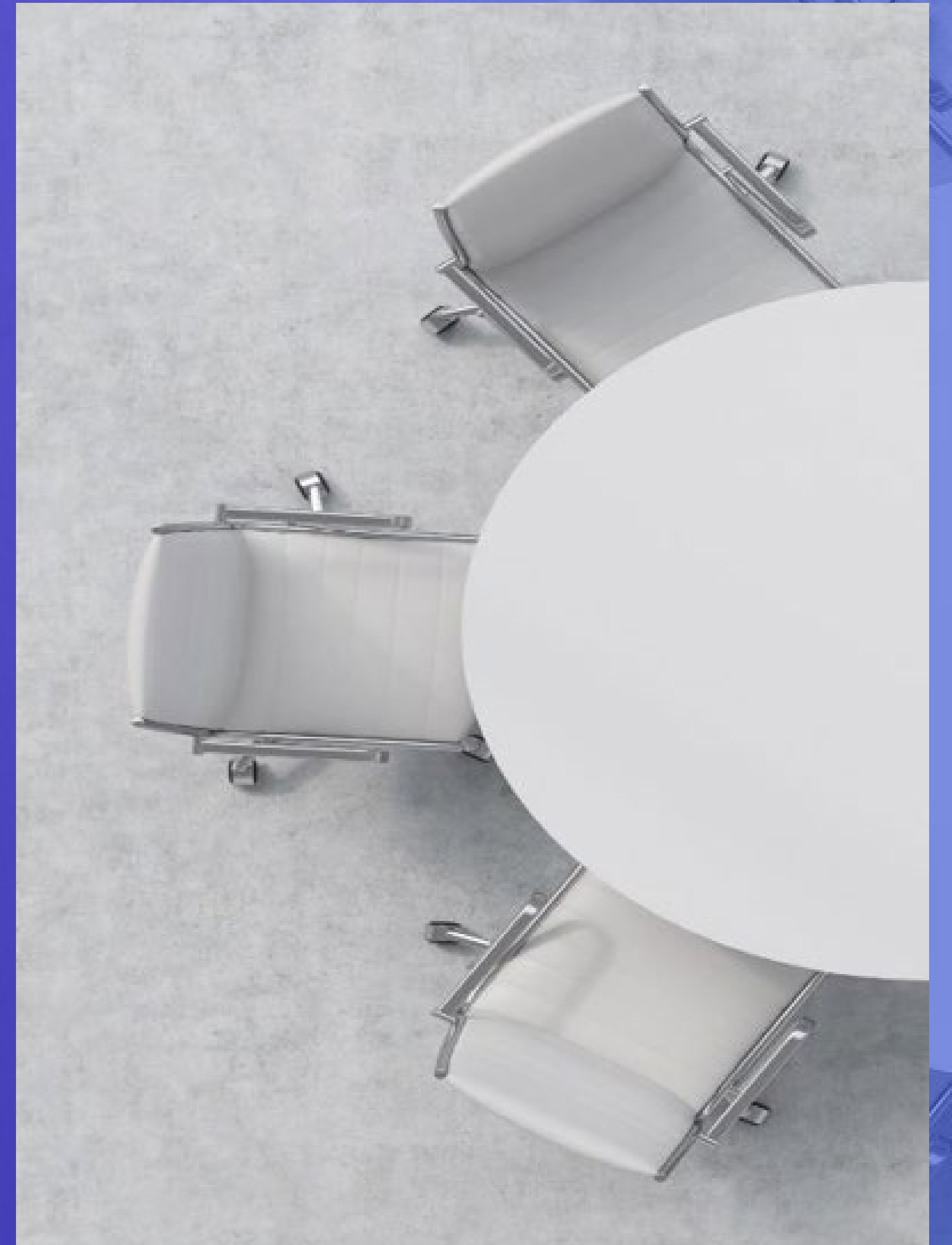




Singapore Tax Update: Implications of Section 10L

Impact to the family offices and asset
management industry

May 2024





Introduction of Section 10L

Introduction of Section 10L – Overview

What?

Tax gain from disposal of “**foreign asset**” (i.e. **Covered Income**) that is –

1. **received in Singapore** by businesses without economic substance in Singapore; and
2. not otherwise taxable as income (i.e. capital gain), or is exempt from tax (e.g. 13W safe harbour).

“**Foreign asset**” – asset deemed to be “located” in Singapore. Effectively a deemed source rule

Compliance with the EU Code of Conduct Group guidance which aims to address international tax avoidance risks.

Why?

Who?

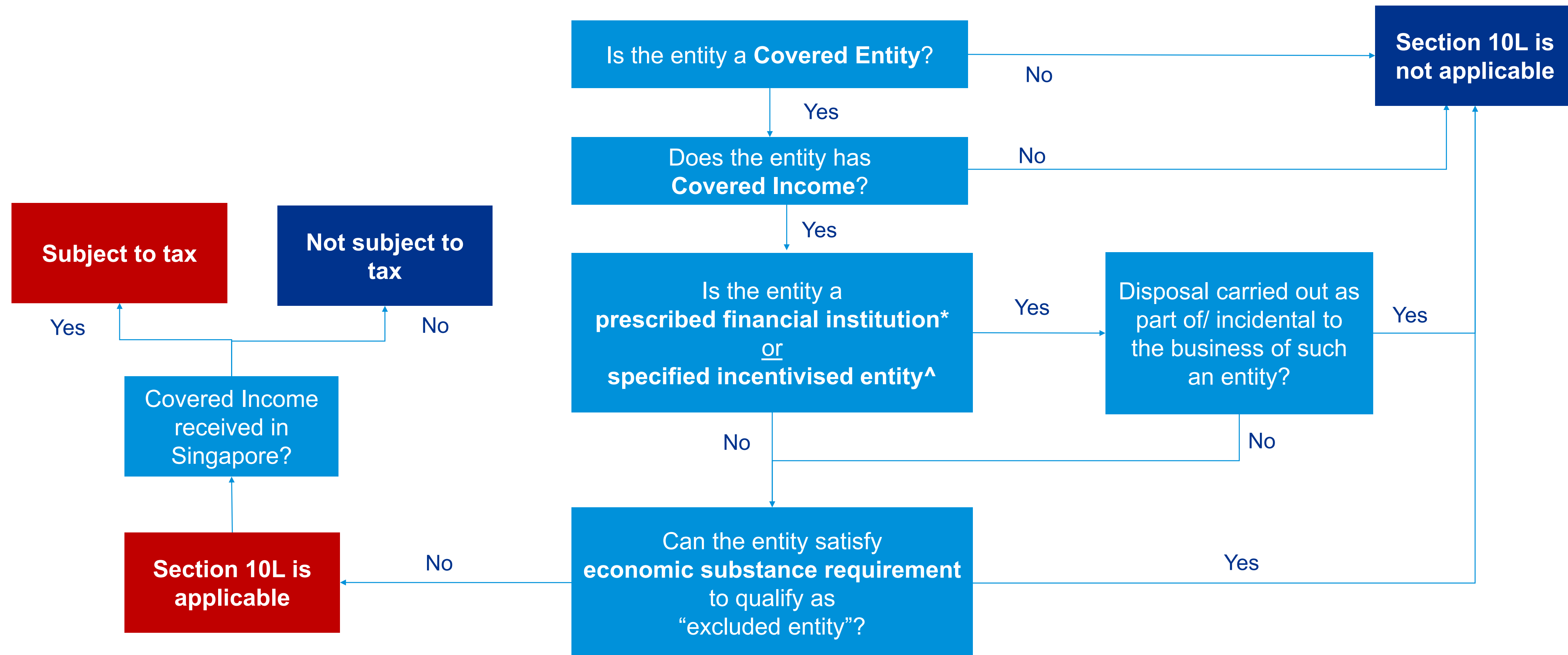
Applicable to a **Covered Entity** – an “entity” of a “**relevant group**” i.e. a group with members that are formed in or operates in two or more jurisdictions.

Based on accounting consolidation, subject to certain exceptions.

Applies to disposal occurs on and after 1 January 2024, and taxation when Covered Income is received in Singapore.

When?

Summary decision tree

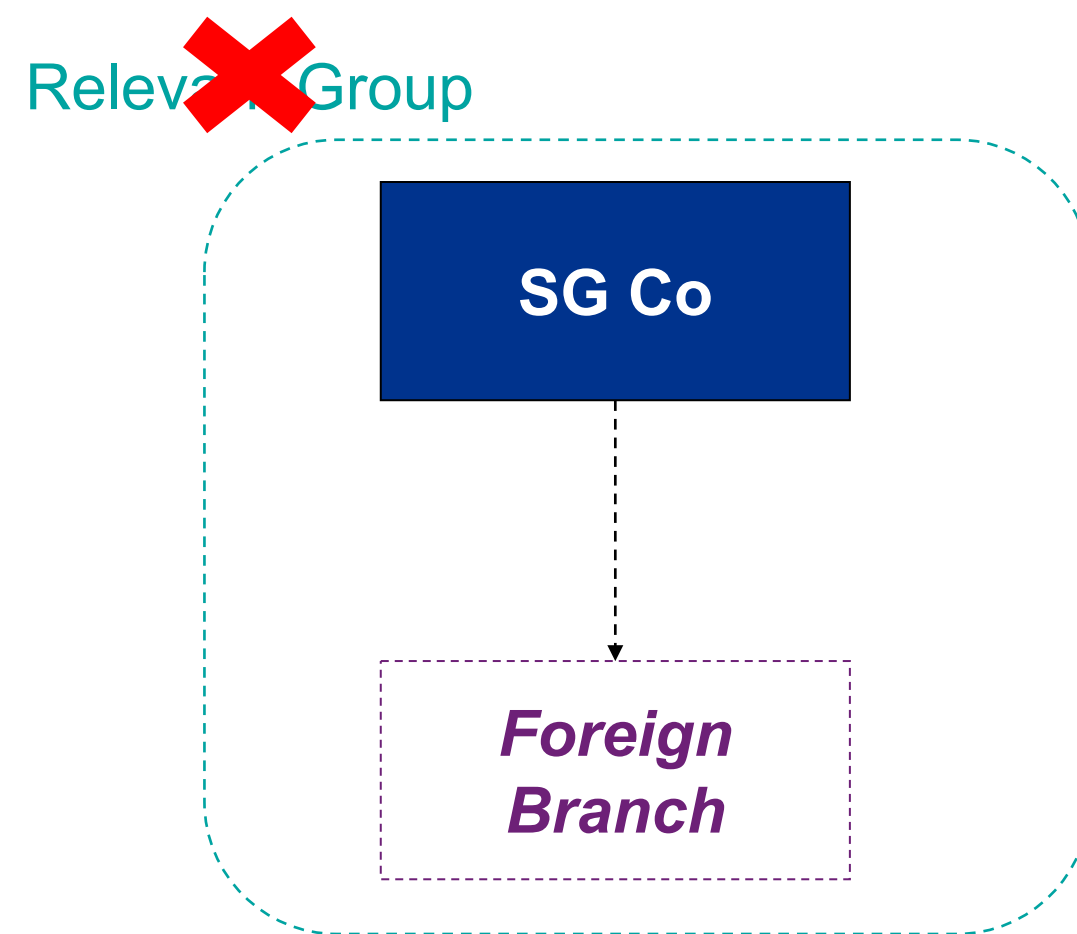


* Licensed bank, licensed merchant bank, licensed insurer, licensed finance company, CMS license holder.

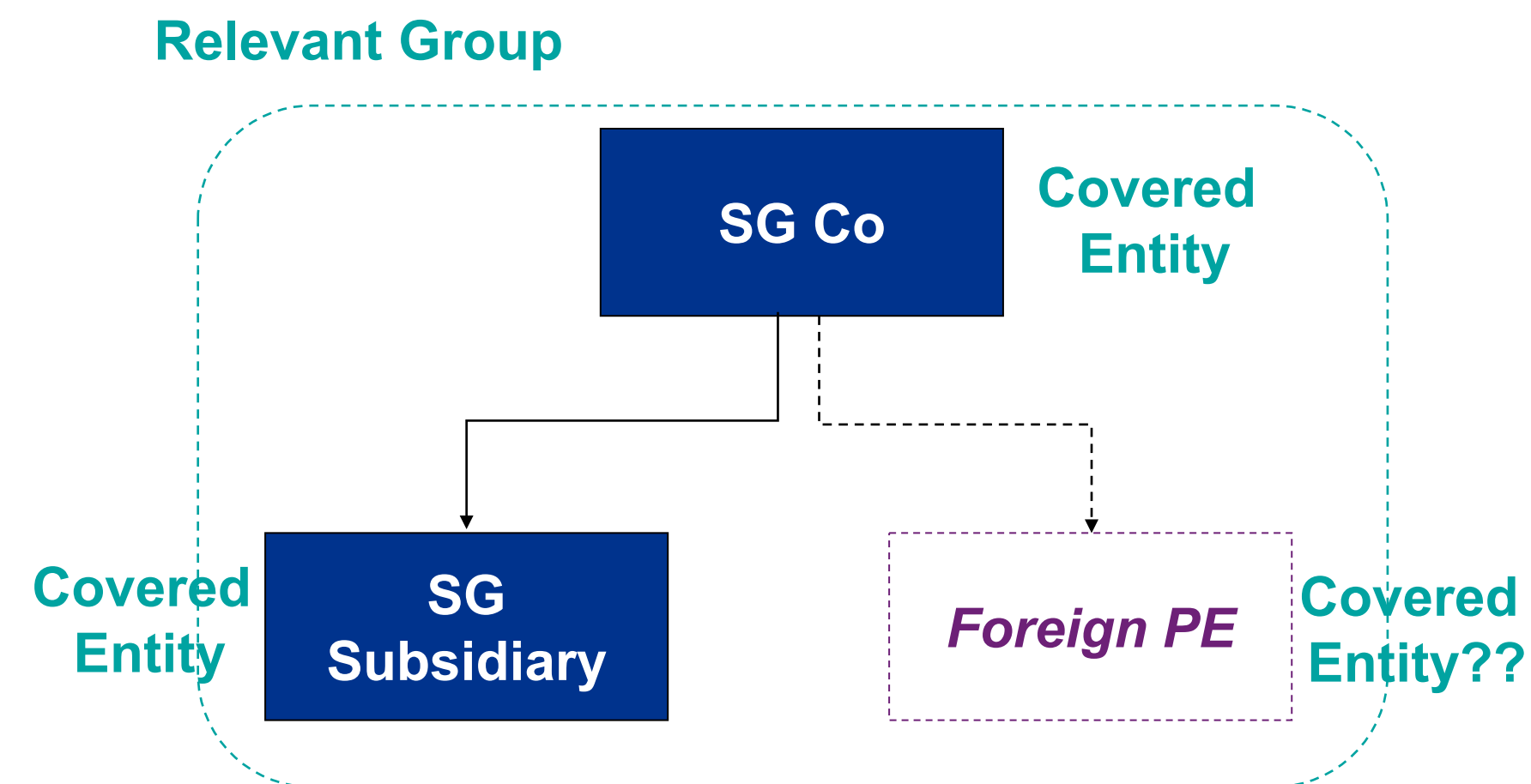
^ An entity granted tax incentive under Aircraft Leasing Scheme, Development and Expansion Incentive, Finance & Treasury Centre Incentive, Financial Sector Incentive, Global Trader Programme, Insurance Business Development Incentive, Pioneer Certificate Incentive.

What is a “Covered Entity”, “Relevant Group”?

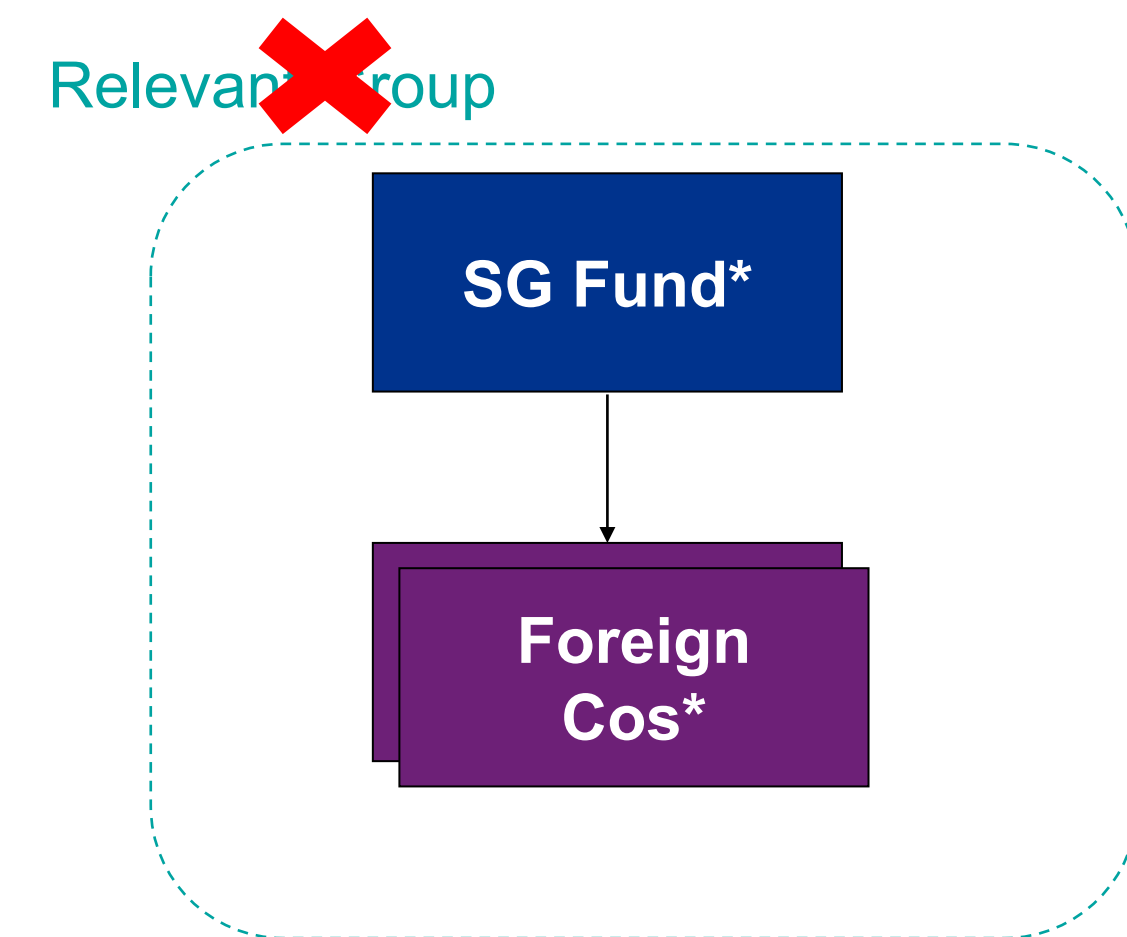
Example 1: Single SG Co with a foreign branch (single legal entity)



Example 2: SG Co with a foreign PE (i.e. a foreign place of business), and a SG Subsidiary



Example 3: Singapore Fund with Foreign Investee Companies



*Accounting consolidation not required

Economic Substance Requirement (ESR)

- Covered Entity is “excluded entity” if ESR is met
- Testing time?
- Generally applied at entity level (i.e. Covered Entity making disposal), subject to certain exception.
- Level of ESR differs depending on whether the Covered Entity is a Pure Equity Holding Entity (PEHE) or non-PEHE
- ESR assessed based on operations (i.e. core income-generating activities) of the Covered Entity → examples in Annex B (e-Tax Guide)

ESR for PEHE

What is a PEHE?

- Function is to hold shares or equity interests in other entities
- Has no income other than dividends, gains on the sale of shares/ equity interests or income incidental to its activities of holding shares/ equity interests

ESR to qualify as “excluded entity”?

- Complies with relevant filing obligations in its respective jurisdiction
- Core income generating activities managed and performed in Singapore, by employees or outsourced
- Adequate human resources and premises in Singapore

IRAS e-tax guide:

- “Employees” include directors, but exclude nominee directors
- “Adequate premises” → PEHE has:
 - a. an office in Singapore;
 - b. a shared premise with an associated entity; or
 - c. the outsourced service provider has an office in Singapore.

Excluded entity – Examples

PEHE – Scenario 1 (ESR met)

- SG Co is a Covered Entity and is a PEHE.
- Has a SG-resident director (not nominee director)
- Shares an office with its SG parent company.
- SG Co holds shares issued by a foreign company (i.e. foreign asset).
- SG Co sold foreign shares in 2024.
- During the year 2024:
 - SG Co's director manages SG Co's core income generating activities in Singapore.
 - SG Co complies with ACRA and IRAS filing requirements.



➤ ***SG Co met ESR in 2024.***

➤ ***Section 10L not applicable to disposal gains → gains not taxable when received in Singapore***

Excluded entity – Examples

PEHE – Scenario 2 (ESR not met)

- SG Co is a Covered Entity and is a PEHE.
- Only has a registered address in Singapore.
- 2 non-Singapore resident directors and a nominee director in Singapore.
- Service provider handles filing matters with ACRA and the IRAS.
- SG Co holds shares issued by a foreign company (i.e. foreign asset) and disposes such shares in 2024.
- The decisions to buy and sell its investments undertaken by non-SG directors offshore.



- *ESR not met in 2024.*
- *Section 10L will apply disposal gains → gains taxable when received in Singapore*

ESR for non-PEHE

What is a non-PEHE?

- Not a pure equity-holding entity

ESR to qualify as “excluded entity”?

- Core income generating activities managed and performed in Singapore, by **full-time** employees or outsourced
- Has adequate economic substance in Singapore, taking into account:
 - a) number of Singapore **full-time** employees of the entity;
 - b) qualifications and experience of employees or other persons;
 - c) amount of business expenditure incurred in Singapore;
 - d) whether key business decisions made by persons in Singapore.

IRAS eTax Guide :

- *Number of full-time employees include full-time equivalent of part-time employees*
- *Business expenditure examples: rental expense, staff-related expenses and statutory expenses, excluding taxes, penalties, depreciation or interest*

Excluded entity – Examples

Non-PEHE – Scenario 1 (ESR met)

- SG Co is a Covered Entity
- SG Co invests in equities and provides loans to related parties. It is a non-PEHE.
- SG Co disposes shares in a foreign company in 2024.
- During the year 2024:
 - SG Co has 2 full-time employees with relevant qualifications to carry out its core income generating activities.
 - SG Co incurs S\$100,000 of local business expenditure.



➤ ***SG Co met ESR in 2024.***

➤ ***Section 10L not applicable to disposal gains → gains not taxable when received in Singapore.***

Outsourcing of economic activities (“Outsourcing Rules”)

Meeting ESR through outsourced entity (i.e. related or non-related service provider)

- a) Outsourced economic activities (i.e. core income generating activities) are carried out in Singapore;
- b) Outsourcing entity has direct and effective control over the outsourced activities; and
- c) Outsourced entity must set aside dedicated resources to provide outsourced services.
 - Outsourced entity expected to charge arm’s-length fee, subject to TP rules where applicable.
 - Outsourced entity can provide support to more than one entity, provided resources are commensurate with the complexity and level of services provided to other entities.

Outsourcing of economic activities (“Outsourcing Rules”)

Examples of outsourcing arrangement in IRAS e-tax guide

S-REIT → REIT Manager

Private trust → Trustee

RBT → Trustee-manager

ESR and Outsourcing Rules considered met if

- a) the core income generating activity is carried out by the respective REIT manager, trustee and trustee-manager (collectively “Outsourced Party”) in Singapore;
- b) The trust deed sets out:
 - i. The functions and responsibilities of the Outsourced Party;
 - ii. Provision for the termination of the Outsourced Party;
- c) Outsourced Party sets aside dedicated resources to perform its functions and responsibilities per the trust deed; and
- d) Outsourced Party charges an arm’s length fee for its services.

Can the above rules under the examples be applicable in the context of investment funds?

Applicability of Section 10L to Funds

FDD Cir 04/2024 released on 4 April 2024 clarifies the application of Section 10L to funds managed in Singapore

ESR Safe Harbour for funds incentivized under Section 13O / 13U / 13V

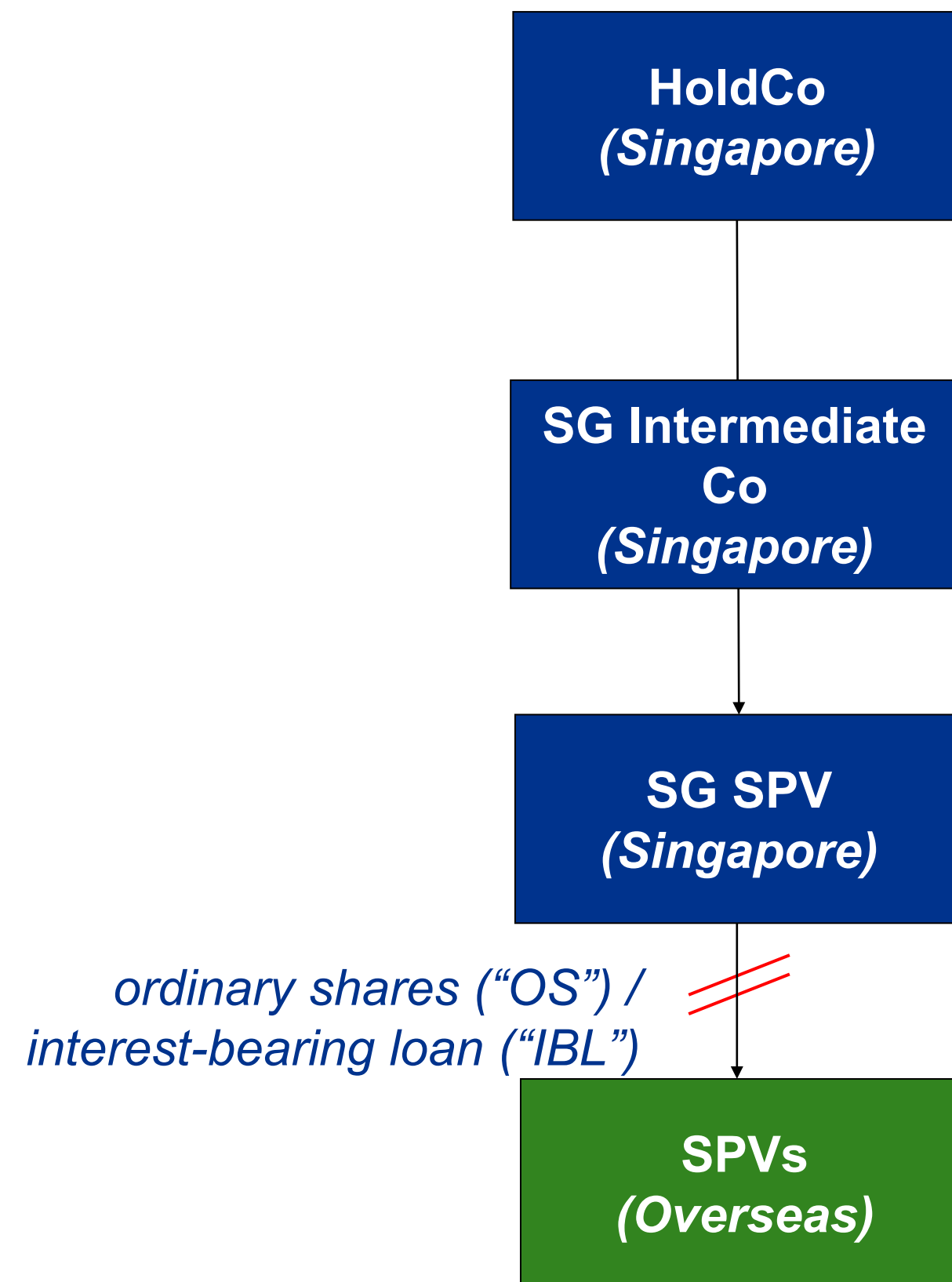
- Submission of annual declaration confirming the satisfaction of incentive conditions = Met ESR in that basis period
- Does not apply to funds approved under Section 13D

ESR and Outsourcing Rules for Funds

For funds or investment holding companies that are not incentivised – considered to have met said conditions if:-

- a) the investment activity of the has been outsourced to a qualifying Singapore-based fund manager ;
- b) the investment strategy has been documented;
- c) the investment service agreement (e.g., IMA or IAA) sets out:
 - the duties and responsibilities of the Singapore fund manager;
 - the provision for the termination of the services of the Singapore fund manager;
- d) Singapore fund manager has set aside dedicated resources to perform its functions and responsibilities based on the investment service agreement; and
- e) Singapore fund manager charges an arm's length fee for its services rendered.

Application of ESR to holding company of SPVs



General rule: ESR applied at entity level – “Covered Entity” making disposal

Exception for “SPV”

ESR applied on the immediate holding entity of **SPV** (or holding entity above) – if the tested holding entity is not itself an SPV and:-

- has effective control over the SPV based on Financial Reporting Standard 110 (Consolidated Financial Statements);
- derives economic benefits from the activities carried out by the SPV; and
- defines the core investment strategies that the SPV implements.

Further Clarifications from the IRAS

Liquidation:

A covered entity undergoes liquidation and distributes its foreign assets to its shareholders as part of liquidation proceeds, and no consideration is received by said covered entity from the distributions of its foreign assets to its shareholders

- Transaction outside scope of 10L – while there is a disposal of foreign assets, no gains are received in Singapore as there is no consideration received by the covered entity for the disposal

Dividend in kind:

A covered entity distributes foreign assets to its shareholders as payment of dividends (i.e. dividend in kind)

- Transaction outside scope of 10L – while there is a disposal of foreign assets, no gains are received in Singapore as there is no consideration received for the disposal

Further Clarifications from the IRAS

Share buyback / cap reduction / redemption

Where a covered entity undertakes: (a) a reduction of share capital; (b) a share buyback to cancel the shares; or (c) a share redemption

- Transaction under scope of 10L where there is a sale or transfer of shares (or any rights or interest thereof) in the course of said share capital reduction, buyback or redemption
- Transaction outside scope of 10L where the share capital reduction, buyback or redemption involves only the extinguishment or cancellation of shares without any transfer of said shares to the company or any other party

Interest Free Loans

Where a company has (i) issued IFLs to its subsidiaries (as a mode of capitalisation); and, (ii) derives only equity related income / gains

- Said company would be treated as a non-PEHE for 10L purposes

Section 10L provisions

Taxpayers are required to provide certain additional information in their tax computations when submitting tax returns

Advance ruling on ESR for proposed sales envisaged to take place within 1 year from the date of application

Ruling issued valid for up to 5 YAs.

Gains derived from the sale or disposal of a foreign asset under 10L (e.g. disposal gains derived via limited partnership) that is allocable to and assessable in the hands of an individual are exempt to the individual.

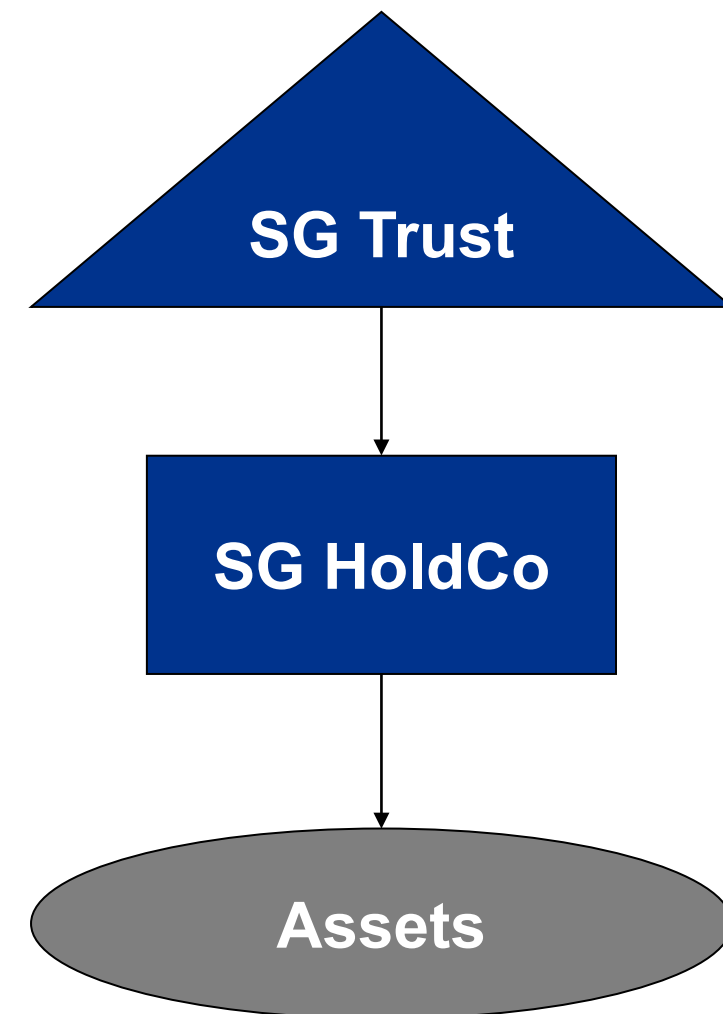
Foreign tax credit may be available to Singapore tax residents where gains are also taxed in source country

Illustrations

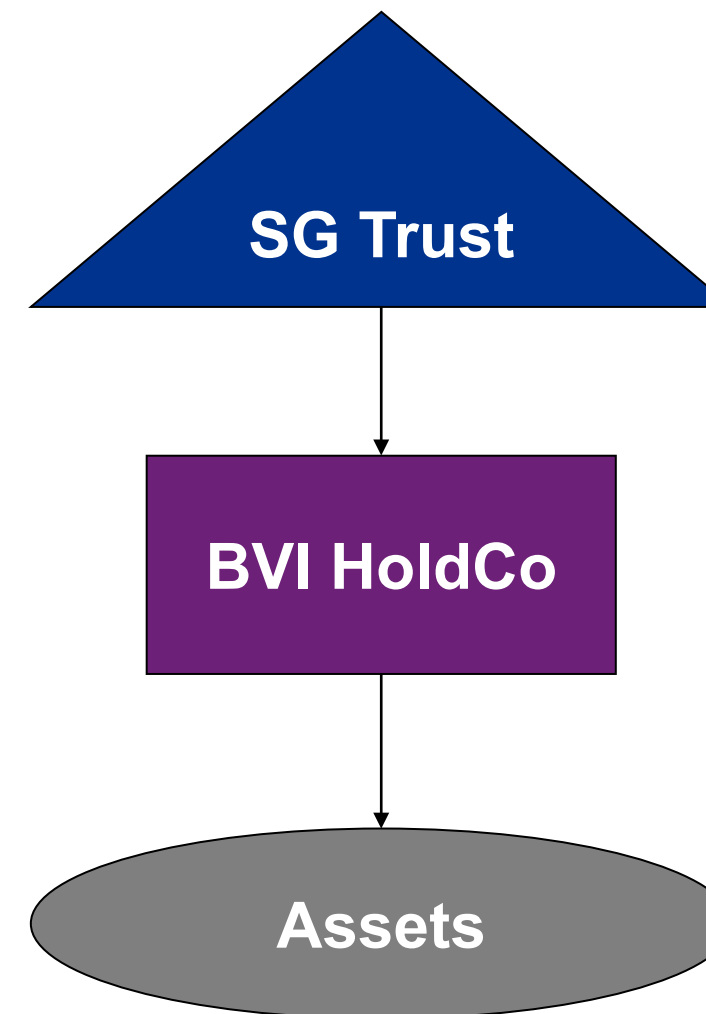
A long-exposure photograph of a city street at night, showing light trails from cars and buildings. The image is overlaid with a semi-transparent blue rectangle containing the word 'Illustrations' in white text.

Example 1 - Identifying "Relevant Group" & "Covered Entity" (1/2)

Scenario 1A: SG Trust + SG HoldCo

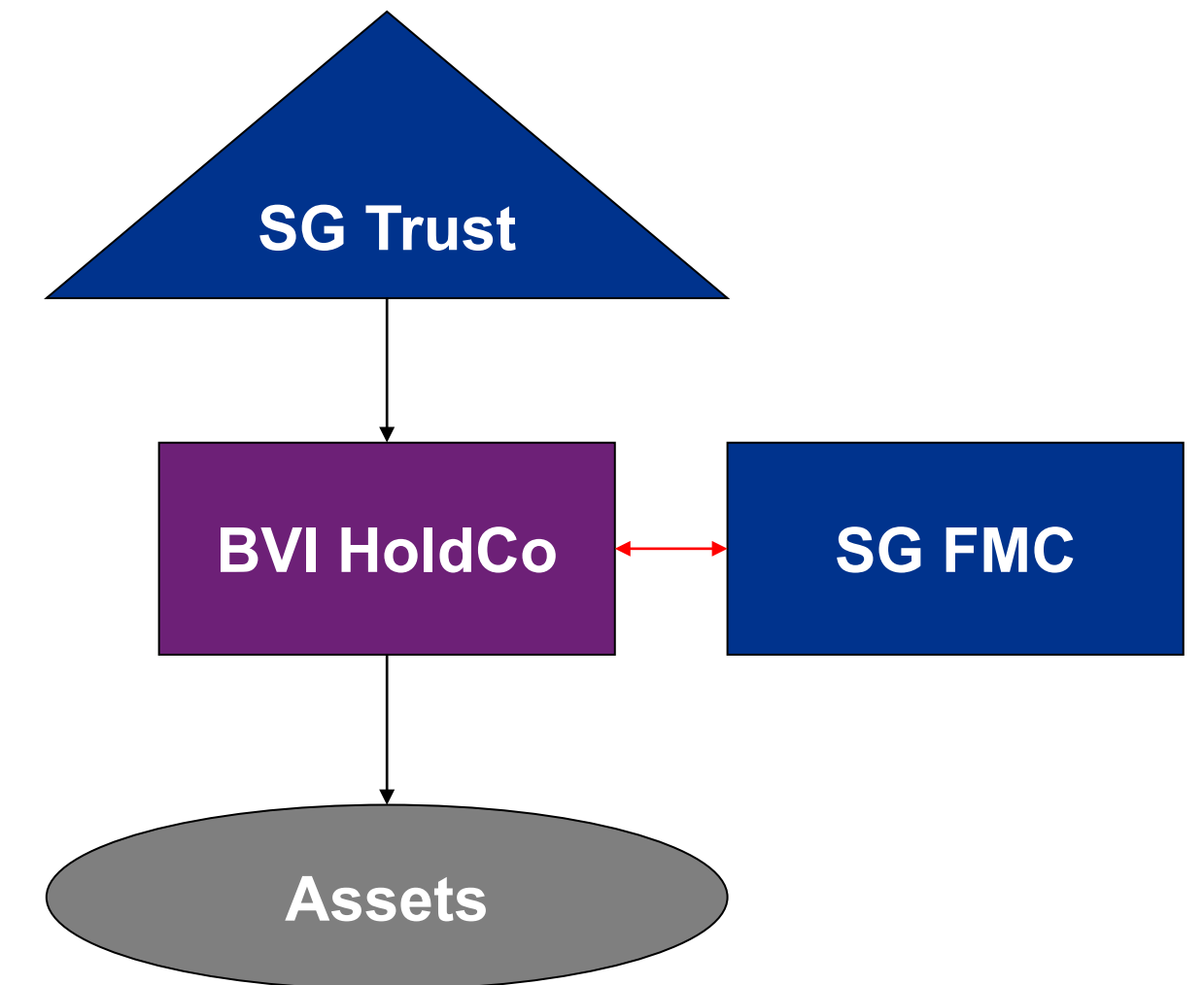


Scenario 1B: SG Trust + BVI HoldCo (with no operations in SG)



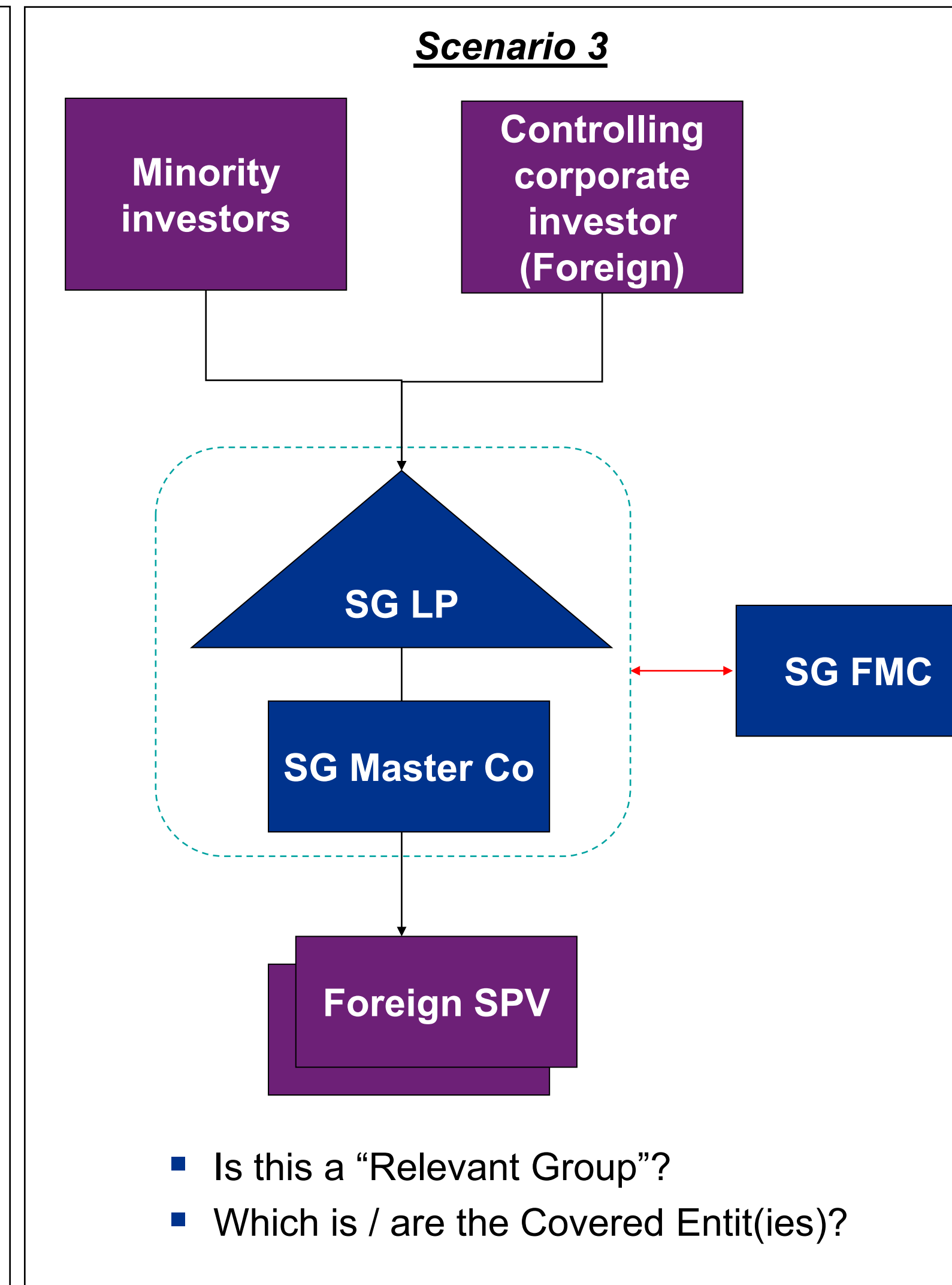
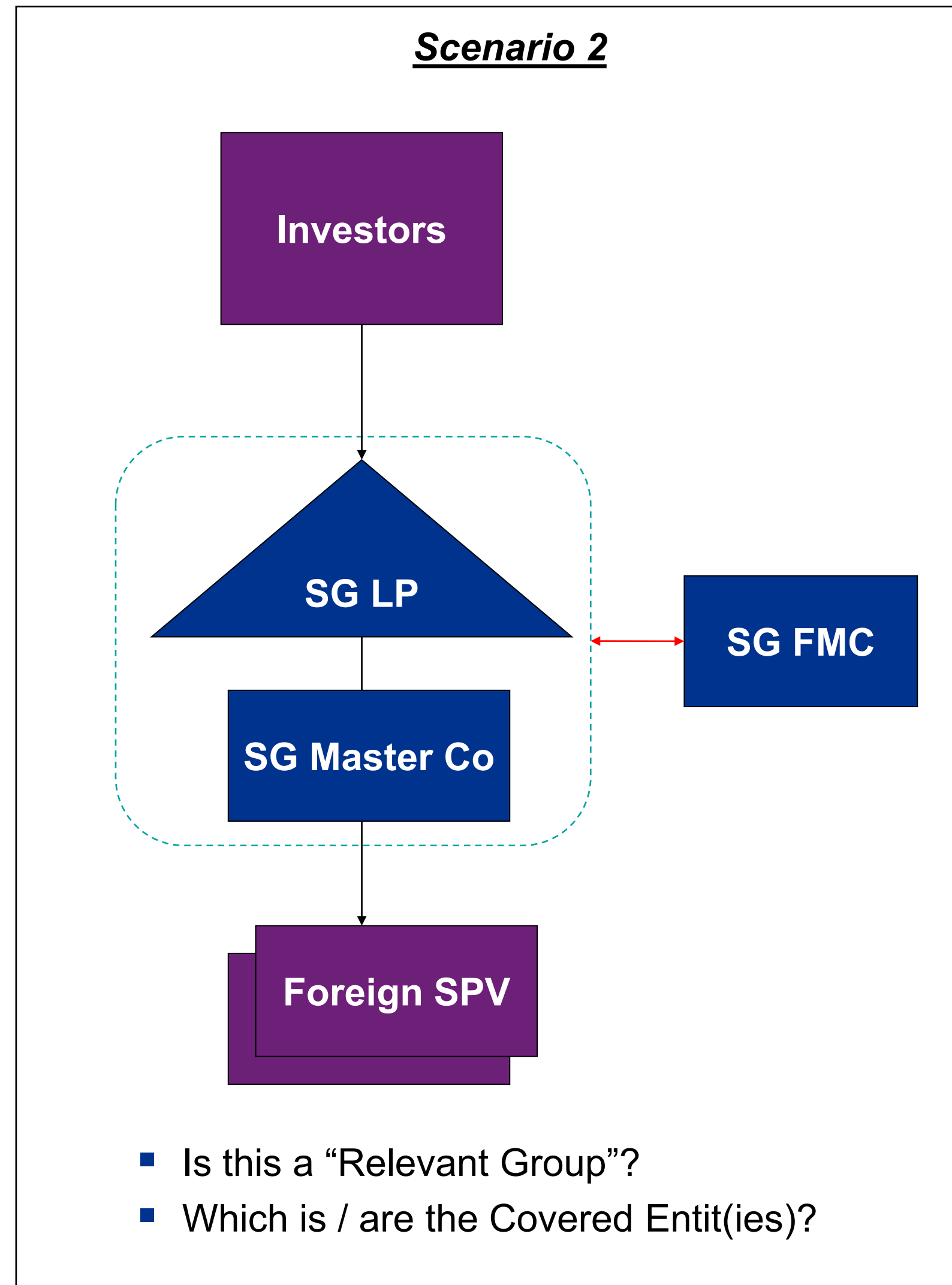
- SG Trust is required to consolidate BVI HoldCo
- BVI HoldCo does not have operations in Singapore

Scenario 1C: SG Trust + BVI HoldCo (with operations in SG)

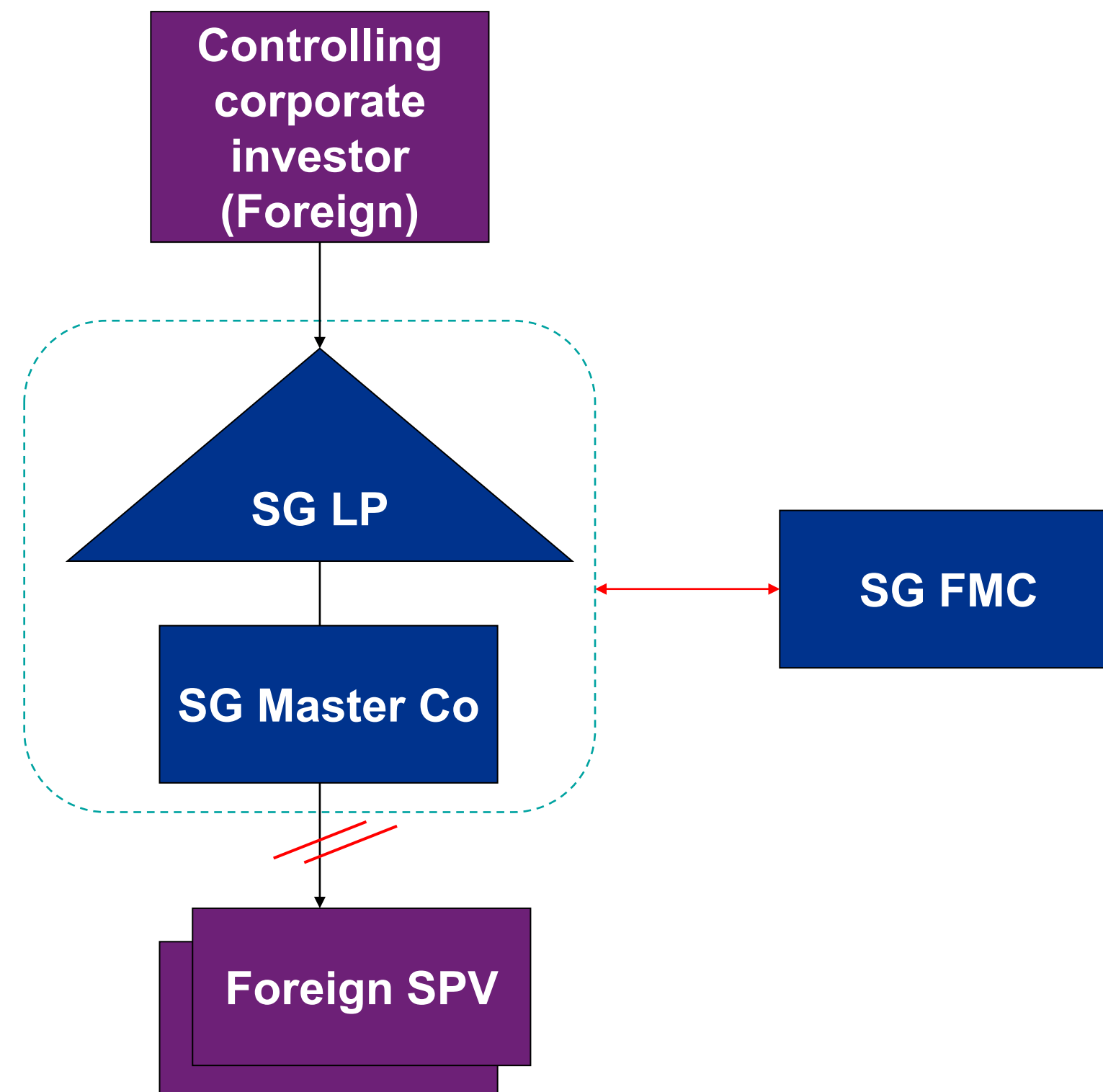


- SG Trust is required to consolidate BVI HoldCo
- BVI HoldCo has operations in Singapore

Example 1 - Identifying “Relevant Group” & “Covered Entity” (2/2)



Example 2 - Application of Outsourcing Rules to Funds (1/2)



Facts

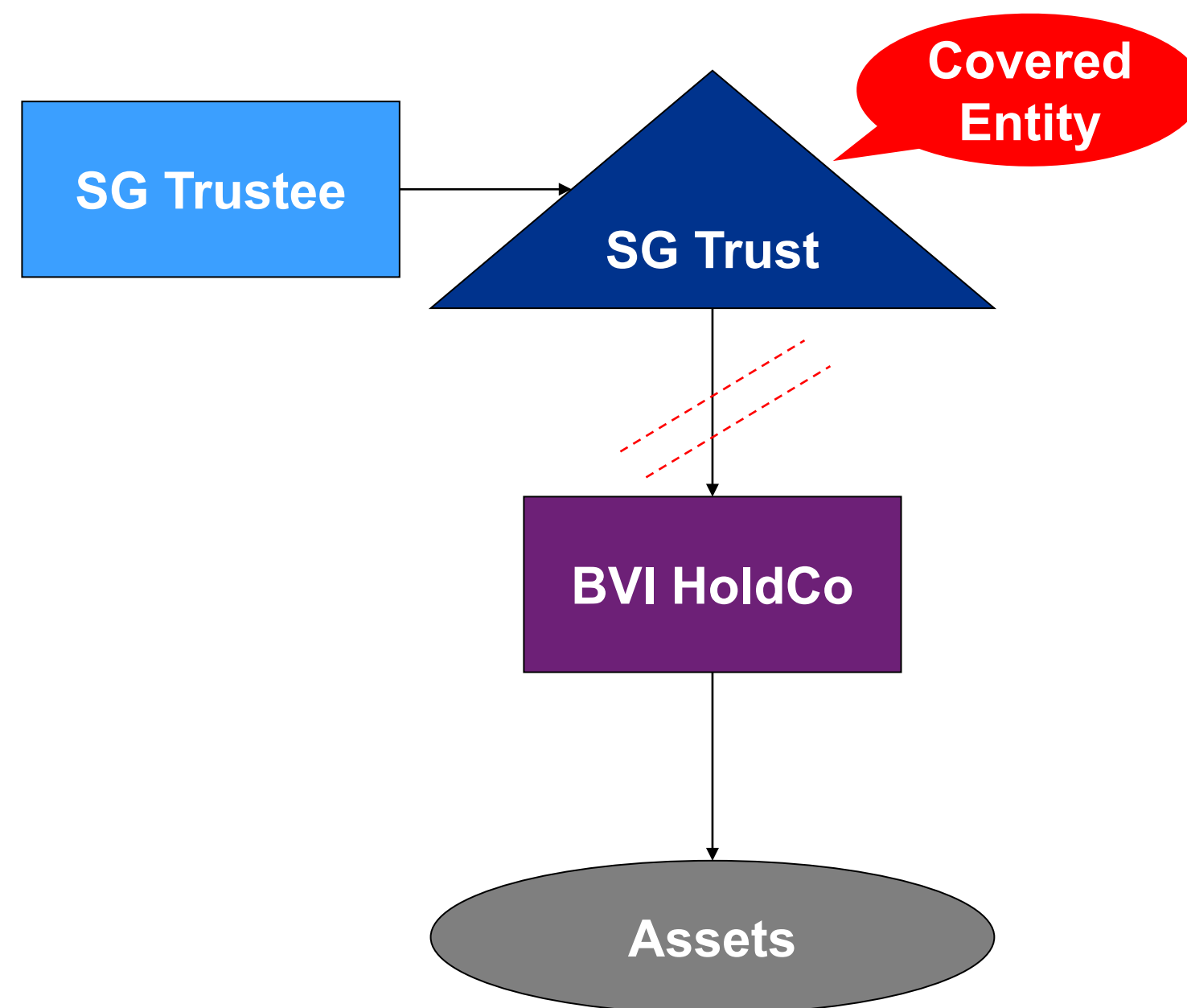
- Discretionary investment management arrangement
- SG Master Co is a Covered Entity
- SG Master Co disposes of shares in a Foreign SPV

ESR

- Can SG Master Co meet ESR through SG FMC?
- Any difference whether SG Master Co is incentivised under Section 13O/U fund incentive scheme?
- What about gains from redemption or liquidation of foreign shares?

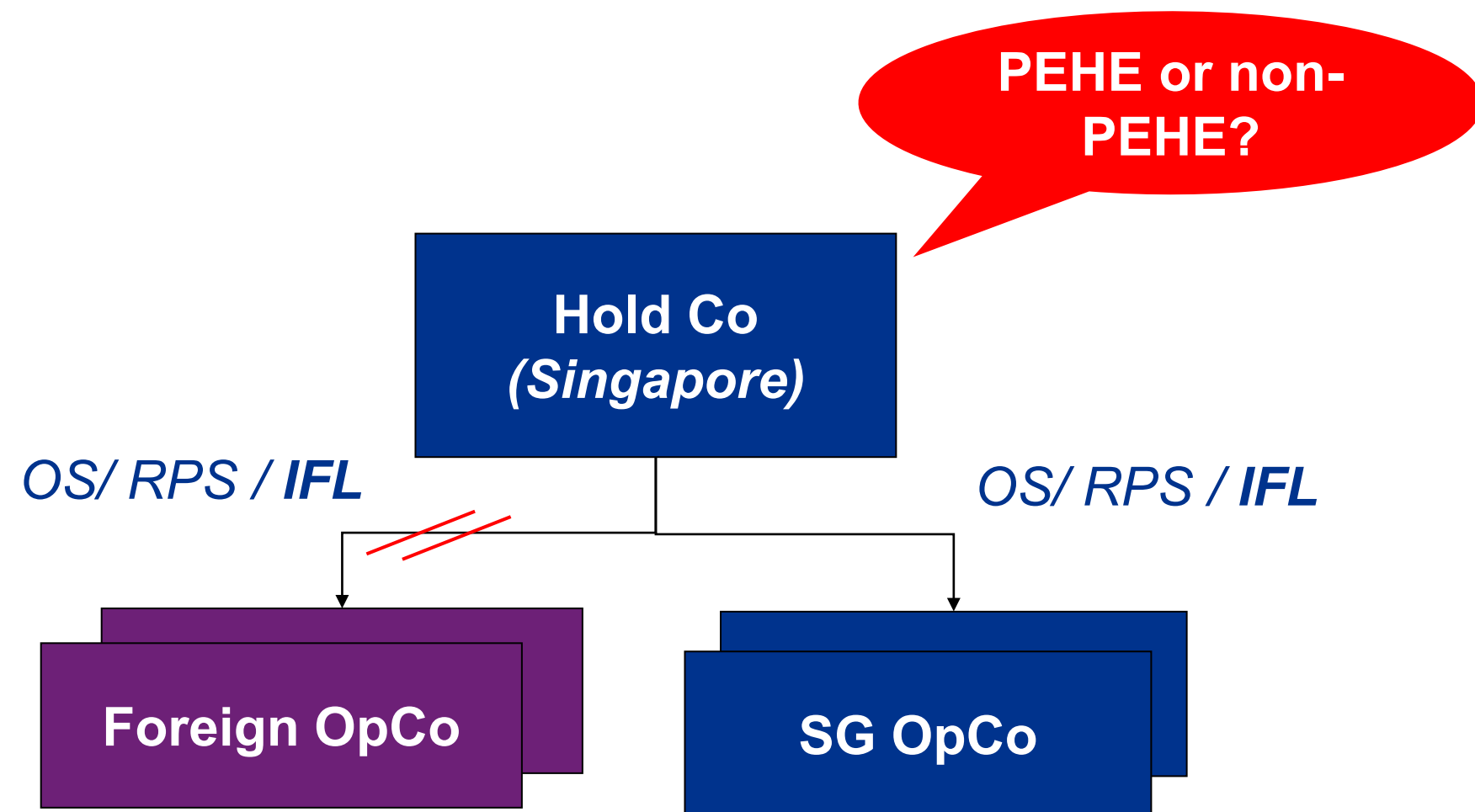
Example 2 – Application of outsourcing rules for trust structures (2/2)

SG Trust + BVI HoldCo



- SG Trust is required to consolidate BVI HoldCo
- SG Trust will be subject to ESR under Section 10L.
- What are the ESR requirements?
 - Depends on whether is PEHE or non-PEHE
- Applicability of outsourcing rules?
 - the core income generating activity is carried out by its Trustee in Singapore;
 - the trust deed sets out the following:
 - i. the functions and responsibilities of the Trustee;
 - ii. provision for the termination of the services of the Trustee;
 - the Trustee has set aside dedicated resources to perform its functions and responsibilities as per the trust deed; and
 - the Trustee charges an arm's length fee for its services.
- If BVI HoldCo is liquidated, does 10L apply?

Example 3: PEHE or non-PEHE?

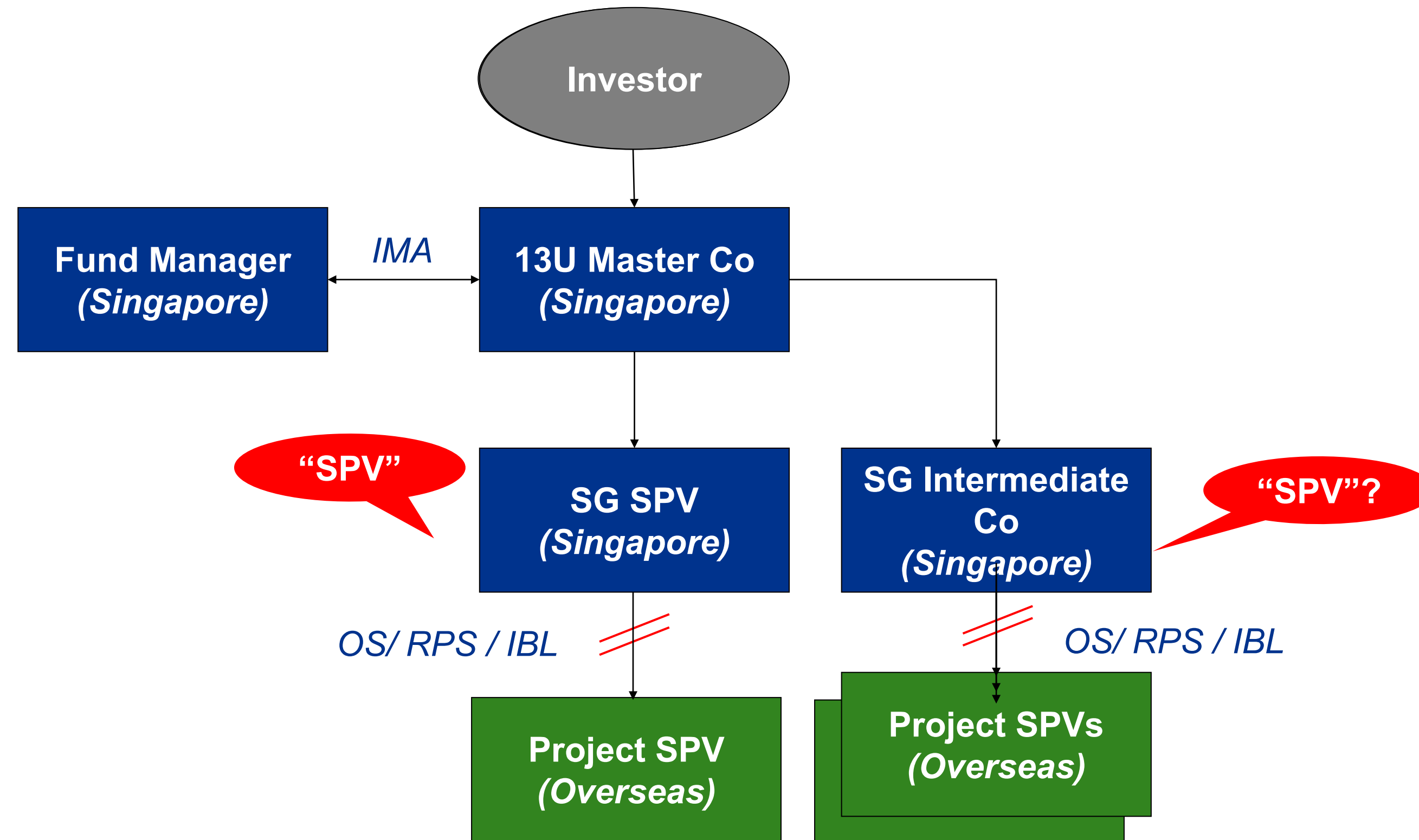


- Hold Co is a Covered Entity, disposes of shares in Foreign OpCo.
- Depending on whether HoldCo is a PEHE or non-PEHE, reduced ESR or higher ESR may apply.
 - Is HoldCo a PEHE or non-PEHE?

What is a PEHE

- Function is to hold shares or equity interests in other entities
- Has no income other than dividends, gains on the sale of shares/ equity interests or income incidental to its activities of holding shares/ equity interests

Example 4 – SPV: Meeting ESR at holding entity level



- Relevant "Covered Entity" – SG SPV
- Is SG SPV a PEHE or non-PEHE?
- Can SG SPV have ESR tested at Master Co level?

- Relevant "Covered Entity" – SG Intermediate Co
- Is SG Intermediate Co a PEHE or non-PEHE?
- Can SG Intermediate Co have ESR tested at Master Co level?

Thank You



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