US TRUSTS

Trust in the United States of America

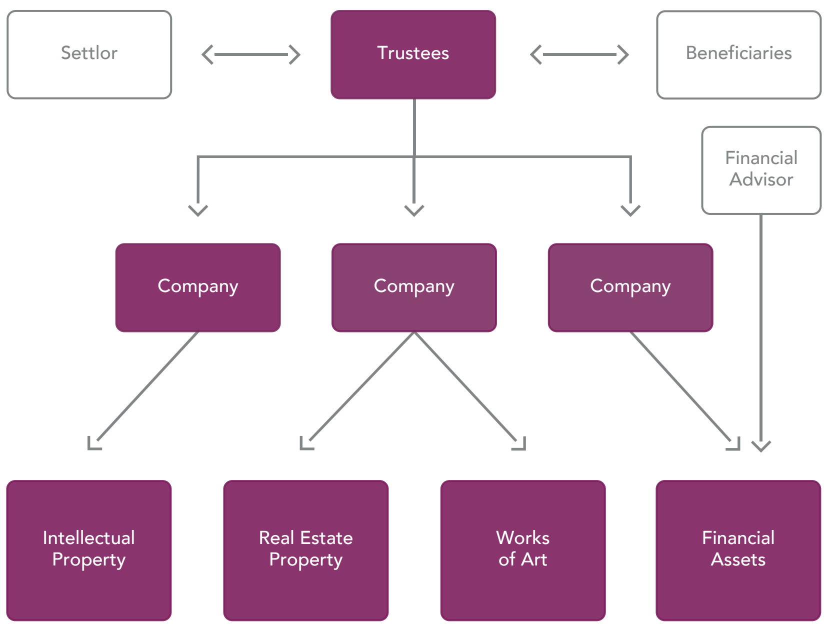
INSIGHT TRUST

The Trust structure in the United States

The Trust Concept

A trust is a private contract of Anglo-Saxon origin, in which a person (Founder - settlor) transfers certain goods or rights to another person he trusts (Trustee), in order to control and administer them for the benefit of third parties (Beneficiaries).

Structure of a simple Trust



Parties involved

Settlor

This is the person to whom the property or asset originally belongs and who decides to transfer it. The person may also be a beneficiary or act as trustee or protector, and retain a high degree of control over the trust, such as approving the distribution of profits or capital, power to modify the terms of the trust, and the power to appoint or remove the trustee or beneficiaries and to revoke the trust.

Trustee

The professional person or entity in charge of the administration of the assets. This person must exercise his powers for the benefit of the beneficiaries and the assets of the trust are not part of the Trustee's personal assets.

Beneficiary	The person or persons designated to receive the profits obtained from the assets and capital amortization. The settlor may be a beneficiary in some particular cases.
Assets	The item or items object of the contract. There are no restrictions on the types of assets to be incorporated into the trust. Assets may be added to the trust in the future. It is usual to establish a trust with an initial nominal amount and later add the assets (stocks, real estate or other items). The assets entrusted to the trustee are property of the trust and are not part of the trustee's personal assets.
Trust Deed	The private contract in which the conditions that must be fulfilled by the trustee are stipulated.
Protector	An optional figure that can be designated to supervise the trustee, acting as a monitoring body, to which the settlor may even grant the power to replace the trustee for another person, if necessary. Usually the protector is a person trusted by the settlor or is a professional advisor. In these cases, the consent of the protector will be necessary, before the trustee can make certain decisions (right of veto).

Settlor always assures that his wishes are fulfilled through the Protector fiscalization

The key to understanding how the trust works lies in the way in which English law, the so-called **common law**, interprets property law. Common law recognizes two different ways of exercising ownership. On the one hand there ir **legal ownership** or legal estate, that is, ownership or legal ownership of asset. On the other hand, there is the so-called **beneficial ownership** or equitable estate, which we could define as the right to use and enjoy. This grants certain rights over the asset to a person other than its legal owner.

This creates a complex situation in which the administrator is the legal owner of the asset, but does not have complete control over the asset, since he has a personal obligation vis-à-vis the beneficiaries. These have the right to receive the asset, at the time stipulated, and in some cases also to use and enjoy it.

The civil code understands the property right as an absolute, exclusive, definitive domain, and therefore considers it as indivisible. There is only one type of property: something belongs to us or does not belong to us. There is no middle ground. It is precisely this concept of double ownership, accepted by the common law, which makes the trust an enormously versatile instrument, with many possibilities and applications both in the private sphere and in finance and commerce. Currently the use of foreign trusts by high wealth families has grown exponentially in Latin America due to its benefits and Latin countries are increasingly accepting and recognizing these vehicles.

Trust in the United States

In summary, the Trust is an instrument by which the settlor transfers the legal ownership of the assets to the trustee while the enjoyment of the assets of the trust is preserved for the benefit of the beneficiaries under the conditions defined by the settlor in the setup of the trust.

The reason for the use of a trust is broad and is in constant evolution, but flexibility and confidentiality are the main advantages that a trust has over other legal forms to maintain, preserve and transfer wealth. The concept of the trust has proven to be highly flexible and is widely used in financial planning, among these:

Estate transmission includes minimizing gift, estate, generation skipping transfer, and income tax. The beneficiaries enjoy the assets without risks.

Preservation of wealth

Can be used to preserve the continuity of ownership of certain assets, such as a business or property, within a family. By the legal trust acquiring the property rights of the assets, the relevant individuals may be able to continue to benefit from the assets, avoiding fragmentation of ownership among a large number of second- and third-generation beneficiaries. The use of the trust prevents the risk that, due to the death of a beneficiary, ownership of part of the assets may fall outside of the family, and therefore allows the preservation of the benefits of future generations intact.

Estate planning

Is the process of anticipating and arranging, during a person's life, for the management and disposal of that person's estate during the person's life and after death, while minimizing gift, estate, generation skipping transfer, and income tax. Estate planning includes planning for incapacity as well as a process of reducing or eliminating uncertainties over the administration of a probate and maximizing the value of the estate by reducing taxes and other expenses. The ultimate goal of estate planning can be determined by the specific goals of the client, and may be as simple or complex as the client's needs dictate. Guardians are often designated for minor children and beneficiaries in incapacity.

A Professional Trustee protects family Estate from garnishment, high taxes and family conflicts.

Asset Protection

Historically, trusts have been established with the primary purpose of protecting the assets from certain types of risks. They can be used to keep the assets in a stable and secure environment. Individuals, families and companies use trusts as a shield against possible future liability of the Settlor, such as litigation risk and punitive taxes. Trusts can also protect assets from confiscation or expropriation by the Settlor's state of residence.

Protection of Creditors

It is used so that the family assets under trust are protected from business creditors and are guaranteed as are separated under the property of the trust.

Forced Heirs

Its use allows planning who will be the beneficiaries in case of death without injuring the "legitimates" that exist in certain countries.

Commercial Trusts

They can also be used for the following purposes:

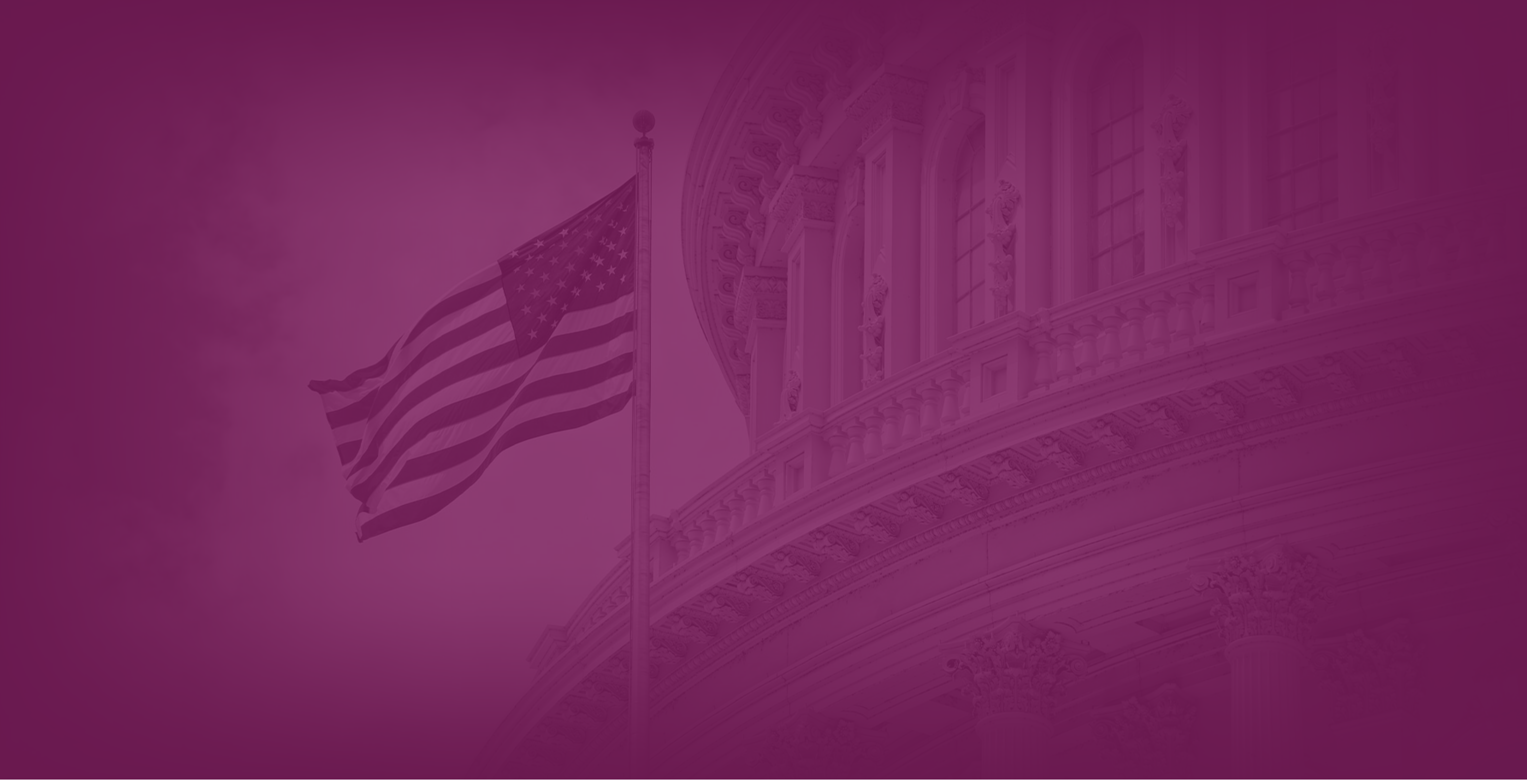
- To make joint investments, group small shareholders
- For off-balance sheet operations
- Agreements between creditors, to guarantee payments and transactions
- Schemes for asset securitization
- Stock options and staff incentives
- Private capital investment agreements, to guarantee the correct fulfillment of a transaction (escrow)

Tax Optimization

In many jurisdictions the Trust is a tax exempt entity and in the case of an irrevocable Trust there is an alienation of the estate extinguishing the tax obligation.

The Special Advantages of a TRUST in the United States

- As the Trustee is based in the United States and the applicable law is US law, the Trust enjoys with US legal protection.
- By failing to comply with the Control Test, the trust is not American for tax purposes, and must not pay taxes in the United States of America.
- By being an American Trust, it should not be reported by the Organization for Economic Cooperation and Development (OECD) Common Reporting Standard (CRS).
- The possibility of a non US-resident becomes Protector of the Trust
- United Stated has never been considered a tax haven or blacklisted.
- The United States is a member country of the OECD.



Trust Taxation in the United States

Although a Trust may be established in accordance with the laws of a state of the United States and have a professional United States Trust company that serves as a trustee (hereinafter an "American Trust"), this does not mean that It is an American Trust for tax purposes.

The Hybrid Trust

If the Trustee is American then the Trust is American from a legal point of view. However, to be considered fiscally American it must comply with two Tests: the Court Test and the Control Test. If non-American persons can take important decisions for the Trust - for example, the protector, or the investment advisor or even the Settlor in some cases - the American trust will be classified as a non-American taxpayer for US tax law purposes. Therefore all Trust earnings will be tax-exempt.

The laws that tax inheritances in the countries of residence of the settlor or the beneficiaries do not affect foreign Trusts as the assets are held in an independent patrimony that never dies.

Confidentiality of Information

Privacy and confidentiality of information is highly valued and very difficult to achieve nowadays. This issue becomes more relevant in countries where personal and legal security is a concern. The following will describe the processing of information in the light of the Automatic Exchange of Information Agreements between countries.

The Common Reporting Standard (CRS)

If the US Trust has a bank account in a US Financial Institution and as the US has not adhered the CRS, no information will be reported. If the account is in a foreign financial institution, the US Trustee must comply with the non-US financial institution's request of the self-certification for the CRS unless USA is considered as CRS compliant jurisdiction. The United States has not agreed to apply the CRS, even if the IRS wants to participate, a Congressional approval should be obtained first.

The applicable CRS law will be that of the jurisdiction where the financial institution is located to determine the status of the account holder. Although the definitions vary between the CRS participant jusrisdictions regulations, a Trust holding financial assets with a professional Trust Firm as a fiduciary will generally be classified as an investment entity under the CRS as well as under FATCA.

The Foreign Account Tax Compliance Act (FATCA)

FATCA is an agreement that requires Foreign Financial Institutions (FFI) to report US persons. Reciprocal IGA Model 1A Agreements require US FIs to report information on resident account holders in countries that are parties to such agreements. Because the Trustee is incorporated under the laws of the US Virgin Islands (Commonwealth of the United States of America) it applies a hybrid regime and is not considered a Foreign Financial Institution (FFI) for purposes of the scope of any IGA. Similarly, as an Institution of a US Commonwealth Territory, the Trustee is not considered an American FI as defined in the US Treasury Regulations. Consequently, the Trustee has no obligation to report information under FATCA, including the communication of non-US clients.

Confidentiality of personal information

Multinational family advisors who are asked to provide personal information about family members - including tax identification numbers and copies of passports - should not hesitate to ask the financial institution requesting the information to ensure protection of confidentiality, integrity and availability of client information. Identity theft is a serious problem, and personal security is one of the biggest problems in Latin America. Safeguarding personal information is the responsibility of financial institutions that receive, maintain, share, transmit or store such data. Accredited financial institutions should be willing to discuss these security measures as they help prevent fraud and identity theft and improve customer confidence.
In cases where the beneficiaries of a Trust are discretionary, and they are not aware of the existence of the Trust, the family advisor must insist that neither the requesting financial institution nor the fiduciary should send a request for a request to such beneficiaries, when such information would violate the confidentiality requirements of the Trust. The settlor or protector can provide identification information of each discretionary beneficiary, to comply with KYC rules and AML.

Privacy is a human right and the only peace of mind in jurisdictions with personal and legal insecurity.

The United States Virgin Islands

What are the United States Virgin Islands?

The United States Virgin Islands (hereinafter "USVI") are a group of territories, dependent on the United States of America. It consists of four main islands: Saint Thomas, Saint John, Saint Croix, and Water Island and some smaller islands. They are located between the Caribbean Sea and the Atlantic Ocean. Its capital is Charlotte Amalie and is located in St. Thomas.

Legal and tax system

From the legal point of view it is a territory controlled by the United States. The situation differs fiscally, since a USVI resident entity is subject to a special regime by the United States Department of the Treasury (hereinafter "IRS").
USVI Trusts laws mirror US federal laws. If the Trust does not comply with the Court Test or the Control Test, it will not be considered to be American from a tax point of view and therefore will not be taxed by US federal taxes. Likewise, the assets included in the trust estate will not be taxed by inheritance taxes (Estate Taxes), at the time of death of the Settlor.

CRS - USVI

Being a territory of the United States, resident entities there are not required to report under the Common Reporting Standard.

FATCA - USVI

For the IRS, the fiduciary is foreign from the fiscal point of view. For FATCA the USVI is considered "Financial Territory", this means that it is an institution incorporated or organized under the laws of an American territory and are exempt from reporting to the IRS under FATCA.

About Insight Trust

Professional Trustee with boutique services offer personal advisory services in Latam with offices in Uruguay.

Who we are

INSIGHT TRUST is a group of companies that independently and exclusively provide a wide range of international services to private clients through its affiliates, regional agents and strategic alliances. INSIGHT US TRUST is the Trust Company of the resident group in the United States of America due to the tax advantages and the appropriate laws for fiduciary activities.
We have a solid team of professionals with vast experience and knowledge, and have a complete understanding of the services we offer and the needs of our private clients.

Our team consists of lawyers, accountants, economists, notaries, tax advisors and trustees, with a 25 year history of advising clients from several countries. Our independence and flexibility allows us to offer innovative solutions tailored to particular needs in various jurisdictions with regulatory environments and changing business climates.

Services we offer

- Advice and assistance in the formation of international trusts
- Trustee, Protector and Executor Services
- Setup and administration of Trusts and offshore Foundations
- Setup and administration of offshore companies and other entities
- International estate planning, wealth protection and transmission of family businesses
- International legal and tax advice
- Family structures in general
- Investment funds and special offshore vehicles
- Other fiduciary services

We share our experience and knowledge with our clients' local advisors.

Contact us

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