

American Bar Association
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Washington, DC
Grandma Died with a Cook Islands Trust: Now What?

Moderator: Leigh-Alexandra Basha Holland & Knight LLP

Speakers: Peter Cohen Trident Trust
Michael Pfeifer Caplan & Drysdale
Willard (Bill) Yates IRS-Chief Counsel (International)

- I. Introduction of Speakers and Program (Leigh-Alexandra Basha)
- II. U.S. Practitioner's Perspective (Michael Pfeifer)
- III. View From the IRS (Willard (Bill) Yates).
- IV. Fiduciary's Perspective and View from Offshore (Peter Cohen)
- V. Application with Practical Examples (All)
- VI. Conclusion (Leigh-Alexandra Basha)

Scenario 1:

Simon Pace is a UK born national. His wife, Priscilla Pace, has a US green card issued to her in the 1970's and is the kind without an expiration date. She comes to the US occasionally to visit her grandchildren. Simon retired from your executive position at Anheiser Busch Company some years ago and decided to remain in Belgium. Simon established a Cook Islands trust, however, to date he has not reported any of the income from the Cook Islands trust to Belgium, even though he is a Belgian resident. The origin of the funds is unclear. As a non-U.K. resident, he does not report to the U.K. Unfortunately, will all your years of tasting your company's products he died of cirrhosis of the liver. The trust beneficiaries are his wife, Priscilla, his daughter, Laura, (married to Pierre and living in France), and a son, Richard, living in the U.S. with his U.S. wife and U.S. resident children. Shortly after Simon's death, Priscilla died, presumably of a broken heart.

Priscilla was named primary executrix of his estate with your son Richard as successor personal representative. She comes to you and asks what she should do with her husband's estate. What reporting obligations are there in the respective jurisdictions? What ethical obligations does the advisor have to the client, to the bar, to the tax authorities?

Scenario 2:

A Brazilian couple, José and Maria Ruiz, established several off shore companies over the course of many years into which José transfers funds from his international shipping operations. Maria knew very little about the actual structures. Funds tended to flow back and forth among the companies to cover expenses from one entity to another without proper documentation to reflect whether the transfers were loans, capital contributions, etc. He also had a Swiss account which he has not disclosed to any of the taxing authorities in Brazil. Further, he has a trust in The Channel Islands, which owns the shares of some of the companies, but not all of them. He has also made gifts via wire transfers and bearer shares from his various companies

to his children who are residents (and green card holders) in the United States, France, Belgium and Italy. Given that they are getting older and want to spend more time with their children and grandchildren they wish to purchase a property in south Florida, and may even apply for a US green card. They wish to have access to US healthcare as they age.

How would you advise Mr. and Mrs. Ruiz? Their children?

Considerations for the various scenarios above:

- Do you ask the client if he or she is current with your or her taxes in the home jurisdiction?
- What statute of limitations may there be? Will the client ever be absolved?
- What are your obligations as an advisor?
- What facts would alter your answers?
- How do you get the client tax compliant?
- Do you hire the accountant?
- What obligations do you as an advisor have?
- What obligations does the trustee have?
- What if the client won't provide you with detailed information e.g. account statements, profit and loss statements for the companies etc?
- What inquiries do you make regarding the origin of the funds?
- Do you ask directly, indirectly, not at all?
- How does KYC- know your customer -rules apply?
- Do you have any anti-money laundering rules to contend with?
- What other regulatory matters should you be concerned about?
- Does the attorney-client privilege apply?
- In the U.S. should you be concerned about the Stop Tax Haven Abuse Act?
- What other recommendations do you have for the client? For the advisor?