

# Introduction

This book was first published in 2000. In the last decade, we have seen extraordinary changes in the international arena. The world has become far more global as our clients work, live, and marry without borders. We have experienced the European Union and its new regulations, more tax treaties have been negotiated, and we now have more transparency than ever. This book is intended to serve as a resource for practitioners having a specific inquiry or for those looking for general guidance on a topic in international planning, tax, succession, compliance, and other issues affecting private clients. Since the book was first published, we have added chapters on FATF and anti-money laundering and offshore compliance and chapters from several foreign jurisdictions to provide comparative insights on different topics.

*A Guide to International Estate Planning: Drafting, Compliance, and Administration Strategies* is comprised of twenty-two chapters organized into eight overarching parts. Part I affords an overview. Robert C. Lawrence, III of Walker, Jones, Lawrence, Duggan & Savage, P.C. and Elisa Shevlin Rizzo of Fiduciary Trust Company International address the conflict of laws issues that are central in determining which country's laws will govern the disposition of a donor or decedent's wealth. In Chapter 2, Henry Christensen, III of McDermott Will & Emery and Toni Ann Kruse explore the basic transfer tax rules for nonresident aliens as well as for citizens and resident aliens.

Building upon this foundation, Part II consists of chapters that address two critical topics regarding testamentary disposition of wealth. First, in Chapter 3, Barbara R. Hauser discusses the perennial, much-debated question of whether multiple wills, typically a domicile and situs wills, should be utilized in international estate planning. While some have argued in favor of this approach, others have argued for a single will, and then only when a nontestamentary substitute, such as a trust, is not appropriate as the ultimate receptacle and management tool for the client's global wealth. Following Barbara Hauser's analysis of the multiple

wills issue, G. Warren Whitaker and Dina Kapur Sanna both of Day Pitney explore the nontax and tax complexities associated with probate and/or administration of a multinational estate.

Part III of the book focuses on the central concerns of marital and familial rights and protections. Chapter 5, which is the second chapter contributed by Robert C. Lawrence, III and Elisa Shevlin Rizzo, dovetails with their earlier discussion of conflicts of law in Chapter 1. Lawrence and Rizzo explain the civil law protections afforded the spouse in terms of community property rights and also the protections afforded other family members, such as children, in terms of forced heirship. In addition to explaining the principles and operation of these protections, Lawrence and Rizzo also analyze the jurisprudence that has developed in the United States as a result of courts being petitioned to enforce these foreign spousal and family protections with respect to U.S. assets. In Chapter 6, Joshua A. Rubenstein of Katten Muchin Rosenman updates Professor Jeffrey A. Schoenblum's chapter and explores in depth the topic. This chapter considers what rights spouses have under different legal systems on a comparative basis and which regime governs when the spouses have had marital domiciles in more than one country or own property situated in more than one jurisdiction. Since marital property regimes seriously curtail the amount of property susceptible to free disposition, the topic cannot be ignored by attorneys representing a married client, a deceased spouse's estate, or the surviving spouse or other family members.

Part IV focuses on important tax issues in detail. First, in Chapter 7, Carlyn S. McCaffrey and Elyse G. Kirschner both of McDermott Will & Emery and Ellen K. Harrison of Pillsbury Winthrop Shaw Pittman deal with the extraordinarily intricate rules of the Internal Revenue Code with respect to foreign trusts, trusts with non-U.S. grantors, and U.S. beneficiaries of such trusts. In Chapter 8, Douglas L. Siegler of Sutherland, Asbill & Brennan analyzes with the same acumen the tax problems associated with the disposition of wealth by a U.S. citizen to a non-citizen spouse. This chapter is nothing short of encyclopedic in the treatment of its subject matter. In Chapter 9, Donald D. Kozusko and Richard A. Fava both of Kozusko Harris Vetter Wareh Duncan LLP proceed to consider the estate planning measures an individual should consider pursuing prior to immigrating to the United States. As the authors demonstrate with their subtle insights, taking the appropriate steps beforehand can yield dramatic benefits down the road. In Chapter 10, Michael G. Pfeifer of Caplin & Drysdale Chartered, offers a thorough analysis of the tax, as well as certain other nontax concerns, confronted when the U.S. citizen or resident emigrates or expatriates.

Part V focuses on U.S. tax treaties. In Chapter 11, Barbara Hauser analyzes the often-neglected, but quite important, estate and gift tax bilateral treaties entered into by the United States. In Chapter 12, William B. Sherman and Summer A. LePree both of Holland & Knight consider the more numerous income tax conventions. They emphasize those provisions of the income tax treaties impacting most

prominently on the individual with multinational investments or family members abroad.

In Part VI, attention turns to trusts and alternative vehicles for the international and offshore client. In Chapter 13, Alec R. Anderson of Conyers Dill and Pearman paints a vivid and incisive portrait of the offshore world and the vehicles and jurisdictions that can be utilized to benefit clients. Following this, in Chapter 14, Anne J. O'Brien and Cara M. Koss both of Arnold and Porter update David Hayton's chapter and deal with the role letters of wishes play in facilitating the carrying out of a settlor's goals, while technically keeping the typically offshore trustee independent of the settlor for various tax and nontax reasons. The authors also explore the evolving legal precedents onshore and offshore with respect to the issues raised by the use of letters of wishes. An increasingly vital aspect of international trusts is developed in Chapter 15. Specifically, Frans Sonneveldt and Mike Vrijomed both of Mazars (the Netherlands), Stefano Guiso Gallisay of Studio Legale Ughi e Nunziante (Italy), Line-Alexa Glotin of UGGC & Associes (France), Sonia Velasco Menal and Carlos Ara Triadu both of Cuatrecasas Abogados SRL (Spain), and Gerd Kostrzewa of Heuking Kuehn Luer Wojtek (Germany) elucidate the current trends in European taxation of trusts. They share the laws of their respective jurisdictions to point out the different approaches being taken as European jurisdictions struggle to define the tax ramifications to settlor, trustee, and beneficiary of trusts with links to civil law countries in which the common law trust historically has not been recognized by the domestic law.

Part VII takes a look at the unique problems associated with estate planning when any one of three countries with many cross-border ties with the United States is involved. In Chapter 16, Mary Ann Bueschkens and Lucindia E. Main both of Heenan Blaikie and Jason P. Trenton of McDermott Will & Emery update the chapter originally written by Wolfe D. Goodman and consider the unique planning problems and different tax systems involved when dealing with a person who has U.S. and Canadian affiliations and/or property. Chapter 17 by Michelle B. Graham and Laura M. Nava both of McKenna Long & Aldridge affords the same consideration to estate planning involving the United States and Mexico. Finally, in Chapter 18, Richard Cassell and Penelope Williams both of Withers, focus on U.S.–United Kingdom estate planning considerations.

Part VIII examines the ever-changing world of transparency and disclosure and their impact on practitioners and clients. Chapter 19 by Christopher M. Reamer of Long Reimer Winegar examines the ethical challenges practitioners face in the international field. In Chapter 20, Gideon Rothschild of Moses & Singer looks at offshore planning opportunities for protecting clients' assets. In Chapter 21, Kevin L. Shepherd of Venable examines the changing world of transparency, due diligence, and heightened scrutiny by lawyers as gatekeepers. Given the vastly changing world of tax transparency, in Chapter 22, Justin Ransome, Marianne Kayan, Ben S. Wright, Ashley Weyenberg, and Caryn Gross all of Ernst & Young

look at the compliance burdens client face when they have anything foreign and how to deal with clients seeking to make a voluntary disclosure to the Internal Revenue Service.

Undoubtedly, as we go to press, tax, regulatory, and other laws will have changed. As practitioners, such changes are our major challenge. Given that our clients and their issues are far more international and multinational, we at least have a place to start in analyzing their complex planning and other issues. I wish to thank all the authors and editors who assisted in this process including Ted Ahlgren, Andrew Stone, and Marianne Kargan to bring the international estate planning world to these pages.

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