

they remained with GITC HK. This does not imply that GITC as a stakeholder held the funds on trust following **Potters v Loppert** [1973] 1 All ER 658. To make the inference in the absence of an express restriction requires some evidence on which the inference can be based, such as payment into a segregated account, or that any interest accruing on the deposit

should accrue for the benefit of SACMI. There was no such evidence. That was sufficient to dispose of the claim that there was a trust and to allow a decision in favour of the liquidator.

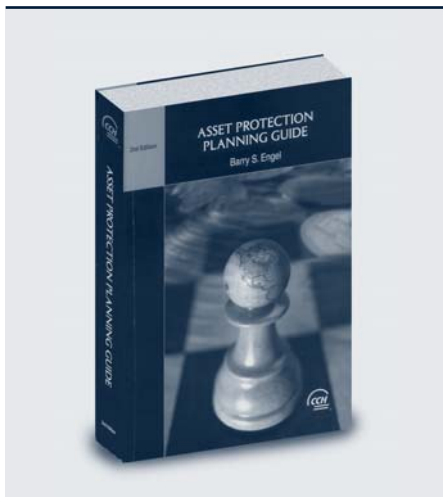
Some last ditch arguments, such as that it was commercially realistic to regard the transaction as a trust arrangement and clearly preferable that the guarantee

deposit should be held on a Quistclose trust, also failed, as did an erroneous translation by the bankers of “guarantee deposit” as “trust money” and other desperate arguments to assert the existence of a trust did not affect the decision on the trust issue.

SACMI Cooperative Meccanici Imola v Gabriel Chi Kok Tam and another 7 ITELR 861

Book Reviews

Asset Protection Planning Guide



2nd Edition

by Barry S. Engel

Published by CCH Incorporated, Chicago

ISBN: 0-8080-1290-8

\$110, paperback, pp690

Asset Protection Trusts come of age

There was a time, about ten years ago, when a trust labelled as an asset protection trust raised the ire of the trust traditionalists who could see no further than the law on fraudulent conveyance but which raised the spirits of honest professional practitioners. They, despite adopting a proper standard of care, were in danger of being sued by those indulging in the extravagances of the compensation society. An asset protection trust was not a special form of trust but

the name attached to those trusts that were intended to counter the often ludicrous claims for damages by medical patients and almost anyone who could smell money.

Offshore centres keen to attract business made it easier to set up such trusts in their jurisdictions by shortening the time within which a claim of fraudulent conveyance had to be made after setting up the trust. And what a fuss that caused.

Like most innovations, either in the form a trust takes or its use, the noise subsides and so long as the three certainties exist, the validity of the innovation is judged calmly and reasonably. Asset protection trusts have not been the only target. Legislation over the last ten years has altered considerably the nature of trusts. Take STAR trusts and VISTA trusts, for example, which initially were greeted with cynicism as to their validity. The storm has passed. Also, the application of trusts for forced heirship planning and the reserved power laws for settlors, as well as the perennial problem of purpose trusts seem to have reached a calm equilibrium. The same can be said of asset protection trusts.

Certainly with the latter both supporters and critics have achieved it with some modification. The extent of this and the practical and theoretical aspects of asset protection is comprehensively dealt with by Barry Engel with Edward D Brown and John R Garland, all of Engel & Reiman, Denver, Colorado, in the second edition of *Asset Protection Planning Guide*.

This book is a guide to the wider concept of Integrated Estate and Asset Protection that puts asset protection in its modern context. The first chapter looks at the purpose of planning and the role to be played by Integrated Estate Planning Trusts: better off with them than without them is the theme. The second chapter rightly looks at the source of the controversy which has been directed at asset protection, that is the laws on fraudulent transfers domestically and abroad; the key to this discussion is the general principle that transfers made in advance of a problem with creditors are not fraudulent transfers even if the purpose is asset protection. This aspect has to be looked at closely. Barry Engel looks at the position from mainly the US point of view. Much of his discussion is relevant elsewhere but in each case the particular law of where the settlor is situated must be examined. Thereafter there is a series of practical accounts of gifting as a tool, joint or concurrent ownership and exemption as a planning tool. Insurance and foreign insurance and annuities, limited liability partnerships and limited liability companies, and trusts under state law are also covered. Then the crucial chapter on Foreign Integrated Estate Planning Trusts as Planning Tools looks at the principles, structures and misconceptions. The combination of explanation, examples and comment, as adopted throughout the guide will put the reader in command of a range of impressive skills to advise professional clients.

Following this, there is a series of chapters on international matters: comparing state and foreign law, the choice of law and conflict of law issues and other foreign-based planning tools (including an illuminating section on Civil Law Foundations). After dealing with expatriation and the protection of retirement benefits, we have to face the ethical, civil and criminal consideration in asset planning. An illuminating chapter highlights how a foreign trust might find itself at the centre of a claim for contempt

of court if the trustees are not willing to return the trust assets to the court's jurisdiction for the court to dispose of as it thinks fit. Recent US cases have illustrated the contempt in which the US courts can hold offshore trusts after settlors and trustees have taken the limits too far. Famous decisions have come out of these disputes: the *Euclid*, *Anderson*, *Lawrence* and *Bilzerian* cases in particular. This then takes us on to a general chapter on trust litigation issues, client confidence and conflicts of interest in particular. An

overview of professional practice follows and, as appendices, a wide range of planning tools that give some very useful material using structures, flow charts, forms and extracts from laws and regulations.

This book is called a guide, and so it is. Practicality is the significant feel that the author puts over and an unrivalled reputation and depth of experience is readily shared.

JGG

The Principles of International Tax Planning



by International Fiscal Services
Roy Saunders, Miles Dean, Richard
Williams, Diana van der Merwe,
www.interfis.com

Corpus Publishing
ISBN: 1 903333 22 9

Price: £95, softback, pp324

Lucca, as the reader will well know, is a town in Tuscany near Florence. Its history is less colourful than its neighbour but

nevertheless spawned wealth for the central Italian families that lived there during the Renaissance.

Therefore, it is not surprising that this habit of wealthy enterprise continues. Here, in this unusual book, we find that Papa Filipe has sold his furnishing business in Lucca and embarked upon a more romantic future of tax planning, taking into account a Liechtenstein foundation and a beautiful Spanish mistress.

From this modest beginning the authors build up a case study centred around the financial affairs of the Filipe family, and an enterprising and active family they are too, requiring extensive planning and support for their various activities. This they get, and all is explained in a series of charts that precede an examination of the numerous elements of the family in the succeeding ten chapters.

In these chapters there is extensive examination of principles of international taxation, which then are applied to the affairs of the family.

These chapters attack practical matters: evidenced by the titles which are in the form of questions; these are best listed: Is the Advice legal? Why are trusts useful in tax planning? What is the importance of

source compared to residence? How can tax treaty provisions help? Can domestic taxation be mitigated by the use of offshore structures? Is the structure artificial? What are the tax implications of international trade? What expenses may minimise tax liabilities? And, what other taxes need to be considered?

The important thing to be noted about these chapters is that they are not biased in favour of one jurisdiction and can be read and considered to advantage by practitioners in whatever jurisdiction they practice. The concepts dealt with are more universal and applicable across frontiers than is the case in more conventional textbooks.

The other side of the argument is that this is a practical gloss on the basics of international tax and it assumes that the reader is aware of these basics so as to get the most out of the analysis of this complicated case which otherwise could take a long time to acquire. Clarity of explanation shows a mastery of the complications of international tax.

As they say in other fields, well done on technical content and on presentation.

JGG

NEWS ITEM

Malta and UAE sign double tax avoidance agreement

Maltese Foreign Minister Michael Frendo and H.E. Dr. Mohammed Khirbash, Minister of State for Finance and Industry of United Arab Emirates signed a Double Taxation Avoidance Agreement in March,

following bilateral talks to increase cooperation between the two countries.

The signing brings to 45 the number of similar agreements Malta has with

other countries on the avoidance of double taxation and prevention of tax evasion. Currently, a further 15 Double Taxation Agreements are being negotiated.

The two parties also agreed that ongoing discussions between the European Union and the Gulf Countries Council (GCC) for the creation of an EU-GCC Free Trade Zone should be concluded as soon as possible.