ASSET PROTECTION NEWSWIRE

Volume 6, Issue 3, July 2009

Duke Law Firm Welcomes Eric Ratliff as "Of Counsel" to the Firm

Welcome aboard, Eric!

More Details, page 2

Offshore Life Insurance

Offshore life insurance is popular for numerous reasons, including: (1) separate, segregated accounts that hold the policy investments (from premium payments) not subject to claims of creditors; (2) as U.S.-compliant (under the Internal Revenue Code), the investment returns are not subject to income tax; and (3) the five diversified investments can include one or more currencies in addition to or in conjunction with the U.S. dollar.

Several jurisdictions have strong insurance laws providing for separate, segregated accounts, to which policy investments are allocated and invested that provide strong asset protection. Duke Law Firm represents Bastion Life Insurance SPC Limited, a Cayman Islands insurance carrier that issues U.S.-compliant variable, universal life insurance: http://www.bastionlife.com. To learn more about the advantages of offshore life insurance under Cayman law, see page 3.

Leveraging an "IDIGT" for Superior Wealth Transfer and Estate Planning

Every village could use an "Idjit" like this one. This advanced wealth transfer and estate planning trust allows a wealthy grantor to sell appreciated assets, but pay no income tax on the sale. It also allows leveraging of the income these assets produce to create new wealth through an insurance product that can pass outside the estate, reducing the estate tax liability.

More Details, page 4

Death Benefit Access Riders and Traditional Long-Term Care: A Survey

With some discussions and planning by parents and their adult children, extended care for the parents in later years does not have to be a burden on the families, or destroy the wealth the parents worked all their lives to create. The Death Benefit Access Rider and Long Term Care policies are two different insurance products that are each excellent tools to transform the family's extended care plans into a reality.

More Details, page 6

Announcing ...

John M. Walker was a faculty speaker at the July NBI CLE on Demystifying Asset Protection Vehicles, held in Birmingham, AL. He spoke on two topics: Are Business Entities a Viable Option; and The Use of Trusts in Asset Protection Planning.

Richard's Corner:

Switzerland nears removal from tax haven "grey list"

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Duke Law Firm Welcomes Eric Ratliff as "Of Counsel" to the Firm

Duke Law Firm is pleased to announce that Eric S. Ratliff has joined the legal team at the firm as "Of Counsel." Eric Ratliff is a native of Southwest Virginia, and currently resides in Sevierville, Tennessee with his wife, Stephanie, and baby girl, Shelby Kay. For the past several years, he has advised and worked with numerous financial institutions to create solutions for their clients on issues relating to international and domestic tax, estate and business planning. Eric is the pioneer to the "team" approach to tax, estate and business planning, adding value to financial institution's relationships with their clients by creating an environment where the client's existing advisors and Eric work together equally for the common goal of providing the best answer to any tax, estate or business problems and structuring such plans for continuation through generations. This includes the client's financial advisors, attorneys, accountants and welcomed family members participating in the process to ensure its success.

Unique to Duke Law Firm is that Eric provides international licensing. Eric is one of a few practitioners in the Southeastern United States who is admitted to practice both in the United States as well as the United Kingdom and Wales. Through the lawyer's practice directive, Eric is qualified to represent clients on location in EU member nations on all issues except local law (conveyancing and probate).

Eric's representative engagements span from representing clients with common estate planning issues to clients with multi-million dollar estates. Eric also represents small businesses, intermediate-sized businesses and multi-national entities to lower their global tax rate by creating entities and mechanisms for global fiscal strategies and succession.

Eric received his B.S., Accounting, University of Virginia (cum laude); B.S., Business Administration, University of Virginia (cum laude); J.D., Appalachian School of Law (magna cum laude) and LL.M., St. Thomas School of Law (now Thomas Jefferson School of Law), (summa cum laude). He is a member of the bar associations of Virginia, Tennessee, England and Wales, is a Chartered Trust and Estate Planner, Chartered Wealth Manager and a Professor with the Thomas Jefferson School of Law Walter and Dorothy Diamond Master of Laws Program.

In his spare time, Eric enjoys attending the Smoky Mountain Christian Church in Sevierville, Tennessee. He is also an avid collector of muscle cars and is a drag racer. He is currently creating a "green" muscle car; a 1968 Eleanor Shelby Mustang that will be powered by a Duramax Diesel engine. Other cars he enjoys include a 1969 Mustang Fastback, a 1966 Cobra, and a 1969 Chevrolet Nova. Finally, Eric trains in Mixed Martial Arts, including Brazilian Jiu Jitsu, Muay Thai Boxing, American Boxing, Tai Kwon Do, and Judo. To his credit, he has these activities as a hobby while having been an insulin-dependent diabetic for 30 years.

Eric S. Ratliff
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Offshore Life Insurance

By J. Richard Duke

Offshore life insurance issued by an offshore carrier insuring the lives of U.S. persons must be U.S. compliant, both under the U.S. Internal Revenue Code and the 1933 Securities Act. Internal Revenue Code Section 817(h) requires the investments of a variable life insurance policy to be diversified. Diversification is accomplished through establishing five separate segregated accounts. As explained below, the Cayman Islands (together with other jurisdictions) has separate segregated account legislation in its insurance laws.

The separate segregated account legislation in the Cayman Islands provides that the separate segregated accounts are not subject to the claims of creditors of the insured or the policyowner and are not subject to the claims of creditors of the insurance carrier in the event it becomes insolvent.

Under the Cayman corporation law, the insurance carrier (or other companies) may be formed as a "Segregated Portfolio Company." (An SPC is a "cell" company that you may have heard about--Delaware and other states now have cell legislation with respect to their LLCs.) Under the SPC provisions of the Cayman corporate law, a policy is owned by a separate SPC, which separates that policy from all other policies, each of which are also owned by a separate SPC. The assets (policy) in an SPC are not subject to claims of creditors and are not subject to the claims of creditors of the insurance carrier in the event it becomes insolvent. This provides double protection and, in my very strong opinion, the greatest asset protection available for Americans. The insurance legislation was written specifically to comply with the extremely complex rules of the United States. Only those countries (jurisdictions) that have the combined insurance legislation that includes protecting segregated accounts from claims of creditors and SPC legislation that further protects the assets (policy) from claims of creditors can provide such benefits. And remember, this is built on the foundation of U.S. law, not foreign law, because the investments held underneath each policy are segregated accounts that are classified as securities under the 1933 Securities Act, meaning that the policy is a variable life insurance policy under the securities law, as well as under the Internal Revenue Code. One can see the separate, segregated account legislation of the Cayman Islands (and other jurisdictions) complies with the diversification requirements of the Internal Revenue Code.

Upon issuing a policy, the policy is placed under a segregated portfolio (with a particular name), and then the SPC provisions of the Cayman Islands corporation law and the separate, segregated account legislation are used to establish the policy arrangement. The particular segregated portfolio will own and hold the policy, and the segregated portfolio then creates separate, segregated accounts for the policy that holds the premium payments to which diversified investments are allocated. When premiums are received, those premiums are allocated among the separate, segregated accounts (a security). As stated, the Internal Revenue Code requires the investments underneath a variable life insurance policy to be diversified among separate, segregated accounts. One can see the separate, segregated account legislation of the Cayman Islands (and other jurisdictions) complies with the diversification requirements of the Internal Revenue Code.

The economics of an offshore variable life insurance policy may be superior to policies issued by a U.S. carrier for several reasons:

1. The offshore carrier is not subject to Subchapter L of the Internal Revenue Code and pays a yearly fee to the Cayman Islands for its existence.
2. The carrier does not have a distribution system consisting of commissions paid to agents, over-ride commissions paid to agents and managers, etc. Typically, the internal costs of a U.S. carrier are somewhere around 7-8 percent where those of an offshore carrier are around 2 to 2 1/2 percent.
3. A 1 percent excise tax is due with respect to offshore insurance; however, this is less than the state premium tax that is avoided.
4. The asset protection available is very specific, both under the insurance laws (separate, segregated account legislation) and the segregated portfolio company corporate law, which is superior to relying on protection from the state in which the individual resides, as most states provide little protection with respect to insurance arrangements for debtor/creditor benefits.
5. The policy investments will be made worldwide, and the underlying investments will be held in currencies other than the U.S. dollar.

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The issuance of the policies, which are classified as securities by the 1933 Securities Act, must comply with the Regulation S exemption to the 1933 Securities Act. This compliance is made by having no direct selling efforts in the U.S., referred to as "conditioning the market" in the U.S. The Reg S exemption is referred to as the "foreign funds" exemption, discussed below. The carrier then provides a private placement memorandum instead of registering with the Securities and Exchange Commissioner, which is given to U.S. individuals outside the U.S. or to certain advisors in the U.S. No specific illustrations are made in the U.S. because only general illustrations can be presented.

A variable life insurance policy may be issued by a foreign insurance carrier on the life of a U.S. person as the insured under the Reg S exemption. A U.S. person who learns of a variable life insurance policy may travel to the foreign carrier and receive an offer and acquire that policy as the insured person. However, as discussed below, the question is how did this U.S. person learn of this variable life insurance policy issued by this particular foreign insurance carrier?

U.S. persons who are accredited investors can acquire private placement variable life insurance under the Reg D exemption directly from a foreign insurance carrier. However, the minimum required premium is generally $1 million, $2 million, or as much as $5 million. For numerous reasons, many U.S. persons may not desire to pay such high premiums for a Reg D, private placement variable life insurance policy. The alternative to private placement insurance is variable life insurance issued and purchased under the Reg S exemption by a foreign insurance carrier.

U.S.-compliant life insurance policies are classified as either single premium modified endowment (MEC) policies or non-MEC policies, with the premiums payable in installments, generally over five or seven years. Most offshore variable life insurance policies are issued as non-MEC policies because the Internal Revenue Code allows borrowing against the policy assets. Because the policies meet the requirements under the Internal Revenue Code to be classified as insurance, the investment returns realized from the policy investments are not subject to income taxation in the U.S. Thus, the non-MEC policy provides the advantages of avoiding taxation on the investment returns with the ability to borrow against the policy assets.

Non-MEC policies are acquired by the trustee of an offshore trust. Typical of domestic trusts in the U.S. acquiring offshore life insurance, the trustee of the offshore trust is the applicant, owner and beneficiary of the policy. Upon death, the insurance proceeds are payable to the trustee, and those proceeds become trust assets that are managed by the trustee in accordance with the provisions of the trust instrument. The trust instrument may establish trusts that continue offshore, or the trust assets may be returned to designated beneficiaries in the U.S., including one or more trustees of trusts in the U.S. as beneficiaries.

Leveraging an "IDIGT" for Superior Wealth Transfer and Estate Planning

By John M. Walker, Of Counsel, Duke Law Firm and
Eric. S. Ratliff, Of Counsel, Duke Law Firm

The abbreviation for the Intentionally Defective Irrevocable Grantor Trust (IDIGT) may be pronounced like a childhood jeer, "idjit," but proper use of the IDIGT can be a brilliant solution to issues often found in advanced estate and wealth transfer planning.

The first thing to understand about the IDIGT is why a competent planning attorney would intentionally create a "defective" trust. When drafting and creating irrevocable trusts, the attorney must pay careful attention to any powers over the trust the grantor retains. These "retained interest" powers are addressed in IRC sections 671-679, otherwise known as the grantor trust rules. If the grantor retains powers under these sections, the trust is considered defective. In the case of an IDIGT, the powers retained by the grantor make the trust defective with respect to income tax. The grantor of an IDIGT must pay income tax on the gains or income of the property held by the trust.

Because the grantor is subject to income tax on the gains by property held by the trust, the grantor may transfer appreciated property into the trust without triggering a sale. Because no sale has occurred, the transfer from the grantor to the trust has no gain. Without the gain as a triggering event, the transfer is not subject to income tax for the grantor. However, because the trust is irrevocable, the value of the assets

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transferred are fixed or frozen at the time of transfer. Also, because the trust is irrevocable, the assets transferred can be removed from the estate of the grantor, affecting an effective estate planning transfer of wealth.

By making the trust defective with respect to income taxation for the grantor, the IDIGT allows the grantor to transfer appreciated property to the trust without incurring income taxes on the transfer and allows the grantor to remove the property from his or her estate and freeze the value of the asset for estate tax purposes.

Care must be exercised with respect to the trustee's reimbursing the grantor for income taxes paid on the income generated by the trust. Under Treas. Reg. 2004-64, if a prior agreement exists between the trustee and the grantor, as stated within the trust document or otherwise, for the trust to reimburse the grantor for income taxes paid on behalf of the trust, then the trust assets will not be removed from the grantor's estate. Note that local law requiring this reimbursement can also have the same effect. However, if the trustee has the discretion to make the reimbursement, and no prior agreement is made with the grantor to do so, then the assets remain removed from the grantor's estate.

Using the IDIGT should be considered where the grantor has assets that have appreciated and are likely to continue to appreciate. Examples of such assets are stock in a privately held business, stock in a publicly traded business, real estate or other illiquid assets such as interests in a limited partnership of LLC, an S corporation, etc.

Another key advantage of using the IDIGT is leverage. This advantage should be fully exploited not only to transfer wealth to the IDIGT, but also to let the IDIGT create wealth for the beneficiaries. To use the IDIGT as a wealth lever, the grantor will transfer cash rather than the assets into the IDIGT. The cash amount should be at least ten percent (10%) of the value of the assets value at the time of transfer. This value must be determined by a competent appraiser or evaluator. This cash amount is called a "seed gift" and may be subject to gift tax.

The IDIGT trustee uses this cash to purchase the assets from the grantor using an interest-only note with a balloon payment. Because the sale does not trigger gain, this transaction does not result in income tax to the grantor. However, the payment by the trustee of the interest on the note to the grantor will be considered income and is subject to income taxation. The interest payment must be at least equal to the minimum required interest under the tax code. The grantor has sold the assets to the trust and removed them from his or her estate for the price of income tax on an interest payment at a minimal interest rate.

If the assets purchased by the trust are generating income, the trustee can further leverage their value and build increased wealth for the beneficiaries. If the IDIGT allows the trustee to purchase life insurance products, the trustee can use the income produced by the assets in excess of the interest paid to the grantor on the note. This excess income can be used to purchase a life insurance policy on the life of the grantor with the trust as the beneficiary. The value of the policy should be at least equal to the balloon payment of the loan. Because life insurance proceeds are generally exempt from income tax, the grantor's estate should not be subject to income tax on the grantor's death. Further, payment of the balloon note should not be subject to income tax to the estate as the sale of the assets for the note was not recognized as a taxable event.

Consider the following example. Grantor G has appreciated assets that are worth $1 million and are producing $80,000 per year in income. His basis in these assets is much lower than their value. Let's assume the basis is $300,000. G's attorney creates an IDIGT that can purchase insurance products. G makes a seed gift of $100,000 to the IDIGT. The trustee, T, uses this cash to purchase the assets from G using an interest-only note with a balloon payment. The interest on the note is the minimal allowable rate under the tax code (assume two percent (2%)). The assets are producing $80,000 per year income while the interest due on the note is approximately $20,000. The trustee uses the excess income of $60,000 to purchase a $5 million life insurance policy on G.

Assume G dies twenty years after establishing the IDIGT. At G's death, the assets have increased from $1 million to $4 million, assuming approximately a seven percent (7%) per year appreciation. The IDIGT allowed G to pass $700,000 in appreciation to the beneficiaries of the IDIGT, because there was no recognized sale on the assets. These assets were worth $1 million with a basis of $300,000. The non-sale resulted in an income tax savings at the time of transfer of $215,362, using 2009 tax rate tables (i.e. income tax due on a taxable income of $700,000). The assets appreciated to $4 million, but were frozen at $1 million at the time of transfer, allowing $3 million in appreciation to pass without being subject to either estate or income taxes. Under the 2009 and 2010 estate tax provisions, the $3 million amount is within the estate tax

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exclusion. However, these exemptions are likely to fall significantly in 2011, making the asset-freeze feature highly valuable. Further, after the insurance product pays off the balloon note, the IDIGT receives approximately $4 million in death benefits that are exempt from income tax under IRC section 101. Over the 20 years of the note, G was subject to income tax on the income the assets produced plus the interest on the note, or an additional $7,000 per year, assuming the top federal income tax bracket (i.e. 35% tax on the $20,000 interest paid on the note, or $7,000 per year).

Using the IDIGT in this example, G had an increased income tax liability of approximately $140,000 over 20 years. However, G saved $215,362 in income taxes by transferring the appreciating assets into the IDIGT, leaving a net income tax savings of $75,362. The $1 million value of the assets at the time of transfer is below the 2009 estate exclusion, and the $100,000 seed money gift is well within the 2009 unified gift exclusion. Therefore, these transfers did not create estate or gift tax liability. More important, at no additional cost, the IDIGT was able to leverage this transfer into an additional $4M wealth addition from the proceeds of the life insurance policy purchased by the IDGIT from the excess income of the assets it held.

Thus, with proper planning using the IDIGT, G was able to sell to the IDIGT assets with appreciation of $700,000 at the time of the sale and pay no income tax on the sale, then leverage these assets to create an additional $4 million in wealth for the beneficiaries of the IDGIT. The additional wealth came without incurring additional cost because the trustee leveraged the asset's excess income stream to purchase an appropriate insurance product for the IDIGT on the life of G.

Despite the pejorative name, using the leveraging power of an IDIGT when appropriate can be a brilliant move for wealth transfer and estate planning. Future articles will elaborate further on this concept by exploring the use of IDIGTs with other estate and business succession planning techniques, such as Family Limited Partnerships and LLCs, Grantor Retained Annuity Trusts (GRATs), and private split-dollar life insurance.

Death Benefit Access Riders and Traditional Long-Term Care: A Survey

By Eric S. Ratliff, Of Counsel, Duke Law Firm

The traditional care of those with long-term health needs is changing. Except in rare circumstances, the days of adult "children" taking care of their elderly parents is not a valid option for the long-term care needs of the elderly parents. The loss of this option stems from poor planning by both the elder and younger generations.

The reasons underlying this poor planning form a "seamless web." First, the children are now adults, often having children of their own. These adult children are challenged with the pressures of two working adults in the house balancing a busy schedule. Second is the long-term impact of the interference that an elderly parent will cause their children and spouses in their marital relationship. Third, even if the first two issues are not a factor and the adult children's home or a facility is chosen as the place the elderly parent will stay during a long-term care event, elderly parents often do not offer the children a sound financial plan toward funding their care.

Alleviating the first two reasons creating this web can be addressed with practicality. It is important that the elderly parents integrate themselves into the lives of the adult children by investing in a sound relationship early in life. Such a sound relationship with the adult children should include making logistical and financial plans that equally involve the adult children and creating a plan not otherwise over-burdensome to the adult children's immediate marital and family concerns.

Solving the third reason is more involved. Consider the following long-term care scenario.

Jack and Annette are married and are ages 65 and 62 respectively. They have four adult children. Two of the adult children are not responsible enough to depend on for care. The other two adult children are responsible, but one child lives out of state and the other child lives next door. Jack and Annette's assets consist of about $1,000,000 of net assets. This includes a home, various residential rental real estate properties, and

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$50,000 in savings. Their income from the rental properties is $2000 per month, not considering maintenance of the properties. Their social security benefit and pension benefits provide an additional $1500 per month.

As they age, Jack's competency is failing and he begins to need assistance in day-to-day living. Annette provides as much care and comfort as she can, but her efforts are not enough and it becomes necessary to hire help. Help is needed because their assumption that the two responsible adult children could care for them is not reality. First, the adult child living out of state cannot balance her family life with travelling to Jack and Annette's home to care for them on a daily basis. Further, the adult child that lives next door operates a business that demands a great deal of her time. Further, the relationship between the next-door child's husband and Jack and Annette is strained, preventing the next-door child from caring for her parents.

The first step in this process is to examine Jack's and Annette's plan in case their default plan (financial and actual assistance by the responsible children) failed. Preparation for these later years can be characterized as follows: no planning; relying on Medicaid; and funding a plan with insurance products.

The worst approach is no planning. In this case, Jack and Annette, by omission, have adopted an asset de-allocation strategy. With this strategy, Jack and Annette will need to use available liquid resources to care for Jack (here, the rental income and the social security/pension benefits). For purposes of this example, assume a competent professional provides this service at $10 per hour, or $120 per day for 12 hours of care. This is $3,600 per month, exceeding the rental income and social security/pension benefits by $100. Jack and Annette can allocate one-half of their rental income and social security benefit to the cause (or $1,750 per month) and the rest will deplete their savings. Assuming a 3 percent return on the savings after taxes, and they will spend down the savings within three years. After this event, they will continue to spend down assets, except now they will have no option but to sell non-liquid assets. In the instant example, this would be the rental property. Further, by selling the rental property, they will deplete the rental income as well because they have sold the properties. Using an estimated cost of $50,000 per year for a semi-private room at a nursing home as Jack's health continues to fail, the estate will be completely depleted in 20 years ($1,000,000/$50,000). However, this equation is flawed. Productivity of the income will decrease as asset de-allocation occurs, Annette may also need care later in life, and this undesirable plan will at some point require Annette to jeopardize her home. Therefore, it is reasonable to consider that this plan will completely deplete Jack's and Annette's assets within 7-10 years.

The second option (and still not a desirable one) is that if Jack and Annette did not have the assets mentioned (either they never had the assets, or they asset de-allocated), they would eventually be eligible for Medicaid. Remember that their options for a nursing home of their choice or assisted living will be severely limited and their status in such nursing home will be limited (for example, the choice of a private room might not be an option).

The third option creates a written plan that incorporates either purchasing a long-term care (LTC) policy or a life insurance policy with an access rider during life. These products can either be a substitute for asset de-allocation (preferred), or as a part of an asset de-allocation strategy.

The LTC policy is considered a health insurance policy under the Internal Revenue Code (IRC). See IRC 7702, et seq. For this reason, many of the qualifications to implement a long-term care insurance policy are similar to a health insurance policy. Obviously, one's medical condition should not indicate an immediate need of long-term care, or certain pre-existing medical conditions. Such pre-existing conditions could include diabetes, a history of heart attacks, stroke, cancer, chronic depression or other major medical issues. For this reason, many applicants consider it difficult to qualify for the LTC policy.

Because LTC policies are tailored specifically for long-term care, these policies do not pay a death benefit. Instead, the benefits are paid each month and may either be unlimited or subject to a high cap. Further, often the policy benefits are indexed to the "Cost of Living Index" (COLI) so that the monthly benefit increases to keep up with inflation. Finally, pursuant to the IRC, the benefit is not taxable to the insured, and most policies allow for the insured to pay whomever the insured wishes to care for him. The most popular LTC policies are underwritten by Genworth, John Hancock and MetLife.

By contrast, a life insurance policy may have a rider attached that will provide the death benefit during a period of need for long-term care.

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This type of policy is guided by IRC 101, et seq. Pursuant to these IRC sections, the benefit paid to the insured during life from the life insurance policy is not subject to income tax. Further, the qualifications to acquire a policy are subject to life insurance standards and not health insurance standards. For this reason, applicants consider meeting the qualification standards of such policies easier to comply with than those of LTC policies. Popular life insurance policies with such riders are underwritten by The Hartford, MetLife, John Hancock, and others.

To illustrate how such policies operate, consider The Hartford's LifeAccess policy. The process of qualifying for the rider begins by qualifying for a life insurance policy. The Hartford's underlying life insurance policy is normally its Bicentennial Freedom Guaranteed Universal Life policy (or "Guaranteed UL.") The Guaranteed UL is not linked to market performance and will provide a defined return on investment, building the cash value of the policy to hedge against inflation. If the applicant qualifies for the policy and the rider, then the potential benefit provided during long-term care needs will be equivalent to the death benefit.

There are limitations to the rate the benefit amount can be paid. First, pursuant to IRS Form 8835, there is a cap on the per diem amount that can be withdrawn monthly. This amount is 2 percent of the death benefit monthly, currently not to exceed $280 per day. Next, unlike a long-term care policy, there is no option for an unlimited benefit. The ability to collect on the rider will end once the death benefit is depleted. Finally, there is not a COLI index to increase the amount receivable, although the stated amount per IRS Form 8835 is adjusted annually, and the cash value of the policy will build.

The most important benefit of a life insurance policy with a rider is the estate planning opportunities it affords. While a long-term care policy can *preserve* the estate, a life insurance policy with a rider can *preserve* and *enhance* the estate. By way of example, the death benefit access rider can conservatively be used as part of a credit-shelter trust for the surviving spouse, preserving the death benefit from estate tax. Further, the policy may be used more aggressively to fund an irrevocable life insurance trust (ILIT). One must take care when using an ILIT not to create a retained interest under IRC section 2036. If the ILIT is used successfully, then the death benefit will not be subject to estate tax.

The ILIT containing a policy with such a rider, taking the above caveats into consideration, may also be used in conjunction with some other planning techniques, such as:

- A multi-generational plan using the required minimum distributions from a qualified plan to fund the ILIT for children while leaving the qualified plan to grandchildren through a revocable living trust. Not only is the death benefit not subject to estate or income tax, but leaving the qualified plan to grandchildren will "step" the IRA into a longer required minimum distribution period for the grandchildren, reducing the frequency and rate of income tax on the qualified plan, without more.
- Using two ILIT's with the rider where one ILIT is for the husband and one is for the wife. These ILITs must be carefully drafted not to conflict with the reciprocal trust doctrine.

In all of the examples above, it is conceivable that the underlying policy would be free of estate and income tax while providing the rider's benefit to the insured.

In conclusion, the LTC policy and the death benefit access rider should be considered as important parts of the long term care plan created by parents and their adult children. They do not necessarily need to be implemented exclusive of the other; both can be used in a competent plan. The first steps in any such plan are to involve those who will be responsible for the decision (i.e., the parent and the child), and to work with a knowledgeable group of professionals such as estate planning attorneys, CPAs and financial advisors. Together the family and the professional team members can develop a written, funded plan ideally to avoid an asset de-allocation strategy. Proper planning and preparation ahead of time can avoid depleting the estate, allowing the parents to pass on wealth to their heirs and live out their own lives with peace of mind and financial stability.

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In The News

Swiss nears removal from tax haven "grey list"

Wed Jul 15, 2009 9:45pm IST

* Swiss-Austria tax deal brings to 11 number of tax treaties

* 12 treaties needed to be removed from OECD "grey list"

ZURICH, July 15 (Reuters) - Switzerland said on Wednesday it had agreed a new tax treaty with Austria, bringing the total of tax deals to 11 and leaving it only one step away from being removed from an OECD list of tax havens.

The list, part of a naming and shaming of tax havens by the G20 nations, was drafted by the Organisation for Economic Cooperation and Development in April and has caused much embarrassment to Switzerland and other countries involved.

In order to be promoted to a "white list" of financial centres, countries must sign at least 12 new bilateral fiscal treaties in which they agree to cooperate on tax evasion issue.

Failure to quickly sign new tax deals may results in sanctions, the G20 nations warned in April.

Switzerland has so far initialed double-taxation treaties with Denmark, Luxembourg, Norway, France, Mexico, the United States, Japan, the Netherlands, Poland and Great Britain, according to a statement by the Swiss Finance Ministry.

See: http://in.reuters.com/article/fundsNews/idINLF41600320090715

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