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Foreign Taxpayers

In the last article of a three-part series on tax planning for foreign buyers of U.S. homes, tax lawyers Carl A. Merino, Dahlia B. Doumar and Henry P. Bubel explore use of a non-grantor trust. ''For a couple that either doesn't plan to use the property or is willing to pay market rent for its use, this option potentially can be more tax-efficient than other indirect ownership structures in the long run,'' the authors write.

Tax Planning for Foreign Couples Buying U.S. Homes: Ownership Through Foreign and Domestic Trusts

By Carl A. Merino, Dahlia B. Doumar and Henry P. Bubel

In the first two installments of this series we discussed U.S. income and estate tax considerations for foreign buyers of U.S. real estate with the example of a nonresident alien couple buying a condominium apartment in New York City. The first installment focused on the tax consequences of direct ownership and steps a non-U.S. couple might take to mitigate their U.S. estate tax exposure,[1] while the second installment explored the use of foreign blocker corporations and foreign partnerships to acquire the property.[2]

One further option, which we explore in this final installment, is for the couple to create and fund a non-grantor trust either in the U.S. or in a low-tax offshore jurisdiction (for example, the Cayman Islands or the British Virgin Islands) and for the trust to buy and hold the apartment—typically through a Delaware or other U.S. limited liability company wholly owned by the trust.

For a couple that either doesn't plan to use the property or is willing to pay market rent for its use, this option potentially can be more tax-efficient than other indirect ownership structures in the long run. If properly structured, it also may provide more clarity from an estate tax standpoint than use of a foreign partnership, as discussed in the second part of this series.

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Income Taxes

Grantor and Non-Grantor Trusts

Trusts can be established as ''grantor trusts'' or as ''non-grantor'' trusts. The grantor of a grantor trust is considered to own the trust's assets for federal income tax purposes and continues to be taxed on the trust's income.[3] Sales and most other transactions between a grantor and a grantor trust (or between grantor trusts with the same grantor) generally are disregarded for federal income tax purposes.[4]

[1] 212 DTR J-1, 11/2/16.
[2] 215 DTR J-1, 11/7/16.

[3] The grantor trust provisions are laid out in Sections 671 through 679 of the Internal Revenue Codeof 1986, as amended.
[4] See, e.g., Rev. Rul. 85-13, 1985-1 C.B. 184 (Feb. 19, 1985); Rev. Rul. 2007-13, 2007-1 C.B. 684; PLR 9535026 (May 31, 1995); PLR 200718019 (Jan. 26, 2007); PLR 201426005 (March 19, 2014); CCA 201343021 (June 17, 2013).

In the case of a non-grantor trust, the trust itself is considered a taxpayer and is taxed on trust income to the extent the income isn't distributed out to the beneficiaries.[5] Very generally, a non-grantor trust can be structured as a ''simple'' trust that distributes all of its income currently to the beneficiaries (who are then taxed on the income) or as a ''complex'' trust, the income and principal of which may be distributed at the discretion of the trustee(s). A complex (or discretionary) trust is taxed on the income it doesn't distribute.[6]

The features that would cause a trust to be considered a grantor trust for federal income tax purposes also would cause the trust's assets to be pulled into the grantor's U.S. estate.[7] Thus, in order to be a viable estate planning vehicle, the trust would need to be established as a non-grantor discretionary trust.

Income Taxation of Non-Grantor Trusts

If the trust is a U.S. trust it will be taxed like a U.S. citizen or resident (but at compressed marginal rates) on its worldwide income, assuming it doesn't make current income distributions. A foreign non-grantor (complex) trust with non-U.S. beneficiaries would be taxed in roughly the same manner as a nonresident alien individual on its accumulated income.

If the trust is a U.S. trust it will be taxed like a U.S. citizen or resident (but at compressed marginal rates) on its worldwide income.

The applicable tax rules for nonresident alien individuals are discussed at greater length in the first part of this series, but very generally, they are taxed at graduated rates of up to 39.6 percent on income that is effectively connected with the conduct of a trade or business in the U.S. (net of applicable deductions if they file a tax return) and at a flat 30 percent rate with no offsetting deductions on fixed or determinable annual or periodical income (FDAP) from U.S. sources (e.g., dividends, interest, rents, royalties and other portfolio income that isn't effectively connected with a U.S. trade or business).[8]

Both U.S. and foreign trusts (like U.S. and non-U.S. individuals) would be taxed on gains from the sale of U.S. real estate because foreign trusts, like other non-U.S. persons, are subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), which taxes non-U.S. persons on gains from the sale of interests in real property situated in the U.S. and imposes a 15 percent tax withholding obligation on the buyer.[9]

Both U.S. and foreign trusts would be eligible for the 20 percent long-term capital gain rate at the federal level on the sale of a capital asset held for more than one year (assuming no depreciation recapture) and both would be subject to New York state personal income taxes on gains from the sale of real estate situated in New York.

Estate and Gift Taxes

As discussed in the case study below, a non-U.S. citizen domiciled abroad could structure and fund an irrevocable trust (domestic or foreign) in such a way that the assets of the trust wouldn't be includable in the U.S. estates of the settlor or beneficiaries (at least under current law).

For example, a non-citizen domiciled abroad could fund an irrevocable trust (domestic or foreign) with an unlimited amount of cash from an offshore bank account without triggering gift tax in the U.S. and the trust could then (directly or through an LLC) buy the property without the property being included in the above individual's U.S. estate.[10]

■ **Planning Point:** It is important for purposes of avoiding the estate tax when the settlor dies—and the generation-skipping transfer (GST) tax further down the line (in the case of a multi-generational trust)[11]—to avoid certain impermissible strings that could cause trust assets to be includable in the individual's U.S. estate.[12]

Case Study: Use of a Foreign Trust To Acquire Apartment

In this case study, we assume the same basic scenario discussed in the first two articles, in which a married

[5] See Sections 651 and 661.

[6] See Sections 661 and 662.

[7] Other than in the case of certain employment-related trusts, a trust is considered a grantor trust with respect to a foreign grantor only if the trust is revocable by the grantor or certain subordinate parties or if the sole beneficiaries of the trust during the grantor's lifetime are the grantor and/or the grantor's spouse. See Section 672(f)(2). These attributes would cause the trust's assets to be included in the grantor's estate under Section 2036 (discussed in note 12 below). The grantor trust rules apply to a much broader range of trusts if the grantor is a U.S. person.

[8] Statutory exemptions (such as for ''portfolio interest'') are discussed in the first part of this series. Note that certain types of income, such as dividends and interest, may be taxed at reduced rates or excluded from income altogether under an applicable income tax treaty.

[9] See Sections 897 and 1445 and discussion of FIRPTA and investments in U.S. real property in the first part of this series.

[10] As discussed in the first of these articles, the gift of cash from a U.S. bank account is potentially taxable in the U.S. However, the Internal Revenue Service has held informally that the gift of cash by a non-U.S. person from an offshore bank account generally isn't subject to gift tax. See PLR 8210055 (Dec. 10, 1981).

[11] A discussion of GST taxes is beyond the scope of this article. However, in the broadest terms the GST tax backstops the estate and gift tax and can come into play when assets are transferred past the immediately succeeding generation (i.e., ''skipping'' a generation and the corresponding estate tax).

[12] As discussed in the second part of this series, Section 2036 includes in the gross estate of a decedent the value of property transferred by the decedent by trust or otherwise (other than for adequate and full consideration) where the decedent has retained for his or her life or for any period that either isn't ascertainable without reference to his or her death or which doesn't actually end before his or her death either the possession or enjoyment of the property, the right to the income therefrom or the right (alone or in conjunction with any other person) to designate who shall possess or enjoy the property or the income therefrom. Certain other retained powers over the beneficial enjoyment of the property can cause it to be pulled into the decedent's estate under Section 2038.

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couple directly or indirectly purchases a condominium apartment in New York City. Each spouse is a nonresident for income, gift and estate tax purposes, neither spouse is a current or former U.S. citizen, long-term resident or New York domiciliary, and there is no applicable estate, gift or income tax treaty.[13]

The apartment is purchased for $5 million cash (including transaction costs) and no financing. The apartment appreciates in value to $8 million by the time of any potentially taxable event (e.g., a sale or death). We again assume that 2016 income and estate tax rates will apply and that the apartment will have been owned for more than one year at the time of any taxable disposition. We also assume that the closing costs for any subsequent sale, including the broker's commission, attorneys' fees and New York state and city real estate transfer taxes, will total 8 percent of the purchase price ($640,000), reducing the amount realized to $7.36 million.

However, in this scenario, rather than acquiring the apartment directly or through a corporation or partnership, either or both spouses will create and fund an irrevocable Cayman or BVI discretionary trust with $5 million cash (and additional amounts as required to cover carrying costs). The trust in turn will create and fund a Delaware limited liability company (which is disregarded for most U.S. tax purposes).[14] The limited liability company then will buy the apartment for $5 million.

Flow of Funds/Funding of Trust

As with the funding of a foreign partnership or corporation, the flow of funds should be from the couple (either spouse) to the trust, with the trust (or its wholly owned limited liability company) buying the property.[15] A transfer of the apartment directly to the trust would be a taxable gift. In contrast, if the couple transferred an interest in a U.S. limited liability company or other U.S. entity owning U.S. real property to the trust, the transfer arguably shouldn't be subject to gift taxes because gifts of intangible property generally aren't subject to gift tax.[16]

However, if there were any retained strings (such as the right to use the property without compensation, the right to any income from the property or the power to otherwise control the beneficial enjoyment thereof), the property, which itself would still be U.S. situs, could be includable in their U.S. estates.[17]

Moreover, even if the trust later disposed of its U.S. situs assets and replaced them with non-U.S. situs assets (or reorganized the holding company offshore), the ''replacement'' property could nonetheless to be tainted by the original transfer and subject to estate or GST taxes in the future.[18]

Independent Trustee

The couple will need to be willing to give up some control in order to reduce their estate tax exposure. Thus, an independent trustee (e.g., a Cayman or BVI service company) should have discretion and control over distributions from the trust.[19]

Restrictions on Beneficiaries And Use of Apartment

Beneficiaries of the trust would receive distributions (if any) at the discretion of the trustee.[20] If both spouses are grantors, then neither spouse should be a beneficiary. If only one spouse is a grantor, then it may be permissible in some situations for the other spouse to be included as a purely discretionary beneficiary.

If either spouse plans to use the property with any frequency, they should enter into a lease with the owner (typically the trust's wholly owned limited liability company) and pay market rent.

The Internal Revenue Service has held informally (in a letter ruling that can't be relied upon as precedent) that the grantor or the grantor's spouse could be included among the class of discretionary beneficiaries of an irrevocable trust where the independent trustee has sole discretion over such distributions.[21] However, the ruling involved an asset protection trust formed in a jurisdiction in which creditors of the grantor generally can't reach the trust's assets and thus may be of limited utility for trusts formed in many jurisdictions.

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[13] As noted in the first two articles, individuals who give up their citizenship and ''long-term residents'' (valid green card holders for eight of the last 15 years) who cease to be lawful permanent residents may be subject to an exit tax under Section 877A, as well as a special transfer tax regime under Section 2801 on subsequent gifts and bequests to U.S. persons.

[14] As discussed in the second article, a U.S. disregarded entity wholly owned by a non-U.S. person (including a foreign trust) may be required to file IRS Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business, apply for an employer identification number and identify a ''responsible person'' under the proposed Section 6038A regulations. There could be reporting implications under the Common Reporting Standard (CRS) developed by the Organization for Economic Cooperation and Development as well. However, the trust still may want to consider using an LLC for liability purposes.

[15] The flow of funds would be the same for a U.S. trust.

[16] See discussion of gift and estate taxes (and situs rules) in the first article. Note that a gift of an interest in a non-U.S. partnership that holds U.S. real property potentially could trigger FIRPTA gains if there is debt on the property. Under Section 752(d), the transferor would be deemed to have transferred his or her partnership interest in exchange for the assumption of his or her share of the partnership's debt. We have assumed there will be no leverage in this case study.

[17] See Sections 2036 and 2038, discussed in note 12.

[18] Under Section 2104(b), property subject to Sections 2036 or 2038 (the retained interest provisions) or Section 2035 (certain transfers within three years of death) will be deemed to have a U.S. situs if it was U.S. situs property at the time of transfer or at the time of death. The IRS has interpreted this rule in the trust context to apply to replacement property acquired from the proceeds of ''tainted'' U.S. situs assets even if the replacement property would otherwise be considered a non-U.S. situs asset. See TAM 9507044 (May 31, 1994).

[19] Similarly, a Delaware trust company might be used as the independent trustee if the trust was formed in Delaware.

[20] Except where otherwise indicated, we have assumed that the trusts in the following examples wouldn't make current income distributions.

[21] See PLR 200944002 (Oct. 30, 2009).

Regardless, if either spouse plans to use the property with any frequency, they should enter into a lease with the owner (typically the trust's wholly owned limited liability company) and pay market rent, even if the trust was funded with cash in the first instance and the property was acquired directly by the trust or LLC.[22]

Taxes on Sale of Apartment

As discussed previously, a foreign non-grantor trust with non-U.S. beneficiaries that doesn't distribute its income currently is taxed in roughly the same manner as a nonresident alien individual. Items of ordinary income may be taxed at a higher effective rate in some cases because graduated rates increase to the highest marginal rate according to a more compressed rate schedule for trusts, but long-term capital gains would be taxed at the same 20 percent rate federally and New York state personal income taxes would apply to the gains as before.

Thus, the sale of the apartment by the trust likely would have roughly the same income tax consequences as a sale of the apartment by the couple (before the death of either spouse) if they held the apartment directly. In the first article, we noted that the combined federal and New York state income tax liability from such a sale would be $680,152 based on a long-term capital gain of $2.36 million.[23]

The result would be the same (assuming the same sale price and holding period) if either or both spouses had died in the interim because there would be no step up in basis upon the death of either spouse for property transferred irrevocably in trust during their lifetimes that wasn't includable in either spouse's estate.[24]

■ **Planning Point:** Note that if the trust distributed the proceeds to the nonresident beneficiaries during the same tax year, then the income may be taxable to them.[25] If there is an interest in keeping the nonresident beneficiaries out of the U.S. tax system, then distributions should be timed so that the income isn't carried out to the beneficiaries in the same tax year.

Assuming the couple doesn't retain inappropriate control over or use of the underlying property, the assets of the foreign trust shouldn't be includable in their estates for U.S. estate tax purposes and, further assuming that the property remains in trust through a descendant's lifetime, shouldn't be included in the estate of a descendant, at least under current law. As noted above, one ideally would avoid a transfer of U.S. situs assets to the trust in the first instance by first funding the trust with cash from a foreign bank account and then having the trust or a subsidiary acquire the property.

Situations Where a U.S. Trust Might Be Preferable to a Foreign Trust

In some cases, a U.S. trust might make more sense from a U.S. tax standpoint than a foreign trust. Usually, such a trust would be established in Delaware or another U.S. state that allows trusts to be created in perpetuity.[26]

For example, if any beneficiaries are U.S. citizens or residents, they could be subject to U.S. federal income taxes on the fair rental value of their use of property held by a foreign trust.[27] They also could be required to file IRS Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, to report the value of the use of such property ''distributed'' to them. Penalties for failure to file Form 3520 can be quite severe (the greater of $10,000 or 35 percent of the amount deemed distributed).[28]

The phantom income rule for use of trust property and associated Form 3520 filing obligation don't apply to beneficiaries of a U.S. trust. Moreover, the creation of a wholly owned LLC by a U.S. trust, rather than a foreign trust, wouldn't require a special Form 5472 filing.

Further, because the U.S. hasn't adopted the Common Reporting Standard (CRS) developed by the Organization for Economic Cooperation and Development, there would be no CRS reporting issues on account of the trust itself (although U.S. know-your-customer rules are being expanded by the U.S. Treasury Department).

A U.S. trust would be taxable on its worldwide income, but if the trust's only asset is the New York City apartment, there shouldn't be a meaningful difference in the federal and New York state personal income tax liabilities from the sale of the apartment.[29] Note that the U.S. trust would have reporting obligations with respect to its beneficiaries (whether U.S. or foreign).

■ **Planning Point:** The sale of property by a foreign trust would be subject to mandatory FIRPTA withhold-

[22] As discussed in the second article of this series, one might argue in the context of a foreign corporation or partnership that if there is no transfer of U.S. situs assets to the foreign entity in the first place, then nothing is ''retained'' for Section 2036 or 2038 purposes. However, because of the corporation-shareholder (or partnership-partner) relationship, one has the argument in that case that uncompensated use of the property, particularly if properly memorialized, is simply a corporate or partnership distribution. Where the grantor of a trust (who isn't and shouldn't be a beneficiary of the trust) makes use of trust property without compensating the trust, there is no equivalent construct, so the IRS might argue that the trust was merely acting as the alter ego or the agent of the grantor when it acquired the apartment.

[23] The trust's federal and New York state income tax liabilities wouldn't be identical to those of a married couple or individual because of differences in the personal exemption amounts available, but we assumed no personal exemptions or deductions in our previous calculations.

[24] See Section 1014(b).

[25] See Section 666. The distributable net income of a foreign non-grantor trust includes its capital gains, which may be carried out to the beneficiaries. See Section 643(a)(6)(C). Depending on the terms of the trust instrument and applicable law, capital gains of a U.S. trust also may be allocated to income and passed through to the beneficiaries as provided under Section 643(b) and Treas. Reg. Section 1.643(a)-3(b).

[26] Some states (including New York) have rules against perpetuities that impose limits on the duration of a trust. Delaware repealed its rule against perpetuities for most types of trust property, except for directly owned real property. In order to avoid this limited rule against perpetuities, one will generally want to have the trust acquire the property through a wholly owned Delaware limited liability company.

[27] See Section 643(i).

[28] See Section 6677 and Instructions for Form 3520. There also may be an obligation to file IRS Form 8938, Statement of Specified Foreign Assets, but Form 8938 isn't required for items already reported on a Form 3520.

[29] As discussed below, there potentially could be an additional 3.8 percent Medicare tax in some cases.

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Previously in This Series

Prior articles in this series are:

■ "Tax Planning for Foreign Couples Buying U.S. Homes: Direct Ownership," 212 DTR J-1, 11/2/16.

■ "Tax Planning for Foreign Couples Buying U.S. Homes: Ownership Through Foreign Corporations and Partnerships," 215 DTR J-1, 11/7/16.

ing. There would be no FIRPTA withholding with a sale by a U.S. trust.[30]

If a foreign trust isn't expected to have U.S. beneficiaries, then phantom income on account of the (foreign) beneficiaries' use of trust property wouldn't be an issue (at least under U.S. tax law) because the deemed distribution rule for fair rental value discussed above doesn't apply to foreign beneficiaries.

■ **Planning Point:** An apartment held by a foreign trust could be made available to an adult child attending college in the U.S. on an F-1 visa without triggering the above phantom income rule because the child could remain a nonresident for income tax purposes for up to five years on an F-1 visa.[31] However, if the child remained past the five-year exemption period and became a U.S. resident, he or she could have phantom income in future years.

■ **Planning Point:** One potential drawback of using a U.S. trust is that the 3.8 percent Medicare tax on high-income earners applies to the undistributed net investment income of U.S. trusts (and with a much lower threshold than for individuals).[32] Foreign trusts aren't subject to this tax.[33] A U.S. trust with a nonresident alien beneficiary could reduce or eliminate this tax by distributing the income currently to the beneficiary (who wouldn't be subject to the tax).[34] However, if the beneficiary didn't otherwise have to file U.S. tax returns, the trustee would need to consider whether the modest tax savings would be worth bringing the beneficiary into the U.S. tax system. This additional tax on the undistributed net investment income of U.S. trusts likely wouldn't outweigh the relative benefits of using a U.S. trust or the potentially very significant tax inefficiencies of using a foreign trust if the beneficiaries are U.S. persons. However, it is something to consider if one is setting up a trust for a non-U.S. beneficiary.

Establishing a U.S. Trust

Settling a trust in Delaware or another U.S. jurisdiction isn't, by itself, enough to cause it to be treated as a U.S. trust for U.S. federal tax purposes. A trust is considered a foreign trust unless it satisfies both a "court" test and a "control" test.[35]

The court test is satisfied if a federal, state or local court within the U.S. can exercise primary supervision over the administration of the trust (including through the court's jurisdiction over one or more of its trustees).[36]

The control test is satisfied if one or more U.S. persons have the authority to control all "substantial decisions" of the trust. Substantial decisions include (but aren't limited to) decisions concerning the distribution of corpus or income, selection of beneficiaries, allocations between principal and income, trust termination, litigation and settlement of claims of and against the trust, addition and removal of trustees, and investment decisions.[37]

Accordingly, if a trust has both U.S. and foreign trustees, then as long as there are some non-ministerial decisions, such as investment decisions, that the U.S. trustee(s) can't make without the approval of the foreign trustee(s), then the trust will fail the control test and thus will be considered a foreign trust regardless of where it is administered.

It is very easy for a trust to inadvertently lose its U.S. status if, say, a U.S. trustee moves abroad or is replaced by a non-U.S. trustee.

■ **Planning Point:** It is very easy for a trust to inadvertently lose its U.S. status if, say, a U.S. trustee moves abroad or is replaced by a non-U.S. trustee, causing the trust to flunk the control test. This can be a tax disaster if the trust holds appreciated property because the conversion of a U.S. trust into a foreign (non-grantor) trust can trigger a deemed sale of the trust's assets for federal income tax purposes.[38] This is also a reason not to initially establish U.S. residence for the trust if there is a possibility that the family will want to move the trust offshore in the future. However, one could still choose to settle the trust in the U.S. (e.g., for choice of law purposes) while preserving foreign trust status for U.S. tax purposes through the use of a foreign co-trustee or protector.

Other Considerations for U.S. or Foreign Trusts

Planning further out, if the trust will ultimately sell the property and reinvest the assets, then the question

[30] Note that certain types of income distributions to foreign beneficiaries could give rise to withholding obligations at the trust level.

[31] See Sections 7701(b)(3)(D), (5).

[32] See Section 1411(a)(2).

[33] The U.S. Treasury Department and the IRS confirmed in the preamble to the final Section 1411 regulations issued in 2013 that U.S. beneficiaries should be subject to the 3.8 percent Medicare tax on distributions of accumulated income from foreign trusts, but that the foreign trusts themselves shouldn't be subject to the tax. U.S. beneficiaries aren't yet subject to the 3.8% tax on accumulation distributions pending further guidance. See Preamble, T.D. 9644, 78 Fed. Reg. 72394 (Dec. 2, 2013).

[34] As noted in the first installment of this series, nonresident alien individuals aren't subject to the 3.8 percent Medicare tax. See Section 1411(e).

[35] See Section 7701(a)(30)(E).

[36] See Treas. Reg. Section 301.7701-7(c)(1).

[37] See Treas. Reg. Section 301.7701-7(d)(1)(ii).

[38] See Sections 684(a) and (b). The regulations allow taxpayers a 12-month grace period to correct any such "inadvertent" changes so as to prevent a potentially taxable change in the trust's residence. Longer grace periods may be allowed at the discretion of the IRS. See Treas. Reg. Section 301.7701-7(d)(2).

of whether a U.S. or foreign trust would be more desirable will depend both on whether the beneficiaries will be U.S. persons and whether the trust can be expected to have significant amounts of foreign source income that wouldn't otherwise be taxable to a foreign trust.

One generally will want to avoid settling a U.S. trust that later has to be moved offshore because of the deemed sale rules, but a U.S. trust could make sense in many cases, particularly where the beneficiaries will be U.S. persons.

A foreign trust may be a good option if no U.S. beneficiaries are contemplated in the near future. If it turns out later that a beneficiary is likely to become a U.S. resident on a long-term basis, consideration may be given to domesticating the trust (or creating a new U.S. trust) and clearing out any accumulated income beforehand to avoid creating phantom income for the U.S. beneficiary. This will require careful planning to avoid running afoul of other income tax rules (including the ''throwback'' tax on accumulated income from a foreign or previously foreign trust).[39]

Conclusions

If there is one takeaway from this piece and the two preceding installments, it is that for every potential tax advantage there is usually a trade-off. All of the above structuring options involve some tension between the couple's retained use of and control over the property and its potential inclusion in their estates. Which option is best for a given couple depends on their particular facts and circumstances.

There has been a trend in recent years of adding additional entity and trust layers between the ultimate ''owners'' (or grantors) and the underlying property. There are situations that may call for this, but the extra layering doesn't always add value from a tax, liability or privacy standpoint, particularly now that so many jurisdictions require detailed disclosures regarding the ultimate beneficial owners. Moreover, each trust or entity in the chain will have its own carrying costs.

Perhaps the most important thing to recognize is that circumstances can and do change and that a structure that makes sense at one point in time may need to be revisited in the future.

[39] See generally Sections 665-668. As previously discussed, distributions of accumulated income from a foreign trust to a U.S. beneficiary aren't yet subject to the 3.8 percent Medicare tax pending further IRS guidance. See Preamble, T.D. 9644, 78 Fed. Reg. 72394 (Dec. 2, 2013).

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