FEATURE:
INTERNATIONAL PRACTICE

By **Melvin A. Warshaw** & **Trang Fernandez-Leenknecht**

U.S. Estate Planners and Foreign Property: Part 2

Income tax considerations

Last month, we discussed domestic and international laws and tax rules that may apply to your clients who own foreign property or make foreign investments. Now, we consider the income tax consequences of owning foreign property or making foreign investments.

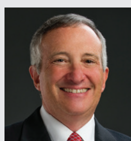
Passive Portfolio Investments

Like the United States, most foreign countries impose withholding taxes on the gross amount of dividends paid to foreign shareholders or interest paid to foreign account holders. Withholding rates often range from 20% to 35%. Most importantly, withholding rates are often reduced and sometimes eliminated altogether when paid to individuals eligible for benefits under a bilateral income tax treaty with the United States. The United States has currently entered into roughly 58 income tax treaties (although none in Latin America or the Middle East nor with either Hong Kong or Singapore).

If U.S. taxpayers are required to pay foreign income taxes, they're generally allowed to claim a credit against their U.S. income tax for income taxes paid to or withheld by a foreign country on the same income.

Some countries don't impose a tax on capital gains realized from the sale of public or privately issued shares by non-resident shareholders. Other countries do impose a tax on capital gains. A few countries impose an exit or departure tax on appreciated assets.[1]

Melvin A. Warshaw is an international tax lawyer and consultant based in Wellesley, Mass., and **Trang Fernandez-Leenknecht** is an attorney at Holistik Wealth Planning in Geneva



Many of the newer model Organisation for Economic Co-operation and Development (OECD) tax treaties entered into by the United States provide that capital gains arising from the sale of real property or all or any part of a permanent establishment may be taxed in the source country. However, all other capital gains under these newer OECD model treaties may only be taxed in the country where the individual realizing the gains is resident.

U.S. Anti-Deferral Tax Regimes

The jurisdiction of the United States to tax foreign corporations is limited, even if the corporation is owned by U.S. persons. Nevertheless, the United States has employed a myriad of tax regimes under which U.S. persons are subject to U.S. tax based on their ownership of stock in a foreign corporation. These U.S. anti-deferral tax regimes include the controlled foreign corporation (CFC) regime of Subpart F and the passive foreign investment company (PFIC) regimes. The most recent addition to this slate of anti-abuse provisions is the global intangible low-taxed income (GILTI) tax, see below, which now brings active business income within the CFC anti-deferral tax regime. Given the breadth of the new GILTI provisions, which exclude only a deemed return on depreciable tangible property, the reality for many U.S. taxpayers is that the U.S. international tax regime is a worldwide full inclusion system.

CFC Anti-Deferral Regime

When a U.S. person owns a controlling interest in a closely held business or investment structure in a foreign country, there are numerous U.S. tax implications to consider. It's beyond the scope of this article to detail the intricate rules applicable to a U.S. controlled foreign corporation (CFC) and its 10% or

more U.S. shareholders.

The 2017 Tax Cuts and Jobs Act (TCJA) eliminated the 30-day rule requirement before a foreign corporation is classified as a CFC so that now ownership of stock in a CFC for just one day in a tax year can result in pass-through of phantom income to its U.S. shareholders. The TCJA also greatly expanded the type of income that could be subject to current U.S. income tax. Previously, only passive investment income and related party income (Subpart F income) of a CFC—but not active business income of a CFC—would be subject to the anti-tax deferral rules. However, the TCJA introduced the new GILTI tax regime, which results in current U.S. income tax for certain U.S. shareholders if a CFC has GILTI that exceeds a nominal return of 10% on its tangible assets. The GILTI tax can result in U.S. shareholders recognizing GILTI for U.S. tax purposes before a foreign tax credit for foreign taxes paid in the foreign country is available. The GILTI tax is especially pernicious for non-corporate taxpayers such as U.S. citizens, Green Card holders, substantial presence taxpayers and U.S. domestic trusts as shareholders of a CFC.

Even if the CFC shows no income, certain U.S. shareholders may be required to file annually a Form 5471 disclosing to the Internal Revenue Service significant shareholder and financial information on the foreign corporation.

PFIC Anti-Deferral Regime

U.S. citizens and residents are strongly disincentivized in how they make investments abroad by another U.S. anti-tax deferral regime known as the PFIC rules. The PFIC rules disincentivize U.S. taxpayers from investing in and owning foreign mutual funds, foreign exchange-traded funds (ETFs), certain foreign traded private equity funds and potentially certain foreign start-ups. U.S. mutual funds are generally restricted by the U.S. Securities and Exchange Commission from being sold outside of the United States due to sponsor covenants in their legal documents. For some years, retail foreign financial institutions ignored these contractual obligations. However, U.S. legislation (for example, the Foreign Account Tax Compliance Act (FATCA)), together with Know Your Client laws in the United States and abroad and the European Union (EU) regulations, such as the Alternative Investment Fund Directive, severely limit the average U.S. taxpayer from investing in these foreign investment vehicles.

If a U.S. citizen or income tax resident were to open a brokerage account abroad and buy registered foreign mutual funds (not regulated by the SEC), such foreign mutual funds would be considered PFICs (even if they are merely a clone of a U.S. mutual fund). The PFIC shareholder would be taxed at the highest individual U.S. tax rate (37%) regardless of income distributions. Unless the fund sponsor furnishes sufficient information to enable a U.S. taxpayer to make a special election in the first year of ownership (which many sponsors are reluctant to do), the disposition of the investment will likely also be subject to ordinary income. Worse yet, each PFIC requires specialized annual U.S. tax reporting on a separate Form 8621 that's estimated by the IRS to take up to 20 hours per fund to complete.[2] Under a form of throwback tax rule, income and gains from PFICs are taxed at the highest ordinary income tax rate and subject to a penalty interest charge.

> In general, use of foreign trusts by U.S. persons is rarely recommended, especially if the U.S. heirs and beneficiaries are also U.S. persons.

Sometimes, an unwary U.S. investor in a foreign start-up without active business income contributes seed money to the foreign start-up, and this results in PFIC tax classification of such entity as to that particular U.S. investor (shareholder) but possibly not later-stage U.S. investors. Under the principle "once a PFIC, always a PFIC," the U.S. investor is unable to shed PFIC classification of such entity in subsequent years when the company is engaged in an active trade or business, with the result that gain on disposition of the PFIC stock is ordinary income.

Foreign Trusts

What are the U.S. tax considerations of foreign trusts settled by U.S. persons? In general, use of foreign trusts by U.S. persons is rarely recommended, especially if the future heirs and beneficiaries are also U.S. persons. U.S. persons interested in establishing foreign trusts often "get the worst of virtually almost all possible worlds."[3]

A foreign trust is any trust that doesn't meet *both* the "court" and the "control" tests. The court test is satisfied if a U.S. court is able to exercise primary supervision over the administration of the trust. A U.S. court won't have primary supervision over the administration of a trust if there's a so-called "flea" or "automatic migration" provision in the trust that provides that a U.S. court's attempt to assert jurisdiction would cause the trust to migrate from the United States.

A major drawback to a U.S. person establishing a foreign trust is the onerous tax reporting obligations imposed by IRC Section 6048.

The control test is satisfied if one or more U.S. persons have the authority to control *all* substantial decisions of the trust. The Treasury regulations include a non-exhaustive list of "substantial decisions."[4]

A trust will be classified as a foreign trust if a non-U.S. person has the power to veto trust decisions.

As a result, most U.S. persons considering establishing a foreign trust to benefit U.S. beneficiaries do so primarily for foreign asset protection reasons. A foreign asset protection trust is typically a grantor trust under Internal Revenue Code Section 677(a) because the grantor and their spouse are usually discretionary beneficiaries of income and principal or under IRC Section 674.

When the grantor and their spouse are discretionary beneficiaries of a foreign asset protection trust with an independent trustee and trust protector, the beneficial enjoyment of income and principal of such trust is subject to a power of disposition, exercisable by a non-adverse party (the independent trustee and/or trust protector) without approval of an adverse party (such as a child or other trust beneficiary with a substantial interest in the trust).

Such trusts are also typically grantor trusts under IRC Section 679, because the trusts have a foreign situs, a U.S. grantor and one or more beneficiaries. As a grantor trust, gain shouldn't be recognized on transfers of appreciated property to the trust under IRC Section 684.

In most foreign asset protection trusts established by a U.S. person, the U.S. person as the grantor generally retains a testamentary power to appoint the trust assets at death, and therefore, gifts to the trust are incomplete for gift and GST tax purposes.[5]

A major drawback to a U.S. person establishing a foreign trust is the onerous tax reporting obligations imposed by IRC Section 6048, which requires a U.S. person to file a Form 3520 in connection with any "reportable event" with respect to a foreign trust.[6]

The penalty for failure to file a timely Form 3520 or the failure to include all required information on such a timely filed return is the greater of $10,000 or 35% of the gross reportable amount.

The "responsible party" is required to file Form 3520. The transferor is the responsible party as to any direct or indirect transfer of property to a foreign trust. The grantor is the responsible party as to the creation of a foreign trust.[7] The U.S. grantor and U.S. beneficiaries receiving a distribution or benefit from a foreign trust must also file certain forms with the IRS.

The bottom line is that except for a foreign asset protection trust established in a debtor-friendly foreign jurisdiction by counsel skilled in such matters, there are often few tax advantages to a U.S. person establishing a foreign trust when compared to the various potential disadvantages as well as the significant and burdensome annual U.S. tax reporting.

Passive Portfolio Investments

Holding foreign portfolio investments in an individual's personal name exposes the property to U.S. estate and potential foreign country inheritance tax and probate in the local country. However, in

certain circumstances, this may be the optimal ownership arrangement.

Passive portfolio investments shouldn't be held in a CFC. Income and gains of CFCs are taxed in the United States at ordinary income rates (which is especially onerous for non-corporate shareholders like individuals and trusts). U.S. shareholders are taxed currently on their pro rata share of the CFC's net income regardless of whether any distributions are made by the CFC. Foreign taxes paid by the CFC are blocked, and therefore, no foreign tax credits are allowed to be passed through to non-corporate shareholders of a CFC.

Perhaps the most common and significant investment mistake made by Americans, especially those living abroad, is to buy a foreign mutual fund (including foreign ETFs or other types of non-U.S.-based funds including any "pooled investments" registered outside the United States, including certain hedge funds, non-U.S. pension plans and foreign insurance products). A bank account might also be a PFIC if it's a money market fund rather than simply a deposit account, because money market accounts are essentially short maturity fixed income mutual funds. The U.S. Tax Code categorizes all these non-U.S. registered mutual funds as PFICs. As noted, PFICs are taxed punitively by the United States, and each separate PFIC must be reported annually on a separate Form 8621. The adoption of FATCA and Form 8938 reporting requires further self-reporting on PFICs and other foreign-held financial assets, mindful that all foreign financial institutions are also required to report directly to the IRS on financial assets held by U.S. citizens and resident aliens.

Q&A on Key Issues

Here are some common questions we get on key issues and the answers.

1. **How does civil versus common law affect how assets should be held?** There are major differences between civil law that's found throughout much of the rest of the world and common law that's found in the United States and in most of the former British territories and the United Kingdom. We know that much of the civil law world generally doesn't recognize the concept of a trust as a legal entity nor the concept of a personal representative who has liability to pay the claims of the decedent's debtors during the period of estate administration. Instead, in civil law countries, assets pass directly from the decedent to the inheritors who must assume the debts of the decedent because they attach to their inheritance. Civil law has marital property laws based on community property principles in which, often by default, half of all marital property belongs to each spouse. In most civil law countries, when a couple has married and resided in that country prior to moving to the United States, the general rules of the United States on community property are often in conflict with the civil law country's community property marital regime, which provides that a marital regime is fixed for all time. Forced heirship rules vary from country to country. Where forced heirship rules apply, an individual can't freely dispose of their assets as they see fit. The entitled heirs (for example, spouse and children) are protected by the applicable forced heirship laws in force. The United States and most common law jurisdictions are unique in imposing a unified gift and estate tax on the transfer of assets from donor to donee or on death time bequests. In much of the rest of the world, there's an inheritance tax imposed on recipients of property (that is, tax is imposed on the inheritors, much like the IRC Section 2801 tax regime). These differences impact how assets should be held in different countries, the succession laws and taxation of property held in a particular country and the reporting obligations.

> Most U.S. advisors who've worked with local counsel in foreign countries often recommend a separate situs will for assets located in each different country.

2. **Should the client have one will to control worldwide property or a separate situs will in each country where foreign property is located?** Most U.S. advisors who've worked with local counsel in foreign countries recommend a separate situs will for assets located in each different country. Due to costs to translate a U.S. will from English into a foreign language, as well as the preference of local counsel to use legal documents that are familiar to local notaries and judges, the use of one will may not be appropriate depending on where the foreign property is located. Instead, separate situs wills may be preferred. Take care to make sure there isn't an inadvertent revocation when using multiple wills. Nevertheless, consider a relatively new option enabling a U.S. citizen owning property in an EU country to make an election under Brussels IV to have the law of the individual's nationality (the United States) apply to such individual's entire property located in that EU nation. However, other legal or practical problems in the EU nation involving retitling and recording of property transfers may cause the individual to choose a separate situs will in that jurisdiction.

> By having the succession laws of the United States apply, the U.S. citizen eliminates forced heirship rights of their children under Italian law.

3. **Should the client own foreign property outright or through an entity?** Often, it makes sense to own foreign property through an entity, especially intangibles. There are, however, occasions when outright individual ownership may be preferable in balancing the inheritance tax and succession laws of the foreign jurisdiction. In particular, corporate-owned real estate may be considered an immovable property in one jurisdiction (based on the location of the property in the jurisdiction) but may be considered movable property in another jurisdiction (based on the residence of shareholders in that other country). Remember, however, near the Mexican seashore, it may not be possible for foreigners to own real estate in their own names. In Switzerland, it's possible for non-Swiss residents to buy real estate either in their own name or through an entity; however, the local laws set strict rules on foreign ownership based on the type of real property and the size. Some areas in Switzerland have restrictions limiting the number of second (non-primary) residences to 20%. In India, a non-resident isn't permitted to buy agricultural land, plantation land or a farm house, although they can inherit such property. Moreover, Reserve Bank of India permission isn't required for a non-resident to buy residential or commercial property in India.

   Obtaining competent local counsel and advice is a necessity.

4. **Should the client own foreign property through a transparent U.S. entity, such as a U.S. limited liability company (LLC)?** It's often preferable and simpler for U.S. estate-planning purposes if an individual can set up a single member U.S. LLC that's a disregarded entity for U.S. tax purposes through which to own foreign assets. However, before undertaking this strategy, the U.S. lawyer must ensure that the U.S. LLC will be treated as a transparent entity and not as an opaque taxable corporation in the foreign jurisdiction and must review any applicable tax treaty with counsel in the other jurisdiction. For example, a U.S. LLC will generally be treated and taxed as a foreign corporation in Canada and the United Kingdom and should only be considered for use in any foreign country after careful consultation with a local counsel in such foreign jurisdiction. Moreover, will the transfer of appreciated property located in a foreign jurisdiction trigger a foreign tax if the property is transferred to a U.S. LLC?

5. **How should a U.S. citizen own real property located in an EU country (for example, Italy) subject to Brussels IV?** Under the default U.S. law of succession, if two U.S. citizens, married to

each other and residing in California with their minor children decide to buy a residence in, say, Italy, then Italian law would govern succession because U.S. default succession law provides that the succession laws of the jurisdiction where the real estate is located governs. However, this would result in the forced heirship rules in Italy applying, and the inheritance rights of the children under Italian law would prevent an unlimited marital deduction for U.S. estate tax purposes. (U.S. citizens are taxed on worldwide assets.)

If the U.S. citizen purchasing the property made an election under Brussels IV, then they could elect to have the laws of their nationality (United States) apply to govern the succession laws applicable to the Italian residence. By having the succession laws of the United States apply, the U.S. citizen eliminates forced heirship rights of their children under Italian law. Equally as important, the entire property interest in the Italian residence can then pass to the surviving U.S. citizen spouse and should be eligible for the unlimited U.S. estate tax marital deduction.

Regardless of the applicable succession laws chosen by the U.S. couple, they must also plan for potential Italian inheritance tax on the residence located in Italy. In Italy, the inheritance tax is calculated only on assets located in Italy if the deceased individual, regardless of citizenship, isn't a tax resident of Italy at the time of death. Compared with other European countries, the Italian inheritance tax is relatively low and ranges from 4% to 8% above a deductible threshold of EUR$1 million per immediate heir (for example, spouse and children). On the first spouse's death, if there's some Italian inheritance tax due, it likely wouldn't be creditable in the United States because there's unlikely to be any U.S. estate tax due on the first spouse's death. The U.S.–Italy Estate Tax Treaty is an older "situs" treaty that gives the country of situs of property primary taxing jurisdiction.

6. **How should a U.S. citizen structure their investment in a German GmbH, a legal entity with limited liability?** If a U.S. citizen investor wishes to make a 50% investment in a German GmbH (not engaged in the real estate business), it may be preferable that the U.S. citizen investor form a U.S. LLC with at least two members (default treatment as a U.S. partnership) through which to make the investment. This partnership arrangement may eliminate the German inheritance tax imposed on non-residents who own at least 10% or more of a German company.

The U.S. CFC rules wouldn't apply because the investment by U.S. persons is "not more than" 50% in the German GmbH.

> U.K. real property acquired by a U.S. citizen often should be owned in the individual's personal name and not in the name of a trust or an offshore company.

While Germany applies the old (by U.S. standards) four classification factors rules for determining whether an unincorporated entity is a partnership, German counsel may be able to review the LLC operating agreement and articles of organization to confirm the view that most likely Germany would treat a multi-member U.S. LLC as a partnership for German tax purposes. This means that after payment of any German dividend withholding tax (reduced to 5% under the current U.S.–German tax treaty for shareholders who own at least 10% of the company), the remaining net dividend amount would pass through to the U.S. LLC members. On sale of the GmbH stock by the U.S. LLC, there should only be capital gains tax under the U.S.–German income tax treaty in the United States because that's the residency of the seller (that is, the LLC).

If a U.S. citizen owns more than 10% of a German company in their individual name, there's German inheritance tax on such property. Instead, if a multi-member U.S. LLC established by the U.S. citizen qualifies under the German Revenue

Decree as a partnership branch and is the owner of the 50% position in the German GmbH,[8] then Germany presumably would allow a U.S. tax credit against the German inheritance taxes should an individual member of the U.S. LLC die while owning such interest in the GmbH.[9]

7. **What happens when a U.S. citizen dies owning real estate in France, an EU member state?** A U.S. citizen married with two small children who wants to buy a French residence in Provence can choose under Brussels IV to apply the default U.S. succession law. Under default U.S. law, the jurisdiction of the situs of real property would be the default succession law, which would require applying French succession law. This may be a problem for U.S. estate tax purposes because under French forced heirship rules, the two children together would inherit a two-thirds interest in the residence, which would prevent an unlimited marital deduction from applying to the transfer of the property on the death of the U.S. citizen owner.

A non-resident company is no longer able to exclude U.K. residential property.

The U.S. citizen can now make an election under Brussels IV to have U.S. succession law apply to the Provence property, which would enable the entire property to pass to the surviving U.S. citizen spouse without forced heirship rights in the children. The transfer of the entire property to the surviving U.S. citizen spouse should be eligible for the unlimited federal estate tax marital deduction. If the surviving spouse isn't a U.S. citizen, it's unclear whether French law would recognize a qualified domestic trust and its attendant filing responsibilities under French law. Under French law, there's no inheritance tax on a spouse who receives property from a predeceased spouse.

Today, if possible, most advisors recommend against leaving property in France in trust. In fact, most advisors recommend that an individual not create a trust naming a French beneficiary, because there will be annual registration requirements to identify the interested parties to the trust in a French public registry. As one highly regarded U.S. lawyer summarized recently: "Don't create a trust if there will be a French settlor, beneficiary or assets (except French listed securities); it has never been a good idea to hold anything French in trust … including investments; terminate existing trusts with a French settlor" otherwise "[t]ake French advice and prepare for significant and frequent French reporting, possible negative tax consequences and possible disclosure in a public Register."[10]

8. **How should a U.S. citizen acquire real property in the United Kingdom?** The past 15 years have seen numerous negative changes to the taxation of trusts in the United Kingdom.[11]

As a result, U.K. real property acquired by a U.S. citizen often should be owned in the individual's personal name and not in the name of a trust or an offshore company.

The residence status of trustees is crucial for determining the application of U.K. income and capital gains tax of a trust. Take care to avoid the unintentional migration of a non-U.K. resident trust to the United Kingdom through any change, albeit temporary or inadvertent, in the trustees' residence. For example, if one or more of the current trustees of a U.S. revocable living trust moves from the United States and becomes a U.K. resident, there will likely be serious adverse U.K. tax consequences. A U.K. tax resident who's a trustee of a trust pays income tax and capital gains tax at the higher trust rate, which is currently 45% for income (other than dividends at 38.1%) and 28% for capital gains on disposals of residential property and 20% on all other kinds of gain.[12]

The current U.S.–U.K. income tax treaty provides that capital gains arising from the sale of real property or from the sale of all or any part of a permanent establishment may be taxed in the source country. Otherwise, capital gains may only be taxed by the country where the individual realizing the gains is resident.

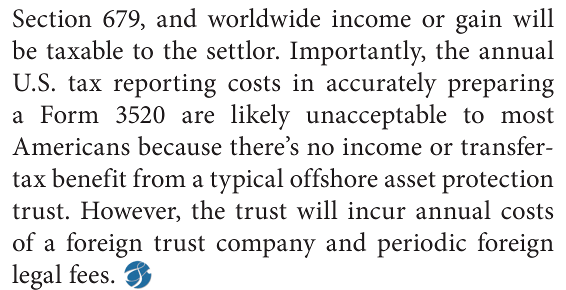
In 2006, the United Kingdom broadened its

inheritance tax base and now a "relevant property trust" includes all new lifetime trusts that hold U.K. situs assets (not excluding disabled person's trusts, other special trusts or charitable or employee trusts). Until April 6, 2017, it was possible to avoid U.K. inheritance tax on U.K. situs property by holding the property through a non-resident company. A non-resident company is no longer able to exclude U.K. residential property. Even the use of a revocable trust to own U.K. real property will generally cause the trust to become subject to the very unfavorable "relevant property regime" under the U.K. inheritance tax. It will often be preferable for a non-U.K. domiciled individual to own U.K. situs property in their own name.[13]

Subject to limited exceptions, under the "relevant property regime," gift transfers into trust will be chargeable transfers, subject to inheritance tax at lifetime rates (currently 20% when assets are gifted into trust during the settlor's lifetime and 40% at death) and to the appropriate exit and decennial charges. There will also be a charge, currently up to 6%, on the value of the trust assets every 10 years following settlement, and a proportionate exit charge (currently up to 5.85%) will be levied when assets leave the trust or cease to be relevant property.[14] Accordingly, the use of most types of trusts and offshore companies to own U.K. situs residential property is now problematic.

As a result of these tax law changes in the United Kingdom over the last 15 years, it will often be preferable today for a U.S. citizen to own the real property in the United Kingdom directly in their own name and have a separate will for the U.K. property. U.S. citizens are also advised to avoid using a U.S. LLC to own U.K. real estate. While single member U.S. LLCs are disregarded (transparent) entities in the United States, the U.K. tax authorities may view them as opaque entities.

9. Should a U.S. citizen consider a foreign trust? Except for bona fide asset protection trusts established in a foreign jurisdiction such as the Cook Islands or Nevis by a U.S. person with U.S. beneficiaries, most U.S. citizens will rarely be interested in establishing a foreign trust. The trust will invariably be treated as a grantor trust under Section 679, and worldwide income or gain will be taxable to the settlor. Importantly, the annual U.S. tax reporting costs in accurately preparing a Form 3520 are likely unacceptable to most Americans because there's no income or transfer-tax benefit from a typical offshore asset protection trust. However, the trust will incur annual costs of a foreign trust company and periodic foreign legal fees.



Endnotes

1. The United States has an exit tax that's imposed on worldwide appreciated assets owned by certain taxpayers (covered expatriates), including citizens who renounce their U.S. citizenship and long-term Green Card holders who abandon or relinquish involuntarily their Green Cards. There's also a U.S. inheritance tax imposed on U.S. heirs who receive gifts or bequests from a covered expatriate. Canada imposes a "departure" tax on those who cease to be tax resident in Canada.
2. *See* the last page of the current instructions to Form 8621, in which the Internal Revenue Service states that preparing and sending a Form 8621 to the IRS is estimated at 20.5 hours.
3. Michael Galligan, "Foreign Trusts and U.S. Estate Planning," *International Law Practicum* and *Journal of Asset Protection* (1999).
4. Treasury Regulations Section 301.7701-7(d)(1)(iii).
5. Treas. Regs. Section 25.2511-2(c); Private Letter Ruling 9332006 (Aug. 20, 1992). *See also* Michael A. Heimos, "U.S. Taxation of Foreign Estates, Trusts and Beneficiaries," 854 T.M., at Section X(D)(4)(a) and (b).
6. IRC Section 6677(a).
7. IRC Sections 6677(b)(1), 6048(a)(4).
8. BMF IV B 4-S1301 USA-22/04 of 19th of March 2004, BStBl. 2004, I, 411.
9. According to the German Revenue Decree, indirect transfers don't qualify as "property" subject to German inheritance tax unless the foreign enterprise is a fiduciary for the domestic property or the interposition of the foreign corporation is an abuse of legal structuring pursuant to Section 42 German Fiscal Code. *See* Henry Christensen III, *International Estate Planning, Second Edition*, Chapter 18, Germany, Section 18.08(2), "German International Estate Tax Law—Limited Estate Tax Liability."
10. G. Warren Whittaker, "French Treatment of Foreign Trusts," presentation at the 2017 Delaware Trust Conference (Oct. 24, 2017); *see also* G. Warren Whittaker, Jean-Philippe Mabru and Matthew J. Woodbury, "French Tax Laws Affecting U.S. Citizens and Trusts" (May 2018).
11. Christensen, *supra* note 9, Chapter 16, England and Wales, Section 16.12, "Taxation of Trusts."
12. *Ibid.*
13. *Ibid.,* Section 16.08, "Inheritance Taxes."
14. *Ibid.,* Section 16.08[9], England and Wales, "Inheritance Tax Planning for Non-U.K. Domiciled Individuals."