



wealth preservation trusts (u.s.)

The utilization of an offshore Wealth Preservation Trust has become an increasingly valuable tool for estate planning for high net worth U.S. individuals. The rate of litigation in the U.S., in some instances frivolous law suits brought against high net worth, deep pocket defendants, has dramatically increased within the last ten years. Business owners, real estate developers, physicians, directors of companies etc. are all targets of such litigation. As a result many high net worth individuals have sought to include a trust settled in a non-U.S. jurisdiction as part of their overall long term estate plan.

ATC is pleased to be able to offer such trust structures in our offices in the Bahamas and Grand Cayman.

asset protection trust - advantages

There are a number of advantages to settling a trust in these jurisdictions:

- The trust laws are based on five hundred years of English trust law. These laws are well established and flexible;
- Trust assets can be liquid (cash, stock, bonds, mutual funds) or non-liquid such as a boat, second home or other valuable assets;
- There are no limitations on distributions to beneficiaries of the trust;
- The settlor/grantor can continue to contribute additional assets to the trust;
- Both jurisdictions are major International financial centers - the Cayman Islands is the fifth largest financial center in the World;
- A properly settled non-U.S. (offshore) trust will provide excellent protection for the assets placed in such a trust. For the trust to be properly settled, there should be no known or potential claims against the settlor at the time the trust is set up and the trust assets are placed in the trust;
- All income and other taxes must be paid on any assets placed in the trust and the settlor must continue to report and pay tax on all income, gain etc. earned from the trust assets.

claims brought against the settlor of the trust after the trust has been settled and funded

The legal process to overturn a properly established trust in either the Bahamas or the Cayman Islands is expensive, time consuming and complicated:

- Foreign judgments - judgments rendered by a U.S. Court - are not automatically enforceable in the Bahamas or the Cayman Islands;
- The creditor would be required to retain local counsel and commence legal proceedings in such offshore jurisdiction to have the U.S. judgment recognized;
- There are no contingency fee attorneys in either the Bahamas or Grand Cayman. The plaintiff/creditor would be required to post a bond to cover the Court expenses if the action was not successful;
- Even if the non-U.S. Court recognized the U.S. judgment, the plaintiff/creditor would then be required to bring another legal action in the relevant non-U.S. Court seeking to show that the trust was fraudulently settled - meaning that the settlor knew or should have known of the existence of the claim that gave rise to the judgment prior to settling the trust.

Therefore, even if the creditor decides to pursue such legal action against the trust, if such trust was properly settled, the trust assets will be safe and secure from such creditor attack.



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ATC has developed an expertise in administering these types of offshore structures settled by U.S. clients. We understand and work with the U.S. client and his/her advisors to properly plan and implement an offshore structure that is tailor-made to each client taking into account the needs of the client and his/her beneficiaries.

More information?

If you would like more information about wealth preservation trusts and asset protection generally, or other services offered by ATC, please contact Nancy Beilin, ATC's U.S. representative, at nbeilin@schiltkamp.com.

DISCLAIMER:

The information contained in this memorandum is of a general nature only and should not be construed as legal or tax advice. Readers should obtain appropriate professional advice before setting up any structure. If required, ATC can refer readers to a panel of reputable legal and tax advisory firms.

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