



# **PRIVATE CLIENTS RESIDENT IN CHILE**

## **BASIC ISSUES**

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## Basic Income Tax Rules

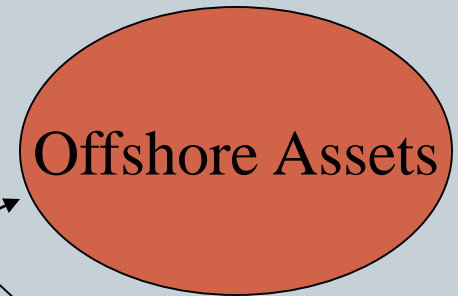
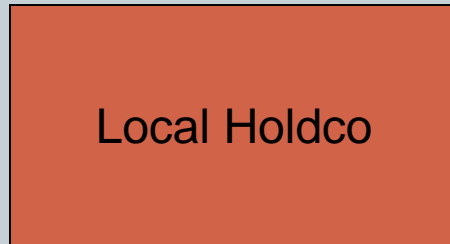
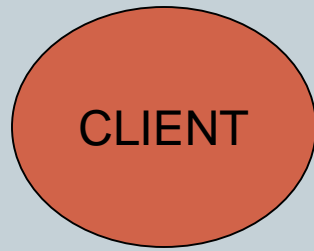
- ❑ **First Level of Business Profit Taxation**
  - ❑ Business Profits/Corporate Tax 17% (proposed 20%)
- ❑ **Second Level of Business Profit Taxation**
  - ❑ 35% Dividend Withholding Tax for non-residents
  - ❑ Surtax – Brackets – Marginal Rate 40% for resident individuals, on profit distribution made to them.
- ❑ **Integration of two levels of business profit taxation**
  - ❑ Corporate Tax Creditable Against 35% Withholding or Surtax.
- ❑ **No local anti deferral rules**
- ❑ **No cross-border anti deferral rules (CFC)**



## Deferral is the “name of the game”

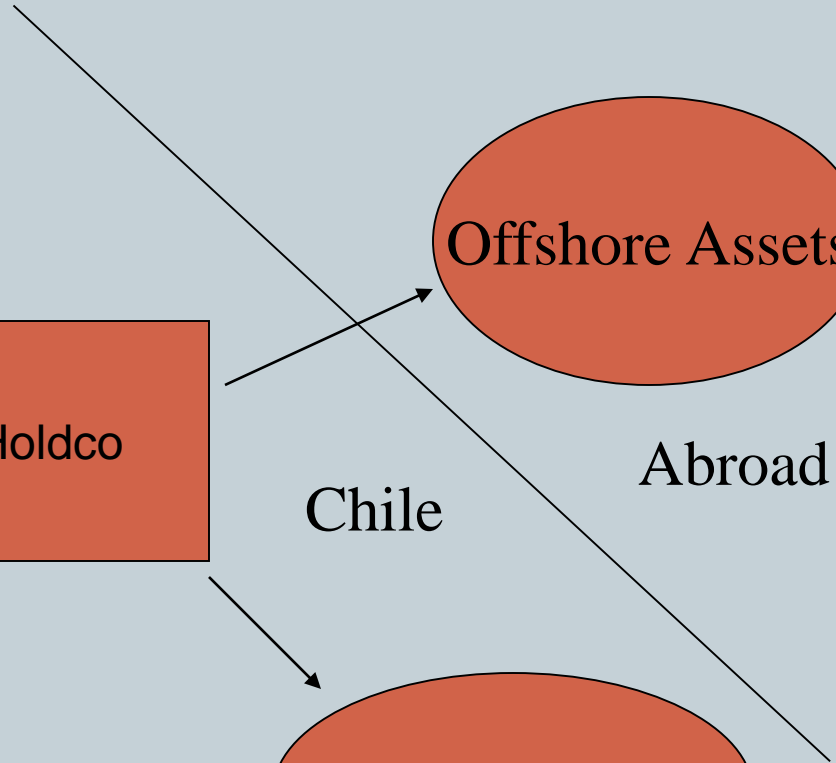
- ❑ Total Income Tax Burden:
  - ❑ 35% for non-residents
  - ❑ Up to 40% for resident individuals (intra-company dividend not taxed)
- ❑ Local “Personal Holding Companies” may shelter Chilean HNWI from the 40% marginal rate of Surtax.
- ❑ Offshore entities may shelter Chilean HNWI from Chilean income taxation.
- ❑ Surtax in the case of local income, and Chilean income taxation in the case of offshore income apply only on amounts distributed to HNWI for consumption.

Deferral Type 1  
Foreign Holding Company



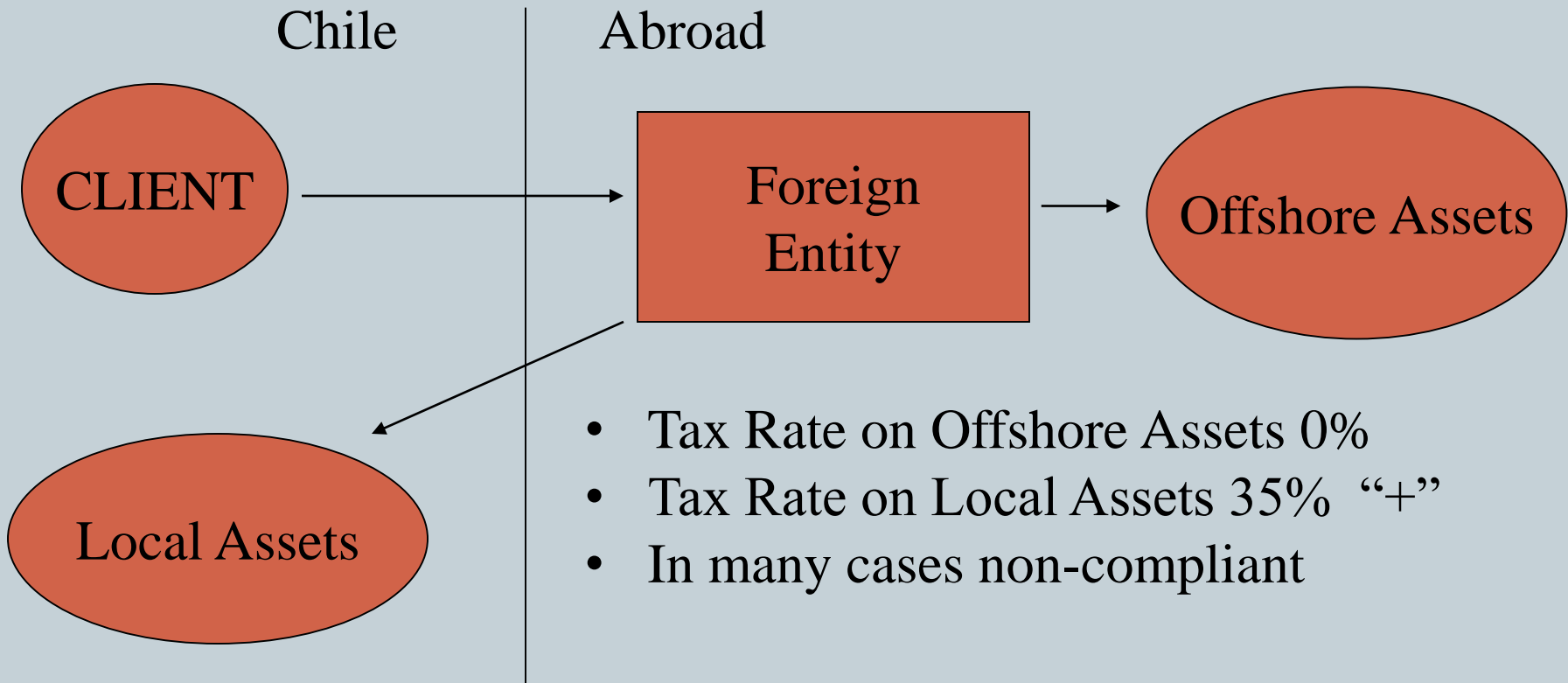
Abroad

Chile



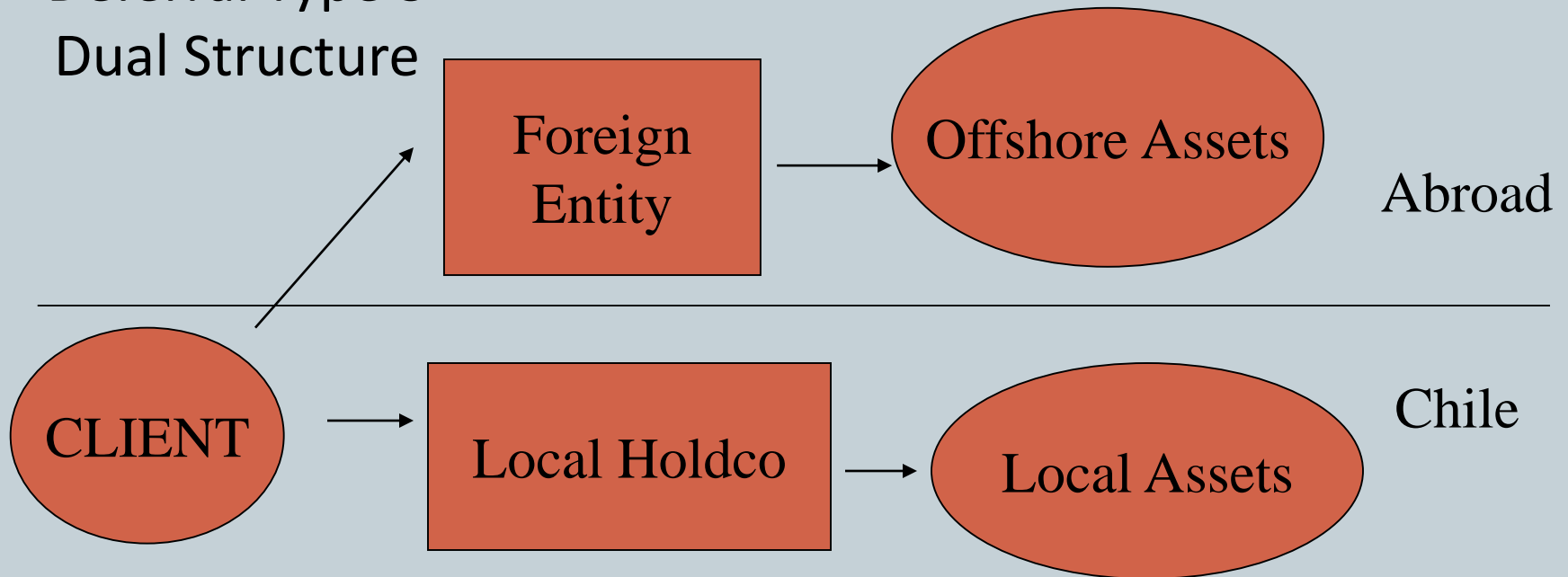
- 17% Tax Rate at Holdco Level
- Fully Compliant

## Deferral Type 2 Foreign Holding Company



## INCOME TAX

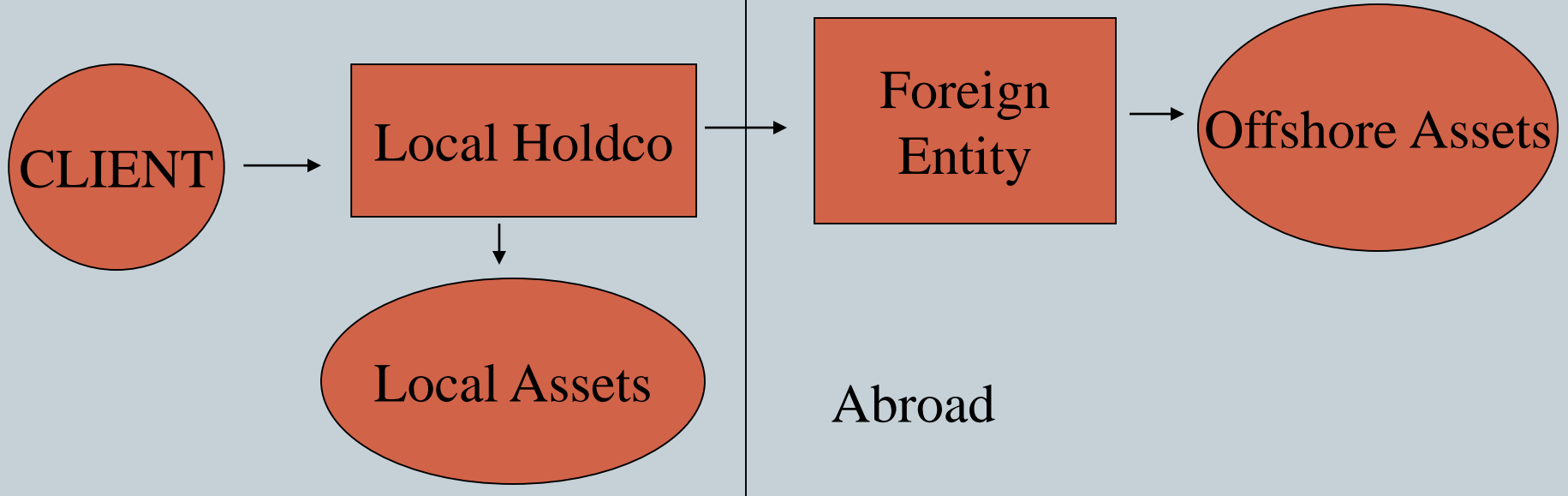
### Deferral Type 3 Dual Structure



- Tax Rate on Offshore Assets 0% until distribution.
- Tax Rate on Local Assets 17% until distribution
- In some cases only local structure is compliant

INCOME TAX

Deferral Type 4  
Local Holdco



Tax Rate on Offshore Assets 0% until distribution to Holdco, then 17% (less available foreign tax credits). Tax Rate on Local Assets 17% until distribution to Client. Fully compliant





- ❑ Chilean IRS went “digital” long time ago.
  - ❑ e-Tax filing
  - ❑ Databases & Software
  
- ❑ E-Reporting to the Chilean IRS
  - ❑ Banks, mutual funds, stock brokers, etc.
  - ❑ Corporations, companies, employers, etc.
  - ❑ Registrars, notaries, customs, police, etc.
  - ❑ Bank secrecy weakened in 2009 Law
  
- ❑ **Result?**
  - ❑ Information flows. BIG BROTHER KNOWS ALL.



❑ Chilean Double Tax Treaties & Exchange of Information

❑ **In force:** Argentina, Belgium, Brazil, Canada, Colombia, South Korea, Croatia, Denmark, Ecuador, Spain, France, Ireland, Malaysia, Mexico, Norway, New Zealand, Paraguay, Peru, Poland, Portugal, United Kingdom, Sweden, Thailand, Switzerland.

❑ **Signed** (Congressional approval pending): Russia, United States, Australia.

❑ **Negotiation Concluded:** South Africa.



- MAIN PROBLEMS
  - High marginal rate
  - Strict Forced heirship rules.
  - Gift tax applies with same marginal rates.
  
- Traditional Estate Tax Planning Techniques
  - Paleolithic or Barbarian?
  
- Some Estate Tax Planning Tools currently in use
  - Dissemination through wills (“inheritance tax”)
  - Life Insurance
  - Corporate reorganizations
  - Is there some space for Trusts & Private Foundations?



## **Chilean Estate Tax – A Problem with Numbers:**

Chilean Business Profits Tax Revenue vs. Chilean Personal Tax revenue (Surtax).

Chilean Business Profits Tax Revenues vs. Chilean Estate Tax Revenue.

Why these numbers represent

Immortality, tax exemptions or shrewd tax planning?

Could Trusts be useful to solve this contradiction?

Could Private Foundations solve the riddle?



## **Trusts & Chilean Legislation**

- Absence of Chilean Trusts
- Absence of institutions similar to Trusts

## **Trust Characterization**

- Chilean or foreign law characterization?
- Are all trusts the same vis-à-vis Chilean law?
- Should we use foreign law or foreign tax law?

## **Settlor vs. Chilean Gift Tax**

## **Trustee vs. Chilean Gift Tax (or income tax?)**

## **Beneficiaries vs. Chilean Gift Tax (or income tax?)**



## International Estate & Gift Tax Provisions

- General Rule: only the Estate of Chileans is subject to Tax
- No International Gift Tax Provisions. Same as Estate Tax?
  
- Does Chilean Gift Tax apply to:
  - Assets located abroad when there is a Chilean party?
  - Transactions entered into abroad when they affect, directly or indirectly Chilean assets or when the settlor, donor or beneficiary are Chilean resident or nationals?
  - Deferred Gift?      Deferred Inheritance?
  
- Is it possible for Private Foundations to solve these issues?

**THANK YOU**