



ESTATE PLANNING: TWO IRONS IN THE FIRE

“A blind man in a dark room – looking for a black hat which isn’t there”. This is an apt description (courtesy of the English judge, Lord Bowen) of the confusion many people have about the use of offshore centres. Seeking reliable guidance can be difficult and there is a constant mix of fact and fiction.

What is fact is that although most traditional offshore structures comprising trusts, foundations and companies will be tax neutral, there are legal ways that they can be used for asset protection. I wanted to make the point about taxes crystal clear because many people believe, or have been led to believe, that one or more of the vehicles mentioned will guarantee tax savings. In certain cases this is true, but they are the exception.

The tax motive is becoming less of an issue because people are seeking assurance that some of their assets will not remain within a domestic environment with its attendant restrictions, uncertainties and erosions of privacy, whether real or perceived. During a speech in the British House of Commons in November, 1783, William Pitt the Younger argued thus: “Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves”. Some of my clients feel they are slaves of the (government) system, that some government controls go too far.

Civil lawsuits can annihilate wealth and are reason enough to place assets beyond the reach of avaricious plaintiffs. As long ago as 2003 a report from the US Congressional Budget Office on the tort system revealed that only 46 cents of every tort lawsuit dollar was going to the victims with the remainder consumed by legal fees and other costs. I have no reason to believe that this has improved; quite the contrary. If further proof was needed of the current craziness, consider a case near San Francisco where the Rubin family filed a \$1.5 million dollar suit for damages against the New Haven Unified School District because their son was thrown off the high school varsity basketball team. The coach was blamed for ruining the son’s chances of winning a university basketball scholarship and thus the possibility of a professional career with the National Basketball Association. It has been said that civil suits have become a sport, but this is ridiculous. Now I appreciate that such extreme cases are more likely to originate in America, but this eagerness to sue has become a growing international trend.

Besides asset protection, there is privacy and probate. The former can be achieved in most cases and the latter can be avoided easily by using either a trust or foundation. A



parallel offshore estate hedges your bets and it was Otto von Bismarck who recommended having two irons in the fire.

Times have changed and so have the principal reasons why assets move offshore, often to be insulated within trusts and foundations. The motive is very clear to me, but then I'm not one of those looking for a black hat. My Panama hat fits me just fine.

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