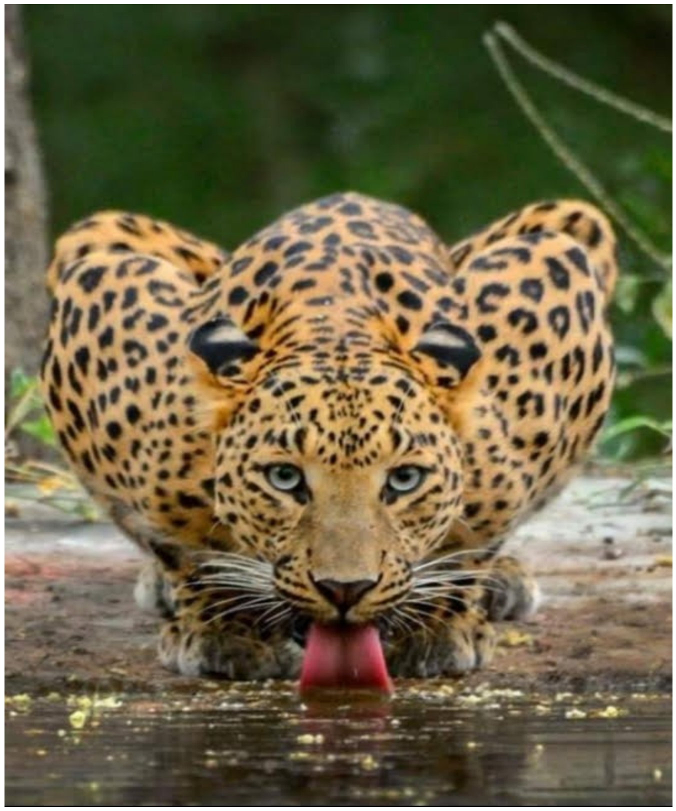
The EWP Da Vinci Code - Part 3



Expanded Worldwide Planning--EWP & Asset Protection

Private Placement Life Insurance (PPLI) in Action

The EWP Da Vinci Code--Part 3

The universality of Expanded Worldwide Planning (EWP) is not to be denied. This is objectified by *Wikipedia.* In the first sentence of their page on *International Tax Planning*, Expanded Worldwide Planning (EWP) is featured.

We are taking a cue from *Wikipedia.* Over the next few weeks, we will feature one of the six principles of Expanded Worldwide Planning (EWP). ***The six principles are***: privacy, asset protection, tax shield, succession planning, compliance simplifier, and trust substitute.

Domestic Asset Protection Trust vs. Offshore Asset Protection Trust

Today we feature asset protection. In this segment we will discuss the development of **Domestic Asset Protection Trust** (DAPT) and **Offshore Asset Protection Trust**

(OAPT). We again alert you to the fact that a simpler and more time-honored approach to asset protection is using life insurance. In a sense, asset protection comes automatically with Expanded Worldwide (EWP).

Advisors debate which is better: a DAPT or an OAPT. We say that they do serve a purpose for some clients, but why not adopt ***The EWP Da Vinci Code*****,** and receive not only outstanding asset protection benefits, but all the *six principles of Expanded Worldwide Planning* (EWP) in one complete package?

Why bring Leonardo da Vince into this discussion? Because Leonardo said, "Simplicity is ultimate sophistication." We have taken this as our model in implementing Expanded Worldwide Planning (EWP) in our ***PPLI asset structures***. We invite you to do the same.

When you purchase an automobile, you do not ask if it has turn signals. Of course, this is a standard part of the vehicle. Today you may pay extra for an advanced guidance system (GPS), but you might be able to do without it.

> "Asset protection does not come as an extra feature with Expanded Worldwide Planning (EWP), it is part of the package, just like turn signals on a new vehicle." ~ Michael Malloy

As we will read, the controversial aspects of DAPTs and OAPTs arise out of public policy issues: is the use of this particular trust the best for the common good.

It is not our place to take a position on public policy issues. At ***Advanced Financial Solutions, Inc.*** our role is to assist wealthy families in their quest to implement the six principles of Expanded Worldwide Planning (EWP). Asset Protection is one of these six principles, and it is achieved through the financial planning tool of life insurance.

Life insurance is considered a societal benefit. Life insurance relieves governments from providing families with the needed cash at the death of the family's income earner. Life insurance encourages savings for retirement through the accumulation of the cash value in the policy. ***PPLI is a form of life insurance,*** and thus bypasses much of the attention that is focused on trust structures.

In terms of the actual PPLI contract, all investments are held in separate accounts in the policy, thus, they are not in the insurance company's general account. For this reason they are not subject to the creditors of the insurance company, if the company were to become bankrupt.

When government regulators look to curb what they would term abuses of public policy: in other words, wealthy families who have gone too far in stretching tax and trust law, aggressive trust structures are a frequent target.

We now give you a brief history of DAPTs and OAPTs, and the public policy issues that raise concerns with government regulators.

According to **Wikipedia**:

> "An asset-protection trust is any form of trust which provides for funds to be held on a discretionary basis. Such trusts are set up in an attempt to avoid or mitigate the effects of taxation, divorce and bankruptcy on the beneficiary. Such trusts are therefore frequently proscribed or limited in their effects by governments and the courts."

What we might call the modern asset protection trust was formulated in the late 1980s, and the first jurisdiction to adopt it was in the **Cook Islands**. These trusts had spendthrift provisions and could be self-settled. These OAPTs had a one year fraudulent conveyance statute.

The Cook Islands legislation was soon followed by similar laws in the Cayman Islands, Belize, Nevis, the Channel Islands, the Isle of Man, and numerous other international financial centers.

In 1997, Alaska passed legislation allowing for irrevocable, discretionary, self-settled trusts. Ninety days later, Delaware followed suit, and as of this date some 16 states have passed DAPT legislation.

The controversy surrounding DAPTs and OAPTs arises from the degree to which OAPTs, in practice, often defeat deep-seated precepts of U.S. trust law. A key precept is that one ought not control and benefit from property and at the same time shield it from one's creditors.

The underlying policy rationale for the non-enforcement of self-settled spendthrift trusts is clearly stated in A. Scott's **The Law of Trusts**:

> "It is immaterial that in creating the trust, the settlor did not intend to defraud his creditors. It is immaterial that he was solvent at the time of the creation of the trust. It is against public policy to permit a man to tie up his own property in such a way that he can still enjoy it but can prevent his creditors from reaching it."
>
> For a U.S. wealthy family to form a DAPT, it is not necessary to form a trust in a jurisdiction outside the U.S., so this can make the process less expensive and time consuming. This takes us back to the old adage: "you get what you pay for."

The greatest deficiency of DAPTs is that they are necessarily governed by U.S. law. The DAPT fails to achieve the jurisdictional separation required to fully protect the asset.

Since only a quarter of states currently have DAPT statutes, it is probable that states where litigation is taking place are those in which DAPTs are expressly prohibited as being against public policy. In a conflict-of-law analysis, it is difficult to envision any judge in a non-DAPT state agreeing to apply the laws of the DAPT state.

OAPTs are more secure for several reasons:

- a foreign trust is not subject to the jurisdiction of the U.S. courts, so a U.S. attachment order will have no effect within that foreign jurisdiction;
- furthermore, creditors seeking to reach the assets embark on independent legal proceedings in the foreign jurisdiction in which the trust is located;
- even a favorable foreign judgment may be a hollow victory. The creditor still may not be able to satisfy that judgment from the assets held in the trust unless she proves that the transfer to the trust constituted a fraudulent conveyance.

Conclusion

Most asset protection trusts established by U.S. settlors are considered grantor trusts under U.S. income tax law, meaning that all income of the trust is reportable on the grantor's (the settlor's) individual income tax return. Asset-protection trusts do not, in and of themselves, offer any tax advantages under U.S. income tax law.

So why not create a trust that not only gives you asset protection, but the whole formidable array of benefits that Expanded Worldwide Planning (EWP) provides? To achieve this outstanding result, we suggest using an International Irrevocable Life Insurance Trust (ILIT) which owns a properly structured PPLI policy--**The EWP Da Vinci Code.**

The ILIT has been in use for decades; it has withstood numerous court challenges, and avoids the taint of opposing public policy that you acquire with DAPTs and OAPTs.

Regarding U.S,. tax laws, a properly designed International ILIT, governed by the law of a foreign jurisdiction, is treated virtually the same as a domestic ILIT. For wealthy U.S. families, or those families with a connection to the U.S., an International ILIT in combination with a properly structured PPLI policy, is arguably the most efficient structure for the integration tax-free investment growth, wealth transfer and asset protection.

Please ***contact us today*** to find out if **The EWP Da Vinci Code** is right for you.

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