Proposed Carry Structure

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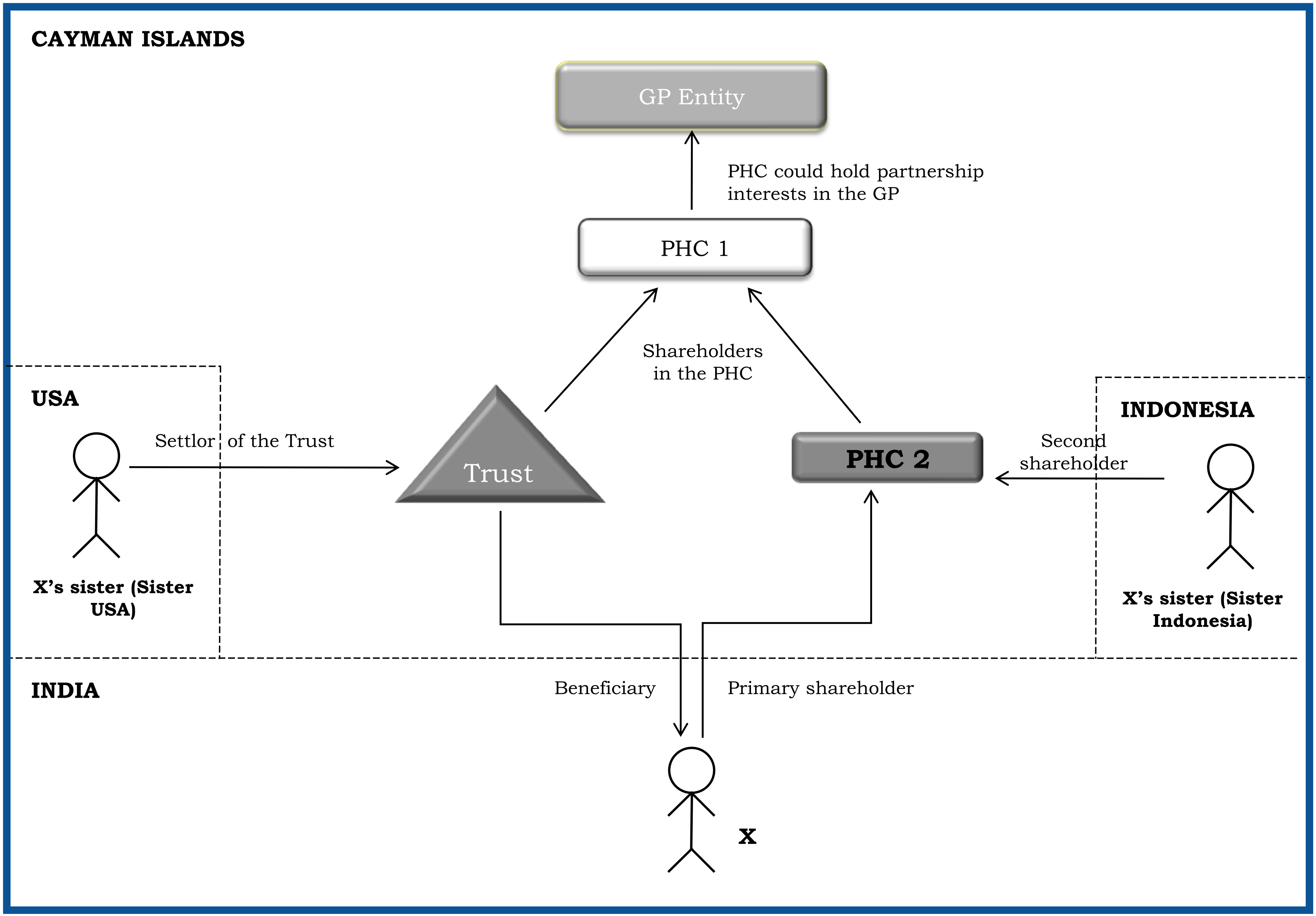
Background & Understanding

- We understand that X is employed with A, a private company incorporated under the laws of India ("**A India**"), which is a wholly owned subsidiary of A Inc., a company organised under the laws of USA, as 'Senior Managing Director'
- X is entitled to certain carried interest distributions ("**Carry**") from the funds of the A group ("**Fund A**")

Proposed Structure



CAYMAN ISLANDS
GP Entity
PHC could hold partnership interests in the GP
PHC 1
Shareholders in the PHC
USA
Settlor of the Trust
Trust
PHC 2
INDONESIA
Second shareholder
X's sister (Sister USA)
X's sister (Sister Indonesia)
INDIA
Beneficiary
Primary shareholder
X

Proposed Structure

- A personal holding company ("PHC 1") could be set up in Cayman Islands by [•] which could hold limited partnership interests in the General Partner ("GP") to the Fund A.
- The shares of PHC 1 could be held by:
- a trust settled in Cayman Islands ("Trust"), and
- a personal holding company ("PHC 2")
- The Trust could be settled by X's sister residing in US ("Sister USA") as a discretionary trust
- Being a discretionary trust, the trustee would have the discretion on distribution of assets, income and capital of the trust
- X and family would be discretionary beneficiaries to the Trust
- PHC 2 could be set up by X in Cayman Islands
- PHC 2 could have X and her husband as the shareholders – diff in diagram
- PHC 2 could be issued partly paid up shares in PHC 1

Flow of Returns

- The returns received by PHC 1 from the GP entity could be paid out as dividends/share buy back to the Trust and PHC 2
- The Trust could pay out returns to the beneficiaries in either the year of receipt or in the years to follow in their sole discretion
- PHC 2 could retain its funds and make investments or could buy back shares from its shareholders or distribute the same to its shareholders

Legal and Tax Implications

Trust

Indian Tax Implications

- No tax at time of settlement of trust
- Beneficiaries to a foreign discretionary trust are not taxed India unless a distribution is made to them. The discretionary trust would be taxed only on its Indian sourced income, if any
- Distributions to beneficiaries could be regarded either as a distribution of income or a distribution of capital
- Distribution of capital: If distributions by trust are made to Indian resident beneficiaries in a subsequent year to which they are earned by the Trust, they may be treated as a distribution of capital and hence not taxable in India. This is not a very settled issue and could be litigated by the tax authorities
- Distribution of Income: If distributions are made in the year in which they are earned or are not regarded as a distribution of capital, Indian resident beneficiaries would be capital gains tax at the rate of 22.66% for long term gains [shares in PHC 1 by the Trust are held for more than 12 months] and 33.99% for short term gains [shares in PHC 1 by the Trust are held for 12 months or less] and at the rate of 33.99% in case the Trust has received a dividend distribution from the PHC 1

Trust

Indian Regulatory Implications

- Trust is being settled by a non resident, therefore, no regulatory implications at the time of settlement of trust

PHC 2

Tax Implications

- Income of PHC 2 should not be taxable in India unless distributions are made to Indian resident individuals
- Distributions to Indian residents shall be taxed as follows:
  - Dividend distributions shall be taxed at 33.99%
  - Distribution on buy back shall be treated as capital gains and taxed at 22.66% in case of long term capital gains or 33.99% if short term capital gains

Regulatory implications

- Remittance for purchase of shares by X shall be restricted to USD 200,000 in any financial year

We acknowledge that the above presentation has been prepared by us for benefit of Ms. Bala Deshpande and New Enterprise Associates. *If the entitlement to carried interest is linked to employment in India, the employees would be taxed on the carried interest on the date of accrual, irrespective of whether the carry is actually received. Therefore, it would be important to remove all references to carry in employment related documents.*

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