What's new in Nevis?

A survey of recent amendments to Nevis trust law

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Abstract

- **Nevis has enacted the *Nevis International Exempt Trust (Amendments) Ordinance, 2015* which has modernised Nevis trust law by:**
  - **updating the definitions of key trust law terms;**
  - **clarifying outdated trust administration provisions;**
  - **increasing the list of beneficiaries and trustees; and**
  - **making it more difficult for creditors to access trust assets absent fraud or other circumstances such as bankruptcy, insolvency or liquidation.**

On 27 May 2015, the Nevis Island Assembly enacted the *Nevis International Exempt Trust (Amendments) Ordinance, 2015* (the Ordinance). The amendments are effective from 1 July 2015. The Ordinance modernises the *Nevis International Exempt Trust Ordinance, 1994* (the Original Ordinance) by introducing provisions that:

- clarify the validity of a trust registered under the Ordinance that was formed or established in a location other than the settlor's domicile or residence;
- eliminate the rule against perpetuities and the rule against accumulations;
- limit the rights of a creditor to reach a beneficiary's interest in a trust;
- permit a settlor to establish a directed trust;
- increase the asset-protection aspects of a trust and ensure the administration of a trust will not be interrupted by litigation;
- clarify the indemnification provisions applicable to the trustee;
- clarify aspects of the fraudulent transfer rule;
- expand the list of beneficiaries of an international trust;
- expand the list of trustees of an international trust;
- facilitate the administration of a trust;

- expand protections available to a trustee with regards to accounting to beneficiaries;
- expand the list of powers that a settlor can retain without a trust being declared invalid;
- increase the bond requirement for creditors who want to challenge an international trust in Nevis;
- allow the minister charged with responsibility for finance in Nevis to establish an advisory body for matters affecting the Original Ordinance;
- permit a statutory tenancy by the entireties trust; and
- permit charitable remainder trusts.

VALIDITY AND ENFORCEABILITY OF TRUSTS

Section 3 of the Original Ordinance was amended to provide that an international trust registered under the Original Ordinance is valid and enforceable even if it is invalid according to the law of the settlor's domicile, residence, place of current incorporation, place of formation or establishment. This amendment is practical since most trusts are settled in jurisdictions other than a settlor's domicile or residence.

ELIMINATION OF RULE AGAINST PERPETUITIES

The amendments to sections 5(1), 5(3) and (4) of the Original Ordinance eliminate the rule against perpetuities and the rule against accumulations. These amendments permit a trust to continue forever if the terms of the trust provide that the trustee has the unlimited power to sell all trust assets or if one or more persons, one of whom may be the trustee, has the unlimited power to terminate the trust.

DISCRETIONARY TRUSTS

Section 8A was added to better define the rights of a creditor of a beneficiary (including the settlor) of a discretionary trust. Section 8A greatly limits the rights of a creditor to reach a beneficiary's interest in such a trust. In the absence of such a provision, a creditor of a beneficiary might attempt to obtain a court order to garnish future distributions made to or for the benefit of a beneficiary. Such garnishment could result in a trustee being unable to make any distributions for the benefit of a beneficiary. This section also specifically permits a trustee to make payments to third parties on behalf of the beneficiary without incurring any liability to a creditor and prevents even the remote possibility of any such attachment, garnishment or interference.

DIRECTED TRUSTS

Section 9 of the Original Ordinance was repealed and replaced in its entirety. The most notable change occurred in subsection (3) of s9, which now allows a trust protector to be granted the authority to direct a trustee to make distributions; approve distributions made by a trustee; and direct the trustee to make investments. By giving a protector authority to direct the trustee to make distributions and investments, in conjunction with giving trustees an indemnity for following the directions of the protector, a trustee has the ability to administer trusts it might not otherwise be willing to administer and this will facilitate the administration of a trust because the trustee is exonerated from liability for acting at the direction of a protector.

Section 45(1) coincides with the amendment to s9 by expanding the list of authorised trust investments to include such assets as are approved by the protector.

CREDITORS' RIGHTS

Section 9A was added to clarify that creditors will only have a right to a beneficiary's interest in a trust if that beneficiary has either a lifetime or testamentary general power of appointment – that is, a power to appoint the trust property to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate – but only to the extent that the beneficiary exercises such power of appointment. This provision codifies the common-law rule regarding general powers of appointment and further provides that the amount subject to a creditor's reach can never exceed the amount subject to the exercise of the beneficiary's power.

Section 9B was added to clarify that creditors only have a right to a settlor's interest in a trust if the settlor retains a power to revoke the trust and to appoint the trust property to the settlor, the settlor's estate, the settlor's creditors, or the creditors of the settlor's estate – but only to the extent the settlor exercises such power.

Section 9B will enhance the asset protection provided by an international trust by giving creditors the right to a settlor's interest only in the limited circumstances where the settlor has unfettered control of the trust property and exercises such control, and only to the extent of such exercise.

The addition of sections 9A and 9B was in direct response to the judgment in *Tasarruf Mevduati Sigorta Fonu* v *Merrill Lynch Bank and Trust Company, et al.*[1] In *Tasarruf*, the Privy Council held that a power to revoke retained by the settlor of two trusts established and funded in the Cayman Islands was tantamount to a property interest because it was a personal power, not a fiduciary power, i.e. the settlor owed no duty of trust or confidence to any other person, and no act personal to the settlor was required to be performed. Therefore, the power could be delegated and/or assigned by the settlor to another person. Thus, the court in *Tasarruf* allowed the settlor's creditors to reach the assets held in two revocable trusts.

The holding in *Tasarruf* was in direct conflict with existing Cayman law and represented a rare instance where the Privy Council overturned the holding of the trial court and the Eastern Caribbean Court of Appeals, where underlying common law in the jurisdiction was clear. The codification of this rule should preclude a creditor of the settlor of an international trust who has retained a power of revocation from reaching the assets held in such a trust, subject to the power of revocation, notwithstanding the judgment in *Tasarruf*. Likewise, s9A should preclude creditors of a beneficiary possessing a power of withdrawal from attaching the trust property. Even though the Original Ordinance contains these specific provisions, it is recommended that US clients refrain from including such powers in an international trust, as a US court would almost certainly have serious problems with a settlor's unfettered control of the trust property.

THREE IMPORTANT PROVISIONS

Section 13 was amended to provide a statutory duress provision applicable to all international trusts. The amendment provides that, when any person is granted the power under the terms of a trust to demand or request any act on the part of a settlor, beneficiary, trustee, protector, or other person, or has the authority to approve, veto or compel any action or exercise any power that could affect an international trust, he, she or it may ignore demands or requests that are given by or the result of persons acting under duress, including pursuant to any legal process, court, administrative body, etc.

> **"Section 9B will enhance the asset protection provided by an international trust by giving creditors the right to a settlor's interest only where the settlor has unfettered control of the trust property and exercises such control, and only to the extent of such exercise**

Section 22 was amended to clarify that the court may not issue a Mareva injunction, Anton Piller order, or any similar remedy. The purpose of the amendment was to prevent a claimant from circumventing the limitations on remedies contained elsewhere in the Original Ordinance, such as under s24 concerning creditor claims. The main purpose of an asset protection trust is to protect its settlor in a time of great need. In *Federal Trade Commission* v *Affordable Media, LLC*,[2] the court in the Cook Islands issued a Mareva injunction freezing the assets of the trust (i.e. cash in an account at a bank in the Cook Islands). Then, while frozen, such funds were not available for use by the settlors to pay their basic living expenses. Such action frustrated the purpose of the trust until the creditors settled.

Section 35A automatically removes a trustee or protector of an international trust that is subject to any other court's jurisdiction, except the High Court of St Kitts and Nevis. This statutory duress provision is unique among jurisdictions. It has its origins in the *Delaware Code* (§3327), but it is a vastly improved provision.

1. Privy Council of the Cayman Islands, Appeal No.0036 of 2010, decided 21 June 2010. See also *Fonu* v *Merrill Lynch Bank and Trust Company (Cayman) Ltd and Others (Cayman Islands)* [2012] 1 WLR 1721, [2011] 4 All ER 704, 14 ITELR 102, [2011] UKPC 17, [2011] BPIR 1743, [2011] WTLR 1249

2. 179 F3d 1228 (9th Cir 1999)

Together, sections 13, 22 and 35A make Nevis an attractive jurisdiction in which to establish an asset-protection trust.

INDEMNIFICATION PROVISIONS APPLICABLE TO TRUSTEE

Section 17(1) was amended to allow the terms of an international trust to indemnify the trustee against liability. This is an expansion of the previously drafted s17, which only permitted a beneficiary to indemnify the trustee.

FRAUDULENT TRANSFERS

Section 24 was amended to clarify the fraudulent transfer rule. Subsection (3) was revised to eliminate what arguably may have given a creditor a three-year window to file a fraudulent transfer claim against an international trust. This 'sliding window' was introduced in s13B(3) of the Cook Islands *International Trusts Act* (ITA), after which subsection (3) of s24 was modelled. While paragraph 13B(3)(a) of the ITA is intended to protect a transfer in trust made more than two years after a creditor's cause of action accrues, paragraph (b) gives the creditor one more year to bring a claim if the creditor's claim happens to arise right before the expiration of the two-year period referenced in paragraph (a). The revision to subsection (3) of s24 implements a fixed one-year window beginning with the date on which the creditor's cause of action accrues. Further, subsection (5)(b) of s24 was revised to expand the list of powers that a settlor can retain without having an intent to defraud a creditor imputed to the settlor. Section 46 was amended to clarify that an international trust may be void or voidable in the event of a settlor's bankruptcy, insolvency or liquidation, including if a corporation or limited liability company is in liquidation.

BENEFICIARIES

The list of beneficiaries of an international trust has been expanded by amending s32(5). A Nevis company, a Nevis business corporation (NBC), a Nevis limited liability company (NLLC) or a multiform foundation may all be beneficiaries of a trust.

TRUSTEES AND NON-RESIDENTS

Under the terms of the Original Ordinance, a trustee could be a licensed Nevis local company, a St Kitts and Nevis attorney or an NBC. The definition of 'international trusts' was broadened so that at least one of the trustees can be an NLLC, a Nevis law firm or a multiform foundation.

The definition of 'non-residents' was broadened to include a natural person who obtains their citizenship in St Kitts and Nevis by way of the citizenship investment programme, an NBC, an NLLC or a business entity incorporated, formed or established under the laws of any jurisdiction other than St Kitts and Nevis, and which does not ordinarily engage in any trade or business within St Kitts and Nevis.

FACILITATING ADMINISTRATION

Section 35B allows the trustee of an international trust to combine two or more separate trusts into a single trust or divide a single trust into two or more separate trusts, provided that such action does not impair the rights of any beneficiary or adversely affect the purpose of the trust or trusts. This provision permits the trustee to segregate the assets of a trust for greater protection, as well as liability purposes, and to combine the assets of separate trusts where administratively that is more convenient or efficient. It also provides rules governing any such combination or severance. Section 36 was amended to allow a trustee to act pursuant to a resolution and to appoint an agent to act on its behalf.

WAIVER OF NOTICE/ACCOUNTINGS

Section 35C(1) was added to provide that the terms of a trust deed may expand, restrict, eliminate, or otherwise vary the rights and interests of beneficiaries. This includes the right of beneficiaries to be informed of their interests in the trust for any period, the grounds for removal of a trustee, the circumstances, if any, in which the trustee must diversify investments, and a trustee's powers, duties, standard of care, rights of indemnification and liability to persons who are granted interests under the trust instrument. The change to s35C(1) provides that a trustee has no duty to account and changes a longstanding rule under English and Welsh law.[3]

3. E.g. *Armitage* v *Nurse* [1997] EWCA Civ 1279, [1998] Ch 241, [1997] 3 WLR

EXPANDED LIST OF SETTLOR'S INTERESTS AND POWERS

Section 47 was amended to expand the list of interests and powers that a settlor could retain over an international trust without a trust being declared invalid. The list was expanded to incorporate many of the types of trusts used in the US for estate-planning purposes, such as a grantor retained annuity trust (GRAT) and a grantor retained unitrust (GRUT), which are permitted under the statutes of most of the states that allow self-settled asset-protection trusts. The revisions broaden the circumstances in which the validity of an international trust will be upheld. Thus, the settlor can retain various rights and/or benefits in the trust and in the income and/or principal of the trust. The terms of a trust deed can provide for an expanded array of powers to be granted to a protector.

OPTION TO ESTABLISH ADVISORY BODY

Section 54 was amended to clarify that a government minister may establish an advisory body for matters affecting the Original Ordinance.

BOND

Section 55 was amended to increase the amount of the bond required by a creditor before the creditor is permitted to bring an action governed by the Original Ordinance. The bond requirement was increased to XCD270,000 (USD100,000). This increase was made to eliminate frivolous or nuisance claims against the trustees of international trusts. The bond requires that a creditor will pay the trustee's legal fees expended to defend and protect the assets held in a trust.

STATUTORY TENANCY BY THE ENTIRETIES TRUST

A new s56(2) was added, permitting married settlors of an international trust to establish a statutory tenancy by the entireties trust (STET). After funding the settlors' interest in such a trust with tenancy by the entireties property, the underlying property of the international trust will remain tenancy by the entireties property.

A Nevis STET provides substantial flexibility in dealing with tenancy by the entireties (T by E) property in the context of asset-protection planning. Florida law and the law of several other US states recognise tenancy by the entireties.[4] T by E is a form of ownership that can only exist between two individuals who are married to each other. Although the rules relating to T by E property can vary greatly between the states that recognise it as a form of ownership, generally property owned in T by E cannot be reached to satisfy the claims of a creditor of only one spouse.[5] Every US state that recognises T by E as a form of ownership permits real estate (or certain types of real estate, e.g. a homestead) to be owned by married individuals in T by E. A few of the states that recognise T by E as a form of ownership, such as Delaware, Florida, Michigan and Pennsylvania, also permit ownership of personal property in T by E.[6]

As an asset-protection strategy T by E has its limitations and it is important for planners to understand these limitations. The limitations include the following:

1046, [1997] 2 All ER 705. In *Armitage* v *Nurse* at 261, the court provided in *dicta*:

> 'The respondents submit that the policy to which s21(3) of the Act of 1980 gives effect is that it would be unfair to bar a plaintiff from bringing a claim unless and until he is of full age and entitled to see the trust documents and so has the means of discovering the injury to his beneficial interest. The difficulty with this argument, in my judgment, is that it proves too much. Every beneficiary is entitled to see the trust accounts, whether his interest is in possession or not. The rationale of s21(3) appears to me to be different. It is not that a beneficiary with a future interest has not the means of discovery, but that he should not be compelled to litigate (at considerable personal expense) in respect of an injury to an interest which he may never live to enjoy. Similar reasoning would apply to exclude a person who is merely the object of a discretionary trust or power which may never be exercised in his favour.'

4. E.g. *Estate of Berlin* v *Pecora*, 968 So2d 47 (Fla 4th DCA 2007); *In re McRae*, 282 BR 704 (2002); *In re Koesling*, 210 BR 487 (1997); and *Amsouth Bank of Florida* v *Hepner*, 647 So2d 907 (Fla 1st DCA 1994)

5. E.g. *Beal Bank, SSB* v *Almand and Associates*, 780 So2d 45 (Fla 2001); *Neu* v *Andrews*, 528 So 2d 1278 (Fla 4th DCA 1988); and *Winters* v *Parks*, 91 So2d 649 (Fla 1956)

6. See e.g. *Cohen* v *Mathews*, 307 Fed Appx 266, (11th Cir 2009); *Estate of Berlin* v *Pecora*, 968 So2d 47 (Fla 4th DCA 2007); *In re McAnany*, 294 BR 406 (Bankr MD Fla 2003); *Beal Bank, SSB* v *Almand and Associates*, 780 So2d 45 (Fla 2001); *Cacciatore* v *Fisherman's Wharf Realty Ltd Partnership ex rel Emalfarb Investment Corp*, 821 So2d 1251 (Fla DCA 2002); *In re Bundy*, 235 BR 110 (Bankr MD Fla 1999); *In re Campbell*, 214 BR 411 (Bankr MD Fla 1997); *Lapp* v *US*, 316 F Supp 386 (SD Fla 1970); *Bailey* v *Smith*, 89 Fla 303, 103 So 833 (1925); *Winters* v *Parks*, 91 So2d 649 (Fla 1956); *Lauderdale* v *Lauderdale*, 96 So2d 663 (Fla 3rd DCA 1957); *Anderson* v *Carter*, 100 So2d 831 (Fla 2nd DCA 1958); *Lacker* v *Zuern*, 109 So2d 180 (Fla 2nd DCA 1959); *Tingle* v *Hornsby*, 111 So2d 274 (Fla 1st DCA 1959); *Lacker* v *Zuern*, 109 So2d 180 (Fla 2nd DCA 1959); *Lerner* v *Lerner*, 113 So2d 212 (Fla 2nd DCA 1959); *Crawford* v *US Fidelity and Guaranty Co*, 139 So2d 500 (Fla 1st DCA 1962); *Colclazier* v *Colclazier*, 89 So2d 261 (Fla 1956); and *Doing* v *Riley*, 176 F2d 449 (5th Cir 1949)

- Divorce severs the T by E estate.
- Death severs the T by E estate.

No one can predict when another individual might die. An unexpected death could lead to disastrous results for an asset-protection plan that relies on property continuing to be owned in T by E property.[7]

Exception creditors

In *US* v *Craft*,[8] the US Internal Revenue Service successfully argued that T by E does not protect an interest in T by E property of a debtor-spouse from a federal tax lien under §6321 of the *Internal Revenue Code*.[9] Thus, case law in both federal and state courts can have a profound and unexpected effect on the ability of T by E to protect wealth. While estate planners could offer advice to clients regarding the use of strategies to 'hedge' against all of the foregoing risks, in many instances the use of such strategies will prove impractical, costly or unworkable for clients. For example, one such strategy might include the spouse who has little risk of incurring significant liability (that is, a 'low-risk spouse' (LRS)), if any, establishing an irrevocable life insurance trust (ILIT) that could hold life insurance with a face value that approximates the value of the T by E property that could be lost to creditors if the LRS dies unexpectedly. In such a case, the spouse with a greater likelihood of incurring significant liability (that is, the high-risk spouse (HRS)) would be a discretionary beneficiary of the ILIT. If the ILIT is drafted properly, there would be little or no risk of a creditor of the HRS ever reaching the trust assets in satisfaction of a judgment against the HRS.

Another example of a strategy to deal with the potential problems of T by E ownership as an asset-protection strategy would be to advise the HRS to transfer such spouse's interest in such property to the LRS. In this case, the LRS could revise such spouse's estate plan to ensure that, should the HRS survive, all of this property would pass for the benefit of the HRS through trust arrangements designed to maximise the protection of such wealth. Alternatively, the LRS could take such spouse's interest in this property and contribute it to a properly structured wealth-protection trust arrangement. To ensure full use of the federal estate tax exemption (when the estate tax is effective) the LRS might consider establishing a qualified terminable interest property (QTIP) trust for the benefit of the HRS. Of course, this might subject all or a portion of the mandatory income stream to seizure by the creditors of the HRS.

In many instances, the foregoing solutions to the potential creditor-protection problems of owning property T by E are not acceptable to one or both spouses. For example, the cost of insurance might be expensive, one spouse might be concerned that transferring ownership of such spouse's interest to the other spouse could be the impetus for a surprise divorce, or the other spouse might not be cooperative with further planning with the property after such spouse is given full ownership.

The STET provides an additional weapon in an estate planner's arsenal to deal with the pitfalls of T by E ownership as an asset-protection strategy. For spouses who reside in a jurisdiction that does not recognise such broad protection for assets held in T by E, it may be possible for spouses to use a financial institution located in a state that recognises such ownership as to personal property, such as Delaware. Such spouses can use a state such as Delaware as an intermediary jurisdiction to create an entireties estate prior to transferring such property to a Nevis STET. Furthermore, in the jurisdictions that recognise this extended form of T by E ownership, such as Florida, it should be possible to use a STET even though there is an existing creditor with a claim or a judgment against

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7. See e.g. *Estate of Berlin* v *Pecora*, 968 So2d 47 (Fla 4th DCA 2007); *Cacciatore* v *Fisherman's Wharf Realty Ltd P'ship*, 821 So2d 1251 (Fla 4th DCA 2002); *Colclazier* v *Colclazier*, 89 So2d 261 (Fla 1956); *Baumgardner* v *Kennedy*, 343 So2d 1323 (Fla 3rd DCA 1977); *Menendez* v *Rodriguez*, 106 Fla 214, 143 So 223 (1932); *Knapp* v *Fredricksen*, 148 Fla 311, 4 So2d 251 (1941); *Bamber* v *Bamber*, 216 So2d 806 (Fla 3rd DCA 1968); *Bendl* v *Bendl*, 246 So2d 574 (Fla 3rd DCA 1971); *Anderson* v *Trueman*, 100 Fla 727, 130 So 12 (1930); *Logan Moore Lumber Co* v *Legato*, 100 Fla 1451, 131 So 381 (1930); and *Winters* v *Parks*, 91 So2d 649 (Fla 1956)

8. 122 SCt 1414 (2002)

9. See also, *Howard D Popky et ux* v *US*) (No.04-2798) (US Court of Appeals for the 3d Cir); and *US* v *Hatchett*, 330 F3d 875 (6th Cir 2003)

one spouse. This is because the *Uniform Fraudulent Transfer Act* (UFTA) specifically exempts the transfer of property held in T by E that cannot be reached by a creditor of only one spouse from the application of the fraudulent transfer rules. UFTA provides that '[a]n interest in property that is owned in tenancy by the entireties to the extent such property is not subject to process by a creditor who possesses a claim against only one tenant' is not subject to the application of the statute.[10]

CHARITABLE REMAINDER TRUSTS

The terms 'charitable remainder annuity trust' (CRAT) and 'charitable remainder unitrust' (CRUT) (a CRAT and CRUT may collectively be referred to as a CRT) are defined to clarify that such trusts can be formed in Nevis with the settlor's retained interest in such trusts also being protected under Nevis law.

A US citizen would want to consider creating a CRT in the US as opposed to Nevis. The settlor of a CRT would generally fund such a trust with property that they expect to appreciate, with the goal of not paying tax on the gain. Under §679(a)(1) of the *Internal Revenue Code*, a US person who directly or indirectly transfers property to a foreign trust is treated as the owner for their taxable year of the portion of the trust attributable to such property if for such a taxable year there is a US beneficiary of any portion of such trust. Since the charitable beneficiaries of a CRT must be US charities, a Nevis CRT established by a US settlor, with a US charitable remainder beneficiary, would be subject to the provisions of §679 because the domestic charity is a US person with an interest in the trust. This would cause unnecessary tax consequences to the US citizen settlor. The exception to the application of §679 for foreign charitable trusts only applies to trusts that are exclusively devoted to charitable purposes under §501(c)(3), not to CRTs that gain their US tax exemption under §664(c).[11]

> 'In order for a trust to be a charitable remainder trust, it must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Solely for the purposes of section 664 and the regulations thereunder, the trust will be deemed to be created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code (relating to grantors and others treated as substantial owners), but in no event prior to the time property is first transferred to the trust. For purposes of the preceding sentence, neither the grantor nor his spouse shall be treated as the owner of the trust under such subpart E merely because the grantor or his spouse is named as a recipient.'[12]

While this provision prevents the interest of the US settlor or settlor's spouse from causing a foreign trust to fail to qualify as a CRT, the requirement that the charitable beneficiary be domestic would cause any otherwise eligible CRT to fail to qualify if the CRT were set up as a foreign trust, because §679 would still apply.[13]

An additional consideration for foreign CRTs is warranted under §684. Section 684 is an income-recognition provision for a taxpayer who transfers appreciated property to certain foreign trusts. Absent §684, appreciated property could be transferred to a foreign non-grantor trust without any gain recognition, and the asset subsequently sold without any US income taxation being imposed on that asset's built-in gain at the time of transfer. Section 684(a) provides that a transfer of appreciated property by a US person to a foreign non-grantor trust is not subject to gain recognition. The transferor is treated as recognising a capital gain with respect to the transferred property. The capital gain is then included on the US person's income tax return for the year of the transfer and subject to US income taxation at that time.

Under §684(b), §684(a) does not apply to the extent that a US person is treated as the owner of such trust under §671, referring to the grantor trust rules of §§671–679. As previously discussed, §679 specifically applies to foreign trusts that have one or more US beneficiaries. If §679 ceases to apply due to a change in circumstances, then §684 could apply at the change in circumstances, even if the change occurred years later.

10. For additional analysis of the STET, see Ruben and Gopman, 'The Delaware Statutory Tenancy by the Entireties Trust: Potentially Powerful Asset Protection for Couples Across the Country', *LISI Asset Protection Planning Newsletter* #233 (19 December 2013); Gopman, 'STET: Delaware Introduces New Asset Protection Trust for Tenancy by the Entireties Property', *LISI Asset Protection Planning Newsletter* #161 (8 September 2010)

11. Galligan, 'International Charitable Giving and Planning Under US Tax Law', 29 *Estates, Gifts and Trusts Journal* 151 (May 13, 2004)

12. Treasury Regulations §1.664–1(a)(4)

13. Rev Rul 77–285, 1977–2 CB 213

If §679 were to apply and the appreciated property contributed to the foreign trust is subsequently sold, any built-in gain with respect to the appreciated property contributed to the foreign trust would be recognised and subject to US income taxation. Consequently, the income-recognition provision of §684(a) would not be necessary. In this case, there is no reason to accelerate the taxation of the built-in gain in those cases where §679 applies.[14] Under §1.684–3(c), if the settlor ceases to be treated as the §679 owner because of the settlor's death, however, the trust can be included in the settlor's taxable estate, making it eligible for a step-up in basis; §684 is not triggered. Under §1.684–3(b), §684 is not triggered if property is transferred to a foreign trust devoted exclusively to charitable purposes, as described in §501(c)(3), even if the trust has not applied for recognition of its exempt status or given notice of its intent to do so.

14. Levin, 'Transfers to Foreign Trusts Could Trigger Gain Recognition', 37 *Estate Planning Journal* 14 (October 2010)

CONCLUSION

The legal and business world does not remain static and laws need to be modernised in order to remain relevant. The Ordinance modernises Nevis law and makes Nevis a more competitive jurisdiction in the trust services market. Coupled with recent changes to Nevis international corporation law and the passage of the *Nevis Limited Liability Company (Amendment) Ordinance, 2015*, Nevis is dramatically enhancing its laws.

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