EWP & Trust Substitute

International Tax Planning & Trust Substitute—Part 1

EWP (Expanded Worldwide Planning) and Trust Substitute

Private Placement Life Insurance (PPLI) in Action

The Dangers of Over Reliance on Trusts

The more sophisticated tools gravitate toward the most sophisticated users of these tools. A Stradivarius violin is used by a master violinist and not a beginner. When clients and advisors initially approach us about ***Private Placement Life Insurance*** (PPLI), they are confused about its uses.

For the most part, what these clients and advisors have read about are beginning uses of PPLI. They have not explored the upper reaches and more sophisticated uses of ***asset structures*** that employ PPLI to its full effect. To keep to our analogy, they have picked up a beginner's violin, and know nothing of the deep, rich, and more pleasing tone of the Stradivarius violin.

We will now discuss the sixth principle of Expanded Worldwide Planning (EWP), ***Trust Substitute***. We will of course speak of the obvious use of a PPLI asset structure in place of a trust structure in some civil law jurisdictions, but we will also expand our discussion to explore the very nature of trust and how they differ from the sophisticated structures that we use for the world's wealthiest families. Our discussion will also touch on why a

PPLI structure is a far better tool for the client who seeks both maximum privacy, asset protection, and tax efficiency, as well as full compliance with the world's tax authorities.

Advisors Don't Know What They Don't Know

The confusion about the uses of PPLI structures that we mentioned in our opening paragraph is exacerbated by the system that educates attorneys, accountants, trust officers, and asset managers. There is virtually no mention of PPLI Structures in colleges, universities, law schools, and the other training grounds of these professionals.

For instance, attorneys spend time learning the various uses of **trusts**, so they produce these for their clients, even when they are not the best tool for the job at hand. *They don't know what they don't know.*

If we are going to use a PPLI structure as a substitute for a trust structure, or in combination with a trust. Let us ask ourselves the basic question: what is a trust and how did it come to be in existence in the first place.

Let us look at a chart that compares Trusts vs. Life Insurance for creating asset structures for wealthy clients.

Insurance and Trust Comparison

Insurance Trust

◆ Contractually based and used by millions ◆ Tax deferral ◆ Insurance Company is beneficial owner ◆ Simplified or limited reporting ◆ Tax-free asset transfer ◆ No capital gains taxes ◆ Asset protection	◆ Provides some asset protection ◆ Sometimes seen as tool for the rich ◆ More stringent reporting requirements ◆ Tax filings for trust and possibly beneficiaries required by some jurisdictions ◆ No tax deferral

What Is a Trust and Where Did It Come From?

In its most basic form, it is a three-party relationship in which someone, the trustor or settlor, transfers assets to a trustee, for the benefit of a beneficiary.

A trust establishes the distinction between a legal and a beneficial owner. The legal owner was referred to as a "trustee" (because he was "entrusted" with property) and the beneficial owner was the "beneficiary".

Roman law had a well-developed concept of the trust (*fideicommissum*) created by wills. However, these testamentary trusts did not develop into the *inter vivos* (living) trusts which apply while the creator lives. This was created by later common law jurisdictions. The *waqf* is a similar institution in Islamic law, restricted to charitable trusts.

In England during the time of the Crusades in the 12th century, the law of trusts was constructed as part of "equity", a body of principles made by the Courts of Chancery, which sought to correct the strictness of the common law. The trust was an addition to the law of property, in the situation where one person held legal title to property, but the courts decided it was fair, just or "equitable" that this person be compelled to use it for the benefit of another.

When a landowner left England to fight in the Crusades, he conveyed ownership of his lands in his absence to manage the estate and pay and receive feudal dues, on the understanding that the ownership would be conveyed back on his return. However, Crusaders often encountered refusal to hand over the property upon their return. Unfortunately for the Crusader, English common law did not recognize his claim. As far as the King's courts were concerned, the land belonged to the trustee, who was under no obligation to return it. The Crusader had no legal claim.

The disgruntled Crusader would then petition the king, who would refer the matter to his Lord Chancellor. The Lord Chancellor could decide a case according to his conscience. At this time, the principle of equity was born. The Lord Chancellor would consider it "unconscionable" that the legal owner could go back on his word and deny the claims of the Crusader (the "true" owner). Therefore, he would find in favor of the returning Crusader. Over time, it became known that the Lord Chancellor's court (the Court of Chancery).

PPLI Structure vs. Trust Structure

Just as a Trust Structure has three elements: trustor or settlor, trustee, and beneficiary, a PPLI, and, indeed, every life insurance policy has three elements: owner, insured, and beneficiary. Using this three party relationship successfully makes many of the advanced structuring possibilities of EWP possible.

As we discussed in our chapter on ***Succession Planning***, some civil law jurisdictions do not recognize trust in the same light as in most common law jurisdictions. In some asset structuring situations, a PPLI asset structure can be a viable substitute for a trust. Upon death of the insured person(s), the value of the assets in a PPLI policy plus any death benefit is paid directly to the beneficiaries listed in the policy. This can facilitate the transfer of wealth and eliminate the need for a trust.

Conclusion

Trusts serve an essential purpose in planning for the world's wealthiest families, but over reliance on them is a grave mistake. If done correctly, the marriage of a trust with a properly structured PPLI policy can indeed be a happy one. Please ***contact us*** today to find out how you can benefit from this happy marriage, which has served the most sophisticated clients worldwide for over 25 years.

by Michael Malloy, CLU TEP RFC, @ Advanced Financial Solutions, Inc