The Financial and Estate Planning Council of Metropolitan Detroit, Inc.

April 2017

33006 W. Seven Mile Road, #237, Livonia, MI 48152 • (313) 530-9223 • FAX: (248) 479-0350

President's Message

Dear Members,

Our February meeting, held at the Automotive Hall of Fame in Dearborn, was a great success from all perspectives. Members were allowed full access to the exhibits during the cocktail hour (drink in hand); the meal catered by Forte Balanger was enjoyable; attendance was good; and, the speakers were knowledgeable.

Instead of a tax update, we asked Joseph Owens from Warner Norcross & Judd to provide a legal update. He gave us a very much abbreviated report about the passage of Michigan's new statue to provide for self-settled asset protection trusts. While I know that Joe has given two full-length seminars on the topic, this update provided for an introduction to our members. We chose the legal update, since our main speaker, John Scroggin, presented a very fine overview about where we stand relative to estate, gift, capital gains, and income tax issues under the new President and Congress. Although there is no clear direction, Mr. Scroggin provided us with a very fine history of estate and gift tax as well as leading us down the road of several analyses regarding the overall direction of the wealth transfer process in the future. His presentation was thought provoking and will provide good background for analysis as legislation ramps up.

Brad Kreiner gave us a short presentation regarding the upcoming annual golf outing. It will be held again at Wabeek Country Club. Proceeds from that day shall be presented to The Salvation Army for its Bed and Bread Campaign. The Bed and Bread program provides meals to persons in need from its canteen trucks which bring the food into neighborhoods where the needy are living. There was a thunderous applause when The Salvation Army was announced and I have received several emails since our meeting. It appears to be a popular choice.

Plans are well under way for a summer social event aboard The Infinity. This will be in lieu of our usual "Significant Others or Guest Night."

I am also pleased to announce that we have set a new record regarding the number of annual sponsors for our organization. The sponsorships are vitally important to us in order to maintain high caliber programs with nationally recognized speakers. Thank you to the donors and a special thanks to the committee who has recruited them.

We are also having a growth spurt in new members. Please know that we have room for more members in order to spread our influence as a professional organization assisting to educate and to enlighten our members to better serve the public.

See you in May.

Yours truly,

David M. Thoms, President

WELCOME TO OUR NEW MEMBERS

MARIA J. BARON, JD
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Chris Burke, CFP
LoVasco Consulting Group
Sponsors: Anthony Cracchiolo and Jonathan Lau

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Center for Financial Planning, Inc.
Sponsors: Tim Wyman and Benson Barr

DONALD M. DENSTAEDT, CFP
Platinum Wealth Management Group
Sponsors: Jeffrey Hoenle and Gregory Hamilton

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Sponsors: Ted Kiriazis and James Smallegan

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UHY, LLP
Sponsors: Margaret Amsden and Jim Smallegan

JOSEPH SAKER
Merrill Lynch
Sponsors: Carlton Bardel and Bob Kass

TYLER SILVERTHORN, CFP
Stonebridge Financial Partners
Sponsors: Nicole Gopoian and Glenn Barnes

JOHN THIBAULT, CFP, ChFC
Wells Fargo Advisors, LLC
Sponsors: Frank Henke, Bruce Stone and Brad Kreiner

TRACY WICK
Tracy Wick Property Team
Sponsors: Drew Hayes and J. Thomas MacFarlane

FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

11th ANNUAL CHARITY GOLF OUTING

Net Proceeds and Additional Contributions to Salvation Army

MONDAY, MAY 22, 2017

GOLF OUTING

Wabeek Country Club
4000 Clubgate Drive,
Bloomfield Hills, MI 48302
http://www.wabeekcc.org/
(248) 855-0700

11:15 AM REGISTRATION /11:45 AM: BOX LUNCH/ SHOTGUN START 12:00 PM

18 HOLES OF GOLF WITH A CART/DRIVING RANGE WARM-UP/UNLIMITED COURSE BEVERAGES

4-PERSON SCRAMBLE (INCLUDES DINNER)

$150 PER GOLFER (SINGLE GOLFERS ARE WELCOME)

$600 PER FOURSOME

$700 FOR A FOURSOME AND A HOLE SPONSOR

$150 HOLE SPONSOR ONLY

5:30 PM COCKTAILS
6:30 PM MEETING & GUEST SPEAKER
7:30 PM DINNER
($60.00 COCKTAILS & DINNER ONLY)

DINNER MEETING:

(see dinner meeting notice for complete details)

Speaker: Mary F. Radford, JD

Topic: "Representing Clients with Diminished Capacity"

Log onto our website by May 12 to make your reservation and pay with VISA or Master Card. www.metrodetroitfepc.org

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Golf Registration:

GROUP NAME:______________________________ GROUP CONTACT INFO:______________________

PLAYER #1 ______________________________
PLAYER #2 ______________________________
PLAYER #3 ______________________________
PLAYER #4 ______________________________

☐ YES I WANT TO SPONSOR A HOLE ☐ PAYMENT ENCLOSED:______________

FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

MEMBER MEETING PRECEDED BY THE 11th ANNUAL GOLF OUTING

(Please refer to the additional Golf Outing Notice)

MONDAY, MAY 22, 2017

Wabeek Country Club
4000 Clubgate Drive, Bloomfield Hills, MI 48302

Mary F. Radford, JD

"Representing Clients with Diminished Capacity"

Professor Mary F. Radford is the Marjorie Fine Knowles Professor of Law at the Georgia State University College of Law in Atlanta, Georgia. Her teaching areas include Wills, Trusts & Estates and Elder Law. Professor Radford is an Academic Fellow of the American College of Trust & Estate Counsel (ACTEC) and, in 2011-12,she served as that organization's President. Professor Radford served as the Reporter and principal drafter for the State Bar of Georgia committees that drafted the 1998 Revised Georgia Probate Code, the 2005 Revised Georgia Guardianship and Conservatorship Code, and the 2010 Revised Georgia Trust Code. Professor Radford is the author of *Redfearn: Wills & Administration in Georgia* (Thomson Reuters, 2016-17); *Trusts & Trustees in Georgia* (Thomson Reuters, 2016-17 ed.); and *Georgia Guardianship and Conservatorship* (Thomson Reuters, 2016-17 ed.), as well as numerous law review articles and other scholarly publications.

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- Wayne State
- Wells Fargo Private Bank
- Williams Williams Rattner & Plunkett, PC

AGENDA:	5:30 p.m.	Complimentary Cocktails
	6:30 p.m.	Presentation
	7:30 p.m.	Dinner

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Log onto our website by May 12, 2017 to make your reservation and pay with VISA or Master Card.
www.metrodetroitfepc.org

RESERVATIONS RECEIVED AFTER MAY 12 WILL COST $85.00 PER PERSON.

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TOTAL ENCLOSED: ______________________ **SPECIAL MEAL REQUESTS:** ______________________
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Five of the Hottest Topics in International Estate Planning

Paula Jones

Multinational individuals and families are one of the most misunderstood segments of the wealth advisors' clientele. Planning for multinationals is not only applicable to the super-wealthy, nor only those who live in New York. The recent media storm surrounding the Panama Papers seemed to exacerbate the inaccurate stereotype that anyone holding assets "offshore" must be a tax cheat.

The real issues that all wealth advisors must be able to address for the multinational client, however, are usually far less dramatic. More and more multinational individuals and families are created by the significant increase in international travel to and from the United States, the creation of cross-border businesses, and the migration of employees to and from the U.S. As a result, the seemingly average client may turn out to have personal, business or financial connections to more than one country, such as:

- A U.S. resident's husband dies with an estate valued well above the federal estate tax exemption amount. His Will leaves everything outright to his wife. The wife is now faced with a large federal estate tax bill due to the lack of an unlimited marital deduction afforded to non-U.S. citizen surviving spouses.

- A married executive owns most of her assets in her own name. For estate planning purposes, it is best that she and her husband each own an equal amount of assets. She needs to make large transfers to her husband, who is a U.S. resident.

- A green card holder has been living in the U.S. for about 6 years. He plans on returning to his home country of Germany in the next few years. He is trying to decide when and how to accomplish his goal in the most tax-efficient manner possible.

- A wealthy Russian individual wishes to purchase real estate in the United States. She asks for advice on the best way to title the property prior to its purchase hoping to minimize U.S. income, estate and gift taxes while limiting her personal liability in regard to a tenant's use of the property.

- A couple left the U.S. several years ago without formally giving up their green cards. They also stopped filing U.S. income tax returns. The clients want to see if they are considered non-compliant with the IRS and if so, they want to weigh all of their options in order to become compliant and avoid significant penalties.

- A multinational couple, both born in India, are citizens of the United Kingdom. They own U.S. property and spending a good portion of their time here. The U.K. law deems them domiciled in India but the U.S. law deems them domiciled in the U.K. They look for advice on planning their estate in the U.S. under this scenario.

The U.S. income and estate tax laws operate differently for multinationals than for purely domestic clients. Every wealth advisor should have at least a passing knowledge of those differences in order to flag issues that must be incorporated into any plan.

1. U.S. Transfer and Income Taxes Have an Extended Reach

The basic rules for federal income and estate tax form the background against which many planning solutions are constructed. The U.S. has a broader reach of taxation than many other countries, even those countries from which U.S. laws have been derived. Here are the basics:

U.S. citizenship and U.S. residency subjects' individuals to U.S. transfer tax (estate and gift taxes). U.S. transfer tax extends to all assets, wherever situated in the world, owned by said individuals.1 For those individuals without either U.S. citizenship or residency but with assets deemed to have a U.S. situs (such as real estate and tangible personal property physically located in the U.S.) only those U.S. situs assets are subject to U.S. transfer tax.2

Individuals who have either renounced their U.S. citizenship or residency may still, under certain circumstances, be subject to U.S. estate tax on a portion or all of their future estate. One law applies to those individuals who renounced prior to June 17, 2008 while a different law applies to those renouncing on or after June 17, 2008. The imposition of estate tax applies under slightly different circumstances in the older law versus the newer one.3

U.S citizenship and U.S. residency subjects individuals to income tax in the U.S. as well and it extends to all income regardless of the country from which it is sourced.4 For those individuals without either citizenship or residency in the U.S., but with U.S. source income, only the U.S. source income is subject to U.S. income tax.5

An exit tax may be imposed on 1) individuals who give up their U.S. citizenship or 2) long-term green card holders who give up their green cards, if the renunciation occurred on or after June 17, 2008 ("covered expatriates").6 Capital gains tax is imposed on all unrealized capital gain on a covered expatriate's worldwide assets, after an exemption amount of $693,000 (in 2016) is applied.7 Not everyone is subject to this exit tax, however. A further qualification

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Tuesday, May 9, 2017

PASQUALE'S RESTAURANT

Mediterranean Room

31555 Woodward Avenue, Royal Oak, MI 48073

(Between 13 and 14 Mile Roads)

Panel Discussion

Courtney L. Kosnick, E.A., Better Business Tax & Accounting, Inc.
Courtney sat for the Enrolled Agents Exam administered by the IRS in 2001. She has also completed a rigorous three year fellowship with the National Tax Practice Institute. Following her passion, all things related to the tax code, she is studying for the USTCP exam that will be administered in Washington DC in November of 2018.

Joseph R. Owens, JD, Warner Norcross & Judd
Joe advises business and individuals in trust and estate planning, tax planning, business succession planning and general business law. His practice is relationship-driven and clients rely on his responsive, comprehensive approach to protecting their assets, providing for heirs, and ensuring continued prosperity for their business.

Pete Gargasoulas, CFP, CIMA, Fifth Third Private Bank
Pete earned his Bachelor of Arts degree in Accounting from Michigan State University, and joined Fifth Third Bank in March, 2007, with more than 13 years of Wealth Management experience as a Senior Portfolio Manager and Equity Research Analyst. Pete has been selected for a variety of interviews from top news organizations, including Bloomberg, Reuters, and CNNfn.

AGENDA:	10:30 a.m.	Registration& Networking
	11:20 a.m.	Buffet Dining
	11:30 a.m. – 12:30 p.m.	Presentation – Q&A

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needed in order to meet the definition of a "covered expatriate" is either a net annual income tax of $161,000 (in 2016) or a net worth of $2 million or more. The U.S. is only interested in imposing the exit tax on those who are considered wealthy.

The definition of "resident" for U.S. estate tax purposes is vastly different than it is for U.S. income tax purposes. A "resident" for estate tax purposes is, a "decedent, who at the time of death, had domicile in the United States." A person acquires domicile by living in a particular location, "for even a brief period of time, with no definite present intention of later removing therefrom."8 A U.S. income tax resident, by contrast, is generally determined in a quantitative manner. Individuals count the number of days they are physically present in the U.S. and if greater than a certain number, according to a formula, they are deemed a tax resident. Green card holders are also automatically deemed U.S. income tax residents.

2. Tax Treaties Can Provide Welcome Relief

There are income tax treaties between the United States and most other countries in the world. However, there are less than twenty estate tax treaties between the United States and other countries.

Most treaties have "tie-breaker" provisions which define issues such as residency, domicile and asset situs - which may be otherwise difficult to discern. Since the laws of more than country may be in direct contrast, a treaty provision can itemize each element of these concepts in order to determine the residency and domicile of an individual and the situs of that individual's assets.

In any planning or administration of a multinational individual or family, the provisions of any applicable tax treaty are crucial. Such treaties can offer a marital deduction when there is none available otherwise; they can prevent double taxation on property otherwise allowed to be taxed under each country's law; and they can also prevent the avoidance of taxation on property that may otherwise fall through a loophole between the laws of applicable countries. The provisions of a tax treaty can negate the need for complex planning in certain areas of the estate. Always check the provisions of any applicable tax treaty before formulating any multinational's estate plan.

3. Non-Citizen Surviving Spouses Have Options

There is a limit to the marital deduction afforded to any transfer – during life or at death – between spouses when the recipient spouse is not a U.S. citizen.9Only transfers to U.S. citizen recipient spouses are afforded the unlimited marital deduction with which most advisors are familiar. Take note that the citizenship status of the donor spouse is irrelevant. Also, both U.S. citizens and U.S. residents are afforded the $5.45 million (in 2016) federal estate and gift tax exemption amount, so transfers above and beyond this amount are those in need of a marital deduction to minimize transfer taxes.10

The philosophy behind this law is to preserve the U.S.'s ability to tax the transfer of the surviving spouse's inherited assets at her death. Should the surviving spouse give up his or her residency, the U.S. can lose its authority to tax him or her. The U.S. would preserve its taxing authority for a U.S. citizen spouse, however, regardless of the country in which he or she physically resides, due to the reach of the U.S. estate tax upon a citizen's worldwide estate.

Fortunately, a non-citizen recipient spouse has some options to render the transfer of assets to him or her eligible for the marital deduction. First, there may be an estate tax treaty that will grant the marital deduction in the estate of the decedent spouse. Another option is for the surviving spouse to become a U.S. citizen.

Finally, a Qualified Domestic Trust ("QDOT") can be incorporated in the estate plan of the donor spouse to earmark any amount passing to the non-citizen recipient spouse that exceeds the applicable estate tax exemption.11 Fortunately, if there has been a lack of planning on the part of the donor spouse, a post-mortem QDOT is available to the surviving spouse, if needed.

The QDOT must maintain a U.S. jurisdiction for tax purposes, so that regardless of where the surviving spouse may relocate, the U.S. maintains the authority to tax the QDOT assets upon their transfer out of the trust. Any transfer into, or attributed to, the QDOT from the donor spouse's estate is then afforded the marital deduction.

A QDOT does not replicate the same experience for the surviving spouse as obtaining citizenship and receiving all assets outright to manage in whatever way he or she seems fit. The QDOT pays out all current income to the surviving spouse but any principal distributions from the QDOT to the surviving spouse are subject to federal estate tax, except when considered "hardship" distributions.12 A QDOT, while providing a welcome option for whom citizenship is not an option, can still feel restrictive to the surviving spouse.

4. Plan Your Client's Pop Over the Pond

When non-U.S. people wish to eventually become resident in the U.S., they have an opportunity to plan their estate while still exempt from the U.S. transfer tax system. Since non-U.S. people have neither U.S. citizenship nor U.S. residency they are subject only to estate or gift tax on U.S. situs assets (see above). Prior to establishing U.S. residency, therefore, unlimited transfers of assets to beneficiaries, outright or in trust, can be made without incurring U.S. gift tax. (These individuals would need to determine if the country of their citizenship or residency, or countries in which their assets are located impose any transfer or income tax on the transfer.) Once U.S. residency is obtained, these

same individuals are subjected to the lifetime gift exemption amount of $5.49 million.13

To extend the benefits of this "loophole", it is recommended that the transferred assets are directed to a U.S. dynasty trust created in a jurisdiction in which the rule against perpetuities has been abolished. Such a trust can keep the benefit of the U.S. transfer tax-free transfer of assets going for many generations.

5. Get Compliant with Foreign Accounts and Assets

In the spring of 2009, the Internal Revenue Service publicized their intent to enforce penalties against those who had failed to report income on their foreign accounts on their U.S. income tax returns. The Service also went after those who failed to file reporting forms regarding foreign accounts, even if all of the income from those accounts had been appropriately reported and paid in the U.S.

For those taxpayers who have not reported or paid income tax on their foreign income, the IRS's Offshore Voluntary Disclosure Program ("OVDI") may be an option to become compliant.14 The most current OVDI, announced in 2012 and modified in 2014, has no current closing deadline. This program imposes a penalty of 27.5% of the highest balance of unreported accounts, in lieu of most other civil penalties if the IRS finds that the taxpayer acted willfully resulting in noncompliance.15

If, on the other hand, the IRS finds a taxpayer did not act willfully, they offered, beginning in September of 2012 and expanded in June of 2014, a Streamlined Program that imposes only a 5% penalty on the highest balance of unreported accounts, in lieu of most other civil penalties.

In order to prevent the need for either of these programs, advisors need to ensure their clients with any accounts or other assets offshore remain compliant. The Foreign Account Tax Reporting Act ("FATCA") was passed in March of 2010 and clarified the requirements of U.S. persons in reporting their financial holdings offshore. A result of that portion of FATCA directed at individual taxpayers, IRS Form 8938 was created to collect information from taxpayers who had not only bank accounts outside the U.S., but also foreign assets. Form 8938 is filed with a taxpayer's Form 1040 and was first required to be filed in tax year 2011.

Practitioners should also be mindful of the requirements of FinCEN Form 114 (often referred to as the "FBAR" and previously identified as Form TD F90-22.1), IRS Form 3520 and IRS Form 3520-A, which often impact individual taxpayers, trusts and estates in the foreign context, although these forms and reporting requirements have been in existence long before 2010.

Legal issues surrounding the compliance of U.S. persons with foreign accounts or with foreign assets have continued to be a major focus of the IRS. There continues to be ongoing activity and change in this highly complex area of the law, with the risk of stiff penalties at every turn.

Conclusion

As our global environment expands, more and more middle class Americans are venturing outside of U.S. borders in many ways - travel, trade, investment and emigration. Advisors should be in tune with the increasing number of clients who have international components to their personal, business or financial lives.

Footnotes:

1 IRC §2001(a), IRC §2031(a)

2 IRC §2101(a), IRC §2103

3 IRC §877, IRC §877A

4 IRC §2(d)

5 IRC §871

6 IRC §877A

7 IRC §877A(a)

8 Treas. Reg. §20.0-1(b)(1)

9 IRC §2523(i)

10 IRC §2010(a)

11 IRC §2056A

12 IRC §2056A(b)

13 IRC §2010(a)

14 https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures

15 https://www.irs.gov/uac/2012-offshore-voluntary-disclosure-program

Paula M. Jones has almost twenty years of experience advising clients on all aspects of domestic and international estate law for moderate to high net worth individuals and business owners. She opened her own practice in 2016. Paula is currently an adjunct professor at Western New England University School of Law where she teaches International Estate Planning and she has authored several articles in respected industry journals. In addition, she developed a workshop and companion workbook on estate planning basics, titled "Will Power: Wealthy or Not, Your Estate Matters." Her web site is www.paulajoneslaw.com.

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