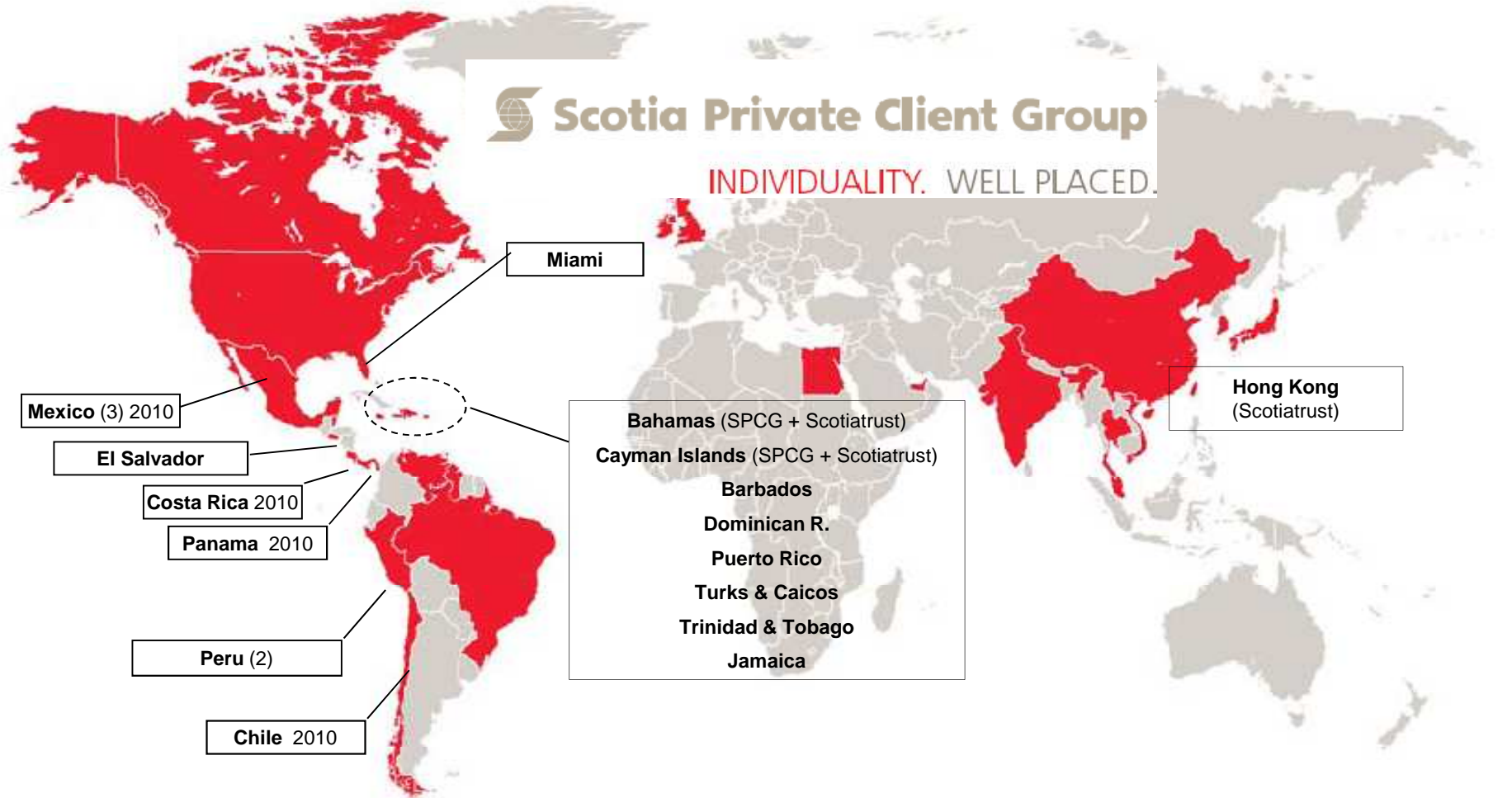


The Use of International Trusts By Canadians



A Growing Presence



International Wealth Structuring for Canadians

- Canada taxes based upon residency – a Canadian resident is liable to CRA for his/her worldwide income
- A Canadian resident cannot defer or avoid paying taxes in Canada simply by settling a trust in a foreign/offshore jurisdiction – there are however, still viable international planning opportunities in select circumstances
- Planning for Canadians focuses on tax and legally compliant solutions that arise due to:
 - Pre-Immigration Planning
 - Expatriation Planning
 - Asset Protection Needs
 - Cross Border Estate Planning

Immigration Trusts

- Trust established for the benefit of new immigrants to Canada or for those who have not been resident for a cumulative period of 60 months
- Primary benefit: income and capital gains realized by assets while in the trust will be **exempt** from Canadian income taxes for up to 60 months following the arrival of the immigrant to Canada
- Key elements:
 - Trust must be resident offshore with mind and management of the trust operations outside Canada;
 - Trust property must be foreign assets settled by a non-resident Settlor (or within 60 months of their arrival);
 - Trust must be fully discretionary

Immigration Trusts

- Important to consider date of trust settlement as well as prior jurisdiction of residence or citizenship in order to maximize trust benefit
- At the end of the 5 year period, the trust will be deemed resident and taxable in Canada – 3 options:
 - Assets can be distributed at a bumped up cost base to Canadian resident beneficiaries;
 - The trust can remain offshore (now taxable in Canada) for asset protection purposes;
 - Domesticated the trust to Canada by changing trustees – operates as a Canadian Inter-vivos trust

Expatriation Trusts

- Trusts created for clients who cease being Canadian residents and relocate to other jurisdictions
- Ability to create a tax advantageous platform that includes estate planning and asset protection
- Key factor is the tax regime of the new jurisdiction
 - Benefits may exist for individuals who plan to move to countries which tax on a remittance basis;
 - Individual pays tax only on income that they receive or earn within the new jurisdiction;
- E.g. Retirees moving to Latin American countries such as Costa Rica, executives who are being relocated to favorably taxed locations or individuals moving to the UK to take up non-domiciled residency

Asset Protection Trusts

- Trusts settled by a Canadian resident individual for asset security and estate planning – not a tax driven solution
- Desire to create a greater degree of protection for assets than would be afforded by a domestic Inter-vivos trust – concern for future liabilities, marital breakdown, privacy and confidentiality
- Trusts are deemed Canadian resident trusts and must file returns and pay tax in Canada
- Often created after the Canadian Settlor has participated in a liquidation event (sale of business or significant asset) or received a large payment of cash (lottery/insurance/court award)

Asset Protection Trusts

- To be effective, trusts must be created prior to any litigation or claim, and the client must be solvent
- Choice of trust jurisdiction is important as countries have express statute of limitation periods – i.e. assets must be in the jurisdiction for a period of time before they are “protected” by the foreign regime
 - The Bahamas – 2 years
 - Cayman Islands – 6 years
- Require legal advice related to viability of trust prior to establishment of structure

Cross-Border Gift/Inheritance Trusts

- Trusts settled by a non-resident contributor for the benefit of Canadian resident beneficiaries – commonly referred to as “Granny Trusts”
- Key benefit exists in the ability to capitalize income on a tax free basis and make capital distributions to Canadian resident beneficiaries tax free
- Trustee must be non-resident with mind and management outside Canada
- Non-resident contributor can be a Canadian citizen but they must be a non-resident for 60 months prior to the establishment of the trust
- Trust is fully discretionary with usually a class of beneficiaries – often guided by a letter of wishes from the Settlor
- Ideal way to transfer wealth across jurisdictions and provide a lasting legacy that combines tax effectiveness and asset protection

THANK YOU

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