



# GLOBAL HIGH NET WORTH INVESTORS: ASSET PROTECTION STRATEGY

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# THE WOLFE LAW GROUP

The Wolfe Law Group is an international array of legal and tax experts providing collaborative services for Global High Net Worth Investors on a per client basis.

Gary S. Wolfe, A Professional Law Corporation has over 35 years of experience providing clients with expertise for IRS Civil and Criminal Tax Audits, International Tax Planning, and International Asset Protection.

## **Awards**

Since 2015 Gary have been the recipient of 29 separate international tax awards from 10 different global expert societies in London/UK including:

International Tax Planning Law Firm of the Year Award (2017) – International Advisory Experts.

International Tax Advisor of the Year (2017) - Global Business Magazine/Prof. Sector Network.

[Click here for complete list.](#)

## **Books**

To date Gary has written 18 e-books [\(available on Amazon\)](#) regarding the IRS, International Tax Planning and Asset Protection. [Click here for complete list.](#)

## **Articles**

To date Gary has published or been interviewed in 100+ separate articles published by 15 different US and International magazines. [Click here for complete list.](#)

## **Video**

In December 2016 Gary was interviewed by California CEO Magazine and RCBNNNews.org on the subject of Criminal Tax Evasion and IRS Tax Audits: Civil and Criminal Issues. This 4 part series, which has been published by [Lorman Education](#), can be viewed below:

[Criminal Tax Evasion - Part 1](#)

[Criminal Tax Evasion – Part 2](#)

[Criminal Tax Evasion – Part 3](#)

[Criminal Tax Evasion – Part 4](#)

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## **Global High Net Worth Investors:** *Asset Protection Strategy*

In a 2006 Wall Street Journal article it was revealed that high net worth investors had an investment tax planning “secret strategy”: they used private placement life insurance as a “tax free wrapper” for their liquid investment portfolios (stocks and bonds).

The strategy has been cited as follows in an October 18, 2006 Wall St. Journal article, *Insuring Against Hedge-Fund Taxes*, by Rachel Emma Silverman:

“A small but growing number of wealthy investors have discovered a legal way to invest in hedge funds without paying income taxes on the gains. It’s called ‘private placement’ life insurance. These special insurance contracts allow policyholders to invest in a wide range of products, including hedge funds. The main attraction: Because the investments are held within an insurance wrapper, gains inside the policy are shielded from income taxes - as is the payout upon death. What’s more, policyholders may be able to access their money during their lifetimes by withdrawing or borrowing funds, tax-free, from the policy....”

“Private-placement insurance policies are essentially variable insurance policies, which allow policyholders to invest a portion of their premiums in separate investment accounts...”

“The strategy’s chief advantage is the tax benefits that all life insurance policies offer: Assets inside a life insurance policy can grow tax-free, and the death benefit can also be paid out free of income tax...”

## **Asset Protection for High Net Worth Investors**

One of the most effective ways to preserve assets is by effecting international structuring that is at once legitimate and compliant (from a reporting and tax perspective) but distances asset ownership from the client and would-be creditors. Yet in a non-adversarial way with solid economic rationale. A key element in this structure is international variable life insurance that is offered in a variety of credible financial jurisdictions like Bermuda, Bahamas, The Cayman Islands, The Isle of Man and others.

Such policies are akin to their domestic counterparts by adhering to the same US tax code (7702 et al) but offer distinct advantages. First the similarities:

- Policies may be funded with single or multiple premiums
- Policy assets are invested in client chosen investments- mainly a set menu of mutual funds
- Growth of such assets are income tax exempted during lifetime
- Policy death benefits are income tax exempt at death
- The policy’s cash surrender value (CSV) may be accessed during lifetime also income tax exempted

Now the dissimilarities and thus advantages that apply to some, if not all, international carriers:

- Policies may be bought with premium in-kind i.e. assets
- Clients may choose their own investment manager to manage policy investments
- The manager may choose virtually any investment class including stocks, bonds, mutual funds, hedge funds, private equity etc.
- Generally, fees are fractional compared to domestic offerings

In terms of asset protection, some jurisdictions (like some US States) exempt insurance policies from the claims of creditors; most notably Bahamas and the Cayman Islands. In fact Cayman has recently updated their insurance legislation such that it fully protects the premium(s), the growth on the premium and the death benefit from the claim of creditors putting the greatest clarity in this section of the applicable law of any jurisdiction. In addition the Cayman Segregated Account Statute (7 (8) c) legally segregates the assets of one policy from another, while also keeping them legally distinct from the insurance company's general assets and liabilities; yet further protection.

Interestingly, Puerto Rico, as a quasi-US/offshore jurisdiction has recently enacted law (2011) that immediately exempts assets placed into a policy issued by an international P.R. carrier, provided that those assets or monies were not subject to any prior or current claim. This offers very substantial, statutorily provided protection that must be respected by every other U.S. State Court and judge. Also as a U.S jurisdiction for reporting/information purposes, a U.S. taxpayer would

also be free from any additional FBAR reporting obligations in owning a PR issued contract.

Regardless of the jurisdiction of issuance, such policies are very often held by trusts for estate planning and dispositive reasons. The domicile of the trust can also be an additional layer of protection for the reason that most jurisdictions have a “fraudulent disposition” period to help establish objectively if the assets settled in trust were done so purposely to defraud creditors of the settlor. The Bahamas by example has a 2-year conveyancing Statute. What this means, in the case of the Bahamas, is that if the assets have been in the trust for +2 years, it’s presumed that they were not placed there purposely to defraud a creditor.

Can a creditor still come forward and lay claim after 2 years? Yes- but the burden of proof is heavily on that creditor.

What happens if the trust is challenged before the 2-year period? The burden of proof, though somewhat lower, is still on the creditor to establish that those assets (in particular) were placed in trust and are rightly his or hers.

In either case under certain tracing claim actions the trust may be permeated. It can happen. In this situation, the courts could award the trust assets to the creditor. That is, specifically it would order non-exempted assets to the creditor. In the Bahamas, as we have noted earlier, insurance is such an exempted asset and therefore the courts would be unable to assign it to the creditor.

The other relevant point is that in court, the debtor now has a cogent, commercial argument for having established the structure in the first

place; to make and hold international investments in the most tax efficient manner that is at once both transparent and compliant. This, as opposed to other structures where the intent is clearly to avoid or even evades liabilities- contingent or otherwise.

### **Asset Protection: The Ultimate Strategy**

Investors concerned about third party creditor attachment may seek “ultimate asset protection” for their assets through a Puerto Rico life insurance policy owned by a U.S. Grantor Trust domiciled in the Bahamas.

This ultimate asset protection strategy has three “key ingredients”:

- 1) Under Puerto Rico law, the cash value benefits of a life insurance policy are expressly exempt from seizure by creditors (absent fraudulent conveyance funding of the policy). See: Puerto Rico Act No. 399 of 9/22/04, as amended by Act No. 98 (6/20/11). Under Act. No. 98 (6/20/11), the policy owner and policy beneficiary are statutorily protected from seizure.
- 2) In the Bahamas under Bahamian law, insurance is exempt from creditor claims, provided that premiums used to fund the policy are not subject to any prior claim at the time of transfer (See: Bahamas Insurance Act, Chapter 347, Section 17, effective 6/1/70).
- 3) In the Bahamas under the Fraudulent Dispositions Act of 1991 (effective date 4/5/91), Chapter 78, Section 4:

- Every disposition of property made with an intent to defraud shall be voidable at the instance of a creditor thereby prejudiced;
  - The burden of establishing an intent to defraud shall be upon the creditor seeking to set aside the disposition;
  - No action or proceedings shall be commenced pursuant to this act unless commenced within two years of the date of the relevant disposition.
- 4) In the Bahamas, under the Banks and Trust Compliance Regulation Act (2000), (effective 12/29/2000), Chapter 316, Section 19(1): no person shall without the customer consent disclose to any person, any such information relating to the identity, assets, liabilities, transactions or accounts of a customer. Any person guilty of an offense shall be liable or summary conviction to a fine not exceeding \$25,000, or to a term of imprisonment not exceeding two years, or both.

For those investors with investment portfolios, pre-emptive planning may fully exempt all assets from creditor attachment. The strategy:

- 1) Transfer all liquid assets (i.e. cash, stock or bonds) to a Nassau Trust (which is a U.S. grantor trust, i.e., IRC Sec. 679), which trust may be amendable or revocable so there is no completed gift (and no gift tax due on Form 709: U.S. gift tax return required);
- 2) The Nassau Trust capitalizes a Puerto Rico variable life insurance policy, which owns an underlying company (a Nassau International Business Company; i.e. an "IBC");
- 3) The "IBC" holds title to all investment assets (the IBC is owned by the life insurance policy separate investment account; i.e.

“cash value account” which is comprised of premiums paid and earnings on the premiums paid).

Since the investment portfolio is ultimately owned by the Puerto Rico variable life insurance policy, the policy acts as a “tax-free wrapper”; i.e., tax-free gains inside the policy (e.g., annual earnings/capital gains are shielded from income taxes). Assets inside the policy grow and compound income tax-free. The death benefit is paid income tax-free (IRC Section 101).

IRS income tax audits may be pre-empted on investment portfolio income since there is neither income tax due, nor any tax reporting due on the investment portfolio income.

Absent a fraudulent conveyance, investment portfolio assets are immediately exempt from creditor seizure once held by the policy. Investment portfolio assets receive the following creditor protection:

- 1) Under Puerto Rico law (the governing law for the Puerto Rico Variable Life Insurance Policy), the policy owner and beneficiary are statutorily protected from seizure;
- 2) Under Bahamas law (the governing law for the trust that owns the policy), insurance is exempt from creditor claims and client financial assets may not be disclosed or be subject to a criminal offense of up to two years in jail. In addition, an “attaching creditor” must initiate an action (in the Bahamas) to set aside a “fraudulent conveyance” within two years from the date of transfer or they will be “time-barred”.

Under the “Ultimate Asset Protection” strategy, IRS tax audits are pre-empted (since no tax is due and there is no tax reporting), both

Bahamas and Puerto Rican laws exempt from creditor attachment the “cash value” component of the life insurance policy (which owns the investment portfolio assets), the Bahamas fraudulent conveyance laws “time bar” creditors after two years, and the Bahamas “Bank Secrecy law/criminalize third party disclosures of client “asset information”.

If the investments perform in accordance with the S&P 500 historic yields (10.6% over the last 30 years, cumulative with dividends) or hedge fund yields (projected 15% annually), the portfolios will grow “income tax free” but will be subject to U.S. estate (and gift) tax on death (or transfers) for U.S. citizens, estate/gift tax residents; i.e. U.S. domicile). The U.S. estate tax may be satisfied by a U.S. life insurance policy, held in an U.S. irrevocable life insurance trust, so the death benefit proceeds may be paid on a “leveraged basis” (by insurance premiums), and excluded from U.S. estate tax (by the life insurance trust).

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