

South Dakota Trust, U.S.A.

International families with connections to the U.S., be it through family members residing in the U.S. or investments in the U.S., require U.S. solutions. As an established succession planning vehicle well recognized in the U.S., the U.S. trust enables the transfer of wealth to U.S. beneficiaries in a most advantageous manner while at the same time providing for an investment structure for U.S. situs investments.



Reasons for a South Dakota Trust

- Succession planning vehicle for U.S. beneficiaries
- Domestication of a foreign trust into the U.S.
- Recipient of income arising from a foreign trust
- Pre-immigration planning tool
- Modern South Dakota trust law
- Recognized structure for U.S. situs investments

The benefits of South Dakota

- Unlimited perpetuity period (trust duration)
- No state trust income tax
- Directed and delegated trust statute (trustee delegates investment responsibility, but keeps selection of investment advisors and performance monitoring responsibilities) trust statute
- Low state premium tax for life insurance premiums
- Domestic asset protection provisions (2 year fraudulent conveyance claw back period)
- Court records are sealed in perpetuity and therefore not available to the public

Succession planning vehicle for U.S. beneficiaries

International families require for their U.S. family members established vehicles which are well-recognized in the U.S. and which offer maximization of succession planning benefits. A U.S. trust is commonly used for the implementation of a variety of legitimate succession planning techniques. U.S. tax law recognizes the trust as a valid instrument for such purposes.

Domestication of a foreign trust into the U.S.

In order to avoid negative income tax consequences and onerous reporting requirements for U.S. beneficiaries of «foreign trusts», it may be more advantageous to domesticate a foreign trust into the U.S.

By bringing the foreign trust into the regulated U.S. environment, benefits exclusive to U.S. structures are made available to the U.S. beneficiary.

Recipient of income arising from a foreign trust

U.S. beneficiaries may prefer to receive their beneficial interest in a foreign trust directly to their own U.S. trust. This will allow them to take advantage of the succession planning benefits available to them in the U.S.

Pre-immigration planning tool

A settlor with the intention to move to the U.S. may establish a domestic U.S. trust prior to formally emigrating. Depending on the settlor's home country, the trust may provide more testamentary freedom and easier administration than is available in the settlor's home country or in the country where the settlor's assets are situated.

Modern South Dakota trust law

South Dakota trust law offers a variety of advantages beneficial for an international family's planning objectives: unlimited perpetuity period, no state income tax levied on trusts, low state premium tax for life insurance premiums, domestic asset protection provisions and trust records sealed in perpetuity.

Recognized structure for U.S. situs Investments

U.S. trusts are very often used by foreign investors to structure investments in U.S. situs assets. In addition to protecting the foreign settlor and foreign beneficiaries from U.S. federal estate tax, if structured properly, a U.S. trust may provide further unique benefits.

Types of South Dakota Trusts

- South Dakota dynasty trust
- Foreign grantor trust
- Non-grantor trust
- Directed trust
- Life insurance trust
- Charitable and purpose trusts
- Qualified domestic trust

South Dakota dynasty trust

The South Dakota dynasty trust is a perfect vehicle for leaving assets to a U.S. beneficiary while at the same time avoiding probate procedures in the U.S. The South Dakota dynasty trust protects the U.S. beneficiaries from U.S. gift taxes upon the establishment of the trust by the foreign settler as well as from U.S. estate or generation-skipping transfer tax. It can continue perpetually for the U.S. beneficiaries with no limitation for duration.

Foreign grantor trust

A foreign grantor trust is established by a non-U.S. settler for the benefit of U.S. and non-U.S. beneficiaries. Despite the fact that it has a U.S. trustee and is subject to South Dakota law, it can be structured in a way that it remains «foreign» for the lifetime of the non-U.S. settler, thereby retaining all benefits of an offshore trust.

Non-grantor trust

A non-grantor trust provides a variety of advantages for its beneficiaries: the U.S. beneficiaries are only taxed on what they receive from the trust; it protects the U.S. beneficiaries from U.S. estate tax; if structured properly, it also protects them from future creditors (2-year fraudulent conveyance claw back period).

Directed trust

A directed trust allows an international family to appoint an external investment advisor/manager in charge of the trust's investment management and who directs the trustee as to how the trust assets must be invested, usually pursuant to a defined investment policy. As this trust relieves the trustee from all investment responsibilities and is recognized by South Dakota statute, it permits greater investment freedom than would ordinarily be permissible in a «regular» trust.

Delegated trust

In principle, a trustee must personally perform the responsibilities of the trusteeship. Under South Dakota law a trustee may delegate its fiduciary authority in the administration of a trust to others. The trustee must however act diligently when selecting the person to whom it delegates certain powers, and remains responsible for monitoring such person.

Life insurance trust

A life insurance trust purchases U.S. life insurance for the benefit of its beneficiaries. Properly structured life insurance can defer federal income taxes and allow federal and state income tax-free withdrawals by the U.S. beneficiaries. South Dakota has the lowest rate of state insurance premium tax in the U.S.

Charitable and purpose trusts

South Dakota trust law allows the creation of trusts for charitable, educational, religious, or other public use purposes. The grantor of the trust maintains the power to enforce the charitable trust or may designate persons for such purposes. In the event of default, the attorney general will ensure the enforcement of such trusts by proper proceedings in the courts. Trusts for lawful non-charitable purposes may be established in South Dakota since it neither has a law rule against perpetuities nor a rule limiting the duration of non-charitable purpose trusts.

Qualified domestic trust

A qualified domestic trust is a unique instrument for preserving the marital deduction on transfers from a decedent to his/her surviving spouse which is otherwise not available where the recipient spouse is not a U.S. citizen. A «ODOT» permits deferral of U.S. estate tax, although not avoidance.



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