



US/UK estate planning

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Who is a “US person”?

- “US Person”
 - US Citizen
 - US Green Card holder
 - US “resident alien” (substantial presence test)
- US Citizen
 - Born in the US
 - Born outside US to two US parents
 - Born outside the US to one US parent if such parent grew up in the US

US federal transfer taxes

- US federal estate taxes are payable by US citizens and US domiciliaries on a worldwide basis
 - Estate tax on death
 - Gift tax on lifetime transfers
 - Generation skipping tax
- Unified exemption \$11.58m (portable between spouses if both US Persons)
- Gifts to non-US spouse are taxable subject to \$159,000 per annum exemption.
- Annual exempt amount \$15,000 per donee
- NB Green card holders are presumed to be domiciled in the US.

US federal transfer taxes (cont.)

- Individuals domiciled outside the US are only subject to estate and gift tax on US situs assets

Gift Tax

- Directly held US real estate
- Chattels in US (artwork, furniture, cars etc.)
- Does NOT apply to US property such as stock in US corporations, cash, annuities and mutual funds

Estate Tax

- Tangible and intangible property in US, including stock in US corporations and currency in the US
- Limited \$60,000 exclusion for US situs assets

Case study

- John, aged 45, born in US now UK resident.
- Victoria, aged 44, born in the UK – worked in the US in her 20s under a visa where she met and married John.
- They have 2 children aged 10 and 12.
- John and Victoria lived in Massachusetts after getting married but moved to the UK 16 years ago.
- While in the US John and Victoria created a revocable grantor trust with the intention of avoiding US probate on death. John and Victoria are the trustees during their lifetime and have power to use the trust assets for their own benefit.
- John and Victoria jointly own a property in the UK worth £3m (\$4.1m) and they each have investments of approximately £10m (\$13.8m) made up of assets in the UK and the US. Their combined estate is approximately £23m (\$31.7m)

Family tax profile

- John
 - US Citizen – subject to US federal income and transfer tax on a worldwide basis
 - Deemed domiciled in the UK – IHT on a worldwide basis
- Victoria
 - Not US citizen or US domiciled – US estate tax on US assets
 - Domiciled in UK
- Children
 - Dual US/UK citizens

Impact of no US/UK joint advice

- Assume John dies first
 - All joint property passes to Victoria by survivorship
 - All other assets pass to Victoria under John's Will.
- Tax consequences
 - As Victoria is not a US citizen, marital deduction not available on assets passing to her outright.
 - John's gross estate = \$15.9m ; exemption \$11.5m , 40% on excess of \$4.4m
 - \$1.76m in US Estate duty on 1st death = timing mismatch on taxable events between US and UK

Outcome the same if Wills include IPDI for Victoria or a discretionary trust

Basic US/UK estate planning to do list

- Review the grantor trust.
- John's Will – prepare Will for John that takes into account his US citizenship, Victoria's non-US citizenship and children's dual citizenship (QDOT)
- Victoria's Will – prepare Will for Victoria that not only covers the UK side but also takes into account the US citizenship of John and children
- Restructure property ownership during lifetime

US grantor trusts

- UK questions:
 - Is the trust a “Settlement” for UK purposes?
 - What is the governing law?
 - What assets are in the trust and where are they located?
 - What happens if John and Victoria lose capacity?

What is a “settlement”

- S620(1) ITTOIA 2005 and s97(7) TCGA 1992
“includes any disposition, trust, covenant, agreement, arrangement or transfer of assets”
- S43(2) IHTA 1984 - refers to assets held “in trust”
- A bare trust is not a “settlement” – accepted by HMRC.
- A “settlement” must have an element of gratuity
- *Armitage v Nurse*:
“If the beneficiaries have no rights enforceable against trustees there are no trusts”

US revocable grantor trust

- Review the governing law of the trust
- Uniform Trust Code – s603:
 - “To the extent a trust is revocable [and the settlor has capacity to revoke the trust] rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor”*
- What happens to the power of revocation if the settlor’s lose capacity?

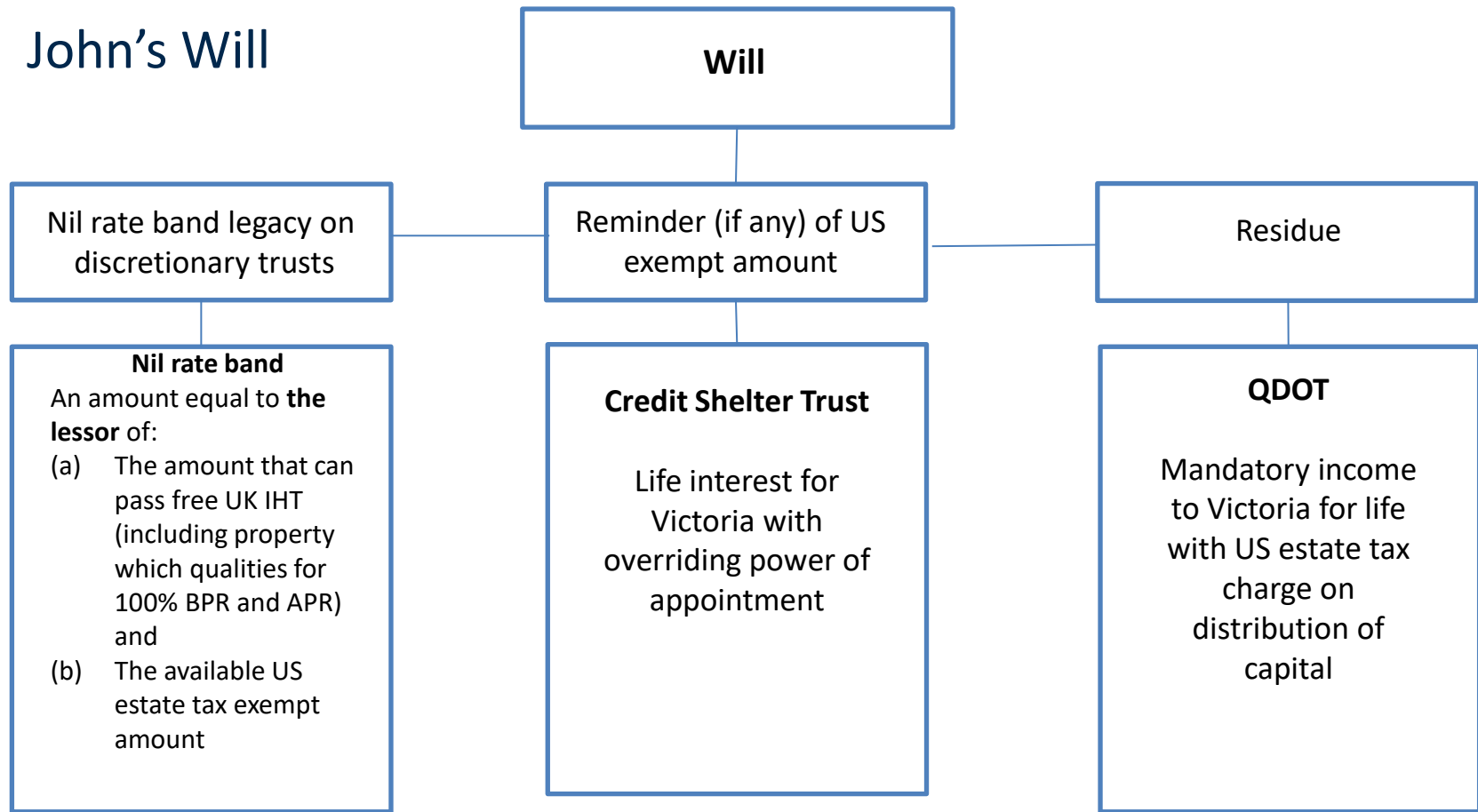
US revocable grantor trust

- If the trust is a settlement:
 - UK IHT consequences – relevant property regime/ excluded property trust?
 - Is the trust UK tax resident? If so trustees will be paying tax on worldwide income and gains subject to the US/UK double tax treaty.

John's Will

- Aim is to defer US Estate Duty until 2nd death
- If assets are in excess of US Gift/Estate Duty allowance then consider incorporating a QDOT (Qualified Domestic Trust) into the Will.
- If US citizen's assets are clearly within US Gift/Estate Duty allowance then QDOT not needed.

John's Will



QDOT

- Needs to have a US trustee
- If assets \$2m needs to have US professional trustee
- Can distribute underlying capital to life tenant spouse but will attract a US Estate Duty charge
- Cannot incorporate an overriding power of appointment for the benefit of other beneficiaries
- Restrictions re foreign property

Property ownership

- Be careful if property is owned as joint tenants!
- US tax looks to the contribution of each spouse.
 - No gift on creation of joint tenancy
 - However, if the joint tenancy is terminated (e.g on a severance or a sale), there is a deemed gift to extent each spouse does not receive their share of the proceeds (based on % contribution)
- Principal Private Residence Relief on gain in UK
- \$250,000 gain exemption in US.
- Mortgages

John
US Citizen
UK deemed domiciled



Victoria
Non-US citizen
UK domiciled

John uses his US annual exclusion amount each year to gift a percentage of the house to Victoria by declaration of trust

US annual exclusion for gifts to a non-US citizen spouse is \$159,000



Percentage owned by Victoria (and outside US tax net) increases each year without triggering US tax or eroding the US gift and estate tax exemption

- Purchased for £500,000
- Current value £3m

Issues for non-US trustees

- US reporting by trustees
- PFICs/CFCs
- UNI, DNI and the throwback rules

Questions?