

Taiwan CFC, CRS and other updates on the overall tax implications on Taiwan HNWIs

Michael Wong / Peggy Chiu | April 2022



Speakers



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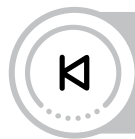
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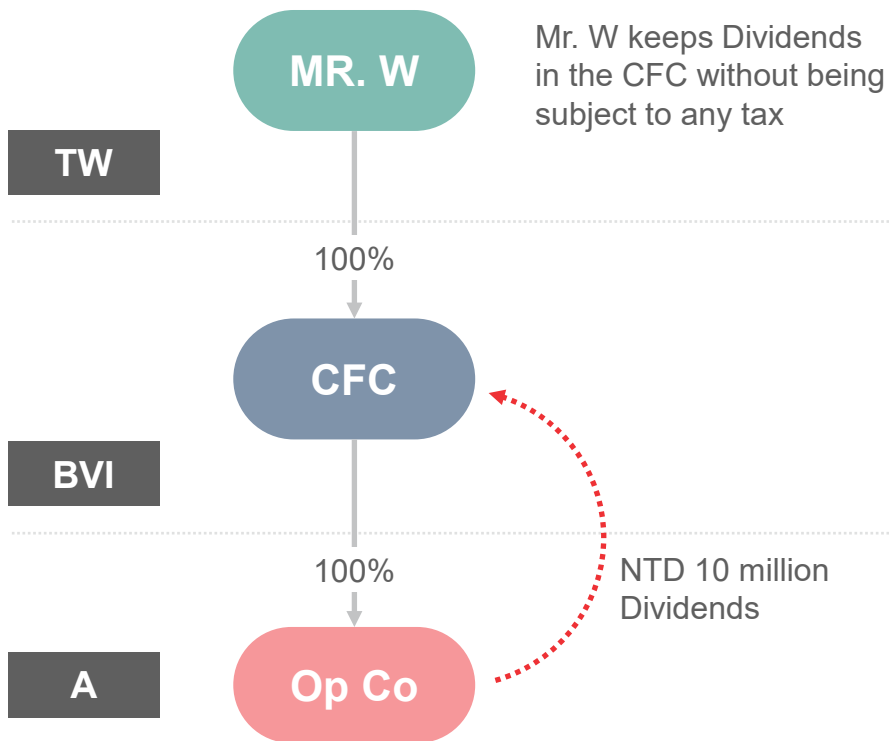
CRS, economic substance and fund repatriation

-  Taiwan has only three signatories: Australia, Japan and UK
-  HNWI's are not significantly impacted because BVI, Cayman, Singapore and Hong Kong have not signed CRS with Taiwan
-  Economic substance requirement of BVI, Cayman etc. does have impact on Taiwan HNWI's, where some of HNWI's have:
 - migrate tax haven companies to the US or Netherlands if they have US/EU ties
 - close or simplify offshore company structure
-  Tax amnesty legislation related to fund repatriation ended in 2021

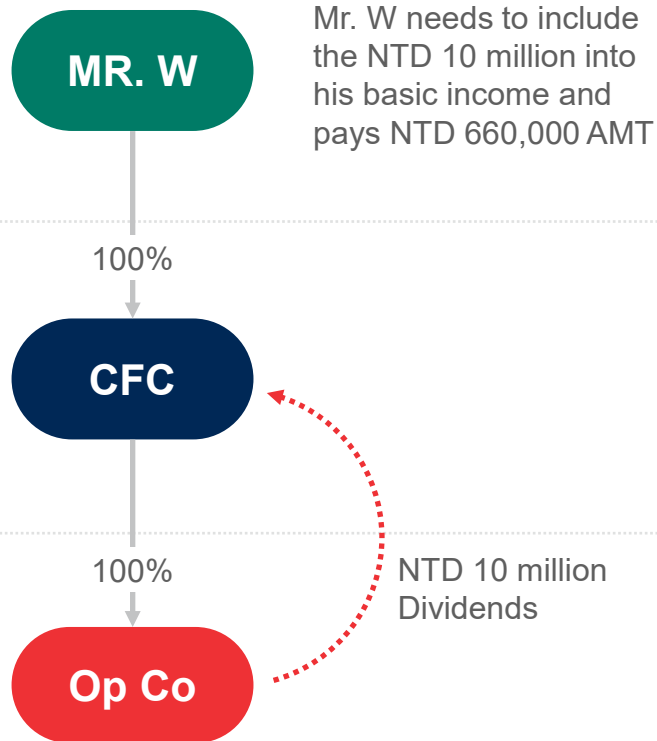




Before CFC



After CFC




CFC

 What is CFC – An individual and his **related party** directly or indirectly holding more than 50% or has significant control of a company in a low tax jurisdiction

What is low tax jurisdiction?

1. Income tax rate not exceeding 70% of Taiwan, such as Bermuda, BVI, Cayman, Samoa ;
2. Only tax on domestic income, such as Singapore, Hong Kong, Malaysia





 Who has reporting obligation – 10% shareholder of a CFC

 What are the tax implications – effective from 2023

- income tax: 20% AMT
- estate tax: CFCs are transparent to the tax authority

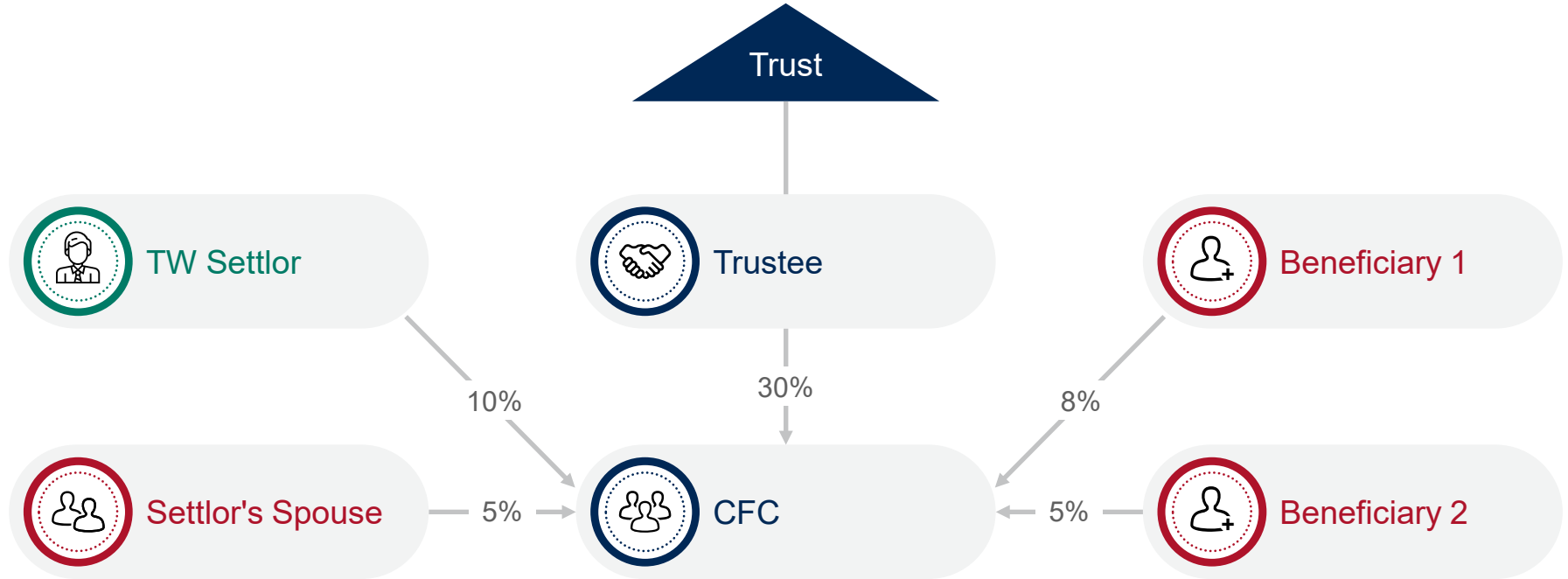


CFC

-  Related party – affiliates and **other related party**
-  Other related party – among others, a trust's trustee and beneficiaries settled by an individual
-  Question: does the definition of "other related party" apply to the determination of 10% shareholder? If not, can a trust structure get around the CFC issue because it does not have 10% shareholder (who is a Taiwan tax resident) to report AMT?
-  Exemptions under CFC:
 - Less than NTD 7 million income/year
 - operating company which has (1) fixed business premise and (2) employees hired in the low tax jurisdiction, and has less than 10% passive income

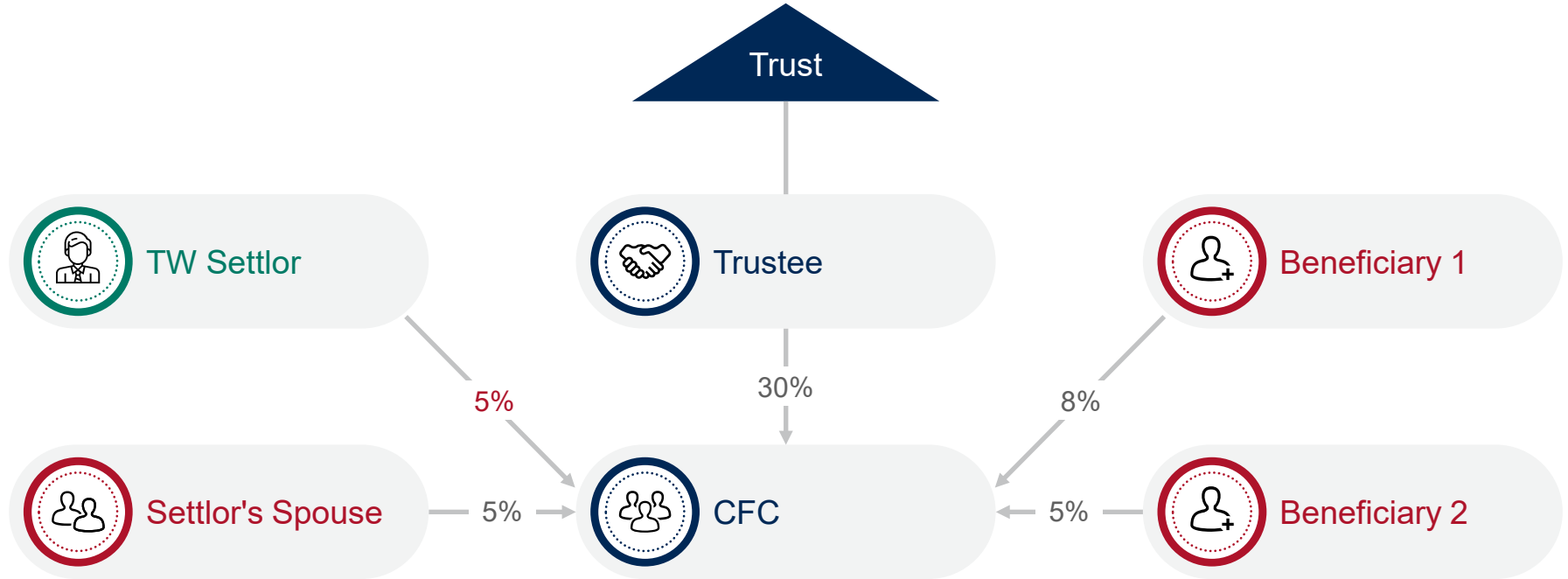


What the tax authority says....



Settlor's shareholding: $30\% + (10\% + 5\%) + (5\% + 8\%) = 58\%$

What the tax authority didn't say....



Settlor's shareholding: $30\% + (5\% + 5\%) + (5\% + 8\%) = 53\%$



Taxpayers, based on gaining tax benefits, may abuse legal forms to avoid the constituent elements of taxation by irregular transactions and attain the economic benefits equivalent to normal transactions. Such actions shall be termed tax avoidance. The tax collection authorities shall set up a claim for tax according to the legal forms equivalent to actual economic benefit and levy belated surcharges and interests.

substance over form rule



A taxpayer who evades tax payment **by fraud** or **other unrighteous means** shall be sentenced to imprisonment for no more than five (5) years, and be imposed with a fine of no more than ten million New Taiwan Dollars (NT\$10,000,000).




A taxpayer committing an offense as described in the preceding paragraph, and the tax evasion amount is over ten million New Taiwan Dollars (NT\$10,000,000) for an individual or over fifty million New Taiwan Dollars (NT\$50,000,000) for a profit-seeking enterprise, shall be sentenced to imprisonment of not less than one year but not more than seven years, and be imposed with a fine of not less than ten million (NT\$10,000,000) but not more than one hundred million New Taiwan Dollars (NT\$100,000,000).

1-7 years sentence + USD3.5 mio penalty

According to Article 3(1)(7) of Money Laundering Control Act, Articles 41, 42 and 43(1)(2) of the Tax Collection Act are money laundering crimes.

Impact of CFC


Transparency – Individuals need to file the following:


-  The diagram of the individual and the related party, the shareholding and the ratio as of December 31
-  The financial reports audited by the offshore CPA or Taiwan CPA, except that there is other evidence proving the reliability of the F/S and validated by the tax authority
-  CFC's loss carry-forward calculation for the previous 10 years
-  CFC's business income calculation
-  Foreign tax credit, if applicable
-  Shareholders' consent or meeting minutes of the companies invested by the CFC
-  The certification of capital reduction, merger, bankrupt, or liquidation documents certified by the embassy





Impact of CFC


Legal and AML issues

 Query: If a client purposely chooses not to report CFCs, will this be considered as an AML activity by FIs? Is this the same as a client purposely choosing not to report his/her AMT?

 Query: What is the level of comfort needed for FIs? A client's self-declaration? Evidence of reporting? Evidence of tax payment? A legal opinion?

 Query: Will FI's AML check burden is less burdensome if the client at least has a trust or insurance policy?





 Query: Can FI/Trustee accept nominee structure after CFC?

 Query: How insiders report their CFCs if the CFCs had securities law issue in the first place?



Impact of CFC

Estate tax and income tax

-  CFC may add additional 20% AMT on undistributed offshore company's income, but that is less of a concern
-  What the client really concerns is the estate tax risk (though the risk is theoretically the same before and after CFC)
-  Failing of reporting CFC properly could lead to criminal liability. Taiwan has raised such penalty in December 2021
-  Relying on Taiwan's special CRS status is a bit too cute – Taiwan is a foreign exchange control country where the Central Bank has records of each remittance
-  The first wave of audit is likely focused on criminal income – the Prosecutor and the Ministry of Justice Investigation Bureau are actually more excited than the tax authority.
 - Query: what will you react if you receive criminal investigation order from Taiwan authorities? Will your legal department be alerted?





Trust

Discretionary/
non-discretionary

Revocable/irrevocable



PPLI

Policy holder:
individual or trust?



Funds

Fund structure with
designated
redemption right



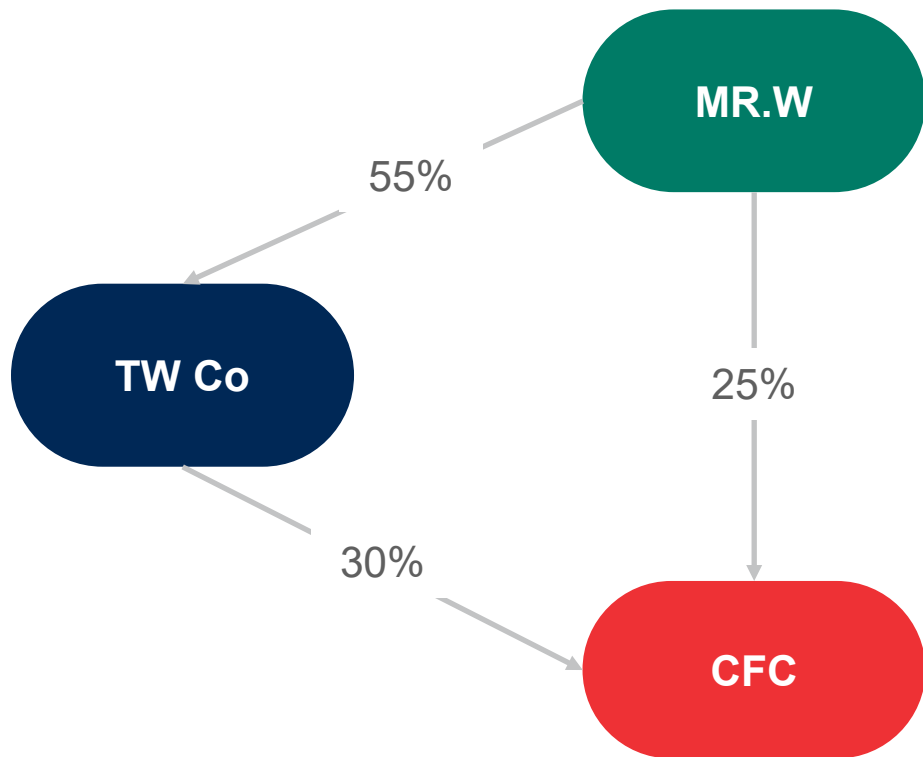
Which one is the right answer?

A

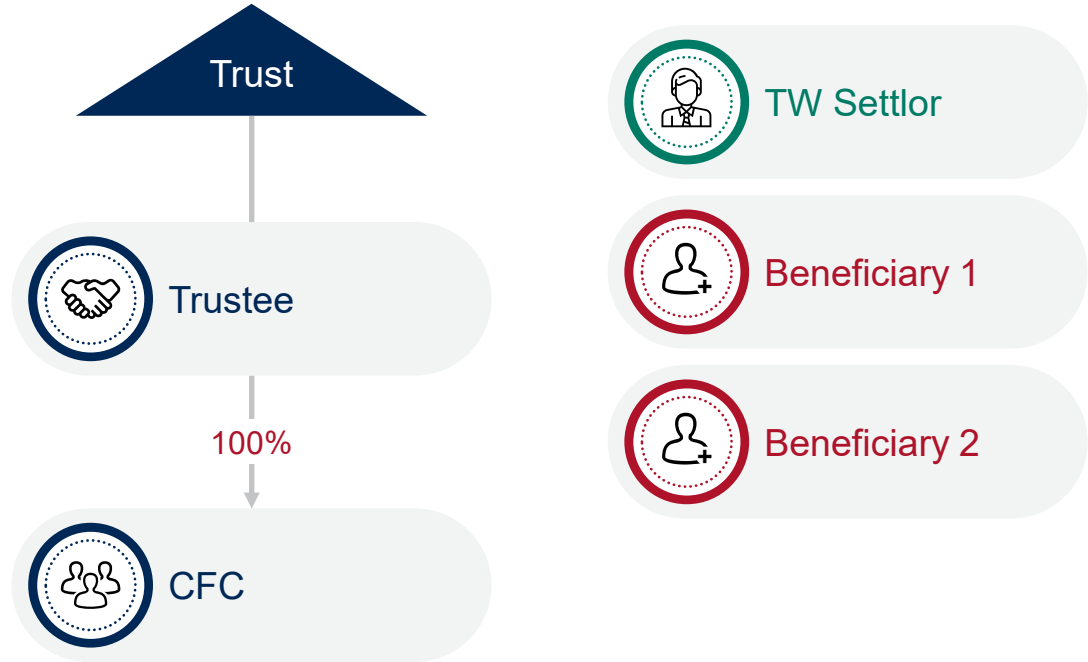
$$55\% \times 30\% + 25\%$$

B

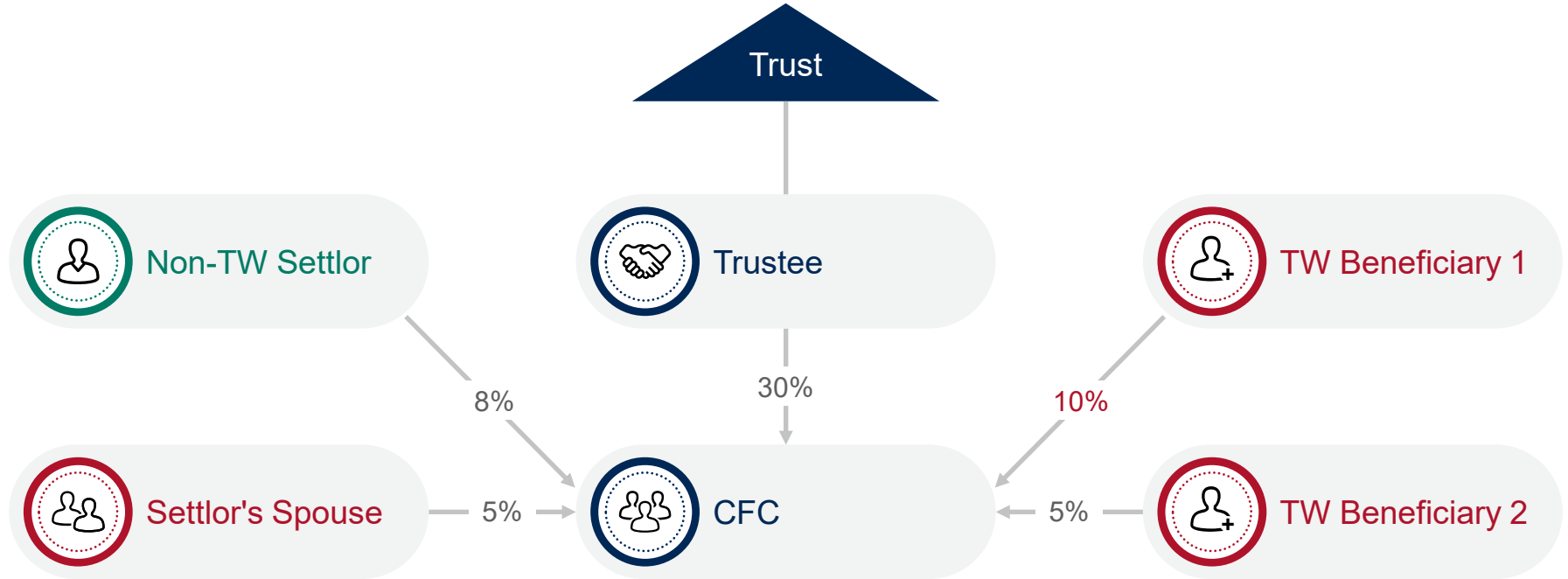
$$100\% \times 30\% + 25\%$$



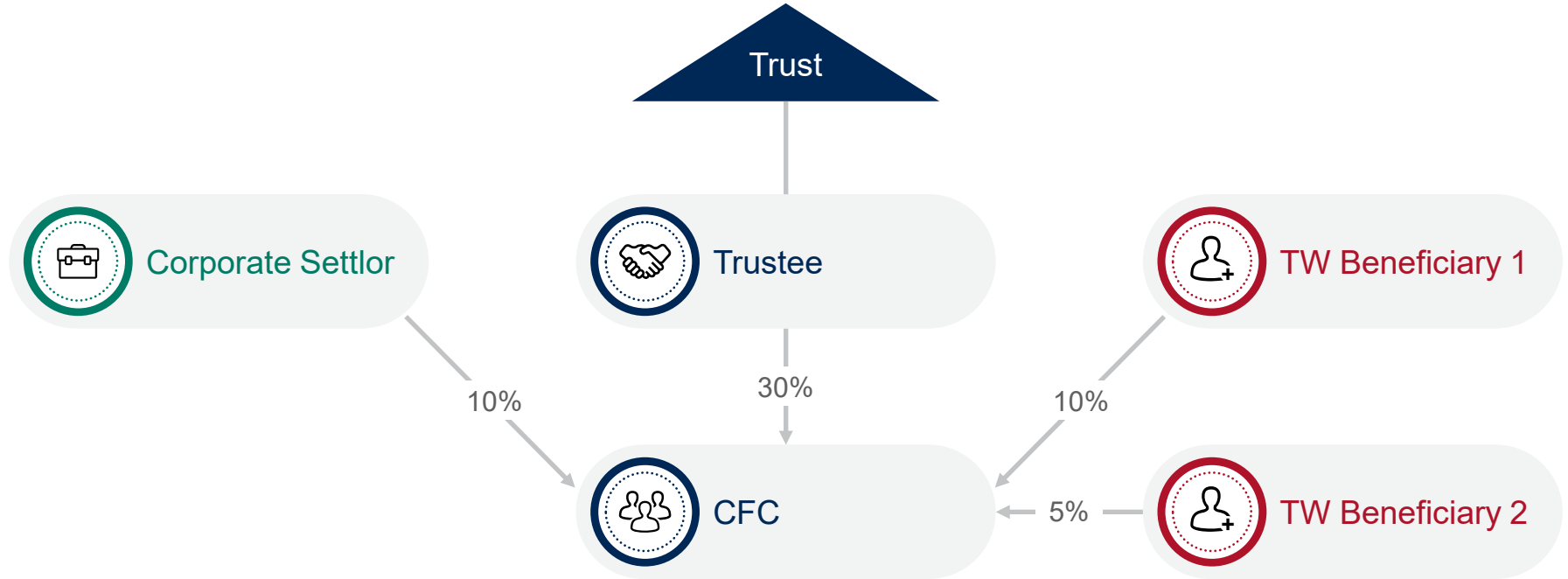
What the tax authority didn't say....



What the tax authority didn't say....



What the tax authority didn't say....



Questions





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