Course Objective

This course was created to teach advisors (CPAs, EAs, accountants, attorneys, financial planners and insurance advisors) about the much misunderstood subject of International Tax Planning specifically using an International Variable Life Insurance Policy.

Many advisors have clients who have sizable liquid assets such as stocks and bonds. This module will help advisors understand the power of using an IVUL to help those clients growth their accounts in a more tax efficient manner and with less expenses than a domestic life insurance policy.

The module also focuses on how to help clients create a fee friendly captive insurance solution using business risk insurance which can be used for income tax planning and wealth building.

Advanced Tax Planning with Offshore Asset Protection Trusts

In asset protection modules 1-8 you've learned the basics about domestic asset protection and the correct way to setup an offshore asset protection trust (OAPT) for asset protection planning.

This material is "next level" planning for advisors who are interested in truly "advanced planning" for their high income/net worth clients.

You have read many times in the CWPP™ and CAPP™ course material that you should run from anyone who recommends "offshore" to avoid taxes.

That is a true statement to live by. Having said that, many things that can be done domestically to mitigate/reduce income and estate taxes can also be done offshore. The WPI has done some extensive due diligence as to compliant offshore planning so this module will focus on strategies that are both IRS and U.S. Treasury Department compliant**.**

Let's state that a different way. Do not go offshore to avoid taxes. Go offshore to protect wealth and just because offshore planning is used does not mean that some of the same techniques which work onshore to mitigate/reduce taxes cannot or should not be used in conjunction with an offshore plan.

The material you will read in the module can be very powerful when helping the high income/net worth client. These tools are not for everyone and are for a more sophisticated client who has a quality CPA and attorney who can review the structures.

While the techniques that will be discussed are not necessarily complicated, because they are “offshore,” “local” advisors many times will turn off without a full review. When working offshore, some CPAs and attorneys have understandable concerns as they are unfamiliar with the use of tax treaties, compliant offshore structures, and IRS and U.S. Treasury Department reporting requirements.

This material is laid out by going back over some of the basics of offshore planning and will then get into the unique programs you can use to help your clients.

The Mission

Our mission is to:

-Enhance domestic financial & estate planning by integrating sophisticated international tax planning strategies. (This planning is not meant to a substitute for good domestic planning which is needed by all clients).

-Create a platform using IRS compliant offshore structures to enable clients to invest through their current advisors in virtually any investment and to run their businesses and practices in a more tax efficient and asset-protected manner.

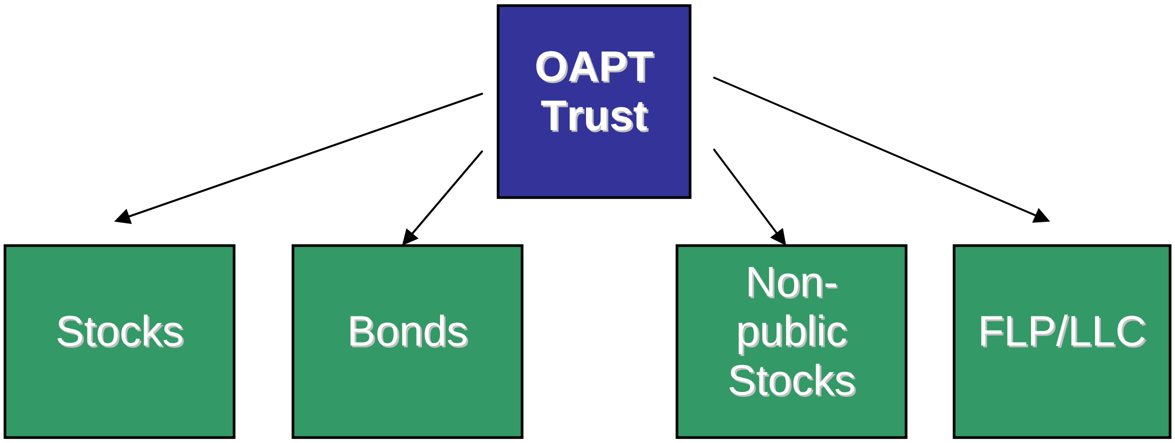
-Structure assets so that they cannot be taken from clients in the event of a legal judgment.

-Structure assets so that all investment gains are reported to the IRS but taxes are significantly reduced.

Allow clients to have access to these funds through an OAPT and retire with lower taxes.

An Asset Protection Trust is Tax Neutral

No taxes are due when placing assets in the trust because the client is simply funding a “grantor” trust for the client’s own benefit. (It needs to be noted that that if the trust instrument is not drafted carefully so as to render the gift to trust incomplete, there will be an immediate gift tax liability). The following is a typical schematic for an offshore asset protection trust.



As you learned in Asset Protection Modules 4-8, it is preferred to have your stocks/mutual funds/bonds owned by an FLP and/or LLC (many times that will be a domestic entity).

The good thing about an OAPT is that a client's assets are protected. The bad or the not as good as we would like is that there are NO tax benefits. An OPAT is tax neutral. Clients must do other things to make the trust tax favorable.

Also, it is important to understand that clients who are U.S. citizens are taxed on worldwide income. Therefore, simply moving assets offshore does not relieve the client of income, capital gains, dividend, or estate taxes on those assets. The client must use some IRS approved structure to accomplish their income, capital gains and estate tax reduction goals. We will simply look to the IRS code and find those tools and integrate them into the use of an OAPT.

Jurisdictions

The jurisdictions are very different. This material analyzes them based on nine criteria which you can see and read about in the chart to following.

This material does not fully explain each criteria and its application for each jurisdiction. However, a few things do need to be pointed out that differentiate some jurisdictions from others.

You'll notice that **Nevis** is the only one that meets all nine of our listed criteria. That doesn't mean that Nevis is the end all be all when creating an OAPT, but Nevis is the jurisdiction many planners are using today. In fact, recently there have been more trust started in Nevis for HNW U.S. taxpayers than any other jurisdiction. What you will find in Nevis is that there are literally so many hurdles that it is nearly impossible to legally jump them all. As a result, usually the opposing counsel will be the first to realize that it is impossible to get to these assets. Let's take a look at some of these hurdles.

As you'll recall from asset protection modules 4-8, when a creditor of one of your clients obtains a U.S. judgment, that creditor must go to the offshore jurisdiction where the trust is located and re-litigate the case. Why? Because the foreign jurisdiction will not recognize the U.S. judgment and the case must be re-litigated de novo (anew). This also means all the witnesses must come to Nevis to testify for a new trial. The reason for this is because Nevis has not signed the Mutual Legal Assistance Treaty with the U.S. There are many countries that have signed and many that have not.

Next, the creditor will find out when he/she goes to the offshore jurisdiction that he/she can't litigate the case alone. Why? Because the creditor needs a locally licensed attorney in the offshore jurisdiction. This is a very difficult task if the trust is setup in the correct jurisdiction.

The next thing the creditor finds out is that attorneys in the foreign jurisdiction are not allowed to take cases on a "contingency" basis (must show financial resources to pay if they lose the case). Practically speaking, the client is going to have to come up with a large retainer fee to get the case started because the local attorney cannot take it on a contingency. This will not be cheap. The creditor could be opening up a black hole of attorney fees due to the fact that an OAPT has never been broken and 99.9% of the time a creditor will not want to incur this expense.

When clients and advisors think of offshore, they typically think of the Bahamas or the Cook Islands. You'll notice in the following chart that the Bahamas and the Cook Islands do not require the posting of a bond before litigation can commence. This is a huge deterrence for creditors who are actually thinking about going to that jurisdiction to re-litigate a case that was litigated in the U.S. (where the creditor obtained a large judgment against a client). The bond is posted to cover the cost of your client's defense costs (the defendant) if the creditor does not win the case.

Nevis also has a 24-month statute of limitations that starts running the day the trust is formed. If your client sets up a Nevis trust tomorrow and a week after is sued in U.S. court, from a practical standpoint, the case would never make it to a Nevis court and be resolved in a 24-month period. By the time a creditor gets through the U.S. system, discovery, appeals, etc, and then ties to process a case in Nevis, they would never it get it through in the 24 month time period**.** As a side note, it typically takes about 17 months to get a case on the docket in Nevis.

To date, we have never heard of a client that lost a penny to a creditor trying to attack a Nevis Trust.

Offshore Asset Protection Trusts - Comparison of Jurisdictions

Country	1	2	3	4	5	6	7	8	9
	Statutory certainty regarding non-recognition of foreign judgments	"Beyond reasonable doubt" standard of proof required in establishing fraudulent intent	SOL for challenging an APT	Statutory certainty that settlor can be a beneficiary	Statutory certainty that settlor can retain some degree of control	Burden of proving fraudulent intent is always on creditor	Posting of bond required before litigation can commence	Statutory certainty that trust remains valid if fraudulent transfers determined to have taken place	Presumption against fraudulent intent if transferor remains solvent following transfers
Bahamas			X	X	X	X		X	
Belize	X			X	X				
Bermuda			X			X		X	
Cayman			X			X		X	
Cook Islands	X	X	X	X	X	X		X	X
Cyprus			X	X		X			
Gibraltar			X					X	X
Labuan	X	X	X	X	X	X		X	X
Mauritius		X	X	X		X			
Nevis	X	X	X	X	X	X	X	X	X
St. Vincent and the Grenadines	X	X	X	X	X	X		X	X
Seychelles		X	X	X		X			
Turks & Caicos			X			X			X
Alaska			X	X	X			X	
Colorado			X	X					
Delaware			X	X	X			X	
Nevada			X	X	X				

** Nonspecific treatment in the law.

How to go offshore and legally reduce taxes

As stated earlier, an OPAT is not a tax avoidance tool. An APT is tax neutral and all taxes flow back to the grantor. The legal way to reduce or defer taxes in an OAPT is to use a tool that is income tax favorable if used domestically. What are those? Tax free bonds, life insurance and annuities.

See how simple that was. If a client's OAPT buys tax-free investments, there are no taxes on the income from those investments.

For this portion of the material we will focus on the use of life insurance in an OAPT and more specifically an international or private placement variable universal life policy ("IVUL").

International Variable Life Insurance (IVUL)

An IVUL is an intriguing concept to help those clients who have sizable brokerage accounts reduce the capital gains taxes, taxes on dividends that are paid annually with most brokerage accounts and other income that is generated from businesses owned by our clients. IVUL can also pass wealth to the client's heirs in a tax favorable manner.

What is an IVUL?

An IVUL is an individually negotiated life insurance policy that can be with a domestic insurance company or, more typically, with an international insurance company. Most people think of IVUL as an investment vehicle.

What are the potential benefits of an IVUL?

- Tax free appreciation of investments
- Investment flexibility, including the ability to request the appointment of your own investment manager (A client recommends to the to the insurance their money manager and if that manager meets the criteria he/she is typically approved)
-Substantial liquidity in the investment account
-Low-cost borrowing from the investment account (tax-free policy loans)
-Low costs due to small or no sales loads and other administrative costs
-No state DAC tax that may run from 1 to 5% of premiums paid.
-Lower compliance costs than a domestic insurance policy.
-Increased asset protection -Tax free death benefits to heirs
-The ability to take "in-kind" payment for premiums (meaning a client could pay part of their life premium with real estate or stock).

How does IVUL differ from traditional or domestic life insurance policies?

The main difference with IVUL over traditional life policies is where the money can be invested. With a traditional policy (even a variable life policy), the consumer is limited typically to name brand mutual funds. With IVUL, the client, through the third party money managers, can invest in almost anything, subject to IRS compliance requirements, that includes:

-Individual publicly traded stocks
-Privately owned stock (which can include start up companies or private venture capital funds).
-LLCs
-Hard assets (such as real estate and small businesses)

In kind premium payments

Additionally, when using the right insurance companies, the companies will take in kind premium payments. For example, say a client has $2,000,000 in an LLC. The insurance company will take the LLC interest as a premium payment.

Another example is if client has a $2,000,000 rental property. The insurance company will take the property (which is usually owned by an LLC or corporation) as a premium payment. There are certain diversification requirements that need to be met in all IVUL policies and are especially important to pay attention to when taking in kind premiums.

Segregated account

IRS recognized VUL policies are held in separate "segregated" accounts, which are reserves that are segregated from the general assets of the life insurance company. That means the money in the policy is **not subject to other creditors of the life insurance company or other policy owners**. It is sort of like putting the money into a safety deposit box at the insurance company where no one, not even the insurance company itself, can access the funds for the benefit of another insured or creditor of the company. Certain jurisdictions take this one step further in that these assets are not even on the financial statement of the insurance company.

Investment options

While above are listed the typical types of investments money in a IVUL can be invested in, a fuller explanation of why this can be beneficial to clients with sizable brokerage accounts is needed.

Domestic IVUL – Typically, with a domestic (in the United States) IVUL policy, the insurance company will have institutional mutual funds for the client to choose from. The IVUL, at first glance, will sound like a typical domestic variable life insurance policy; but because IVUL is meant to house literally millions in investment dollars and because of the low insurance costs, IVUL is much different and more economically feasible than traditional domestic variable life.

Some domestic IVUL policies will only allow a policy owner to choose from among the insurance company's pool of money managers.

Foreign IVUL – With "offshore" IVUL policies, the insurance company typically allows the policy owner to request a money manager who is not among the insurer's existing group of approve investment managers. If that manager meets the required criteria of the insurance company, the insurer may permit the manger to manage the policy funds. The qualifications required to serve as an IVUL investment manager are more flexible than those required for domestic VUL policy investment managers. Additionally, with an IVUL, you will have much more latitude in the investments that are available to the IVUL policy. IVUL policies are more popular for those who wish to have greater flexibility to select from broad investment strategies that include hedge funds* or private company stock as investments (subject to investor control rules) or take advantage of the other tax solutions that will be covered in this material. *There have been new laws passed recently which limit hedge fund investing and it is important to work with a firm that is competent to work within those rules when putting a IVUL together.

Expenses

Because IVUL is an individually negotiated policy, there are set fees. However, typically with IVUL, there are **no up-front loads** that go to pay insurance agents. The insurance company is typically charging the lowest possible insurance rates for the life insurance (sometimes break-even rates) to attract big money clients to the company. Most clients who use IVUL policies do so for the tax benefits of having their investments owned in tax favorable a structure.

Annual Fee – Because an IVUL is really more of an investment rather than a traditional life insurance policy, the company charges typical money management fees of between .5% to 1.65% annually on the cash value in the policy (the money being managed).

Cost of Insurance – The cost of insurance is the cost the policy owner has to pay to cover the death benefit (mortality costs) over and above the cash in the policy. So, if a client put $5,000,000 cash into an IVUL as an investment, the policy might have a $10,000,000 death benefit. The cost of insurance would be to cover the difference between the $5,000,000 cash value and the $10,000,000 death benefit.

Many insurance companies do not try to profit from the life insurance, and so the costs for the additional $5,000,000 in the above example will be lower than what could be found in a traditional life insurance policy.

More Fees – If there are separate money management fees to get into a particular type of investment (say a mutual fund or hedge fund with a front-end load), those expenses are taken out of the cash value in the policy.

Asset protection

In some states like Texas and Florida, life insurance is asset protected by state statute; and so, whether you had a normal universal life policy with a million-dollar death benefit or a twenty-million-dollar IVUL policy, the cash value in the policy is protected from creditors.

For clients in states where life insurance is not protected from creditors, IVUL policies, if structured correctly, can provide tremendous asset protection. The main asset protection feature for those not familiar with OAPTs is through the use of an LLC.

For purposes of this material, the IVUL policy will be owned by an OAPT , which is the best place to have any liquid asset owned.

Tax savings of IVUL

Today, most people who invest do so on a post-tax basis and give their money to a local stockbroker or day trade it themselves on the Internet. The main problem with traditional investing revolves around all the taxes (short-term and long-term capital gains and income taxes on dividends) that go along with post-tax investing.

Money that is invested inside any life insurance policy does so **without capital gains taxes or dividend taxes**. That is just one nice aspect of having cash grow inside a life insurance policy.

Because of the special nature of IVUL policies, low costs, and flexible investments, IVUL policies are mainly used because money can be actively managed without incurring any annual taxes on the investment. Most advisors use a 31% blended capital gains (short and long term taken into account) and dividend tax rate on post-tax investing. That means every year a client ends up paying taxes on some portion of their investment account and, certainly, will pay capital gains taxes once the stocks or mutual funds are sold.

The real reason most clients use IVUL

With an IVUL (like any life insurance policy), the owner of the policy can take “**tax free**” loans from the policy where, when the client dies, the loan is paid back. In essence what an IVUL allows a client to do is to put large amounts of money into a life insurance policy (with low expenses) where money can be actively managed and the client can access the cash without paying taxes of any kind on the borrowed money.

When you take into consideration all the tax savings on the investment side of things, the savings dwarf the minimal amount of life insurance costs inside the policy.

Estate taxes

Typically, the death benefit from an IVUL policy will be included in a client's estate at death. The death benefit will pay income and capital gains tax-free to the beneficiaries, but they will have to pay estate taxes.

Who is the typical candidate to use an IVUL policy?

A typical candidate to use an IVUL policy is anyone who has $1 million or more in a brokerage account who would like the account to grow without capital gains or dividend taxes and would like the ability to borrow money tax free from the life insurance policy. Also, the client would typically want to have the death benefit ultimately pass to the heirs' income tax free. Because your local broker can continue to manage your money, if approved by the insurance company, you are simply moving a brokerage account (which is not tax friendly) into an IVUL policy where no taxes will be due on investment returns or when the cash is accessed via policy loans.

As you know if you've taken the CWPP™ or CAPP™ courses, the Wealth Preservation Institute is all about protecting a client's assets. Once you understand OAPTs, it is easy to see why they are recommended for anyone who has liquid wealth. The WPI is also about protecting a client's money from downturns in the stock market. A foreign IVUL policy, which we are discussing, is a variable life policy and so much caution needs to be applied when picking the overall investment strategy (Policy owners choose broad investment strategies, not individual stocks or investments). This material will not go into detail about where the money should be invested, but know that as a CWPP™ or CAPP™ advisor, that is an issue you need to discuss with your clients when introducing this topic to them.

Having said that, private placement variable life is a popular tool for the "wealthy." Many clients have private placement life policies (domestic or offshore) that house large brokerage accounts. Why? Because in a private placement life policy, a client can have the investments managed by their own money manager who can buy and sell stocks, mutual funds, etc. without incurring income taxes or capital gains taxes (subject to IRS investor control rules and diversification requirements). While all life insurance policies have expenses, one thing that makes them unique is that money can grow in a tax favorable manner.

It should be noted that the typical reason the average client with a 1-2-3-5 million dollar stock portfolio uses an "offshore" international private placement life policy (IVUL) has to do with the restrictions on the money managers who may be used when done domestically. It is not easy to have your "local" money manager approved to direct a client's investments in their life policy when the policy is domestic. It should be noted that a policy can be setup for as little as $250,000.

In essence an IVUL policy is a tax favorable vehicle which can hold stocks and mutual funds where they are allowed to grow in a tax efficient manner (something that can't be done in a traditional brokerage account) The term wealthy is used because a client will typically not be a good fit for a private placement life policy unless they have more than 1 million liquid to put into the policy for growth (which is why most clients use traditional domestic non-private placement life policies).

Besides the annual tax advantages of a life policy, clients use life insurance policies as investment tools because money can come out of a life insurance policy income tax free through policy loans (see the life insurance education module for a complete explanation of how money grows and come out of a policy in a tax favorable manner). When using any cash building life insurance policy (domestic or international), it is always best to let the cash accumulate for a number of years before contemplating taking loans from the policy.

Comparison Between Domestic and International VULs

Beneficial Differences:

	Domestic	International
1. Paid with after-tax dollars	Yes	Yes
2. Accept in-kind premium payments including closely held stock, tangible assets, etc.	**No**	**Yes**
3. Cash Value accumulates tax-free	Yes	Yes
4. Policy loans tax-free	Yes	Yes
5. Interest charges on loans	Yes	Yes
6. Dividend declared to offset above interest charges	Yes?	Yes
7. Segregated accounts free from creditors, etc.	Yes	Yes
8. Money manager selection request	No	Yes
9. Follow diversification of 817(h)	Yes	Yes
10. Pay out major portion of first year's premium as commissions.	Yes	No

Requirements for a Legitimate VUL Contract

It is very important that the IVUL be a real life insurance contract. When setting these up you must respect the formalities and the rules surrounding Variable Life Insurance. Therefore the:

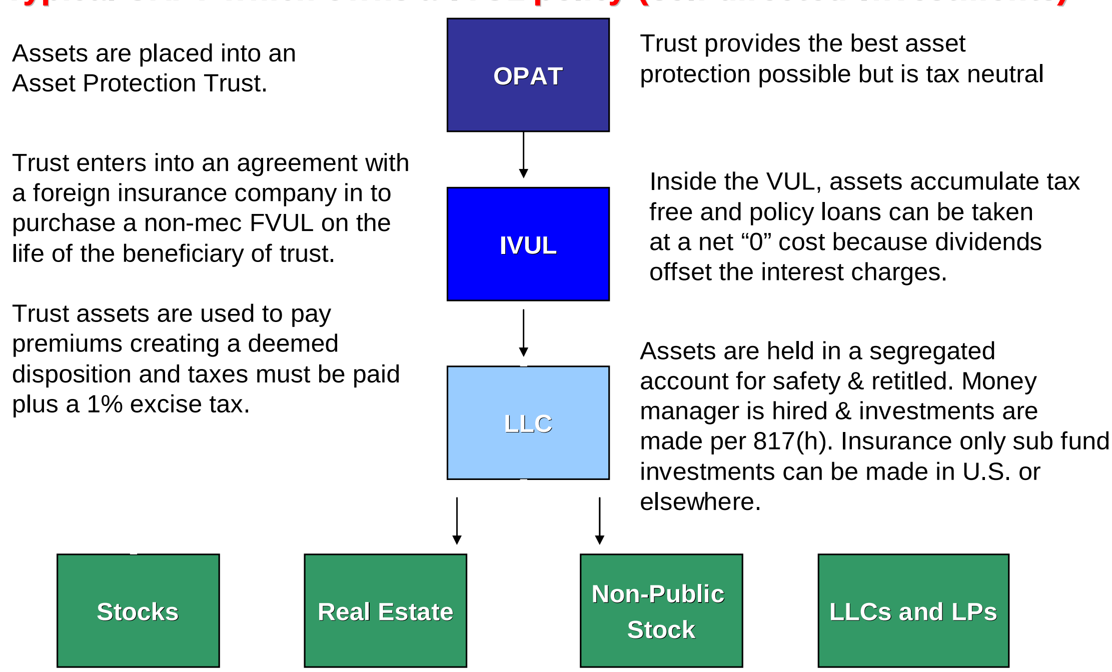
-Coverage must exceed the premium invested by a substantial margin
-Premium must be competitive
-Policy must have genuine risk shifting
-Investment strategy must meet the requirements of Sec 817(h) and investor control rules

IVULs owned by OAPTs

The main reason for this education module is to teach advisors about the combination of using an OAPT and an IVUL in various ways to protect a clients' wealth and grow it in the most tax favorable manner.

The following schematic is what a typical asset protection plan would look like when an IVUL is incorporated into it. It is not a difficult schematic to grasp. The client forms the OAPT, funds it, and then the trustee of the trust can exercise his/her discretion to meet the grantor's wishes by having the OAPT invest the money into an IVUL insurance policy. The IVUL must invest the money into several different buckets as you will see below.

Typical OAPT which owns a IVUL policy (self directed Investments)



Tax Savings

You see the LLC in the schematic. Without getting too technical, when setup correctly, the LLC will qualify this under the tax code as an insurance company's sub-fund and that becomes the owner of the LLC (which itself will have multiple investments inside the LLC).

If the IVUL takes as premium "in-kind" assets, when those assets are transferred to the IVUL, this is considered a sale of the assets and if there are capital gains or other required taxes dues, they will need to be paid by the client. In-kind assets must be valued by a third-party valuation expert, if not a publicly held stock. Then a 1% excise tax must be paid to the IRS at this point by the insurance company, since these assets are being used as a premium payment to a foreign insurance company.

The client must file a tax form 3520 for assets going into the trust.

Once premium payments have been made to the insurance company, the company can invest in various items including an LLC. In essence the IVUL is going to "capitalize" an LLC as an investment. Once the LLC is capitalized, the entity, like any other, can come into the U.S. and open an account at any brokerage house, or bank. The LLC can purchase real estate, own closely held stock, etc. Whenever an account is opened at a financial institution, the IRS is notified via a W8-BEN form telling them that a foreign account is opening a domestic account and who the beneficial owner is (in this case it is the LLC).

Once things have been setup correctly, from then on, everything in that LLC will not be subject to taxation because it is owned inside the IVUL.

Side note: To read about the required forms when going offshore, see the end of this material. It is VERY important that CWPP™ and CAPP™ advisors work with firms who will file the correct forms when going offshore.

If we did nothing else dramatic with the schematic, what did we do for the client?

1) We asset protected their brokerage account ($1,000,000-$10,000,000+) because it is owned by an OAPT.

2) We created an investment environment where money will grow income and capital gains tax free because the money is growing in the IVUL (a policy with virtually no up front loads and as low as possible annual insurance costs).

3) We created an environment where the invested dollars can come out to the client income tax free in retirement via policy loans.

4) We created an environment where the death benefit will pay income tax free to the heirs.

A Captive Alternative…Reducing Business Taxes through Business Risk Insurance

Business Risk Insurance

This part of the materials will discuss a very interesting application of the IVUL for small-medium sized business owners. The typical client is someone who has $500,000 or more in a brokerage account (which can be used as seed money for the IVUL policy) and who has surplus income they do not need and would like to do something with in a tax favorable manner.

Said another way, any client who owns a business, is maxing out their qualified plan and is looking for tax deductions of $50,000 or more where the deducted money essentially will grow tax free and come out tax free to the client. It should sound very interesting and it is.

What is Business Risk Insurance (BRI)? BRI (also known as Business Protection Insurance) is the type of insurance that businesses can buy but typically choose not to buy because while the risk is real, the chances of a claim is small, so the client chooses to self-insure these risks..

Would a client buy insurance if the premium paid went to a company the client owned? Sure, clients do this all the time with a Captive Insurance Company (CIC) (see the CIC education module for more information on CICs).

The BRI concept does not have the client owning a CIC, but due to the proprietary **re-insurance** structure (discussed below), the client's LLC, which is owned by his/her IVUL, receives the majority of insurance premiums paid by the client's business. This is a much more tax favorable approach than simply having a client own their own CIC traditional captive).

Summary of the transaction

IRS Requirements for a Legitimate Contract
IT MUST BE REAL INSURANCE

- Recognized insurance coverage is tax deductible under IRC section 162
- Risks insured must be shifted from client's company to a non U.S. insurance company and distributed among other insured risks
- Premiums must be actuarially determined
- Premium rate must be competitive
- Policy risks must be backed by sufficient reserves
- Claims must be filed if loss event occurs

In essence, what clients are tying to accomplish with the BRI concept is fairly simple (although difficult to explain in paragraph form).

How does this structure work?

1) Let's assume the client has already funded his/her OAPT, IVUL and LLC with the appropriate amount of money (four times the BRI premiums that will be paid).

2) The client's business takes a section162 business deduction for BRI for "first party coverage." The premiums are paid to an unrelated foreign insurance company. It is important for the coverage to be first party coverage because the only entity that can make a claim on that policy is the client's business which was issued the policy.

3) The foreign insurance company, which received the premium and issued real live insurance coverage, goes to market to "re-insures" the risk. The re-insurance company is the LLC that is owned by the client's IVUL. The LLC's assets are used as the re-insurance for any claims on the policy.

4) Because the LLC's assets are mainly the ones on the hook if there is a claim made against the policy issued to the client's business, the LLC contractually is entitled to the majority of the profits from the policy. Therefore, if the insurance policy that was issued to the client's business has no or little claims, the LLC will keep as its profits (as the re-insurance source) the majority of the premiums paid.

5) Because the LLC is owned inside a life insurance policy, the profits of the LLC are not income taxed and the owner of the life policy (the client) can take tax-free loans from the policy.

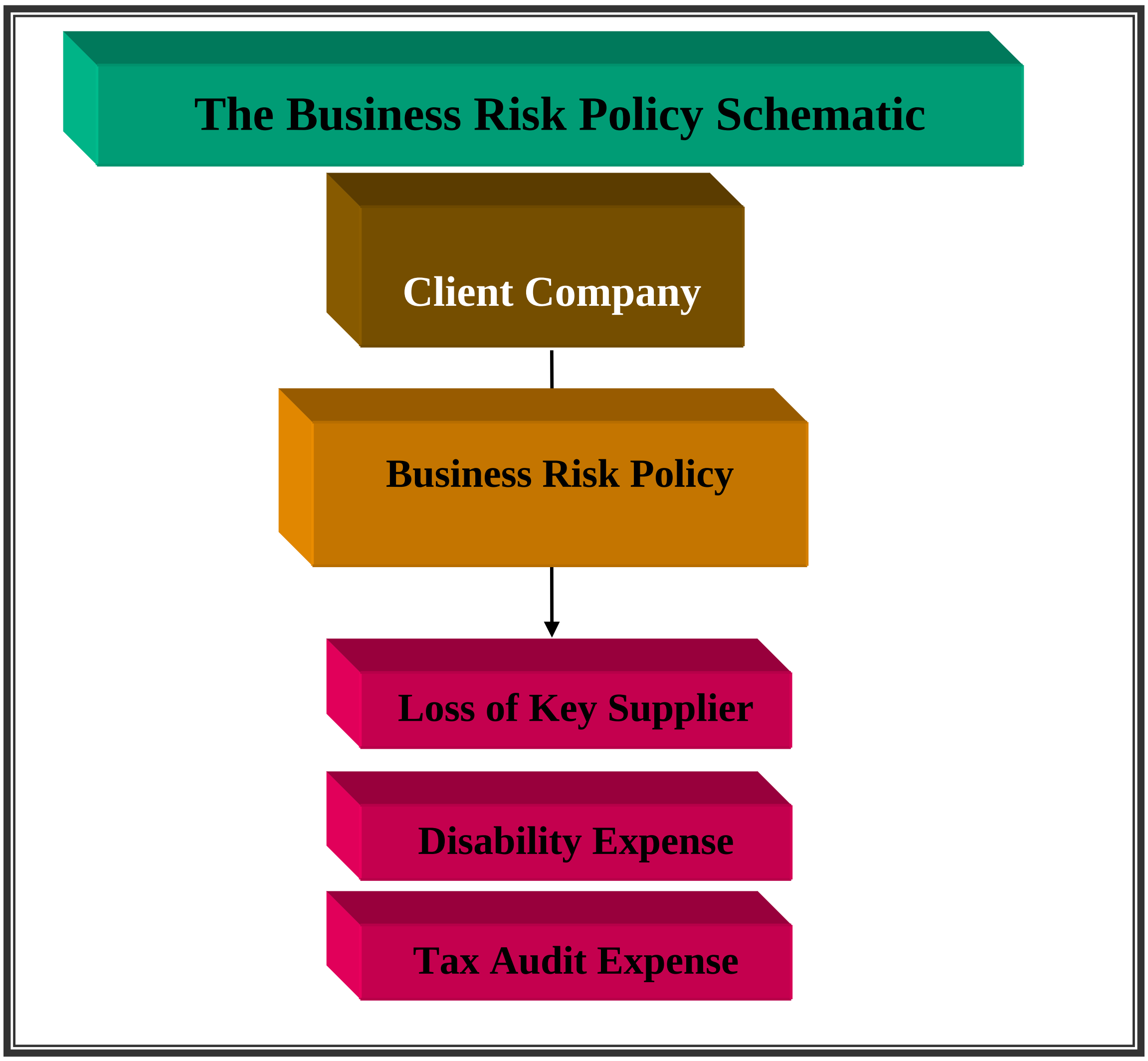
The key to this transaction is having an insurance carrier who is not related to the client or the client's business. The insurance carrier who issues the BRI policy is a separately owned company that has nothing to do with the client or the client's business. The insurance company can choose to buy re-insurance from various places and chooses to re-insure its risk by contracting out with the LLC, which is owned by the client's IVUL.

The insurance company selling the policy to the business is making a profit. How much? The insurance company keeps roughly15% of the premiums paid and allows 85% of the premium to inure to the LLC as its fee for issuing the re-insurance and really being on the hook for any claims. This 15% profit can be partially recouped through the Yield Enhancement Fund (YEF, see below).

The IRS requires the insurance company to have as a reserve four times the premiums paid. Therefore, when looking at this transaction, it is vitally important for the LLC to have enough assets in it to meet this requirement (since its money is being used to re-insure the risk).

Unlike some captive situations you may have seen, if the client's business has a claim, the IRS requires it to be filed, since the BRI is insurance coverage that the policy holder wants the IRS to recognize (which in turn means it will be paid by the insurance company which will look to the LLC's assets to help pay the claim).

Business Risk Insurance—The Client's business purchases a business risk insurance policy**.** The client evaluates his uninsured business risks and buys a business risk policy covering those risks that are applicable to the company and within its budget for insurance. The terms of this policy must meet these conditions: (1) coverage must be deductible under I.R.C. § 162; (2) risks insured must be shifted from client's company to the insurance company and adequately distributed among other insured risks; (3) premiums must be actuarially arrived at; (4) premium rates must be competitive; (5) policy risks must be backed by sufficient reserves; and (6) claims must be filed if a loss event occurs.



Why would a client want to do this?

The reasons are simple and similar to the reasons clients implement many "advanced" plans.

1) The client is looking for <u>legitimate deductions</u> (the client has a legitimate need for the insurance)

2) The client would like to have his/her money in a place where it is <u>asset protected</u>

3) The client would like his/her money to <u>grow income tax free</u> (which it will do in the IVUL) and <u>come out income tax free</u> (which is can via policy loans).

What more would a small business client want? Income tax deductions, asset protection, income tax free growth and tax free income in retirement.

If it sounds too good to be true, it's not. The reason you do not know this topic is because it is not widely used (mainly because it applies to clients with $500,000-$1,000,000 in a brokerage account) and is a bit complicated at first look. Throw in the fact that many CPAs/accountants and attorneys are unaware of these tools and suspicious of "offshore" structures, and you'll be hard pressed to find many advisors who are familiar with this topic.

Having said that, as a CWPP™ and/or CAPP™ advisor it is your duty to know the best topics out there for your clients and their proper application. As such, you need to be familiar with the topics in this education module.

What types of insurance would a client buy with BRI?

It depends on the client.

If the client is a physician, the medical practice could buy all sorts of different types of BRI. For example, Medicaid fraud insurance where the potential fines are $10,000 per violation (and every time the doctor sees a patient there are several potential violations). Other types of risk:

- Disability Expense Reimbursement Protection
- Excess Mental Health Expense Reimbursement
- Health Insurance Difference in Conditions Expense Reimbursement
- International Travel Accident
- International Travel Medical Expense Reimbursement
- International Travel Disability
- International Communicable Disease Medical Expense Reimbursement
- International Kidnap/Ransom Investigation Expense
- Tax Audit Defense Legal Expense Reimbursement

- Criminal Defense Legal Expense Reimbursement
- Regulatory Investigation Defense Legal Expense Reimbursement
- Injunctive Relief Defense Legal Expense Reimbursement
- Bankruptcy Legal Expense Reimbursement
- Key Supplier Loss Expense Reimbursement
- Key Customer Loss Expense Reimbursement
- Product Recall Loss Expense Reimbursement
- Market/COGS Fluctuation Loss Expense Reimbursement
- Currency Risk Loss Expense Reimbursement
- Research and Development Expense Overrun Reimbursement
- Business interruption insurance, etc.

The key is that the insurance premiums must be actuarially arrived at in a mathematically sound manner (which means it is very important to use an actuary who will calculate the risk and the allowable premium based on the risk). Every client who uses this program will pay for an actuary report that will outline exactly what the risks being covered are, the risk factors of a claim and the allowable premium for said insurance had it been purchased elsewhere (the open market). The allowable premium in the open marketplace is the key. If AIG, Chubb or Lloyds charges $10,000 a year for $1,000,000 worth of terrorism coverage, the client needs to pay around that number for it to be commercially reasonable and respected by the IRS from a deduction standpoint.

The IRS attacks captives for failure to meet all of these requirements, but especially for making up premiums as you go along (not actuarially computed).

Reserves

The biggest reason for attacking the BRI structure is improper risk shifting because of insufficient or too sufficient reserves.

Let’s look at a few examples.

Assume a client setup up a captive (let’s say it is a 501(c)15 captive) and took a $15,000 deduction for his captive backed up by 200 million in reserves that were accumulating tax free. The reason a client have a $15,000 premium with a captive capitalized with $200,000 million is that in the captive the reserves could grow tax-free (no dividend or short or long tem capital gains taxes would be due).

This actually used to be legal and now is a major problem because of the recent tax law changes surrounding captives. Now a client can’t setup what is effectively a sham captive whose main purpose is avoiding tax on the gain on a large brokerage account, NOT the issuance of insurance.

On the other hand, there was an article about an oil company who set up captive to insure against pollution. This captive had 5 % reserves to back up the deduction they were taking and like the previous example, the captive was determined not to be valid. Why this time? It was determined that the captive did not have enough reserves to pay if there was a claim.

It is the opinion of those that know this topic on The WPI Educational Board that that IRS should accept a 4 to 1 reserve on an aggregate basis. From our research, the IRS has accepted this 100% of the time and so that is what we recommend when dealing with the structures in this educational module.

How are the reserves used in the BRI structure?

Remember the setup:

1) The client funds an IVUL policy

2) The IVUL has inside of it as one of the investments an LLC

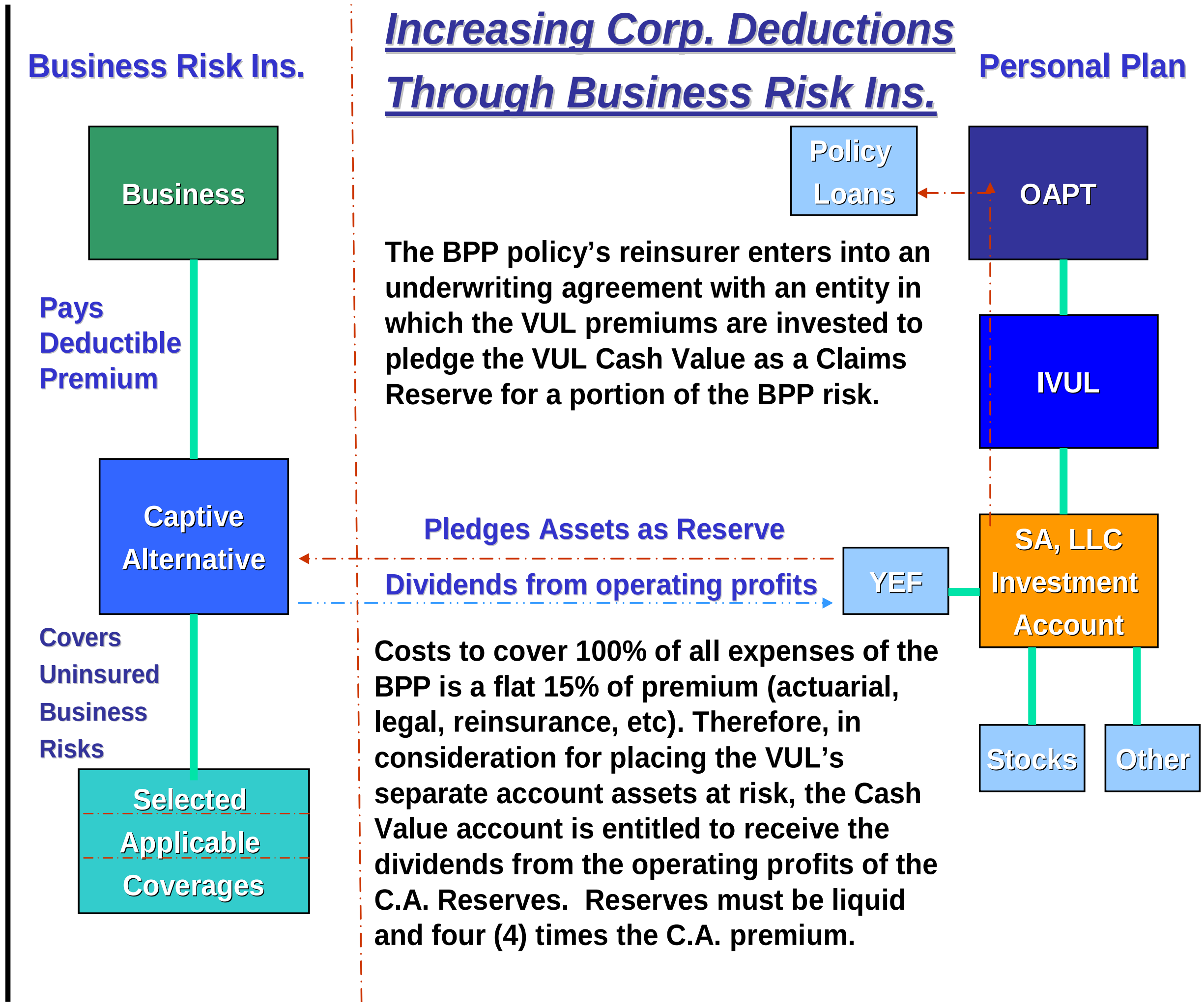
The LLC's assets are going to be used as to re-insurance an insurance policy issued to the client's business by a separate and non-related insurance carrier.

Why? To maximize the tax advantages of the IVUL structure, the client needs the BRI premiums through the proprietary re-insurance structure to inure to the LLC which is owned by the IVUL. That income will obviously not be taxed just as any income inside a life insurance policy (setup correctly) will not be income taxed.

The investment gains on those profits of the LLC which are derived in part from its re-insurance agreements will not be taxed.

The <u>Yield Enhancement Fund</u> (YEF). This fund invests in, and provides claims reserve for insurance companies issuing policies such as the business risk policy. The SA, LLC may invest with cash from its account or pledge assets as a capital commitment to the Yield Enhancement Fund. In consideration for placing the assets of the YEF at risk, the fund receives underwriting profits from the insurers. Based on claims experience underwriting profit on the policy reserves can be as high as 21.25% annually if there are no claims. The fund distributes profits to shareholders.

Schematic of the BRI package.



While this all seems a bit complicated, it's really not. Simply ask yourself if a client would be interested in a structure where his/her assets would be protected, where 85% of the money taken out of his company through a corporate deduction will inure to an LLC which is owned by his IVUL? Remember the IVUL assets grow tax free and can come out tax free. (Remember the amount of tax free income in retirement hinges on good claims history with the BRI). In essence, you can show a client how to effectively accumulate eighty five cent dollars as opposed and have it grow tax favorably instead of sixty cent after tax where that money will typically not be asset protected and will grow in a tax hostile manner.

Almost all small to medium sized business clients with wealth and income will like this concept and then the question is can we do a good enough job explaining it to them and their current advisors so they are comfortable with what in its basic form is not a complicated structure.

Excise tax issue

There are two types of life insurance companies that can be used in this structure. One is treated as a foreign insurance company and one while foreign, chooses to be treated as a domestic (U.S) taxpayer. .By electing to be treated as a U.S. taxpayer, the 953(d) electing insurance company policies are not subject to federal excise taxes that are imposed on payments to non-U.S. insurance carriers.

By electing to be treated as a U.S. taxpayer, the insurance company may invest segregated account funds without the withholding penalties that the IRS otherwise imposes on foreign insurers who invest in real property. See FIRPTA (foreign investment in real estate property tax act of 1980) which in essence charges any foreign owner a 30% tax up front on any investment in real estate. By choosing a 953(d) electing insurance company, which is a foreign insurance company that elects to be taxed as a domestic company, investments in real property are not subject to FIRPTA withholding. In all cases where real estate is placed in an insurance contract, it is important to note that when investing in real estate in an IVUL, the client must comply with the investor control rules (which are outside the scope of this material).

As far as excise taxes, there is a federal excise tax of 1% of the premiums paid on a non-953(d) electing IVUL contract and a 1 to 4% tax paid on the premiums of a BRI. The variance is dependent upon whether casualty or medical coverages are selected.

Insert Examples

Summary

What you've read and learned in this education module is some of the most advanced, useful and practical information ever put together on compliant offshore tax planning. While the overall concepts in this module are not difficult to grasp, the fine details which need to be followed to implement the items discussed are complex and vital to know when helping a client implement a plan. Unless you are currently an international tax attorney/CPA/EA/accountant, it is recommended that you not try to implement plans discussed in this module without seeking the assistance of a true expert. The WPI has such experts on its educational board and can help you find someone to work with, but whether you use The WPI's experts or another, do seek out the help of a trusted advisors to work with on these complex issues.

Form 3520
U.S. Information Return with Respect to the Creation of or Transfers to a Foreign Trust

As stated earlier in the material, it is vitally important to know the forms used in offshore planning and work with firms who file the forms in a timely manner.

The following material comes straight from the IRS.

Purpose of Form

U.S. persons (and executors of estates of U.S. decedents) file Form 3520 to report:

-Certain transactions with foreign trusts and

-Receipt of certain large gifts or bequests from certain foreign persons.

A separate Form 3520 must be filed for transactions with **each** foreign trust.

Who Must File

File Form 3520 if:

1. You are the responsible party for reporting a reportable event that occurred during the current tax year, or you held an outstanding obligation of a related foreign trust (or a person related to the trust) that you treated as a qualified obligation during the current tax year.

Clients must complete the identifying information on page 1 of the form and the relevant portions of Part I.

1. You are a U.S. person who, during the current tax year, is treated as the owner of any part of the assets of a foreign trust under the grantor trust rules.

Complete the identifying information on page 1 of the form and Part II.

2. You are a U.S. person who received (directly or indirectly) a distribution from a foreign trust during the current tax year **or** a related foreign trust held an outstanding obligation issued by you (or a person related to you) that you treated as a qualified obligation during the current tax year.

Complete the identifying information on page 1 of the form and Part III.

3. You are a U.S. person who, during the current tax year, received either:

a. More than $100,000 from a nonresident alien individual or a foreign estate (including foreign persons related to that nonresident alien individual or foreign estate) that you treated as gifts or bequests or

b. More than $12,375 from foreign corporations or foreign partnerships (including foreign persons related to such foreign corporations or foreign partnerships) that you treated as gifts.

Complete the identifying information on page 1 of the form and Part IV.

Exceptions To Filing

Form 3520 does not have to be filed to report the following transactions.

-Transfers to foreign trusts described in sections 402(b), 404(a)(4), or 404A.

-Most fair market value (FMV) transfers by a U.S. person to a foreign trust. However, some FMV transfers must nevertheless be reported on Form 3520 (e.g., transfers in exchange for obligations that are treated as qualified obligations, transfers of appreciated property to a foreign trust for which the U.S. transferor does not immediately recognize all of the gain on the property transferred, transfers involving a U.S. transferor that is related to the foreign trust). See Section III of Notice 97-34, 1997-25 I.R.B. 22.

-Transfers to foreign trusts that have a current determination letter from the IRS recognizing their status as exempt from income taxation under section 501(c)(3).

-Transfers to, ownership of, and distributions from a Canadian registered retirement savings plan (RRSP) or a Canadian registered retirement income fund (RRIF), where the U.S. citizen or resident alien holding an interest in such RRSP or RRIF is eligible to file Form 8891, U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans, with respect to the RRSP or RRIF.

-Distributions from foreign trusts that are taxable as compensation for services rendered (within the meaning of section 672(f)(2)(B) and its regulations), so long as the recipient reports the distribution as compensation income on its applicable federal income tax return.

-Distributions from foreign trusts to domestic trusts that have a current determination letter from the IRS recognizing their status as exempt from income taxation under section 501(c)(3).

-Domestic trusts that become foreign trusts to the extent the trust is treated as owned by a foreign person, after application of section 672(f).

Joint Returns

Two transferors or grantors of the same foreign trust, or two U.S. beneficiaries of the same foreign trust, may file a joint Form 3520, but only if they file a joint income tax return.

When and Where To File

In general, Form 3520 is due on the date that your income tax return is due, including extensions. Send Form 3520 to the Internal Revenue Service Center, Philadelphia, PA 19255.

Form 3520 must have all required attachments to be considered complete.

Note

If a complete Form 3520 is not filed by the due date, including extensions, the time for assessment of any tax imposed with respect to any event or period to which the information required to be reported in Parts I through III of such Form 3520 relates, will not expire before the date that is 3 years after the date on which the required information is reported. See section 6501(c)(8).

Who Must Sign

If the return is filed by:

-An individual or a fiduciary, it must be signed and dated by that individual or fiduciary.

-A partnership, it must be signed and dated by a general partner or limited liability company member.

-A corporation, it must be signed and dated by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other corporate officer (such as a tax officer) who is authorized to sign.

The paid preparer must complete the required preparer information and:

-Sign the return in the space provided for the preparer's signature.

-Give a copy of the return to the filer.

Inconsistent Treatment of Items

The U.S. beneficiary and U.S. owner's tax return must be consistent with the Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, filed by the foreign trust unless you report the inconsistency to the IRS. If you are treating items on your tax return differently from the way the foreign trust treated them on its return, file Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR). See Form 8082 for more details.

Penalties

A penalty generally applies if Form 3520 is not timely filed or if the information is incomplete or incorrect. Generally, the penalty is:

-35% of the gross value of any property transferred to a foreign trust for failure by a U.S. transferor to report the transfer,

-35% of the gross value of the distributions received from a foreign trust for failure by a U.S. person to report receipt of the distribution, or

-5% of the amount of certain foreign gifts for each month for which the failure to report continues (not to exceed a total of 25%). See section 6039F(c).

If a foreign trust has a U.S. owner and the trust fails to file the required annual reports on trust activities and income, the U.S. owner is subject to a penalty equal to 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person (the gross reportable amount). See Form 3520-A.

Additional penalties may be imposed if noncompliance continues after the IRS mails a notice of failure to comply with required reporting. However, this penalty may not exceed the gross reportable amount. Also, penalties will only be imposed to the extent that the transaction is not reported. For example, if a U.S. person transfers property worth $1 million to a foreign trust but only reports $400,000 of that amount, penalties could only be imposed on the unreported $600,000.

For more information, see section 6677.

Reasonable cause

No penalties will be imposed if the taxpayer can demonstrate that the failure to comply was due to reasonable cause and not willful neglect.

Note

The fact that a foreign country would impose penalties for disclosing the required information is not reasonable cause. Similarly, reluctance on the part of a foreign fiduciary or provisions in the trust instrument that prevent the disclosure of required information is not reasonable cause.

Definitions

Distribution

A distribution is any gratuitous transfer of money or other property from a trust, whether or not the trust is treated as owned by another person under the grantor trust rules, and without regard to whether the recipient is designated as a beneficiary by the terms of the trust. A distribution includes the receipt of trust corpus and the receipt of a gift or bequest described in section 663(a).

A distribution also includes constructive transfers from a trust. For example, if charges you make on a credit card are paid by a foreign trust or guaranteed or secured by the assets of a foreign trust, the amount charged will be treated as a distribution to you by the foreign trust. Similarly, if you write checks on a foreign trust's bank account, the amount will be treated as a distribution.

Also, if you receive a payment from a foreign trust in exchange for property transferred to the trust or services rendered to the trust, and the FMV of the payment received exceeds the FMV of the property transferred or services rendered, the excess will be treated as a distribution to you.

Examples

1. If you sell stock with an FMV of $100 to a foreign trust and receive $150 in exchange, you have received a distribution of $50.

2. If you receive $100 from the trust for services performed by you for the trust, and the services have an FMV of $20, you have received a distribution of $80.

See the instructions for Part III, line 25, on page 7, for another example of a distribution from a foreign trust.

Foreign Trust and Domestic Trust

A foreign trust is any trust other than a domestic trust.

A domestic trust is any trust if:

1. A court within the United States is able to exercise primary supervision over the administration of the trust and

2. One or more U.S. persons have the authority to control all substantial decisions of the trust.

Grantor

A grantor includes any person who creates a trust or directly or indirectly makes a gratuitous transfer of cash or other property to a trust. A grantor includes any person treated as the owner of any part of a foreign trust's assets under sections 671 through 679, excluding section 678.

Note

If a partnership or corporation makes a gratuitous transfer to a trust, the partners or shareholders are generally treated as the grantors of the trust, unless the partnership or corporation made the transfer for a business purpose of the partnership or corporation.

If a trust makes a gratuitous transfer to another trust, the grantor of the transferor trust is treated as the grantor of the transferee trust, except that if a person with a general power of appointment over the transferor trust exercises that power in favor of another trust, such person is treated as the grantor of the transferee trust, even if the grantor of the transferor trust is treated as the owner of the transferor trust.

Grantor Trust

A grantor trust is any trust to the extent that the assets of the trust are treated as owned by a person other than the trust. See the grantor trust rules in sections 671 through 679. A part of the trust may be treated as a grantor trust to the extent that only a portion of the trust assets are owned by a person other than the trust.

Gratuitous Transfer

A gratuitous transfer to a foreign trust is any transfer to the trust other than (a) a transfer for FMV or (b) a distribution to the trust with respect to an interest held by the trust (i) in an entity other than a trust (e.g., a corporation or a partnership) or (ii) in an investment trust described in Regulations section 301.7701-4(c), a liquidating trust described in Regulations section 301.7701-4(d), or an environmental remediation trust described in Regulations section 301.7701-4(e).

A transfer of property to a trust may be considered a gratuitous transfer without regard to whether the transfer is a gift for gift tax purposes (see Chapter 12 of Subtitle B of the Code).

For purposes of this determination, if a U.S. person contributes property to a trust in exchange for any type of interest in the trust, such interest in the trust will be disregarded in determining whether FMV has been received. In addition, a U.S. person will not be treated as making a transfer for FMV merely because the transferor is deemed to recognize gain on the transaction.

If you transfer property to a foreign trust in exchange for an obligation of the trust (or a person related to the trust), it will be a gratuitous transfer unless the obligation is a qualified obligation. Obligation and qualified obligation are defined below.

Gross Reportable Amount

Gross reportable amount is:

-The gross value of property involved in the creation of a foreign trust or the transfer of property to a foreign trust (including a transfer by reason of death);

-The gross value of any portion of a foreign trust treated as owned by a U.S. person under the grantor trust rules or any part of a foreign trust that is included in the gross estate of a U.S. citizen or resident;

-The gross value of assets deemed transferred at the time a domestic trust to which a U.S. citizen or resident previously transferred property becomes a foreign trust, provided such U.S. citizen or resident is alive at the time the trust becomes a foreign trust (see section 679(a)(5)); or

-The gross amount of distributions received from a foreign trust.

Gross Value

Gross value is the FMV of property as determined under section 2031 and its regulations as if the owner had died on the valuation date. Although formal appraisals are not generally required, you should keep contemporaneous records of how you arrived at your good faith estimate.

Guarantee

A guarantee:

-Includes any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another's obligation;

-Encompasses any form of credit support, and includes a commitment to make a capital contribution to the debtor or otherwise maintain its financial viability; or

-Includes an arrangement reflected in a “comfort letter,” regardless of whether the arrangement gives rise to a legally enforceable obligation. If an arrangement is contingent upon the occurrence of an event, in determining whether the arrangement is a guarantee, you must assume that the event has occurred.

Non grantor Trust

A non grantor trust is any trust to the extent that the assets of the trust are not treated as owned by a person other than the trust. Thus, a non grantor trust is treated as a taxable entity. A trust may be treated as a non grantor trust with respect to only a portion of the trust assets. See *Grantor Trust* above.

Obligation

An obligation includes any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other evidence of indebtedness, and, to the extent not previously described, any annuity contract.

Owner

An owner of a foreign trust is the person that is treated as owning any of the assets of a foreign trust under the grantor trust rules.

Property

Property means any property, whether tangible or intangible, including cash.

Qualified Obligation

A qualified obligation, for purposes of this form, is any obligation only if:

1. The obligation is reduced to writing by an express written agreement;

2. The term of the obligation does not exceed 5 years (including options to renew and rollovers) and it is repaid within the 5-year term;

3. All payments on the obligation are denominated in U.S. dollars;

4. The yield to maturity of the obligation is not less than 100% of the applicable federal rate under section 1274(d) for the day on which the obligation is issued and not greater than 130% of the applicable federal rate;

5. The U.S. person agrees to extend the period for assessment of any income or transfer tax attributable to the transfer and any consequential income tax changes for each year that the obligation is outstanding, to a date not earlier than 3 years after the maturity date of the obligation, unless the maturity date of the obligation does not extend beyond the end of the U.S. person's tax year and is paid within such period (this is done on Part I, Schedule A, and Part III, as applicable); and

6. The U.S. person reports the status of the obligation, including principal and interest payments, on Part I, Schedule C, and Part III, as applicable, for each year that the obligation is outstanding.

Related Person

A related person generally includes any person who is related to you for purposes of section 267 and 707(b). This includes, but is not limited to:

-A member of your family—your brothers and sisters, half-brothers and half-sisters, spouse, ancestors (parents, grandparents, etc.), lineal descendants (children, grandchildren, etc.), and the spouses of any of these persons.

-A corporation in which you, directly or indirectly, own more than 50% in value of the outstanding stock.

See section 643(i)(2)(B) and the regulations under sections 267 and 707(b).

Person related to a foreign trust.

A person is related to a foreign trust if such person, without regard to the transfer at issue, is a grantor of the trust, a beneficiary of the trust, or is related to any grantor or beneficiary of the trust. See the definition of related person above.

Reportable Event

A reportable event includes:

1. The creation of a foreign trust by a U.S. person.

2. The transfer of any money or property, directly or indirectly, to a foreign trust by a U.S. person, including a transfer by reason of death. This includes transfers that are deemed to have occurred under sections 679(a)(4) and (5).

3. The death of a citizen or resident of the United States if:

-The decedent was treated as the owner of any portion of a foreign trust under the grantor trust rules or

-Any portion of a foreign trust was included in the gross estate of the decedent.

Responsible Party

Responsible party means:

-The grantor in the case of the creation of an inter vivos trust,

-The transferor, in the case of a reportable event (defined above) other than a transfer by reason of death, or

-The executor of the decedent's estate in any other case (whether or not the executor is a U.S. person).

U.S. Agent

A U.S. agent is a U.S. person (defined below) that has a binding contract with a foreign trust that allows the U.S. person to act as the trust's authorized U.S. agent in applying sections 7602, 7603, and 7604 with respect to:

-Any request by the IRS to examine records or produce testimony related to the proper U.S. tax treatment of amounts distributed, or required to be taken into account under the grantor trust rules, with respect to a foreign trust or

-Any summons by the IRS for such records or testimony.

A U.S. grantor, a U.S. beneficiary, or a domestic corporation controlled by the grantor or beneficiary may act as a U.S. agent. However, you may not treat the foreign trust as having a U.S. agent unless you enter the name, address, and taxpayer identification number of the U.S. agent on lines 3a through 3g.

If the person identified as the U.S. agent does not produce records or testimony when requested or summoned by the IRS, the IRS may redetermine the tax consequences of your transactions with the trust and impose appropriate penalties under section 6677.

The agency relationship must be established by the time the U.S. person files Form 3520 for the relevant tax year and must continue as long as the statute of limitations remains open for the relevant tax year. If the agent resigns or liquidates, or its responsibility as an agent of the trust is terminated, see Section IV(B) of Notice 97-34.

U.S. Beneficiary

A U.S. beneficiary generally includes any U.S. person that could possibly benefit (directly or indirectly) from the trust (including an amended trust) at any time, whether or not the person is named in the trust instrument as a beneficiary and whether or not the person can receive a distribution from the trust in the current year. In addition, a U.S. beneficiary includes:

-A foreign corporation that is a controlled foreign corporation (as defined in section 957(a)),

-A foreign partnership if a U.S. person is a partner of the partnership, and

-A foreign estate or trust if the estate or trust has a U.S. beneficiary.

A foreign trust will be treated as having a U.S. beneficiary unless the terms of the trust instrument specifically prohibit any distribution of income or corpus to a U.S. person at any time, even after the death of the U.S. transferor, and the trust cannot be amended or revised to allow such a distribution.

U.S. Person

A U.S. person is:

-A citizen or resident alien of the United States (see Pub. 519, U.S. Tax Guide for Aliens, for guidance on determining resident alien status),

-A domestic partnership,

-A domestic corporation,

-Any estate (other than a foreign estate, within the meaning of section 7701(a)(31)(A)), and

-Any domestic trust (defined on page 2).

U.S. Transferor

A U.S. transferor is any U.S. person who:

1. Creates or settles a foreign trust.

2. Directly or indirectly transfers money or property to a foreign trust. This includes a U.S. citizen or resident who has made a deemed transfer under section 679(a)(4) or a U.S. resident who has made a deemed transfer under section 679(a)(5).

3. Makes a sale to a foreign trust if the sale was at other than arm's-length terms or was to a related foreign trust, or makes (or guarantees) a loan to a related foreign trust.

4. Is the executor of the estate of a U.S. person and:

a. The decedent made a testamentary transfer (a transfer by reason of death) to a foreign trust,
b. Immediately prior to death, the decedent was treated as the owner of any portion of a foreign trust under the grantor trust rules, or
c. Any portion of a foreign trust's assets were included in the estate of the decedent.

Generally, the person defined as the transferor is the responsible party (defined above) who must ensure that required information be provided or pay appropriate penalties.

Foreign Compliance Section

Below is a partial list of the IRS and Treasury Department Forms that may be necessary depending upon the strategies being implemented. Since domestic CPA's are typically not familiar with these forms, we either provide instructions or complete and submit the required forms to the client's CPA for approval and submission.

3520 Annual Returns To Report Transactions With a Foreign Trust
http://www.irs.gov/pub/irs-pdf/f3520.pdf

3520A Annual Information Return of Foreign Trust with a Foreign Owner
http://www.irs.gov/pub/irs-pdf/f3520a.pdf

TDF 90--22.1 Report of Foreign Bank and Financial Accounts
http://www.irs.gov/pub/irs-pdf/f9022-1.pdf

8832 Entity Classification Elections
http://www.irs.gov/pub/irs-pdf/f8832.pdf

926 Return by a U.S. Transfer of Property to a Foreign Corporation
http://www.irs.gov/pub/irs-pdf/f926.pdf

720 Quarterly Federal Excise Tax Return
http://www.irs.gov/pub/irs-pdf/f720.pdf

W-8 BEN Certificate of Foreign Status of Beneficial Owner for U.S. Withholding
http://www.irs.gov/pub/irs-pdf/fw8ben.pdf

8865 Return of U.S. Persons with Respect to Certain Foreign Partnerships
http://www.irs.gov/pub/irs-pdf/f8865.pdf

8865 O Transfer of Property to a Foreign Partnership
http://www.irs.gov/pub/irs-pdf/f8865so.pdf.