

The Delaware Trust Advantage

For the Out-of-State or Out-of-Country Client

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Trust Administration in Delaware

- Comprehensive body of trust laws over many years
- Constant updating of trust law with support from judiciary and legislature
- Multiplicity of qualified institutions and professionals
- State income taxation advantages
- Coordination of laws with underlying Delaware business and investment entities

Directed Trusts

- Delaware administrative situs with significantly reduced trustee involvement and expense
- Ability to include family members and trusted advisors as investment advisors and distribution advisors
- Control of family owned business and investment entities through advisors

Directed Trusts as Domestic Trusts for Non-US Persons

- Use of a US “domestic” trust for US taxable asset investments by foreign persons
- Satisfy IRC definition for domestic trust
- Eliminates foreign taxpayer US reporting
- Use of non-US related party portfolio debt to generate tax savings against effectively connected income and real estate income

Significance of Trust Tax Classification

- Foreign trust versus domestic trust is determined by Section 7701-4 Regulations
- Court test
- Control test
- Advantages and disadvantages to be considered during the International Track presented later in the seminar

Directed Trusts as Foreign Trusts for Non-US Persons

- Use of a US “foreign” trust for non-taxable US asset investments by non-US persons
- Satisfy IRC definition for foreign trust by failing control test or use of flee clause
- FATCA/CRS applications for US entity
- Transfer tax protection for US situs stocks

FATCA and CRS

- US legislated FATCA reporting regime is now supported with bilateral Intragovernmental Agreements
- Non-US investors are very concerned about Common Reporting Standards (CRS) regime
- With CRS new systems for beneficial ownership registries that will include trusts are being developed
- Public availability of private data
- US is not a party to CRS

Flexible Distribution Trusts

- Unitrusts
- Power to Adjust
- DNI and UNI Planning for US trusts that are foreign trusts for US tax purposes

Beneficiary Information Restricted Trusts

- Delaware law versus Uniform Trust Code
- Use of Designated Representative

Dynasty Trusts

- GST exemption and perpetuities planning
- Common law perpetuities limitations
- Non-US persons and familiarity with foundations in civil law jurisdictions
- Use of leveraged and freeze planning to extend GST limited or perpetuities limited trusts

Leveraging Trusts

- Identifying potential opportunities
- Planning pitfalls
- Use of Section 2701 compliant preferred partnerships in connection with GST non-exempt trusts, QTIP trust, GRATs and perpetuities limited trusts
- Utilization of G-2 gift and GST exemptions to leverage tax inefficient trusts with loans and preferred partnerships
- “Reverse” preferred partnerships
- Loans between trusts
- Sales to IDGTs and recent Chapter 14 challenges
- Use of derivative techniques
- Use of Charitable Lead Annuity Trusts possibly with private placement life insurance and preferred partnerships
- Split dollar insurance planning with trusts
- Foreign non-grantor trusts with preferred partnerships and private placement life insurance

Domestic Asset Protection Trusts for US Persons

- Allows for creditor protection without involvement of non-US fiduciary
- Full faith and credit and bankruptcy concerns
- Robust involvement of Delaware fiduciaries and courts
- No offshore reporting issues

Delaware Asset Protection Trusts for Non-US Persons

- Delaware self-settled trust laws permit transfer tax shield for US situs investments
- CRS/FATCA reporting issues
- Protection of US courts from non-US judgements

DING and Delaware Situs Trusts

- State income tax advantages
- IRS Private Letter Ruling specificity
- New York limitations on incomplete gift trusts
- Distribution limitations and timing

Purpose Trusts

- US domestic tax status for control persons over trustees and protectors
- Coordination with US or non-US based private trust companies
- KYC advantages for CRS and beneficial ownership registries in non-US jurisdictions

Insurance Trusts

- Delaware premium tax is now the lowest in the US
- Coordination with private placement life insurance and deferred variable annuities using US based companies
- Grantor versus complex trusts
- IRS heightened concern over foreign PPLI accounts

Thank You

Questions?

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