

UTILIZING AN INTERNATIONAL FOUNDATION, UNIVERSAL LIFE INSURANCE AND AN INTERNATIONAL TRUST TO CREATE THE ULTIMATE ESTATE PLAN

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INTRODUCTION

Many Canadian residents utilize a non-Canadian (international) structure for their investment and business activities as well as to provide effective estate planning. A legally established international structure will allow for great flexibility as well as numerous other advantages. The focus of this article is to discuss one advantage which could be obtained by utilizing an international foundation and an international trust as the international structure in combination with universal life insurance to provide continuing distributions from the international structure free of any tax to Canadian residents.

COMPONENTS OF ESTATE PLAN

A. *The International Foundation*

The international corporate private family foundation ("Foundation") is incorporated in a non-income taxing country (the "Tax Haven"). The Foundation is incorporated for the purpose of the estate plan, being primarily to obtain life insurance policies and settling trusts, all for the ultimate purpose of bestowing benefits upon the defined private family class of recipients (the Class of Recipients"). As the Foundation is incorporated in the Tax Haven, has its directors and officers resident in the Tax Haven and has all its issued shares held by shareholder(s) resident in the Tax Haven, the Foundation will not be subject to Canada's *Income Tax Act* (the "Act"). Having Canadian residents as part of the Class of Recipients will not cause the Foundation or its Canadian residents to be subject to tax under the Act. Further, the Canadian foreign reporting requirements under the Act (the "Reporting Requirements") will not apply to Canadian residents who receive distributions of property from, or make transfers of property to, the Foundation, including making payment of the life insurance premiums.

B. *The Universal Life Insurance Contract*

The purpose of life insurance planning generally includes protection of dependants, estate liquidity and conservation, equalization of inheritances, savings/pension accumulation, business interest buy-out funding, charitable giving and other similar purposes. However, for this estate plan the Foundation would own a life insurance policy or policies (the "Policy") issued by either a Canadian or a non-Canadian insurance company on a member or members of the Class of Recipients and as well the Foundation would be the beneficiary of the life insurance proceeds until the international Trust (hereinafter described) is established.

C. *The Trust Structure*

A Trust is a legal relationship rather than a legal person and is one of the oldest means of preserving both income and capital. The modern use of Trusts actually dates back to their use by the Knights prior to embarking on Crusades and remains a viable method of tax, estate and asset protection planning today. A Trust is created (the settlement) when a person (the Settlor) gives (settles) an asset (the trust assets) to another person or persons (the Trustee) for the benefit of a third person or group of persons (the Beneficiaries). In an international Trust, generally the Settlor will also appoint another person or persons, called a protector, who can be trusted to act as a "watch dog" over the Trustee. The protector will have the specific powers to replace the Trustee and as well may have the power to add or change Beneficiaries. The Reporting Requirements do require a Canadian resident to report the receipt of property from, or contribution of property to, the international Trust. with the result that Revenue Canada is given the