

Offshore, Legitimately

Despite negative publicity, “offshore” is still a good way to go for asset protection and life insurance

Offshore planning has gotten a lot of bad press lately.¹

It’s getting slammed in the U.S. Senate. This August, a Senate subcommittee held a week-long hearing on its report, “Tax Haven Abuses: The Enablers, the Tools and Secrecy”² that purported to “open that black box and expose how offshore and U.S. financial professionals are helping U.S. citizens conceal and secretly utilize offshore assets, while undermining, circumventing, or violating U.S. tax, securities, and anti-money laundering laws.”

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The Internal Revenue Service is “investigating” promoters of offshore tax planning, leading to substantial civil penalties against some promoters and injunctions against certain offshore tax-planning techniques and devices.³ In other cases, promoters are being indicted.

This leads to the obvious question: “Is offshore planning viable for law-abiding Americans?”

The answer is a resounding “Yes.” But this is true only if advisors and their clients take to heart two critical lessons: First, almost all offshore planning and structuring is tax-neutral—meaning it offers no U.S. tax benefits. And second, the most important aspects of offshore planning are tax compliance and tax reporting requirements.⁴

But if it’s not to dodge U.S. taxes, what is “offshore” good for? There

are a variety of legitimate uses, chief among them: asset protection and life insurance. Other viable offshore uses include helping to plan estates; accessing worldwide investments under Regulation S of the 1933 Securities Act;⁵ diversifying investments (not only among types of investments, but also among offshore banks and offshore asset managers); taking advantage of expertise in currency trading;⁶ using captive insurance carriers to issue liability insurance policies; and planning for income taxes from operations of a trade or business outside the United States. For now, though, let's focus on the top two uses for "offshore."

TRUSTS, IBCS, LLCs

For asset protection, clients can "go offshore" by creating offshore asset protection trusts (OAPTs), international business companies (IBCs), limited liability companies (LLCs) or by buying life insurance offshore. Instead of OAPTs, advisors sometimes recommend creating civil law foundations, particularly in Panama and Liechtenstein.⁷ (In this instance, a foundation is a legal entity that acts like a trust but operates like a corporation and must be classified for tax purposes as either a foreign trust or a foreign corporation, based on how the foundation documents are drafted.)

OAPTs have been vulnerable to creditors. U.S. courts have found settlors to be in "control" of the offshore trustees of OAPTs and therefore have ordered repatriation of OAPT assets. In the late 1990s, settlors were even incarcerated for failing to comply with these court orders.⁸ A new issue to deal with is the recent amendments to the federal bankruptcy law,⁹ where a trustee in bankruptcy may avoid (that is to say, include the trust assets in the debtor's estate) the transfer by a settlor/debtor of assets moved into an OAPT on or within 10 years of the date of the filing for bankruptcy. (See "Bankruptcy Law Makes OAPTs Scariest," p. 44.)

To avoid legal classification of an OAPT as a principal-agency relationship or as an alter ego of the settlor, an OAPT must operate as a "relationship." An irrevocable OAPT must be properly formed and operated as a relationship between the settlor (creator of the trust), the trustee (legal owner of the trust assets) and the beneficiaries. The trustee holds the assets in trust

in a fiduciary capacity for the beneficial owners. A settlor who fails to treat the trustee of an OAPT as the legal owner is tampering with that basic relationship.

Cases involving OAPTs provide lessons of the "do's and don'ts" for drafting, structuring and operating these trusts to avoid settlor control and therefore asset vulnerability to creditors.

(1) An independent person or institution located outside the United States should serve as the trust protector. The protector's powers generally include the right to remove and appoint a successor trustee. The settlor,¹⁰ or any other person who can be perceived as acting as the settlor's agent, should not serve as the protector. Because a protector generally acts in a fiduciary capacity,¹¹ it should be independent and outside the jurisdiction of the U.S. courts. A new theory of how to attack the resignation of a protector arose in one case in which the trustee in bankruptcy sought an equitable remedy to restore the settlor as protector who had resigned, based on the position that the resignation was a fraudulent conveyance involving the intangible right of the fiduciary position of a protector.¹² It's expected that the U.S. courts won't deal favorably with a U.S. protector who resigns or is removed upon a threat of litigation against the settlor.

(2) OAPTs shouldn't be domesticated for U.S. tax purposes.¹³ That's because a U.S. court is given primary supervision over the trust administration and the U.S. co-trustee has authority to control all substantial decisions of the OAPT.¹⁴ A U.S. court will take a dim view if, when a settlor or beneficiary is threatened with litigation, a U.S. co-trustee resigns and the U.S. court is stripped of its supervision.¹⁵

(3) OAPTs can't be used to avoid known creditors. Assets shouldn't be transferred to an OAPT when a settlor (a) has knowledge of liability;¹⁶ (b) creates and funds an OAPT during litigation;¹⁷ (c) creates and funds an OAPT after judgment;¹⁸ (d) creates an OAPT after defaulting on a loan;¹⁹ or (e) creates an OAPT after knowledge of a government investigation.²⁰

(4) Settlor, beneficiaries and their dependents cannot control the OAPT trustee. Trusts must be drafted to exclude any powers of control over the trustee by the settlor, beneficiary or others

The top two reasons to "go offshore" are to create asset protection and to buy insurance.

BANKRUPTCY LAW MAKES OAPTS SCARIER

Before clients create offshore asset protection trusts (OAPTs) these days, I tell them that things could get sticky should they file for bankruptcy.

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, a bankruptcy trustee may “avoid”¹ a debtor’s transfer to a “self-settled trust” (which most offshore trusts are) or “similar device” that was made on or within 10 years of the date of the debtor’s filing of a petition for bankruptcy.² In order for a bankruptcy trustee to treat the transfer as if it never occurred, this transfer must have been made with actual intent to hinder, delay or defraud present or future creditors. The bankruptcy act applies not only to creditors existing at the time of the transfer of assets to the trustee of the OAPT, but also to future creditors.

A bankruptcy trustee has 10 years to find an event or transaction that demonstrates the settlor’s intent to hinder, delay or defraud creditors. For example, if a settlor loaned money from an OAPT to a friend, relative or other party at a rate that was less than fair market value or the loan wasn’t repaid, these actions could indicate to the bankruptcy court that the settlor intended to hinder, delay or defraud other creditors by removing the assets in the OAPT from the bankruptcy estate. A judge might issue a turn-over order to the settlor demanding repatriation of the OAPT assets—either for the entire OAPT assets or for the equivalent of the loan amount.

But here’s the rub: The settlor of an offshore trust won’t be able to repatriate the assets in his offshore trust. Worse: the offshore trustee, as legal owner of the OAPT, is in control of the trust assets and actually required to ignore orders of foreign courts. The OAPT trustee will refuse to comply with a bankruptcy court’s demand to send the trust assets back to the states. The settlor could get caught between the two forces: a recalcitrant OAPT trustee and a determined judge. Because the OAPT assets aren’t repatriated, the settlor will be in violation of a turn-over order. And don’t be surprised if the judge incarcerates the settlor for contempt of court.

This is pretty much what happened in the case of Stephan Jay Lawrence.³ Chief Judge A. J. Cristol of the bankruptcy court in the Southern District of Florida doesn’t believe that Lawrence gave up control of his offshore trust assets. Thus, the judge finds Lawrence’s OAPT assets are a part of his bankruptcy estate, and Cristol refuses to discharge Lawrence in bankruptcy. As of Oct. 8, Lawrence had been in jail in Miami for six years—and counting.

The *Lawrence* case keeps getting uglier. In early October, Cristol found that one of Lawrence’s attorneys could be deposed under the crime-fraud exception to the attorney-client privilege. Under this exception, a lawyer can be forced to reveal information the client shared with him in his capacity as legal counsel because the lawyer’s services were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud.

That’s pretty tough stuff for an attorney, but it gets worse: A lawyer may be found to have committed malpractice if he filed a petition in bankruptcy for a settlor and knowingly failed to reveal all of the client’s assets—including any assets the client controlled. So the lawyer is forced to squeal on a client who is hiding something.

The moral of this story? A settlor of an OAPT who goes into bankruptcy within 10 years can expect the bankruptcy trustee to look in every nook and cranny to find facts showing that the settlor intended to hinder, delay and defraud creditors. And his lawyer may be called in to tell tales.

Be warned.

Endnotes

1. That is to say, treat it as if the transfer did not occur and the assets are available to the bankruptcy estate.
2. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 11 U.S.C., Section 548(e).
3. *In re Stephan J. Lawrence*, 251 B.R. 630 (S.D.Fla. Bkrpt. 2000).

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who aren’t independent of the settlor. For example, a U.S. court ordered a settlor to repatriate OAPT assets because the settlor reserved the right in the trust instrument, with such right given to the settlor’s spouse at settlor’s death, to discharge a trustee and appoint a successor trustee anywhere in the world.²¹ In one much-discussed case,²² Stephan Jay Lawrence amended his trust to add a

spendthrift clause and changed its situs from Jersey to the Republic of Mauritius. He also amended the trust to prohibit his powers from being executed under duress or coercion and to provide that his life interest terminated in the event of his bankruptcy. Lawrence also retained the right to remove and appoint a successor trustee at his discretion. A court stated this last power was not affected

by the amendment making Lawrence an excluded person.²³

(5) It’s recommended that a flight-or-flee clause not be included in the language of an OAPT.²⁴ A flight-or-flee clause allows the trustee or the protector to change the governing law of the trust from one offshore jurisdiction to another offshore jurisdiction in the event a lawsuit is threatened to be filed in the first jurisdiction. Instead of this clause, the protector should be given the power to change the governing law of the trust without specifying reasons.

It’s sometimes better to create an offshore IBC or LLC because they are less expensive to form and operate with no trustee and protector fees, and the owners maintain control of the entities. Most IBC statutes²⁵ and some offshore LLC statutes provide limited liability protection to owner(s).²⁶ But when picking jurisdictions, be sure that the offshore LLC statute provides that the charging order is the sole and exclusive remedy²⁷ available to a creditor. The statute must provide that a terminating (withdrawing) member or assignee receives no portion of the capital account until the LLC is terminated.²⁸

The use of an offshore IBC or LLC by an American will result in tax problems if not handled properly. Entities created by offshore IBC and LLC statutes that provide limited liability protection are classified as foreign corporations for U.S. tax purposes.²⁹ Such entities are further classified as controlled foreign corporations (CFCs),³⁰ and the earnings on the investments are classified as subpart F income.³¹ A Form 5471 must be filed with respect to a CFC’s operations. A Form 926 is generally required to be filed with respect to the transfer of assets to an IBC. Subpart F income is taxed as ordinary income with no capital gains rates available; losses on investments can’t be taken until the CFC is liquidated, and investments in the United States are subject to 30 percent withholding on income. The CFC status and subpart F income disadvantages are avoided by filing a Form 8832 for the IBC,³² and

an offshore LLC by checking the box to treat the foreign entity as a disregarded entity for one owner or a foreign partnership for two or more owners.³³

OFFSHORE INSURANCE

Why go offshore to buy life insurance? Clients just might get a better deal. Offshore carriers generally have lower overhead costs because they are located in no-tax jurisdictions and aren't subject to subchapter L of the Internal Revenue Code; they pay referral fees instead of higher commissions; and they have lower internal operational costs. Other advantages include offshore policies' access to the world's leading investment managers and individually customized investment vehicles. Also, investments can be made or held in various currencies. And, of course, the policyowner receives favorable asset protection that is independent of the law of the state where the insured resides.

Many offshore variable life insurance policies also offer asset protection benefits that aren't available for variable life insurance policies issued by U.S. carriers.³⁴ The law of the insured's state of residence determines the extent to which life insurance is exempt from the claims of creditors.³⁵ Also, a state may have a rule that mere proof that a particular claim or debt existed at the time of the premium payment is presumptive evidence of the intent to defraud.³⁶ Favorable offshore insurance legislation provides that separate, segregated accounts that hold the investments of a variable life insurance policy are available solely to satisfy the insurance carrier's obligations to the policyowner and aren't subject to the claims of creditors of the insurance carrier if it becomes insolvent.³⁷ Such legislation also provides that the segregated accounts aren't subject to the claims of creditors against the policyowner or insured, so long as they are not the result of fraudulent transfers. Jurisdictions with legislation that protect segregated accounts from claims of creditors and insolvency of the carrier

include Bermuda, the Cayman Islands, Barbados, The Bahamas, Singapore and Nevis.

An insurance carrier can form a "cell" company³⁸ in some jurisdictions (such as the Cayman Islands) that allows the creation of separate protected cells within one company, avoiding the necessity to form separate subsidiary companies in order to separate liabilities. Cell companies are recognized in the United States because the LLC statutes of Delaware, Iowa and Oklahoma provide for the creation of separate, protected cells (series) within one limited liability "container" (the series LLC) so as to avoid the requirement of creating separate subsidiary entities.³⁹ An offshore carrier can create a separate cell to hold each separate policy.⁴⁰ For example, the Cayman Islands authorize a segregated portfolio (cell) to hold a single policy and separate the assets and liabilities of that policy from the assets and liabilities of other segregated portfolios.⁴¹ Cayman law also allows segregated accounts to be created to hold the investments for a variable life policy.⁴²

U.S. COMPLIANT

An offshore carrier must issue U.S. compliant variable life insurance policies⁴³ with respect to insureds that are U.S. taxpayers. A U.S. compliant policy is one in which:

- The life insurance contract⁴⁴ meets one of two other requirements: (1) the cash value accumulation test must be met under IRC Section 7702(b), or (2) the guideline premium test of Section 7702(c) and the cash value corridor test of Section 7702(d) must be met. Most offshore life insurance policies meet the second test.

- The policy is classified as a variable contract that, as IRC Section 817(d)(1) puts it, "provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company."⁴⁵

- Investments are diversified under

IRC Section 817(h)(1). Diversification means that at the end of the first policy year and on the last day of each quarter of each calendar year thereafter, no more than 55 percent of the value of a segregated account may be placed in any one investment; no more than 70 percent of the value of a segregated account can be placed in any two investments; no more than 80 percent of the value of a segregated account can be placed in any three investments; and no more than 90 percent of the value of a segregated account can be placed in any four investments.⁴⁶

- Policy assets are managed by the offshore carrier and the policyowner doesn't violate the "investor" control rules thereby causing the insured, for tax purposes, to be treated as the owner of the segregated accounts if the policyowner controls the management of the policy assets.⁴⁷ If the policyowner can select and control one or more investments in a segregated account, the investor control rule is violated and the otherwise tax-free earnings of the policy investments will be taxable to the policyowner or the insured.

If the policy is acquired by an offshore trustee of an offshore trust⁴⁸ or offshore limited partnership, the U.S. insured avoids the state premium tax and pays a lower 1 percent excise tax.⁴⁹ An excise tax of 1 percent is due on each premium payment made to an offshore life insurance carrier⁵⁰ for a life insurance policy insuring a citizen or resident of the United States as the insured,⁵¹ absent a tax treaty.⁵²

A TD F 90-22.1 (Report of Foreign Bank and Financial Accounts) may have to be filed by the insured for having a financial interest in a foreign financial account in a foreign country exceeding \$10,000 in the aggregate at any time during the calendar year.

CHALLENGING THE IRS

OAPTs, offshore entities and life insurance provide asset protection and other benefits for U.S. citizens who want to transfer assets outside of the states.

But the most anyone should expect from OAPTs and offshore entities is tax-neutral planning. Offshore life insurance provides potential lower premium costs with specific advantages under the IRC, including no tax on the policy earnings, a right to borrow from some policies, and insurance proceeds may be excluded from the gross estate for federal estate purposes.

Offshore tax planning also brings Circular 230 to tax practitioners' front door, because written statements about tax planning may be subject to specific requirements for a tax opinion. Audits of offshore tax planning transactions result in the IRS requesting massive amounts of information. Such civil investigations can result in substantial promoter penalties and sometimes injunctions against specific planning techniques. ■

Endnotes

1. The U.S. Senate permanent subcommittee on investigations report at http://hsgac.senate.gov/_files/TaxHvnAbRPT.pdf; alleged that Sam and Charles Wyly improperly used offshore asset protection trusts, IBCs and offshore life insurance to personally benefit themselves and their families. The *Wall Street Journal* recently focused on the allegations that the Wyly brothers used assets from offshore structures to privately benefit themselves and their families. See Glenn R. Simpson, "How Tax Shelters Brought Trouble To Billionaire Clan," *Wall Street Journal*, July 31, 2006, at p. A1. See also Tom Herman and Rachel Emma Silverman, "IRS to Increase Audits Next Year," *Wall Street Journal*, Nov. 23, 2005, at p. D1; Jane Novack, "The IRS Wants You to Fess Up," *Forbes*, April 14, 2003; David Stout, "Telecom Executive Accused of Evading \$210 Million in Taxes," *The New York Times*, Feb. 28, 2005; John D. McKinnon, "IRS Warns Against Tax Dodge Involving Insurance Companies," *Wall Street Journal*, May 12, 2003; Leroy Baker, "USA-Former Senior State Judge Charged With Offshore Tax Evasion," *Tax-News.com*, April 20, 2006; Robert Guy Matthews, "Tax-Haven Abuses Examined," *Wall Street Journal*, July 26, at p. D2.
2. The report by the U.S. Senate permanent subcommittee on investigations, "Tax Haven Abuses: The Enablers, the Tools and Secrecy," can be found at http://hsgac.senate.gov/_files/TaxHvnAbRPT.pdf.
3. The Internal Revenue Service obtained information regarding unreported offshore accounts discharging debit and credit cards issued by offshore banks from the John Doe Summonses cases filed in Miami and San Francisco in 2000 and 2002, respectively. In January 1993, the IRS implemented the Offshore Voluntary Compliance Initiative to obtain names of promoters, bankers and banks holding unreported accounts and other information. On April 10, 2003, the Financial Crimes Enforcement Network delegated its enforcement authority for offshore bank and financial account reporting to the Criminal Investigation Division of the IRS. News Release (IR-2003-48) IRS. The notice relates to filing of the TD F 90-22.1, the Foreign Bank and Financial Account Report. The IRS is currently conducting civil investigations of targeted promoters of certain offshore tax planning under Internal Revenue Code Sections 6700 and 6701.
4. Targeted promoters are generally engaged in activities listed by the IRS in its "Dirty Dozen." See www.irs.gov/newsroom/article/0,,id=136337,00.html. See "Offshore Transactions," "Abusive Insurance Arrangements," "Offshore Deferred Compensation Arrangements," "Shifting of Income Using Offshore Private Annuities," "Repatriation of Offshore Funds Using Credits Cards," IRS Abusive Offshore Tax Avoidance Schemes-Facts (Section IV) at www.irs.gov/businesses/small/article/0,,id=106559,00.html.
5. See J. Richard Duke, "Offshore Trusts: Crossing the 'T's,'" *Trusts & Estates*, November 2005, at p. 49.
6. See www.law.uc.edu/CCL/33ActRls/.
7. Ten shares of stock of Microsoft held in U.S. dollars does not have the same value as 10 shares of Microsoft stock held in other currencies.
8. See *FTC v. Affordable Media, LLC*, 1998 U.S. Dist. LEXIS 22843 (D. Nev. May 22, 1998), *aff'd*, 179 F.3d 1228, 1233 (9th Cir. 1999); see also *In re Stephan Jay Lawrence*, 251 B.R. 630, LEXIS 14790 (S.D. Fla. Bkrpt. 2000), *vacated and remanded*, 244 B.R. 868, 2000 U.S. Dist. LEXIS 1616 (S.D. Fla. 2000), *aff'd by sub nom.*, *Lawrence v. Goldberg*, 279 F.3d 1294 (11th Cir. 2002). As of Oct. 7, Lawrence has been incarcerated for six years.
9. 11 U.S.C. Section 548(e).
10. See *FTC v. Affordable Media, LLC*, 1998 U.S. Dist. LEXIS 22843 (D. Nev. May 22, 1998), *aff'd*, 179 F.3d at 1228 (9th Cir. 1999). The court said that the Andersons, as trust protectors, could remove the foreign trustee and appoint a friendly trustee to repatriate the trust assets under the court's order.
11. See Alexander A. Bove, "Trust Protectors," *Trusts & Estates*, November 2005, at p. 28; Alexander A. Bove, "The Trust Protector: Trust(y) Watch Dog Our Expensive Exotic Pet?" 30 *Est. Plan.*, August 2003, at p. 390.
12. *Walker v. Weese et al.*, 286 B.R. 294 (Bankr. D. Md. 2002). According to newspaper articles, the Weese case was settled for about \$13 million with payment coming from the 1994 Louise B. Grass Trust, a domestic trust. Tom Dochat, "Grass kin strive to settle bankruptcy case: Family trust issues complicate bankruptcy case settlement," *The Patriot-News*, Feb. 14, 2003; Lorraine Mirabella, "3 Bibelot creditors, Weeses settle: \$13 million deal with banks appears to be final chapter in rise, fall of book chain," *The Baltimore Sun*, March 1, 2003.
13. See *supra* note 5, at pp. 53-54.
14. A trust is treated as a domestic trust for U.S. tax purposes if: (1) a court within the United States can exercise primary supervision over the administration of the trust; and (2) one or more U.S. persons have the authority to control all substantial decisions of the trust (referred to as the "court test" and the "control test," respectively). If either of the foregoing conditions isn't satisfied, the trust is treated as an offshore trust for U.S. income tax purposes. IRC Section 7701(a)(1). The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation. IRC Section 7701(a)(3)(B).
15. If the OAPT includes a provision that causes the trust to migrate from the U.S. to an offshore jurisdiction in the event a U.S. court attempts to assert jurisdiction, or to otherwise exercise primary supervision over the administration of the trust, directly or indirectly, the OAPT isn't domesticated for U.S. income tax purposes. Thus, an automatic migration provision can't be included in the trust deed if domestication of an offshore trust is desired. Treasury Regulations Section 301.7701-7(c)(4)(ii) 16. *In re Stephan Jay Lawrence*, 251 B.R. 630, LEXIS 14790 (S.D. Fla. Bkrpt. 2000), *vacated and remanded*, 244 B.R. 868, 2000 U.S. Dist. LEXIS 1616 (S.D. Fla. 2000), *aff'd by sub nom.*, *Lawrence v. Goldberg*, 279 F.3d 1294 (11th Cir. 2002).
17. *SEC v. First Jersey Secur., Inc.*, 1987 U.S. Dist. LEXIS 10157 (S.D.N.Y. March 25, 1987), *partial summary judgment denied*, 1994 U.S. Dist. LEXIS 4967 (S.D.N.Y., April 15, 1994), *supplemental opinion*, 876 F. Supp. 488 (S.D.N.Y. 1994), *judgment entered, injunction granted*, 890 F. Supp. 1185 (S.D.N.Y. 1995), *aff'd in part and rev'd in part*, 101 F.3d 1450 (2d Cir.

- 1996), *subsequent appeal*, 230 F.3d 65 (2d Cir. 2000), *motion denied*, 2001 U.S. Dist. LEXIS 6887 (S.D.N.Y. May 24, 2001).
18. *SEC v. Bilzerian*, Fed. Sec. L. Rep. (CCH) para 94491 (D.D.C. June 29, 1989); *partial summary judgment*, 1991 U.S. Dist. LEXIS 9950 (D.D.C. Apr. 8, 1991); 814 F. Supp. 116 (D.D.C. 1993); *aff'd*, 29 F.3d 689 (D.D.C. 1994); *cert. denied*, 514 U.S. 1011 (1995); *aff'd*, 2003 U.S. App. LEXIS 19630 (D.C. Cir., Sept. 22, 2003).
 19. *Bank of America, N.A. v. Brian D. Weese, et al.*, 03-C-01-001892 (Cir. Ct. Baltimore Co., Aug. 3, 2001).
 20. *United States v. AmeriDebt, Inc.*, 373 F. Supp. 2d 558 (D. Md. 2005).
 21. *United States v. Grant*, S.D. Fla. (W. Palm Case No. 00-CV-8986, 2005).
 22. *In re Stephan Jay Lawrence*, 251 B.R. 630, LEXIS 14790 (S.D. Fla. Bkrpt. 2000), *vacated and remanded*, 244 B.R. 868, 2000 U.S. Dist. LEXIS 1616 (S.D. Fla. 2000), *aff'd by sub nom., Lawrence v. Goldberg*, 279 F.3d 1294 (11th Cir. 2002).
 23. An excluded person is a person who can't receive any benefits from the trust.
 24. *See The Private Trust Corporation et al v Grupo Torras, SA*, [1997/98] 1 OFLR 443.
 25. An IBC statute may be adopted by non-residents of the jurisdiction. For example, nonresidents of the Cayman Islands can form a Cayman IBC. A foreign corporation, including an IBC, formed by a U.S. person or the trustee of an offshore trust avoids foreign inheritance taxes with respect to securities bought in companies in major countries outside the United States. For estate and inheritance tax purposes, the situs of the intangible shares of stock is the IBC, not the situs of the companies in which the stock is bought by the IBC.
 26. *See Nevis Limited Liability Company Ordinance*, 1995 (as amended, 2002) Section 19(2). On the resignation, expulsion, death, bankruptcy or dissolution (as a "termination event"), a member is treated as relinquishing his membership interest and becomes merely an assignee under Section 40(3) of the ordinance, and with few rights under the ordinance.
 27. *Ibid.*, Section 43(3).
 28. If a court orders a member to withdraw, the member receives no distribution from the LLC. *See Nevis Limited Liability Company Ordinance*, Section 40(4), 1995 (as amended, 2002).
 29. Treas. Regs. Section 301.7701-3(b)(2)(i)(B) and (ii).
 30. IRC Section 957.
 31. The investment company income is treated as foreign personal holding company income under IRC Sections 952(a)(2) and 954(c).
 32. A Form 8832 can't be filed for a per se corporation as listed under Treas. Regs. Section 301.7701-2(b)(8)(i).
 33. A one-member disregarded foreign entity is subject to no filing requirements except the Form 8858 and a foreign partnership files a Form 8865.
 34. *See* Michael A. Heimos and Gregory J. Dean, "Islands in the Stream, Revisited: Using the Bahamian External Life Policy or Commercial Annuity Contract in Offshore Investment, Tax, and Asset Protection Planning," 25 *Tax Mgmt. Est., Gifts and Tr. J.* 2 (2000), at pp 95-105.
 35. Each state has a system of debtor protection rules that shield certain types of property and assets from the claims of their residents' creditors that are known as the "exemption" laws and they usually include varying degrees of protection for life insurance and annuity contracts in their lists of protected assets. *See* Michael A. Heimos and Gregory J. Dean, "Augmenting Asset Protection With An Offshore Life Insurance Policy or Commercial Annuity Contract," *Asset Protection Strategies: Planning with Domestic and Offshore Entities*, A.B.A. Real Prop. Prob. & Trust Law Section (2002). *Editor's note:* For a state-by-state list of exemptions, *see* www.mosessinger.com/articles/files/creditprotec.htm.
 36. *Ibid* at p. 263. *See also* Michael A. Heimos and Gregory J. Dean, "Augmenting Asset Protection with an Offshore Life Insurance Policy or Commercial Annuity Contract," 3 *Asset Protection J.* 1 (2001), at p. 40.
 37. *See* Michael A. Heimos and Gregory J. Dean, *supra*, note 35.
 38. A Cayman Islands carrier may form a Cayman Islands exempt Segregated Portfolio Company under the Cayman Islands Companies Law (2001 Second Revision) and hold an Unrestricted Class "B" Insurer's License granted under the Insurance Law (2004 Revision).
 39. *See* Section 18-215 of the Delaware Limited Liability Company Act that allows a series of members, managers or limited liability company interests.
 40. Cayman Islands Companies Law, Section 232 (2004 Revision).
 41. Cayman Islands Companies Law, Section 236(i) states: "(i) A segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the company held within or on behalf of a portfolio from the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company or the assets and liabilities of the company which are not held within or on behalf of any segregate portfolio of the company."
 42. Cayman Islands Insurance Law, Section 6(c).
 43. *See* J. Richard Duke, "Uses of Offshore Life Insurance in International Estate Planning," *Asset Protection Strategies: Planning with Domestic and Offshore Entities*, A.B.A. Real Prop., Prob. & Trust Law Section (2002); *see also* J. Richard Duke, "Planning for High Net-Worth U.S. Persons Through the Use of Offshore Life Insurance," 1 *Rich. J. Global L. & Bus.* 1 (2000), at pp. 43-59.
 44. IRC Section 7702(a).
 45. IRC Section 817(d)(1).
 46. Treas. Regs. Sections 1.817-5(b)(1) and 1.817-5(c)(1).
 47. Revenue Ruling 77-85, 1977-1 C.B. 12; Rev. Rul. 80-274, 1980-2 C.B. 27; *Christoffersen v. United States*, 749 F.2d 513 (8th Cir. 1984); Rev. Rul. 81-225, 1981-1 C.B. 12; Rev. Rul. 82-54, 1982-1 C.B. 11 and Private Letter Ruling 9433030.
 48. A modified endowment contract, which is a single premium policy, will prohibit borrowing against the policy assets. An unmodified endowment contract, with premiums paid over seven years, generally will authorize borrowing. An unmodified endowment contract is generally acquired by the trustee of an offshore revocable trust (instead of an irrevocable OAPT).
 49. Instructions for Form 720, Part I, Foreign Insurance Taxes, 5, regarding Line 30 (2000), states: "Enter the amount of premiums paid during the quarter on policies issued by foreign insurers."
 50. IRC Section 4372. Each U.S. policy-owner is required to deposit the excise tax in a timely manner with an authorized depository bank and file IRS Form 720 (Quarterly Federal Excise Tax Return) reporting each such payment. IRC Section 6501(b)(4); Instructions for Form 720, Part I, Foreign Insurance Taxes, 5, regarding Line 30 (2000).
 51. IRC Section 4371(2).
 52. For example, the U.S. treaty with Switzerland provides: "[T]he Convention shall, however, apply to excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums aren't reinsured with a person not entitled to the benefits of this or any other Convention which provides exemption from these taxes." 1996 U.S.-Switzerland Income Tax Treaty, article 2, para. 2, subpara. b.