

Contents

Media/Books Products Committee	xxi
Introduction	xxiii

PART I

Overview	1
-----------------	----------

CHAPTER 1

Basic Conflict of Laws Principles	3
--	----------

Robert C. Lawrence, III and Elisa Shevlin Rizzo

I. Introduction	3
II. Conflict of Laws Issues	4
A. Determining Affiliation	4
B. Bases of Jurisdiction of a U.S. Court	6
C. Choice of Law	9
III. Summary	18

CHAPTER 2

Current Rules for the United States Income and Transfer Taxation of Nonresident Alien Individuals	19
--	-----------

Henry Christensen, III and Toni Ann Kruse

I. Introduction	19
II. Bases for Taxation	20
A. Citizenship	20
B. Residence in the United States for Income Tax Purposes	21
C. Residence in the United States for Transfer Tax Purposes	24
D. Special Rule for Citizens of Possessions of the United States	26
III. U.S. Income Taxation of Nonresident Aliens	27
A. Income Connected with the Conduct of a Trade or Business	27
B. Income Not Connected with a U.S. Trade or Business	29
IV. U.S. Transfer Taxation of Nonresident Aliens	30
A. Estate Tax	30
B. Gift Tax	35
C. Generation-Skipping Transfers	37

V. U.S. Income Taxation of Dispositions by Nonresident Aliens of U.S.-Situs Real Property	37
VI. Returns Required to Be Filed by Nonresident Aliens or Persons Related to Nonresident Aliens	39
A. Income Tax Returns	39
B. Estate Tax Returns	39
C. Gift Tax Returns	40
D. Generation-Skipping Transfer Tax Returns	40
E. Income Tax Returns by Foreign Estates and Trusts	40
F. Returns of U.S. Beneficiaries of Gifts and Trusts	40
G. Liens for Payment of Estate and Gift Taxes	40
VII. Treaty Impact	41
VIII. Expatriation to Avoid Tax	41
 PART II	
Wills, Probate, and Administration	43
 CHAPTER 3	
The Use of Multiple (“Situs”) Wills	45
<i>Barbara Hauser</i>	
I. Introduction	45
II. Prevalent Mistakes	46
A. Accidental Revocation	46
B. “Pour Over” Wills (and Their Revocable Trusts)	46
III. “Situs” Wills: Reasons to Consider the Use of Multiple Wills	47
A. Elimination of Some Administration Expenses	47
B. Clearer Application of Relevant Law	47
C. Translations	48
D. Selection of Law	48
E. Requirements for Validity	48
F. Need of an Original Will by the Probate Court	48
G. Confidentiality—If Administration Is Confined to Certain Assets	49
H. Simpler Administration in Each Jurisdiction	49
IV. Choice of Law Issues	50
A. Capacity	50
B. Bequest to Witness	50
C. Revocation Effected by Marriage	50
D. Revocation Effected by Divorce	51
E. Bequests to Charities or Others	51
V. Property That Can Be Disposed of by Will	51
A. Marital Rights and Regimes	51
B. Forced Heirship	52
C. Other Restrictions	52

VI. Drafting Concerns	52
A. Nonrevocation Provision	52
B. Statement of Residency	53
C. Coordination of Beneficiaries	53
D. Allocation of Tax Liability	53
E. Responsibility for Tax Payment	53
F. Authority to Administer	54
G. Critical Definitions	54
VII. Formalities of Execution	55
A. Recognized Classifications of Wills	55
B. Validity of Formalities of Execution	55
VIII. Conclusion	58

CHAPTER 4

Estate Administration and Postmortem Planning Considerations for the International Client **59**

G. Warren Whitaker and Dina Kapur Sanna

I. Introduction	59
II. Common and Civil Law Jurisdictions Contrasted	60
A. Common Law Jurisdictions	60
B. Civil Law Jurisdictions	61
C. Convention Concerning International Administration of Estates of Deceased Persons	62
III. Jurisdictional Authority	63
A. General Considerations	63
B. Validity of Wills and Choice of Law	63
C. Original Probate in Situs Jurisdiction	66
D. Effect of Res Judicata	71
IV. Postmortem Estate Planning Considerations Involving Estate Situs and Distributions to Beneficiaries	72
A. Criteria for Distinguishing between Domestic and Foreign Estates	72
B. Income Taxation of Estate Versus Distributions to Beneficiaries	73
C. Transfers of Appreciated Property by United States Person to Foreign Estate or Trust	75
V. Postmortem Estate Planning Considerations Involving Trusts and Foreign Corporations	76
A. Impact of Controlled Foreign Corporation (CFC) and Passive Foreign Investment Company (PFIC) Provisions	76
B. Domestication Versus Nondomestication of Foreign Trust	79
C. Distributions from Domestic Nongrantor Trusts to Foreign Beneficiaries	79
D. Postmortem Estate Planning as Related to Qualified Domestic Trusts (QDOTs)	81

PART III
Marital and Family Rights **83**

CHAPTER 5
Enforcement of Spousal and Forced Heirship Rights in U.S. Courts **85**

Robert C. Lawrence, III and Elisa Shevlin Rizzo

I. Introduction	85
II. General Considerations	85
III. Spousal Inheritance	86
A. Overview	86
B. Characterization of Property	87
C. Special Considerations with Respect to Community Property	88
D. Enforcement of Spousal Inheritance Rights	90
IV. Forced Heirship Rights	92
A. Overview	92
B. Characterization of Property	93
C. Enforcement of Forced Heirship Rights	94
V. Testamentary Substitutes	95
VI. Conclusion	98

CHAPTER 6
Theories of Marital Property on the International Stage **99**

Jeffrey A. Schoenblum and Joshua A. Rubenstein

I. Introduction	99
II. Mutability Versus Immutability	100
III. Party Autonomy	106
IV. Scission between Real Property and Personal Property	107
V. <i>Renvoi</i>	109
VI. The Law-Determining Affiliation	110
VII. Formalities and Capacity to Contract	112
VIII. Publicity and Enforcement by and against Third Persons	113
IX. The Border Territory between Matrimonial Property and Succession to Property at Death	115
X. Intertemporal Conflicts	116
XI. Immediate and Secondary Questions	117
XII. International Treaties and Conventions	118

PART IV
Special Tax Considerations **125**

CHAPTER 7**U.S. Taxation of Foreign Trusts, Trusts with Non-U.S. Grantors and Their U.S. Beneficiaries****127***Ellen K. Harrison, Elyse G. Kirschner, and Carlyn S. McCaffrey*

I. How to Create a Foreign Trust	128
A. How to Determine Whether a Trust Is a Foreign Trust	128
B. Creation of and Transfer of Property to a Foreign Trust by a U.S. Person	133
C. Creation of a Foreign Trust by a Non-U.S. Person	141
II. Tax Treatment of Foreign Nongrantor Trusts	142
A. In General	142
B. Gross Income	142
C. Imposition of U.S. Income Tax	143
D. Deductions	146
E. Tax Rates	148
F. Withholding	148
G. Effect of Tax Treaties	149
H. Taxable Year; Reporting	149
III. Tax Treatment of U.S. Beneficiaries of Foreign Nongrantor Trusts	151
A. In General	151
B. Distributions of Income in the Year Earned	151
C. Distribution of Income Accumulated in a Prior Year—the “Throwback Rules”	157
D. Loans Treated as Distributions	170
E. Indirect Transfers from Foreign Trusts	172
F. Treatment of Income of Controlled Foreign Corporations and Passive Foreign Investment Companies	176
IV. Tax Treatment of U.S. Beneficiaries of Grantor Trusts with Foreign Grantors	183
A. Background	183
B. Limitation on Grantor Trusts	183
C. Definition of Grantor	184
D. Foreign Persons Not Treated as Owners	186
E. Qualifying for a Basis Adjustment at the Grantor’s Death	191
F. Consequences of Expatriation	192
G. Consequences of Immigration	194
H. Shifting the Identity of the Grantor—Code § 672(f)(5)	201
I. Comparison of Code §§ 672(f)(5) and 679(a)(4)	202

V. Recharacterization of Purported Gifts	202
A. Purported Gift	202
B. Purported Gifts from Partnerships	203
C. Purported Gifts from Corporations	203
D. Exceptions	203
E. Gifts through Trusts Funded by Gratuitous Transfers from Partnerships or Foreign Corporations	204
F. Affirmative Use	205
G. De Minimis Rule	205
H. Anti-avoidance Rule—Check the Box	205
VI. Reporting of Distributions from Foreign Trusts and Gifts from Foreign Persons	206
A. Reporting by U.S. Beneficiaries of Foreign Trusts Who Receive Distributions	206
B. Reporting Gifts from Foreign Persons	209
C. Unified Reporting Forms	212
D. Gifts from Covered Expatriates	212
VII. Reporting Foreign Financial Assets and Foreign Accounts	213
A. Bank Secrecy Act Reporting Requirements for Trust Beneficiaries	213
B. Internal Revenue Code Reporting Requirements for Foreign Financial Assets	215

CHAPTER 8

Planning for Transfers to Noncitizen Spouses

217

Douglas L. Siegler

I. Introduction	217
A. Prior Law	217
B. Background	219
II. Disallowance of Federal Estate Tax Marital Deduction	220
A. General Rule	220
B. Treatment of Jointly Held Property (with Right of Survivorship) at Death	221
C. Allowance of Marital Deduction When Surviving Spouse Becomes a U.S. Citizen	224
III. Qualification as a QDOT	226
A. In General	226
B. Marital Deduction Requirements	226
C. Statutory Requirements	227
D. Security Requirements for Collection of the QDOT Tax	233
E. Miscellaneous QDOT Issues	245

IV. When Is Qualification as a QDOT Determined?—Provisions for Reformation	248
A. General Rules	248
B. Limitations and Uses of Reformation Provisions	250
V. Transfers by the Surviving Spouse of Outright Bequests and Nonprobate Property to a QDOT	251
A. Statutory Provisions	251
B. Effective Dates	251
C. Regulatory Provisions Governing Transfers of Property to a QDOT	252
D. Who May Make the Transfer	252
E. When Must the Transfer to the QDOT Be Made?	253
F. Irrevocable Assignment of Property to a QDOT	253
G. Special Rules for Transferable Annuities	254
H. Special Provisions Governing Assignments and Transfers	255
I. Protective Assignments of Property to a QDOT	256
J. Nontransferable Property	257
K. Effect of Transfer of Assignment on Other Tax Provisions	259
VI. Special Rules for Nonassignable Annuities and Other Arrangements	262
A. Background	262
B. Final Regulations Governing “Nonassignable Annuities or Other Payments”	264
VII. Taxation of QDOTs	271
A. Taxable Events	271
B. Amount Subject to Tax	272
C. Amount of Tax	272
D. Distributions Exempt from Tax	278
E. Administrative Provisions	283
F. Cessation of Imposition of the QDOT Estate Tax: The Surviving Spouse Becomes a United States Citizen	288
VIII. Death of the Noncitizen Surviving Spouse	290
A. Credit for Federal Estate Tax Paid	290
B. Allowance of Certain Tax Benefits	292
C. Double Taxation	295
D. Use of Spouse’s Unified Credit and Federal Estate Tax Brackets	296
E. Generation-Skipping Transfer Tax	296
IX. Federal Gift Tax on Transfers to Noncitizen Spouses	297
A. Limitation on the Marital Deduction for Gifts to Noncitizen Spouses	297
B. Federal Gift Tax Effects of Creation and Termination of Joint Tenancies	301

X. Effect of Changes in the Federal Gift and Estate Tax Marital Deduction on Existing United States Tax Treaties	307
A. Existing U.S. Transfer Tax Treaties	307
B. OBRA 1989 Treaty Provisions	309
XI. Effective Date Provisions	312
A. Effective Dates of Statutory Provisions	312
B. Effective Date Provisions for Final Regulations	313
C. Effective Dates of Gift Tax Provisions	315
XII. Planning for the Marital Deduction for Noncitizen Spouses	315
A. Lifetime Planning	315
B. Planning for a Noncitizen Surviving Spouse after the First Spouse's Death	326

CHAPTER 9

Pre-Immigration Planning

333
Donald D. Kozusko and Richard A. Fava

Introduction	333
I. Pre-Residency Planning for Transfer Taxes	333
A. U.S. Tax Burden Warrants Pre-Residency Planning	333
B. Long-Term U.S. Residents Taxed as U.S. Citizens	334
C. Gifts by NRA Usually Avoid Gift Tax	335
D. Clear Opportunities for Estate Tax Planning for NRAs	337
E. Generation-Skipping Tax Planning Follows Gift and Estate Tax Planning	339
F. Transfer Tax Planning Considerations	342
II. Pre-Residency Planning for U.S. Income Taxes	349
A. Change in Tax Burden	349
B. U.S. Citizens and Residents Taxed on Worldwide Income	349
C. Income Tax Residency Versus Estate and Gift Tax Domicile	350
D. Effect of U.S. Income Tax Residency without U.S. Domicile	351
E. Temporary Loss of Residency	351
F. Income Tax Planning Considerations	352
III. Pre-Residency Planning for Foreign Trusts and Investment Companies	356
A. Trusts "Owned" by the Grantor (Grantor Trusts)	356
B. Current Income Distributions from Nongrantor Trusts	359
C. Accumulation Distributions from Nongrantor Trusts	359
D. U.S. Income Tax on U.S. Shareholders of Foreign Corporations	361
E. Attribution of Investment Company Stock to U.S. Beneficiaries	362
F. Pre-Residency Planning for Grantors and Beneficiaries	364
IV. Planning for Long-Term Residency	369
A. Expatriation Tax Regime on Surrender of Citizenship or Long-Term Residence	369
B. Exit Tax	370

C. Nongrantor Trusts	370
D. Transfer Tax Rules	370
E. Treaty Application	371
F. Planning Prior to Long-Term Residence	371
CHAPTER 10	
The Current State of Expatriation	373
<i>Michael G. Pfeifer</i>	
I. Introduction and Background	373
II. Expatriation for Citizenship Law Purposes	374
III. Expatriation for Tax Law Purposes: Prior Law	378
A. FITA: Original Provision	378
B. HIPAA: 1996 Modifications	379
C. AJCA: 2004 Modifications	382
IV. Omissions and Technical Issues under Prior Law	385
V. HEART Act Changes	386
A. Section 877A: Mark-to-Market Tax	386
B. Section 2801: Succession Tax	389
VI. Guidance under the HEART Act: Notice 2009-85	390
A. Mark-to-Market Tax	390
B. Tax on Deferred Compensation	393
C. Specified Tax-Deferred Accounts	394
D. Interests in Nongrantor Trusts	394
E. Filing and Reporting	395
VII. Additional Expatriation Issues Requiring Guidance	397
VIII. Conclusion	399
PART V	
U.S. Tax Treaties	401
CHAPTER 11	
Transfer Tax Treaties	403
<i>Barbara R. Hauser</i>	
I. Overview	403
A. Pre-1966 Treaties	404
B. OECD Model Convention	408
C. U.S. Treasury Department	410
D. Post-1966 Estate Tax Treaties	411
E. Selected Issues under the Treaties	416
II. Canada—Income Tax Protocol	419
III. Conventions	420
A. Convention of the Conflicts of Laws Relating to the Form of Testamentary Dispositions (Oct. 5, 1961)	420

B. Convention Concerning the International Administration of the Estates of Deceased Persons (Oct. 2, 1973)	421
C. Convention on the Law Applicable to Trusts and on Their Recognition (July 1, 1985)	421
D. Convention on the Law Applicable to Succession to the Estates of Deceased Persons (Aug. 1, 1989)	422
IV. Conclusion	423
CHAPTER 12	
Income Tax Treaties	425
<i>William B. Sherman and Summer A. LePree</i>	
<hr/>	
I. Introduction	425
II. Tax Treaties in General	426
III. Constitutional and Other Authority	426
IV. Interpreting Treaties	427
A. General	427
B. Interpretation by U.S. Courts of Tax Treaties	428
C. OECD Commentary	429
D. Application of Local Law	430
V. Qualification for Treaty Benefits	430
A. General	430
B. Residence	431
C. Limitation on Benefits	435
D. Other Limitations	437
E. Saving Clause	437
VI. Specific Treaty Provisions Providing Benefits	438
A. General	438
B. Permanent Establishment and Business Profits	439
C. Provisions Relevant to Non-Business, FDAP Income	443
D. Employment/Services Income	446
E. Miscellaneous	446
F. Other Income	447
VII. Claiming Treaty Benefits—Procedural Requirements	447
A. Forms W-8 and 8233	447
B. IRS Reporting—Form 8833	447
VIII. Conclusion	449
PART VI	
Trusts and Alternative Vehicles for the International and Offshore Client	451

CHAPTER 13	
Introduction to Offshore Planning for the International Client	453
<i>Alec R. Anderson</i>	
<hr/>	
I. Introduction	453
A. What Is Meant by “Offshore”?	454
B. The Increasing Regulation of OFCs	455
II. Reasons for Using OFCs	457
A. Tax Planning	457
B. Modern, Innovative, Flexible Legislation, Efficient Legal Systems, and Developed Infrastructure and Service Industries	457
C. Asset Protection	458
D. Confidentiality	461
E. Benefits to the Multi-Jurisdictional Family	461
III. Common Offshore Vehicles	462
A. Trusts	462
B. Trust Alternatives	467
IV. The Future of OFCs	470
CHAPTER 14	
Letters of Wishes and Protectors as Devices to Further the Settlor’s Purposes	473
<i>Anne J. O’Brien, Cara M. Koss, and David Hayton</i>	
<hr/>	
I. Introduction	473
II. Three Types of Letters of Wishes	474
III. Protectors	477
CHAPTER 15	
The Inheritance and Gift Tax Treatment of Anglo-American Trusts	485
Estate Planning in the Netherlands	487
<i>Prof. Dr. Frans Sonneveldt and Mike Vrijmoed LL.M.</i>	
<hr/>	
I. General Law	487
A. Legal System	487
B. Trusts	487
C. Matrimonial Property Law	488
D. Registered Partnership	491
E. Lifetime Gifts/Donations	491

F. Estates of Deceased Persons	492
G. International Estate Planning Issues	496
II. Taxation	501
A. Inheritance and Gift Tax	501
B. Formalities in Respect of the Levy of Inheritance Tax and Gift Tax	506
C. The Taxation of Trusts	507
D. Principles of Estate Planning	510
E. Ways to Reduce Dutch Inheritance Tax	512
F. Business Succession	517
G. Tax Planning	520
H. Anti-Tax Avoidance	521
I. Double Taxation Relief	521
J. Enforcement and Exchange of Information	523
The Inheritance and Gift Tax Treatment of Anglo-American Trusts in Italy	524
<i>Stefano Guiso Gallisay</i>	
I. Introduction	524
II. Taxation	524
A. Creating a Trust	524
B. Conveying Assets to a Trust	525
C. Producing Income	526
D. Distributing the Corpus to the Beneficiaries	526
E. Residency Issues	527
The Inheritance and Gift Tax Treatment of Anglo-American Trusts in France	528
<i>Line-Alexa Glotin</i>	
I. Civil Issues	528
A. Succession Law	528
B. Private International Law	531
II. Taxation	532
A. Criteria for Liability to Main Taxes	532
B. Taxes	533
C. Enforcement and Collection of Taxes	536
III. Asset Holding Vehicles	538
A. Trusts	538
B. Partnerships	539

IV. Transnational Giving	539
A. Obtaining Status as an Organization to which Tax Deductible Gifts Can Be Made	539
V. Regulatory Environment	540
A. Anti-Money Laundering Legislation	540
B. EU Savings Tax Directive	541
The Inheritance and Gift Tax Treatment of Anglo-American Trusts in Spain	542
<i>Sonia Velasco Menal and Carlos Ara Triadú</i>	
I. Introduction	542
II. A Brief Approach to Spanish Civil Institutions Considered Similar to Trusts	543
III. The Trust from the Spanish Tax Authorities' Perspective	545
IV. Comments on the Spanish Tax Authorities' Administrative Doctrine	548
V. Conclusion	549
The German Tax and Inheritance Law Treatment of Trusts	550
<i>Gerd Kostrzewa</i>	
I. Introduction	550
II. German Income Taxation	550
A. German Income Taxation under National German Tax Law	551
B. German Income Taxation under Tax Treaty Provisions	555
III. German Inheritance/Gift Taxation	558
A. German Inheritance/Gift Taxation under National German Tax Law	558
B. German Inheritance/Gift Taxation under Tax Treaty Provisions	560
C. Main Taxable Events	561
D. Personal Tax-Free Allowances and Tax Rates	562
E. Special Tax Exemption for Business Transfers	564
IV. German Inheritance Law Implications	565
A. Application of German Inheritance Law	565
B. German Testaments and Forced Heirship	565
V. Trusts under German Civil and Tax Law	567
A. Validity of Trusts under German Civil Law	567
B. Taxation of Trusts	568
VI. Conclusion	571

PART VII
Considerations Pertaining to Particular Foreign Jurisdictions **573**

CHAPTER 16
Special Considerations in U.S.-Canada Estate Planning **575**

Wolfe D. Goodman, Updated by Mary Anne Bueschkens, Lucinda E. Main, and Jason P. Trenton

I. Elimination of Canadian Federal Estate and Gift Taxes at the End of 1971	575
II. Canadian Taxation of Capital Gains in Transferred Property after 1971	577
III. The Canadian Approach to Life Insurance Taxation	577
A. Life Insurance Policies	577
B. Annuity Contracts	579
IV. Valuation of Assets for Purposes of the Capital Gains Tax	580
V. The Concept of “Residence,” the Jurisdictional Predicate to Canadian Taxation in Canadian Tax Law	583
VI. Patterns of Death Taxation for Persons Having Contacts with Both the United States and Canada	589
A. U.S. Residents Owning Canadian Property	589
B. U.S. Citizens Resident in Canada	592
C. Canadian Resident Decedents (Non-U.S. Citizens) Owning U.S. Property	592
VII. Enforcement of Cross-Border Tax Liabilities	596
VIII. Dangers in the Use of a U.S.-Style Revocable Inter Vivos Trust	598
IX. Conclusion	599

CHAPTER 17
Advising the Client Who Has Ties with Mexico **601**

Michelle B. Graham and Laura M. Nava

I. Nontax Considerations	601
A. Cultural Differences	601
B. Communication Challenges	601
C. Confidentiality	602
D. Marital Property Regime	603
E. Ownership Versus Title	603
F. Recognition and Use of Trusts	605
G. Mexican Trusts for Mexican Real Property	605
II. Summary of Mexican Tax Issues	607
A. Overview	607
B. The Mexican Tax Legislation	608
C. Tax Treaties	610

III. U.S. Tax Issues and Planning for Clients with Mexican Connections	611
A. Determining the Client's Tax Residence	611
B. Investments in U.S. Situs Assets	612
C. Pre-immigration Planning	613
D. Compliance with the U.S. Foreign Trust Compliance Rules	613
E. Compliance with Transfer Tax Reporting Obligations	614

CHAPTER 18

Navigating the Treacherous Tax North Atlantic: Aspects of Anglo-American Estate Planning Updated **615**

Barry McCutcheon, Richard Cassell, and Dyke Davies. Updated by Richard Cassell and Penelope Williams

I. Introduction	615
II. Background	616
A. Overview	616
B. Estate Taxes	616
III. Specific Planning Considerations	624
A. The Estate Tax Spouse Exemption Mismatch	624
B. The Joint Property Trap	628
C. The U.K. as a Tax Haven for Entrepreneurs	631
D. Making the Most of Exemptions	633
E. Bigger Bites into the Estate: The U.S. Unified Credit and the U.K. Nil Rate Band	635
F. Post-Death Tax Planning	635
G. Loans	636
H. The Amount on Which Estate Tax Is Charged: Who Cares Who Pays the Tax?	636
IV. A Few Words about Trusts	637
A. U.K. Inheritance Tax—A Twin-Track System	637
B. The U.S. Rules—Twin-Track Issues	638
C. Planning Implications: The Deadly Discretionary Grantor Trust	639
D. Revocable Trusts	639
E. Penalties for Nondistributing Offshore Trusts	640
V. Common Investment Funds	641
VI. Charities	641
VII. Temporal Bermuda Triangles	642
VIII. Breaking the Ties That Bind	642

PART VIII

Considerations of Ethics, Transparency, and Asset Protection in a Global World **645**

CHAPTER 19
Ethics in International Estate Planning **647***Christopher M. Reimer*

I. Introduction	647
II. Sources of Rules	649
A. Domestic and Foreign Professional Responsibility and Disciplinary Rules	649
B. Additional Resources	652
III. Competence	652
IV. Unauthorized Practice of Law	653
A. The Risk	653
B. Relevant Rules	655
C. Penalties	659
D. Solutions	661
V. Advertising in Foreign Jurisdictions	672
A. Advertisement of Expertise	672
B. Advertising in Foreign Jurisdictions	673
VI. Avoiding Providing Assistance to Criminal and Fraudulent Activities	674
A. Ethical Restrictions	675
B. The Withdrawal Solution	677
C. Legal Restrictions, the Gatekeeper Initiative, and Voluntary Due Diligence Procedures	678

CHAPTER 20
Asset Protection Trusts **687***Gideon Rothschild*

I. Introduction	687
II. Benefits of Offshore Asset Protection Trusts	688
A. Creditor Protection	688
B. Estate Planning	690
C. Foreign Investment	691
D. Confidentiality	692
E. Avoidance of Forced Heirship	693
III. Jurisdictional Issues	693
A. Common Law Versus Civil Law	693
B. Effect of Retained Interests and Powers	693
C. Effect of Statute of Elizabeth	694
D. Funding the Trust	696
E. Protective Trust Clauses	697
IV. Selective Jurisdictional Review	701
A. The Bahamas	701
B. Bermuda	702

C. Cayman Islands	703
D. Cook Islands	704
E. Gibraltar	705
F. Jersey	706
G. United States	706
V. Legal Challenges to Offshore Asset Protection Trusts	715
VI. Ethical Considerations with Asset Protection Planning	721

CHAPTER 21

The Financial Action Task Force, the Gatekeeper Initiative, and the Risk-Based Approach to Client Due Diligence **723**

Kevin L. Shepherd

I. Introduction	723
II. FATF and the FATF Recommendations	724
A. What Is Money Laundering?	726
B. Background of FATF	727
C. The FATF Recommendations	729
III. Background of Gatekeeper Initiative	731
IV. Risk-Based Approach and Development of Lawyer Guidance	732
V. Risk Categories	734
VI. Development of Good Practices Guidance	736
VII. Application of Good Practices Guidance to CDD	737
VIII. Recent Revisions to the FATF Recommendations May Trigger Revisions to Good Practices Guidance and Lawyer Guidance	743
IX. Conclusion	744

CHAPTER 22

United States Tax: International Compliance Considerations for the Individual Client **745**

Marianne Kayan, Ben S. Wright, Ashley A. Weyenberg, and Caryn Gross

I. Introduction	745
II. Residency	746
A. Terminating U.S. Citizenship and Residency	747
B. Residency Reporting	748
III. Foreign Financial Assets	751
A. FinCen 114	751
B. Form 8938	753
C. Form 8891	755
IV. Income Tax Reporting, Generally	756
A. Withholding Requirements	756
V. Foreign Entity Ownership	760
A. Taxation and Reporting of Passive Foreign Investment Companies	760
B. Taxation of Controlled Foreign Corporations	761

C. Attribution Rules	761
D. Foreign Entity Reporting	762
VI. Taxation and Reporting for Foreign Trusts	768
A. Background	768
B. Classification as a Foreign Grantor Trust	769
C. Classification as a Foreign Nongrantor Trust	770
D. Foreign Trusts Reporting Forms	770
E. Taxation of U.S. Grantor Trusts (Owned by a Non-U.S. Person)	774
VII. Transfer Tax Reporting	774
A. Form 709	774
B. Form 706	775
C. Form 706NA	775
VIII. FATCA Withholding and Reporting Obligations	775
A. Form 8957	777
B. Form 8966	777
C. Forms W-8	777
IX. Offshore Voluntary Disclosure Program	778
A. Streamlined Compliance Procedure for Nonresident U.S. Taxpayers	780
Table of Cases	781
Index	789