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If you do not have the rights to *sell* your investment....

By Mogens Eliassen

We are often approached by people who have invested in some program that will provide them a great payout, and they now come to us because they want to protect this investment offshore. They heard about our Investment Incubators or Offshore Trusts and are delighted by the perspective of being able to set up an offshore protection for their investment.

Then they read on our web site that in order for them to transfer ownership to an offshore entity, they have to *sell* that investment...

And then they look into their contract and find a clause that says that they are not allowed to sell it....

This is often the case with many kinds of pension plans and insurance plans.

What are the motives behind this restriction?

In the following, we shall call the people whom you bought your membership/investment from and from whom you expect payment **the Controllers of the investment**.

There can be several reasons for the Controllers of the investment to not want to give you ownership of that investment. Ownership includes the rights to sell. If you are not allowed to sell, you have no ownership.

On the other side, the legal default is that, when you *pay* for something, you get to *own* it. So, unless it is specified otherwise in the sales contract, they *you own what you pay for*. In other words, if there is nothing in the paperwork that indicates any such restrictions of your ownership, then you do indeed have the rights to sell what you paid for. But you have to be careful about drawing that conclusion before you have read all "the small print" and all the documents that are referred to in your

contract. It is easy to “be taken” by not doing your due diligence, and, by law, making a payment with clear reference to an agreement or a document is as good as signing the agreement or accepting the terms of that document.

Here are a few of the possible reasons for the Controllers restricting your ownership:

- A. The program is specific for people at certain ages, so the controller does not want to allow cheating by a younger person getting in at favorable terms and then selling the rights to the payout to an older person, whose could not otherwise achieve those benefits.
- B. The program is made for the purpose of benefiting private persons – and the founders did not take into account that, by doing that in such a restrictive way, they are actually provide more money to government than to their members...
- C. The Controllers do not want to risk being accused of criminal solicitation of securities – and they fear that this could happen, if the memberships/investments could be made subject to trade.
- D. The Controllers just don't know what they are doing and just try to “play it safe” for themselves, keeping things within what they know – and they just know nothing about offshore protection of assets....
- E. The Controllers have already arranged with the government about obtaining some direct tax benefits or other advantages themselves, in return for making sure that the members do indeed end up paying those taxes in the end! This might sometimes *not* be a volunteer arrangement...
- F. The program is running under government control...

Except for the last two cases (which meant that you are hooked on that tax liability, no matter what you do), the Controllers really should not have any problems with your selling your interest in the payout to an offshore entity.

The best you can do about this is to approach them and ask – and by doing it in such a way that you cover their concerns, up-front. We return to that later.

Addressing the concerns

In the cases where the program is controlled by the government, either openly and directly, through “gentleman agreements” between the Controllers and the government or by simple Mafia tactics from the government's side, you don't need to worry, because no matter how you approach the Controllers about this, you will be declined. So, you only need to focus on the other four possibilities and the concerns they are rooted in.

Dealing with an age restriction

Since your intent to sell the rights to the payout to an offshore entity, whether directly under your own control, or indirectly through an Investment Incubator, there really is no conflict between your wish and the intentions of the Controllers. It is all a matter of putting the wording in place, so that everybody obtains his/her objective.

Let make this clear: The Controllers do not want to let you sell because they do not want the funds to benefit a person who is otherwise not eligible for the benefits offered by the program. The reasons this can be many, including a fear for "distorted competition" that could hurt the program's publicity by showing it as lacking integrity and consistency.

But you are not going to sell to another person. And you can easily accept a clause in your permission to sell saying something to the effect of the rights to the payout from this program never being sold to another person, whether inside out outside your own country. You can also include that it can never be sold to any business or institution *within* your country's boundaries.

If you can leave it at that, you are done.

However, you might be faced with some additional demands that really are irrelevant, but if you understand them up front as not hurting you, then you can also quickly appear to be flexible in your negotiation tactics, because you can accept also clauses like these:

- The membership itself is not for sale – but you can sell *the rights to the payout*. You must personally remain the contact person for the controllers. In a case like this, the simple standard WORD template located at <http://freedomfromtaxes.com/ClientAskingAuthorityToSell.doc> might help you obtain what you need from the Controllers in regards to authority to sell. You must keep in mind that, in this situation, the final sale has to be confirmed by the Controllers, and the Controllers have to take certain action after the sale in order to consolidate it and make it legal. You cannot expect any buyer of your investment to accept your signature on the sales agreement unless you *minimum* have obtained the Controllers' consent to the points in that template. (Remember: if the sales agreement does not completely strip yourself of all rights to access those funds, so that you are completely powerless in regards to possibly "regretting" the sale, then you have no protection in court against your government!)
- The sale must be to a *charitable organization* of some sorts – because our Offshore Trusts are indeed *charitable Trusts*. Be aware though, that you cannot accept that it must be a *government approved* charity! Please also note that, in case of an Investment Incubator, this adds an extra cost on the investors, as the standard is that the ownership is taken over by an IBC...
- The sale cannot be repeated – but, if you need an Investment Incubator, then you must ensure that you can get permission to 2 sales, first one to the investor, second one to the offshore entity of your own. And that's it.

- The sale must be approved by the controller... This one is not your pet, but if you have to swallow it, then do. Chances of them putting in such a clause without also having the intention of approving your choice of buyer are slim indeed. It is far more likely that they insert this clause because are not totally certain about the consequences of their permission and simply want to "cover their butt".
- The Controllers want the buyer to sign a non-disclosure agreement or a confidentiality agreement of some sort. This is an extra administrative burden on the investor, but will not generally cause any serious problems, as long as those agreements are reasonable. You will have to take upon yourself to facilitate those agreements being forwarded to the buyer, signed, and returned to the Controllers.

If you know that some of this extra "ammunition" will help your case in the first place, then use it right away. If not, then your best bet is to keep this in reserve, so you have something to "give" when you negotiate.

Dealing with fear of illegal solicitation

This concern is really quite simple to address, because you can easily warrant that you will not solicit the investment for sale – you already have an offer from a buyer! And: this offer is of completely private and confidential nature and will absolutely not be made public in any way whatsoever.

You can accept just about any restriction on your rights to advertise, solicit, and promote – as long as you still can get the rights to sell to a private business contact in a foreign country. This way, you do indeed eliminate all legitimate concerns the controllers might have that they could end up in legal trouble, unless there are specific laws in your country against selling such investments from one private organization to another. Other than Communist countries, Iran, and possibly a few other religiously fanatic states, I cannot imagine such laws in existence in any modern country. But if you are in doubt, you should check with your lawyer before you approach the controllers! You must know what their problem is! And you must know *before* you approach them...

Also, you can accept the following restrictions, with no hesitation:

- You must have a non-disclosure agreement signed with the buyer – that's OK.
- You can have the buyer obliged to not sell again to any person or business inside your own country – that's no problem. In the case of your selling to an Offshore Trust you have in your control, you can even accept that there will never be another sale. For an Investment Incubator, however, you need just one more sale before you are "all done"...
- You can accept that you and the buyer will never sell to anyone in your own country, private person or business.

This should do. Again, you might consider accepting also that the controllers must approve of your buyer – but avoid it if you can.

Dealing with ignorance or lack of knowledge

Very few people have a clue what it truly takes to “go offshore” or to “protect assets” effectively. However, it is not generally wise to throw that into the face of those who are subject to this limitation, if you want them to do anything for you....!

If ignorance or lack of knowledge is the reason for the controllers to maintain a no-sale policy, then you have to provide the education they need – and you have to do it gently and politely.

A possible way that has a better chance of success than *your* trying to be the teacher, is to refer to a web page where they can get the facts. One such web page could be <http://freedomfromtaxes.com/InvestmentIncubator.php>, where this dilemma of ownership is discussed.

Another possibility is that you make them contact us, but this should always be arranged with us first, otherwise it will back-fire! If we do not know anything about these people before they call, we will treat them like government, and you can then kiss your offshore protection possibility good-bye for good!

If you realize that they don't want to bother and really have no valid motivation for it, other than plain lack of desire to take any action, then you might want to consider making a deal with them, in order to stimulate some motivation. The deal could be that you offer to have toll taken off the payout, in return for them accepting the sale. As long as you keep that percentage very low in comparison to the taxes you would have been liable for as the “no action” default, you will still come out the winner. What percentage you will offer is really up to you, but if you were to pay taxes to the tune of 50% and you are too stingy to offer them, say, 25%, then I would call you “stupid”... Sure, it would be better yet, if you could get away with 5% or less – but keep the perspective clear before you make such decisions with your emotions.

Just to be sure that you don't go too far in the opposite direction either, then do take into account that you have a few fees to pay to your Trustee, the banker, and the courier in order to sell to “your” Trust – and you also have fees to be deducted if you are aiming at selling the investment to an Incubator.

Your action plan

So, your tactics should be that you write a letter to the controllers and explain that you would like to obtain some effective asset protection of this investment, and you have come to realize that the best way of doing that is by selling the investment to a foreign legal entity. For you to avoid legal trouble with your government, this means that the action requires a bona fide *sale*, so that you don't formally *own* the funds anymore.

So much for introduction. Do *not* say anything about the person in *control* of the foreign legal entity still being you!

You should then address the concerns you know or seriously suspect could be the reason for the restriction on your ownership. If you have information available about this, you should use it. You might even first make an informal approach and simply ask! You can do this by sending an e-mail or making a phone call and say that you noticed this restriction, and you were a bit puzzled about *why* it was there, so, if they could be so kind so just let you know the reasons, then you would appreciate it. You don't need to tell them why you ask. If you ask politely, then chances are pretty good that you will get answer that has value for your next step. If you, by any means, can remain anonymous, it might be best. So, avoid identifying yourself when you ask, if you can. You can often simply pretend you are a potential new member. But if you already have a good working relationship with the Controllers, then there is no point in playing this game – if your first approach is honest and reasonable, then you should also be able to expect an honest and reasonable reply.

The main purpose of your initial inquiry is to have the Controllers confirm that they do not have any problems with your selling the rights to the payout, as long as you comply with their requirements. Next after that, you want to get confirmed also how you can submit to them the specific requirements you are being asked by the buyer to have honored. It is a good idea here to ensure that they understand that you do this in order to make sure that you don't get yourself into something that could cause trouble for neither them nor yourself. It always helps to demonstrate that you are considerate...

After your introduction, you want to write something to the effect of addressing the concerns you now know must be addressed. I already gave you the ammunition – so just pick what you feel will support your case from that “arsenal” and put it together!

You should definitely mention that you are aware that the rule about not selling is in place for a reason, and you accept that it makes sense that you cannot let other people benefit from buying your membership, as this could result in some undesired effects, which you can appreciate that the controllers want to protect themselves and the membership against. (Just use a little “butter” – it always helps you when you make the other party understand that you also have their best interest at heart!) Then, mention the concerns you believe are in the game, and address them. You may include also some you are not sure about, as long as you do it diplomatically and without offense.

For each concern, you will, of course, also point out what the simple solution is! Note that I said “simple”! In such an application, you do not want to discuss all possible details, as I do here! It will become way too long for them to even bother reading! Make it simple, short, and sufficient. And then wait and see what the result is. You know you have more ammunition available, so you can easily deal with a lot of objections. You should, of course, indicate already in your first letter, that, if there are any concerns you have not addressed, then you will be happy to discuss a win-win solution also to those. *Do not say that you are willing to give more*

concessions if they want that! That might be what they will read *between* the lines, but that's OK.

It is important that you show that you are indeed sharing their concerns, and that you feel you have already done what you can about that – but you are not arrogant enough to ignore your own limitations, so you invite them to inform you about any additional concerns you have not yet had a chance to address. You must give the impression of looking for a win-win result. You are not willing to accept a lose-win neither for yourself nor for them, and you must show this without saying it directly. You have to tread carefully, because you really have no power.... You are completely at their mercy – but don't let them get tempted to exploit that! Most people are willing to make fair compromise when it appears reasonable, and they do not like to be perceived as being ridiculous or unreasonable, even when they have the legal power to do so.

Your best chances of a positive outcome generally is that you avoid appearing like a beaten dog begging for mercy – and you also want to avoid coming across like an arrogant bluffer. The pathway in-between, expressing assertiveness, understanding of the opponent's concerns, a willingness to negotiate and be reasonable yourself, and an honest expectation for being reciprocated on that is sure to dramatically increase your odds of success in such a peculiar situation.

You have nothing to lose. You do realize that, when you signed up for that investment/program, you did indeed notice that you were not allowed to sell, and you did indeed understand that this meant that you would be obliged to pay taxes on the proceeds of that investment. So, if you fail negotiating an exemption, you just get what you expected all the time. Nothing less. Nothing more.

Then thing is, though, that if you can be successful negotiating this exemption for you to sell the rights to the payout, then you can probably double or triple the value of your investment, subject to the specific tax laws in your country! What you invest now is not money – but thoughts, planning, and words...

The result you need

In all good negotiation, you need to **specify what you ask**. And you need to do this in such clear language that formulating the answer is very easy on the part of your controllers. Basically, "put the words in their mouth"! Don't make it difficult for them to formulate an answer. Be clear and specific about what you ask, and ask only what is reasonable. But do not be wishy-washy or shy about it! Ask with the clear expectation of getting a "yes" – simply because nothing else would make sense – and show that through the logic with which you present your case.

For the formal use of your rights, you do need the answer in writing – otherwise, you will not get a Trustee or an Incubator investor to buy the investment. Fax or scanned e-mail will generally suffice, as you will most likely later be required to confirm this with an original signature of yours on the final sales documents. But you need to have something in your hands that clearly convince you that you are

holding on to a document that possibly can serve as proof in a court-of-law and convince a judge that you are acting in good faith when you believe in this. This means that *you* will have to take ultimate responsibility for this permission not being fake! You need to understand that if you are selling someone else's property, without proper permission or authority, you are committing a crime called "theft" in regards to your dealings with the people who control the investment, and another crime called "fraud" in your dealings with the buyer of your investment....

Let me be sure that you understand the scope of this.

If these people, who are responsible for the payout, are unwilling to communicate with you in a way that is legally obliging for them, then you could as well have communicated with a "Nigerian scam monkey" that has no intention whatsoever of honoring any commitment to you! There are many scams around, particularly online. And you can generally recognize most of them on the fact they hide their identity and avoid communicating in a way that can be legally traced back to them. Any *honest* investment controller should have no problem answering you in a way that reveals the sender's identity and commits to the answer by a signature. An e-mail sent from a free Yahoo or hotmail account doesn't do that... But a signed letter or fax, on the appropriate business letterhead of the company you are dealing with, does. However, you can sometimes verify the legitimacy of the answer, even if it is indeed sent by e-mail. This would be the case where, say, the e-mail is from an account on the same domain as those people's web site – and their legal name and address are clearly displayed on the web site, and you can verify through whois.com or some other identity verification service that they are indeed the legal owner of that domain and thus responsible for that e-mail.

If you are dealing with honest legitimate people, they will also understand this, and they will not hesitate identifying themselves and committing to their answer, in order to help you avoid getting yourself into a criminal situation. If they do hesitate, you should indeed take that fact as a serious indication that they are *not* honest...

So, if you get a legitimate answer back, duly signed, and it is truly representing the legal identity of the controller of this investment, and this answer authorizes you to sell the investment, all problems are solved....

If the answer is of dubious legitimacy, because it does not reveal the identity of the sender, or it does not provide a legally enforceable commitment (such as a signature from someone with the necessary authority), but it does give you the authorization to sell, then you are in limbo.

The problem now is that you might not be able to convince *the buyer* of your investment that this investment is indeed worth throwing good money at! I cannot tell you what you need to do to solve that problem, but here are some possibilities you might want to consider:

- **Get back to the controller** of the investment and have them verify their identity, explaining your dilemma in a polite and honest way. If it was an oversight from their side, they will have no problem accommodating you.
- **Make an agreement with the buyer** that involves your holding them harmless for any losses and waste of their time, in case this investment is

indeed the scam they think it is... The solution you can accept would seriously depend on your own beliefs and your own financial situation.

If nothing else comes out of this, then at least you now learned how to do your due diligence next time you want to invest in something similar....

What if the answer is legitimate, but isn't quite what you wanted?

In the case you do not get anything but a clear "yes", you must know the reasons for the objection, so you can deal with those. Do not take "no" for an answer! If you do get rejected, get back and ask what the reason is. You do this by politely indicating that you believe there is a mistake here – because the reply you got to your thorough application does not seem to address the issues you raised, so you kindly ask to be informed about those issues you obviously missed in the first place, as you do not see the rationale behind the reply and you do not believe that there wouldn't be any!

With a little diplomacy, and playing on the "rights" you have that things should make sense, you have the greatest chances of moving that decision in direction of your own benefit. Again, you have nothing to lose, but be careful about not coming across in any demanding or obnoxious way, as you truly don't have a leg to stand on here if push comes to shove...

Another possibility that you might want to consider is offering some kind of payment or compensation to the controller in return for doing this work for you. Now, there isn't much work to do, but your attitude could shift their decision. As long as you pay them less than what your alternatives would cost, then it is worth it. Provided, of course, that the terms of that payment is within what you *can* honor. You could, for instance, offer that they deduct a certain amount or a certain percentage of the payout, in return for your getting the authority to sell what is left. Be reasonable about this. That means, be lavish, but don't make them appear greedy.

For this, you need to know what your alternatives are.

First, the ultimate default is to just pay the taxes... You know what that means, in terms of money. Both in specific amounts and in percentages of the total.

However, there is another possibility that is very relevant here. Yes, you might have to *accept your tax liability* on that investment if you cannot obtain legitimate authority to sell the investment. But that does not necessarily mean that you have to *pay the taxes* – because you might be able to offset those with some similar *tax deductions!*

This can be done by re-investing the money, and, this time, doing it in a smarter way, so you do not end up with this kind of tax liability problem one more time.

The bad news about this solution is that it is quite expensive: In order to make all ends meet, including obtaining your government's approval of the tax deduction, you need to have multiple offshore structures involved, and you are most likely looking at fees in the order of magnitude \$10,000. Those fees can be paid out of the proceeds of the investment, though, so it does not represent cash you have to pay now. But it

still represents a lot of work and effort you are best off saving! However, if your investment is greater than \$25-30,000, then even this "worst case" solution is certainly much more attractive than "no action", which will imply full taxation of the proceeds!

Novasol can help you with this re-investment solution, so connect with us if this is the route you have to go.

A few formalities

Before you send your application, you must make sure that you know exactly who is to make the decision on this. You then address the application personally to him/her.

Do not send an e-mail to info@domain.com or in any other way to some impersonal destination, where you do not know who is going to read it! It is far too easy for your controllers to hide behind this veil of anonymity, if they want to tell you "no". When you contact a person directly, and you present your good reasons, then you can (and should!) hold this person accountable for the reply! When the person knows this (because your application is personally addressed), then you are indeed putting some pressure on this person, but you do it in a non-abusive and polite way. It nevertheless works very effectively in your favor.

The specific form you chose should, for this same reason, be as formal as you can make it. A written letter, send by courier is certainly a good way of creating some attention! It might be perceived as "overkill", though. But a standard registered letter would be adequate, as you certainly do have a legitimate interest in making sure that this application goes not fall into the wrong hands.

Regardless of this, it could offend.... It is impossible for me to tell you if it does or not. You have to use your own judgment on this. You must balance two opposing forces here:

- You want to have your application noticed, not only by the person who receives it, but also by other people around;
- You do not want to intimidate the receiver.

Remember, however, that you must have a reply back on paper, legally signed. This warrants that you choose an approach in the same format. In other words: an e-mail is not going to make it...

If e-mail is your only option, then you do have a problem. Not only with the formality of the application, but with the fact of not having any legal contact to these people at all. Seriously, you are very likely to be involved in a scam, if you do not know the name and mailing address of the people who are administrating the payout! Honest, genuine business people do not mind receiving mail and they do not

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try to hide where they work. Generally, only scammers and fraudster do that... if your controllers are indeed honest people, and you explain you have something to mail them, then they will give you a mailing address when you contact them through e-mail.

I hope this helps you. In the end, it is best if you do this yourself. If, however, you are completely lost and want my help to write the letter for you, on the basis of the information we can make available about the situation, then connect with me through <http://freedomfromtaxes.com/Consulting> so we can get the ball rolling for you.

To your freedom!

A handwritten signature in red ink that reads "Mogens Eliassen". The signature is written in a cursive style with a long, sweeping underline.

Mogens Eliassen