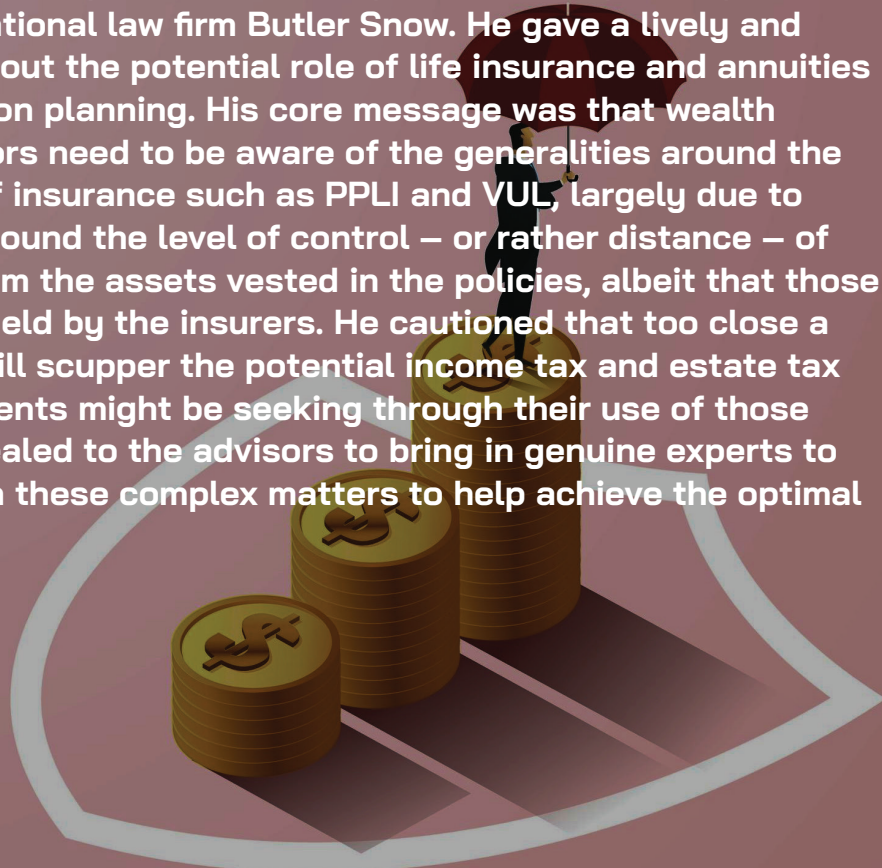


Leading Lawyer John Shoemaker Reviews the Intricacies Around Using Life Insurance in US Pre-Immigration Planning

John Shoemaker is a Singapore-based Registered Foreign Lawyer with leading international law firm Butler Snow. He gave a lively and entertaining talk about the potential role of life insurance and annuities in US pre-immigration planning. His core message was that wealth management advisors need to be aware of the generalities around the US tax treatment of insurance such as PPLI and VUL, largely due to US-specific rules around the level of control – or rather distance – of the policyholder from the assets vested in the policies, albeit that those assets are legally held by the insurers. He cautioned that too close a degree of control will scupper the potential income tax and estate tax advantages that clients might be seeking through their use of those structures. He appealed to the advisors to bring in genuine experts to help their clients on these complex matters to help achieve the optimal outcomes.



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JOHN SHOEMAKER
Butler Snow

John first told delegates

that he is a US tax attorney for the mid-size private law firm Butler Snow in the US, working for their offshore offices in London and Singapore. He explained that they specialise in tax and succession planning and that his background includes having spent some time working for regulatory agencies in the US and then within the private

also of the legal solutions and expertise that he and his firm can bring to individual clients and their families.

Don't make false assumptions

John explained that his talk was on the technicalities and practices around the US treatment of life insurance. He said he would run quickly through both some technicalities, and also some of the key advantages private clients might want to achieve as they think about moving themselves or family members to the US. He said he would frame the talk bearing in mind the difference between expertise and awareness with a view to helping advisors and clients understand how to arrive at the best outcomes.

"Transparency is the new reality," he commented. "We all know that the days of hidden accounts and banking secrecy are over. There is a

who can then address and solve those potential challenges."

Caution and due care are vital

John said that advisors must be wary of assuming they know things, as incorrect information or advice can be hazardous to the financials and reputations of very wealthy clients and their affairs. "You must be cautious in delivering specifics to clients and make sure that when technicalities are involved, you bring in the right expertise from outside to deliver the optimal solutions to your clients," he reiterated. "You are not going to learn much about US insurance in my short talk today, but I can help highlight how you can be aware of complexities, spot issues and then work with specialists such as myself and my colleagues here today."

He explained that life insurance tax treatment in the US can be

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banking world for a bank-owned fiduciary and subsequently in private legal practice.

He said their offices in London and Singapore focus largely on tax and estate planning. John has accumulated a comprehensive overview of how the regulators think, how they implement changes from a practical perspective, and

clear expectation wherever you are involved in financial transactions or insurance transactions that you have a legitimate purpose behind them. As advisors, you in the wealth management space need to help guide your clients. You cannot know everything, but you can identify issues and bring them to your clients' attention, and when to move those issues to specialists

very preferential, but it can be far less preferential if not structured correctly. The payout from an income tax perspective should be tax-free and treated as capital. From a transfer tax perspective, the surrender value can be included in the estate of the policy owner, but clients can use fiduciary structures like trusts and annuities to hold policies outside the estate, and

thereby ring-fenced from that transfer tax against their estate tax exposure. And John added that there are also both Federal and local tax considerations to think about in the US.

Mission possible, but be cautious

“The mission is to achieve income tax efficiency and a capital treatment payout,” he elucidated. “And we want to be able to ring-fence at a minimum surrender value within estate tax or maybe the entire value of the policy outside of the estate tax in the US. But I reiterate that it must be structured to work in the US context.”

John said that, for example, Private Placement Life Insurance, a key topic of the September 6 Summit, is fully recognised and long established in the US as a form of permanent variable universal life housing an array of investments for the policyholder, with those assets no longer directly owned by the client, but by the insurance companies.

Keep your distance

“But,” he cautioned, “the central issue in the US is the investor control doctrine. You must be aware that to achieve the desired advantages and outcomes from a tax perspective, the investment decisions over the assets must be entirely separate from the individual who funded the policy. That can frequently be a hurdle, as it doesn’t meet client expectations about wanting to be involved in those investment decisions. This means that you must be aware that you can achieve the outcome that you want with PPLI, but sometimes, in the US, it may require greater separation of



control.” And that is not necessarily the preference amongst HNW and UHNW clients in Asia.

In short, he said that life insurance related to the US will not always reduce tax liabilities to zero, but it can mitigate exposures, defer exposures and help with inter-generational wealth transfer and liquidity at critical times. But only if the structuring is done properly. He also remarked that annuities, another interesting product highlighted in the Summit, are also a good solution as well, as those can offer income tax deferral.

“My key point is that if somebody is getting ready to move to the US, the pre-immigration planning should involve ring-fencing a portion of their assets to limit income tax exposure and both PPLI and annuities can be part of a total planning package that can reduce their annual income tax liability and spread it out farther into the future,” John explained. And he added that they can be combined with trusts that further help

overcome some issues, including dangers related to the CFC regime.

Get it right

“We see life insurance and annuities as key components within robust US pre-immigration planning, but you must all be fully aware of the specific approach to insurance in the US (which can be very different from its treatment in other countries) so that it can be properly structured and used effectively as part of any client’s US pre-immigration planning process.”

He closed his talk by reminding the audience that when working with clients who might be considering a personal or family move to the US, they need to be aware that insurance products they are used to in their home markets in Asia might now be treated as insurance under the US tax system. And this is precisely why he reiterated that advisors should help their clients reach out to experts for specialist advice.” ■

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