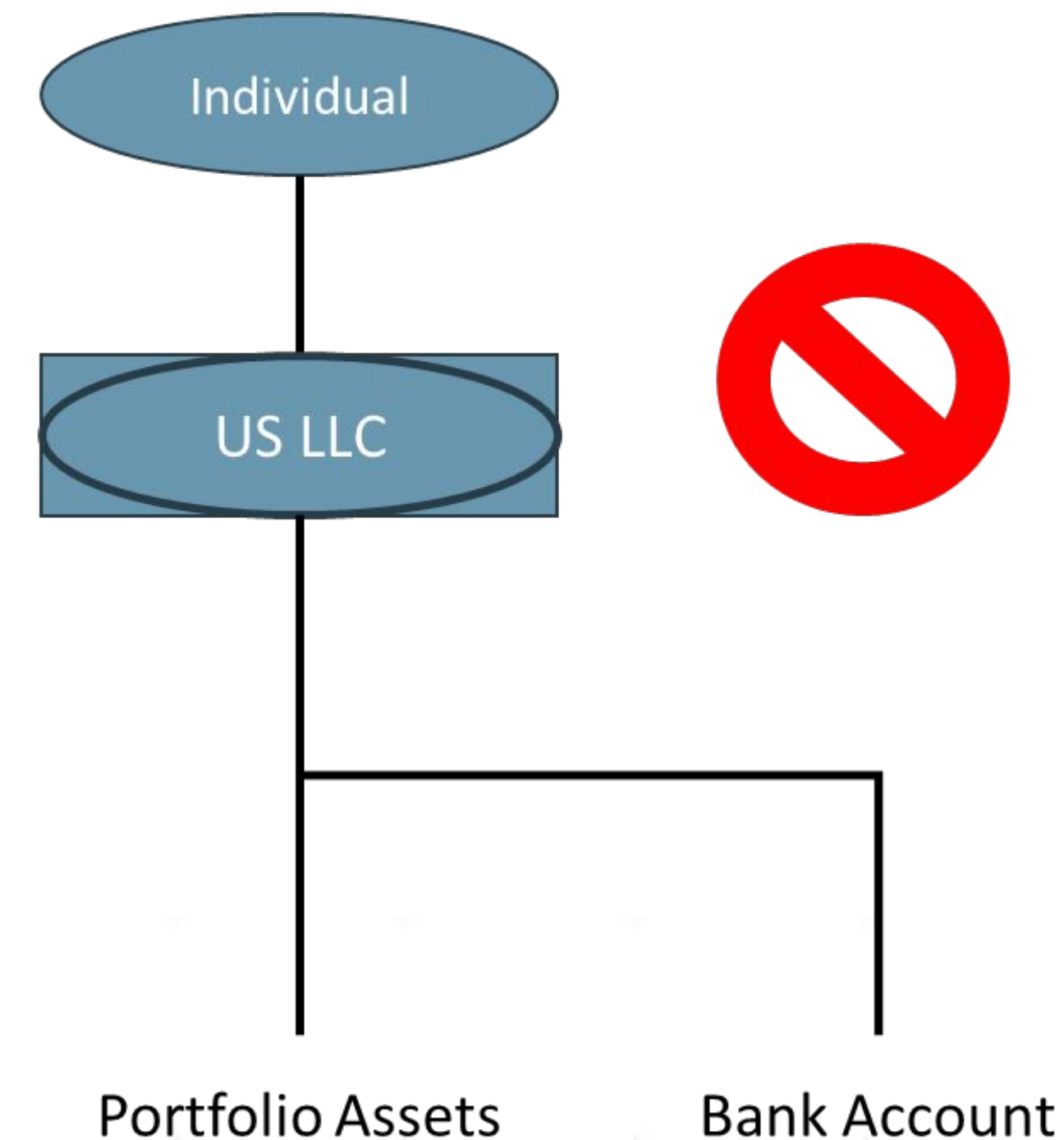
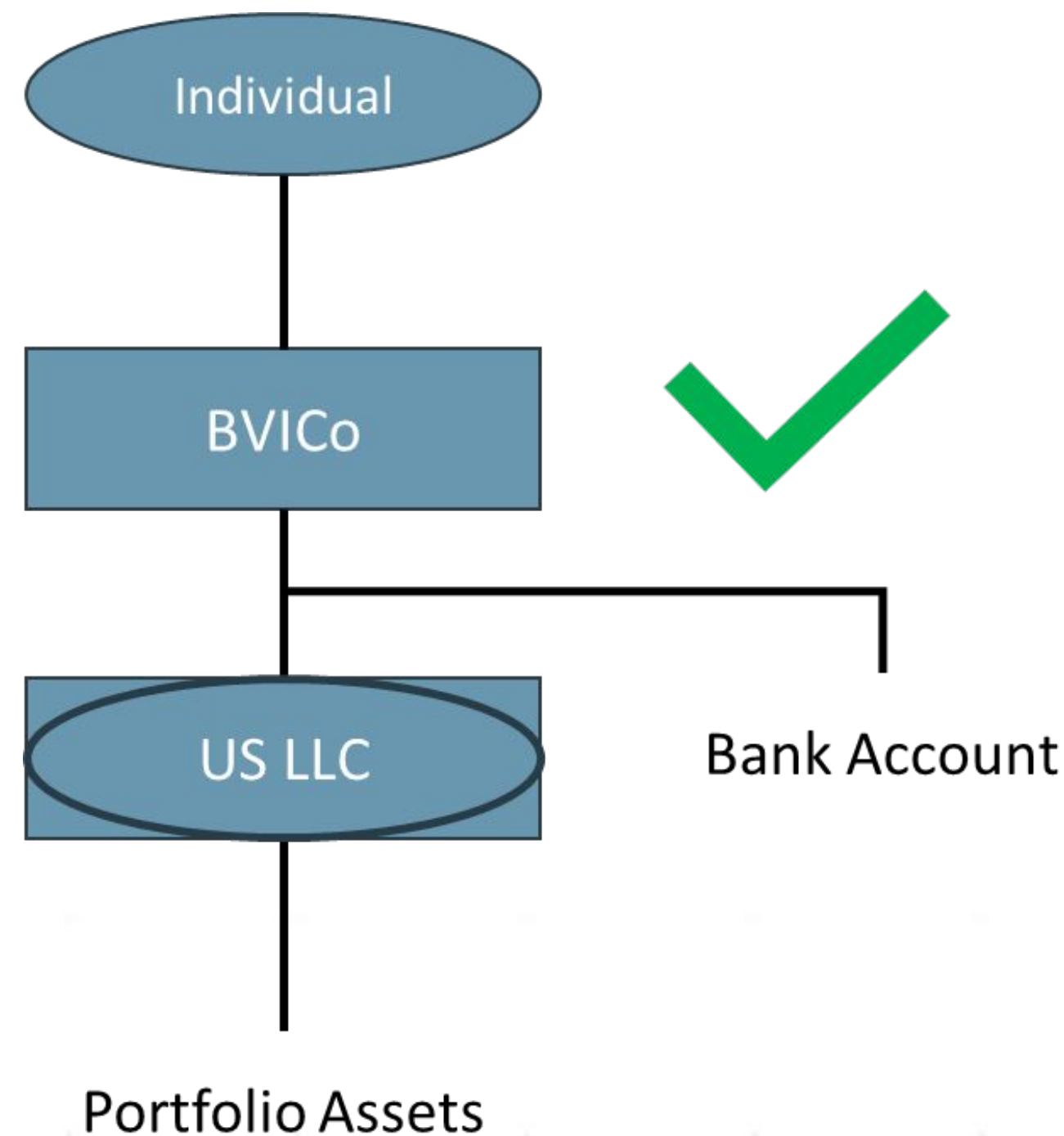
LIFETIME GIFTS TO U.S. CHILDREN

When a LATAM parent is a U.S. non-domiciliary, lifetime gifts of **non-U.S. assets** (e.g., stock in a foreign holding company, non-U.S. debt claims) to U.S. children can be tax-efficient under certain circumstances. Two crucial points govern this analysis:

- 1) Compare **carryover basis on gifts** to a **step-up at death**. Where significant built-in gains exists, it is generally more tax-efficient to defer transfers until death, since the U.S. child receives a step-up in basis rather than carryover basis. By contrast, a lifetime gift of bare legal ownership (with parent retaining the usufruct) often results in less favorable long-term tax treatment, as it forfeits the potential basis step-up that would otherwise be obtained upon death.
- 2) Whether a lifetime is more beneficial from a local law perspective than setting up an estate tax blocker or a bequest.

CHOICE OF BLOCKER

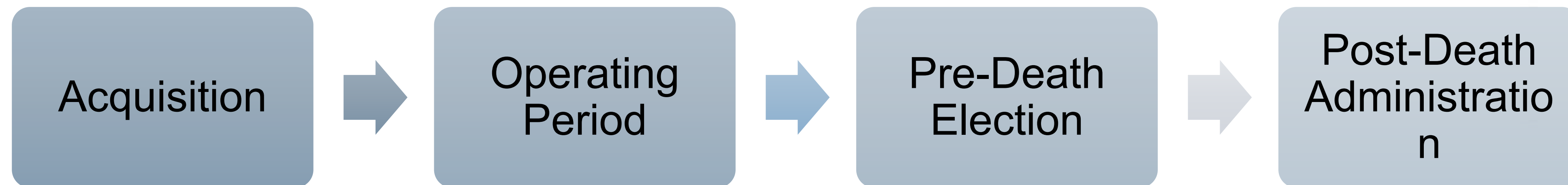
A parent who holds U.S. assets directly exposes the estate to U.S. tax at death. Interposing a **foreign corporation** above U.S. real estate and U.S. securities can remove those assets from the parent's U.S. estate base so that U.S. children inherit **foreign shares** instead of U.S.-situs property. Single-member LLCs do not achieve this outcome.



CHECK-THE-BOX (“CTB”) TIMING WITH AN EYE TO SUCCESSION

Entity classification choices are succession tools. A late-stage **CTB election** can reset basis or alter the taxpayer. But CTB trigger deemed liquidations that can change PFIC/CFC outcomes for a future U.S. heir. Crucially, **CTB elections can be made retroactively after the death of the parent.**

As standard practice, always consider the timing of the election within the holding period and the effect before and after death:



U.S. REAL ESTATE BLOCKERS WHEN HEIRS ARE U.S. PERSONS

There's a number of strategies one can choose from:

- 1) Foreign corporate blocker** above a U.S. property-owning entity: strong estate-tax shield for the parent; plan FIRPTA mechanics on sale and future shareholder-level planning for U.S. heirs.
- 2) Foreign Partnership** held by the parent: U.S. estate tax protection is unclear, so better designed for **lifetime gifts** to U.S. children (sudden death is a substantial problem).
- 3) Insurance or financing overlays** used to reduce net estate exposure while preserving commercial flexibility.

Each strategy has advantages and disadvantages depending on the family's liquidity and the value of the underlying assets.

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SECTION 2 – TRUST PLANNING

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U.S TRUST TAXATION

Classification is driven by two sets of opposing concepts: grantor vs. non-grantor and domestic vs. foreign.

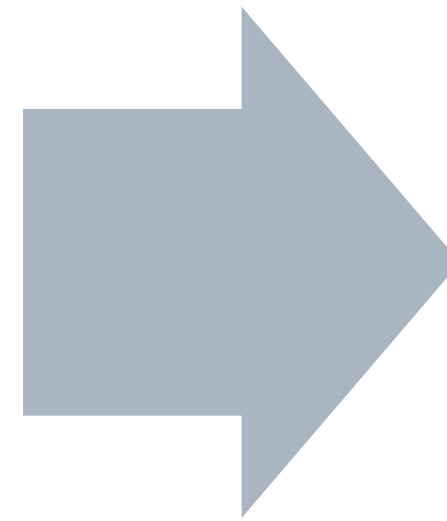
- **Grantor:** settlor reports and pays tax personally on all items of income, § 1014 step-up may apply at death; distributions to Grantor are ignored for income-tax purposes and are treated in a way similar to gifts for transfer-tax purposes when made to beneficiaries.
- **Non-grantor:** trust is its own taxpayer; DNI carries out current income to beneficiaries; undistributed net income (UNI) for a foreign non-grantor triggers the throw-back charge plus interest.

A Trust is foreign if it fails the court-and-control test. All trusts that pass both tests are considered U.S. trusts. A single non-U.S. trustee or a non-U.S. protector is enough to keep a trust foreign, even if it is organized under U.S. law and subject to the jurisdiction of the Courts of a U.S. state.

Key traps: accidental grantor trust status, § 679 residency start date grantor trust status and trust migration issues; § 684 deemed gain when a domestic trust becomes foreign; § 2036(b) estate tax inclusion when control is retained; potential PFIC/CFC look-through when domestic trust keeps foreign blockers or financial assets; state-level tax and trust residence mismatches.

NON-GRANTOR TRUST INCOME TAXATION: DNI, UNI & THROWBACK RULE

DNI (Distributable Net Income):
Passed through to the beneficiary and taxed on their return – the trust receives a deduction.



UNI (Undistributed Net Income):
An issue applicable only to foreign trusts.

- Represents accumulated, undistributed DNI.
- Income is taxed at the trust level.
- When distributed in the future, the income is subject to throwback rules and reclassification.

Common Strategies:

- Distribute income annually to avoid accumulations.
- Direct UNI to non-U.S. beneficiaries.

DO YOU NEED A TRUST?

Trusts are tools, not goals. For LATAM parents with U.S. children, they become economically and legally compelling when one or both of the following are true:

- 1) **Asset protection & governance needs.** You want spendthrift protection for young or financially exposed heirs; divorce/creditor insulation; guardrails around concentrated assets (family business, real estate); or professional fiduciary oversight to avoid intra-family conflict. Trusts separate control from benefit, set investment/distribution standards, and provide a durable governance forum that a will or bare holding company rarely offers.
- 2) **Estate size relative to exemptions.** Under the One Big Beautiful Bill Act, the federal lifetime gift/estate and GST exemptions are scheduled to be **\$15 million per person (\$30 million per married couple) starting January 1, 2026**, indexed for inflation thereafter. If the parent's expected taxable estate is **well below the exemption** and assets will be **split among multiple U.S. children**, the annual maintenance costs (trustee fees; foreign-trust filings like Forms 3520/3520-A or domestic trust K-1 preparation; PFIC statements, etc.) may outweigh tax benefits.

WHY A TRUST WHEN HEIRS ARE U.S. PERSONS

Trusts allocate control, protect assets, and sequence tax results for U.S. children. Properly designed, a trust can:

- 1) prevent U.S. estate tax in the parent's estate;
- 2) deliver predictable DNI to U.S. children while limiting UNI exposure;
- 3) create governance that respects LATAM civil-law expectations; and
- 4) provide a migration path from foreign to domestic status when the family's center of gravity shifts.

When trusts shine for U.S. children: A properly drafted **Dynasty Trust** funded by a foreign parent can place **very large (in practice, unlimited) amounts** of non-U.S. assets beyond U.S. estate tax at the parent's death **and** (with GST allocation and “no strings” drafting) outside the U.S. children's estates for future generations. Where U.S.-situs assets are involved, the use of blockers or pre-funding steps are possible so contributions to the trust are not subject to U.S. gift tax and so future DNI/UNI administration is practical for U.S. heirs.

THE FOREIGN GRANTOR TRUST

- For a LATAM parent with U.S. children, a frequent pattern is a foreign grantor trust during life (parent taxed) that automatically converts at death into a domestic non-grantor trust for the U.S. heirs, via pre-established control shifts and governing-law provisions.
- To stay within the grantor-trust regime, make the trust revocable and ensure that the settlor has the right to revest assets to themselves without the consent of an adverse party. If that is undesirable, during the settlor's lifetime, the settlor and their spouse should be the only permissible beneficiaries.
- Draft a letter of wishes anticipating U.S. status changes, with a clear rule: U.S. children come into beneficial class only after conversion to the post-death structure.

THE FOREIGN NON-GRANTOR TRUST

- Foreign non-grantor trusts should be avoided unless absolutely necessary. We usually encounter foreign non-grantor trust in scenarios where the family has already set up a foreign structure that is classified as a trust for U.S. income tax purposes.
- Foreign non-grantor trusts that accumulate income create UNI that results in throwback taxation on subsequent distributions to U.S. beneficiaries. Before the first distribution to a U.S. child, consider a clean-up phase:
 - 1) distribute accumulated income, where possible, to non-U.S. beneficiaries;
 - 2) realize gains inside the trust to refresh basis where appropriate before any U.S. persons become beneficiaries;
 - 3) where feasible, elect QEF on PFICs prospectively to avoid Section 1291 issues; and
 - 4) **domesticate the trust**, if possible, or set up a second U.S. domestic non-grantor beneficiary trust that is allocated all income, so future DNI computes under U.S. rules without throwback baggage.

POST-DEATH DOMESTICATION PLAYBOOK (U.S. CHILD TRUST)

On the parent's death:

- ☑ Control shift to a U.S. trustee and U.S. control committee satisfying the court/control tests.
- ☑ Governing law migrates to a favorable U.S. jurisdiction (e.g., DE, SD, NV) via situs and decanting clauses.
- ☑ Split trusts by beneficiary residence: a domestic non-grantor trust for U.S. children; a foreign non-grantor trust for non-U.S. family.
- ☑ Asset review: PFIC-tainted vehicles, foreign blockers, and operating companies are triaged for elections or restructuring appropriate to U.S. beneficiaries.

PAYING U.S. CHILDREN: CORRECT FLOW MATTERS

Distributions directly from an entity owned by the trust to a U.S. child can be re-characterized as distributions and be subject to tax as ordinary income. Always maintain the chain:



Best practices include keeping rigorous minutes and resolutions that reflect the capacity and relevant approvals at each tier.

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SECTION 3 – CASE STUDIES

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SCENARIO I: COLOMBIAN SETTLOR, U.S. BENEFICIARIES (DYNASTY TRUST)

Facts: Colombian settlor creates a foreign grantor trust; secondary beneficiaries include a U.S.-born child and her descendants.

On settlor's death: trust is intended to become domestic non-grantor; there is a § 1014 step-up in basis.

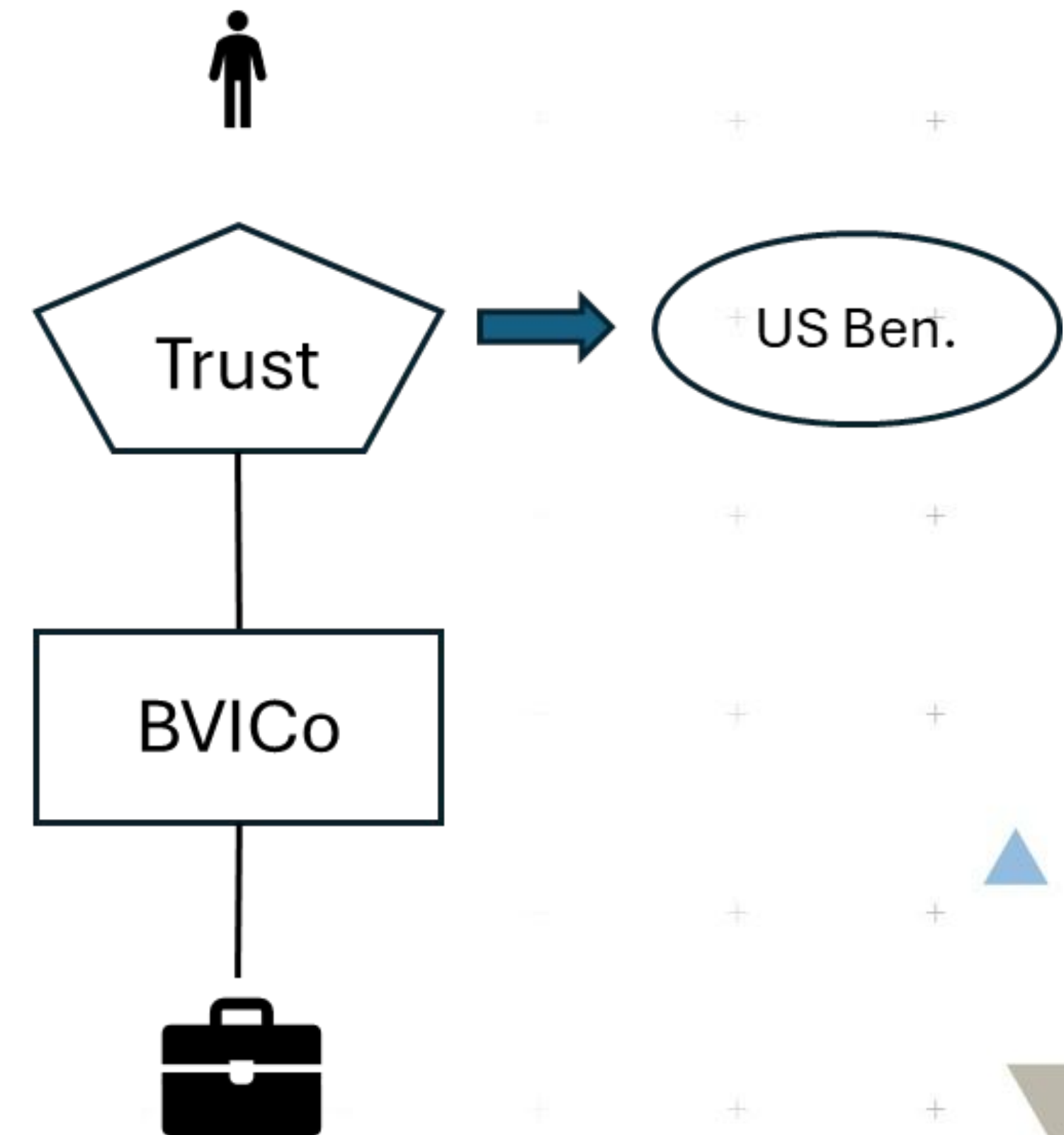
Estate tax: foreign status and use of blocker structure during life keeps trust assets outside estate tax net; after death, the trust functions as a dynasty trust protecting beneficiaries from estate tax.

Traps:

(i) Trust fails to domesticate because of non-US control. Foreign non-grantor status triggers UNI accumulation issues and burdensome reporting for US beneficiaries.

(ii) Trust domesticates and then migrates because of non-US control. § 684 triggers gain recognition. Same UNI issue above.

Solutions: insert failsafe language that comes into play immediately upon settlor's death. The trust should never become foreign except for decanting.



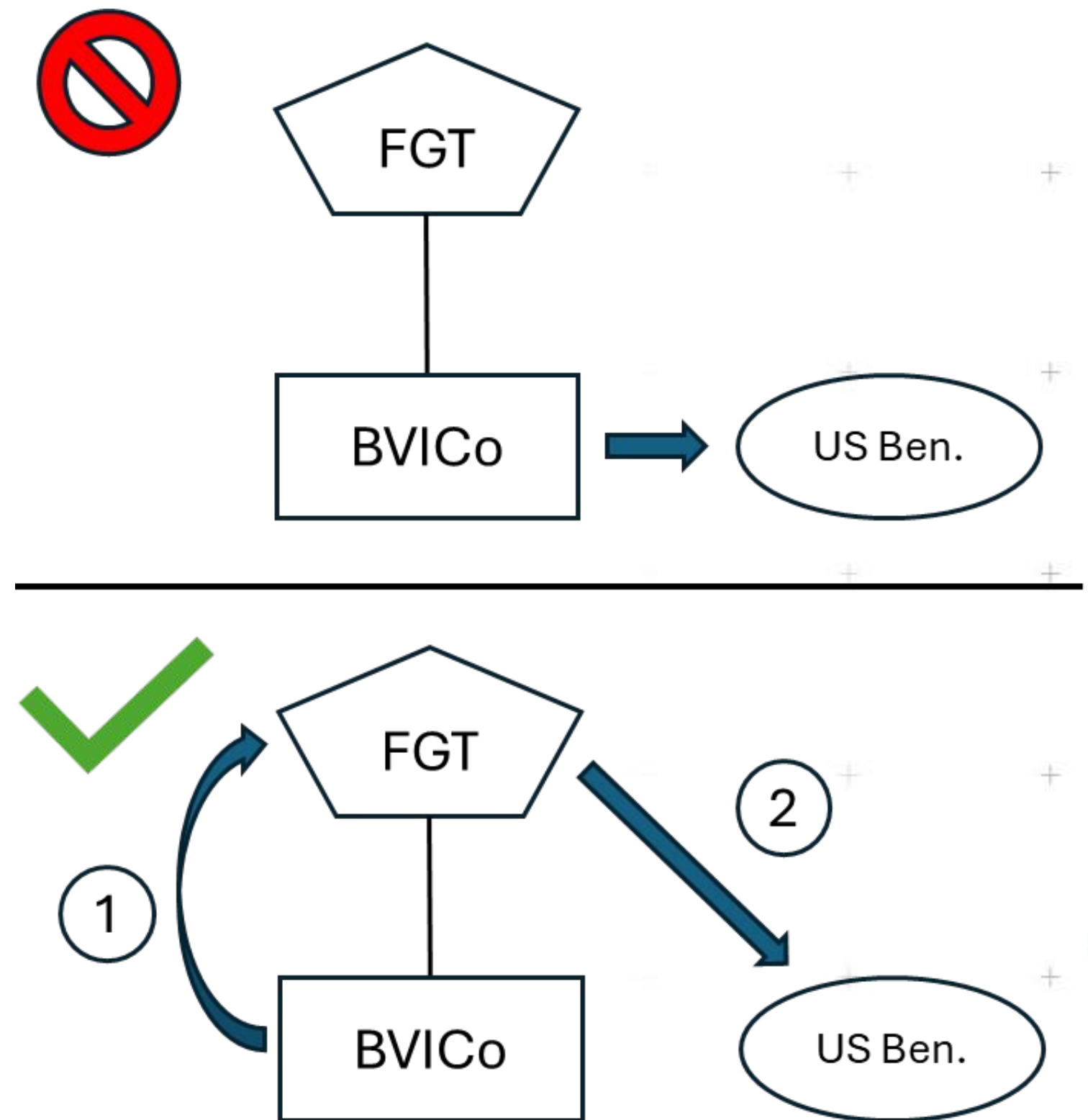
SCENARIO II: DONATION MADE BY ENTITY CONTROLLED BY TRUST TO U.S. BENEFICIARY

Facts: settlor of a Foreign Grantor Trust wishes to make a distribution to a U.S. beneficiary.

Tax Consequences: distributions from a Foreign Grantor Trust to U.S. beneficiaries are treated similarly to gifts. The U.S. beneficiary does not pay tax on the amount received.

Tax Traps: If the gift is made directly by an entity controlled by the Trust, even if the Trust is a Foreign Grantor Trust, the gift will be reclassified as a taxable distribution to the U.S. beneficiary (purported gift tax rules).

Solutions: The controlled entity must first make a distribution to the Trust, and then the Trust makes the distribution to the U.S. beneficiary.



QUESTIONS?



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THANK YOU

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