

# New York State Bar Association

## International Section 2014 Seasonal Meeting

### Vienna Austria

### Panel 23: Trusts in Civil Law Jurisdictions

#### Speakers:

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The Gruber Family

**Edmund Gruber**  
**(age 89) 40%**  
**Tyrol, Austria**

**Daniela Gruber-**  
**Marcus (age 60) 20%**  
**CEO Tyrol, Austria**

**Claudia Gruber**  
**Holt (age 53) 20%**  
**Teacher Munich,**  
**Germany**

**Michael 5%**  
**Professor**  
**Rome, Italy**

**Elena 5%**  
**Brooklyn,**  
**NY**

**Eric 5%**  
**Successor**  
**CEO**  
**Munich,**  
**Germany**

**Sofia 5%**  
**California**

The Facts

# The Facts

The Grubers are a wealthy European family that originated from the state of Tyrol in Austria. Many family members continue to live Tyrol, while others have settled in South Tyrol, a neighboring province in northern Italy (also known as Alto Adi), just to the south of Tyrol, Austria, and in Bavaria, a state in southern Germany, just to the north of Tyrol, Austria.

# The Facts

The Gruber family's primary business is a vast network of ski lodges, some of which date back over 150 years. The main lodge is located near Innsbruck, Austria, which is in the state of Tyrol, and includes the famed Chateau Gruber built in 1872. There is another ski lodge located in the Dolomite Mountain Range located in South Tyrol. Finally, there is a third ski lodge located in the Fichtel Mountains in Bavaria.

# The Facts

The original family company is an Austrian company, Gruber Eigenschaften GmbH & Co. KG ("GE Austria"). GE Austria holds the ski resort property and business in Tyrol, Austria. There are two other separate family companies, a German company, Gruber Eigenschaften Nord GmbH & Co. KG ("GE Germany"), and an Italian company, Gruber Proprietà Sud, S.r.l. ("GP Italy"), each of which holds the properties and businesses in Bavaria and South Tyrol, respectively (GE Austria, GE Germany and GP Italy shall hereinafter, at times, be referred to together as the "Companies" and individually as a "Company").

# The Facts

The patriarch of the Gruber family is Edmund Gruber, who was born in 1925. Edmund has two children, Daniela Gruber-Marcus, who is 60 years old and lives in Tyrol, Austria, and Claudia Gruber-Holt, who is 55 years old and lives in Munich, Germany.

# The Facts

At the age of 89 Edmund continues to work in the family business, but ceded day to day management of the business to Daniela about twenty years ago. Daniela has three children, Dr. Michael Gruber-Marcus, who is 35 years old and is a tenured professor of philosophy at a university in Rome, Italy, Elena Gruber-Marcus, who is 30 years old and is married to an Austrian and lives in Brooklyn, New York, and Eric Gruber-Marcus, who is a 28 year old graduate of the London School of Economics and is expected to succeed his mother as CEO of GE in five to ten years. Eric is married to an American and lives in Munich.

## The Facts

Edmund's other daughter, Claudia, is not involved in the business. She is a school teacher in Munich and is married to a wealthy German banker, Albert Holt. They have one child, Sofia Holt, who is 30 years old and lives in California.

Currently Edmund owns a 40% interest in each of the Companies, the children, Daniela and Claudia, each own a 20% interest in each Company, and the grandchildren, Michael, Elena, Eric, and Sofia, each own a 5% interest in each Company.

# The Issues

# Issue # 1 - Lifetime gifts from Austrians to children living in the US, Italy, and Germany

Edmund, Daniela, and Claudia are each contemplating lifetime gifts of interests in one or more of the Companies. Edmund would like to transfer interests to each of his grandchildren and Claudia and Daniela would like to transfer interests to each of their children. Elena and Eric (who are Edmund's grandchildren, and Daniela's children) live in the US and Germany, respectively, and Edmund and Daniela (both of whom live in Austria), are concerned about transferring interests in the company directly to them due to the estate taxes in each of these countries.

# Issue # 1 - Lifetime gifts from Austrians to children living in the US, Italy, and Germany

Daniela would also like to know if there will be any negative tax consequences to Michael under Italian law if he receives more shares by gift. Likewise, Claudia, who lives in Germany, is concerned about leaving her interests directly to Sofia, who also lives in the US.

# Issue # 1 - Lifetime gifts from Austrians to children living in the US, Italy, and Germany

- What are the benefits and pitfalls under US law to non-US persons making gifts to US person's via a trust?
- What are the tax consequences in Germany and Italy to the children receiving shares in the Companies outright?
- Can the interests passing to the children in the US and Germany be shielded from the estate taxes in those countries upon the deaths of the children by transferring the interests in GE Austria, GE Germany, and GP Italy to some type of trust, or an equivalent structure, for their benefit?

# Issue # 1 - Lifetime gifts from Austrians to children living in the US, Italy, and Germany

- Are there negative tax consequences in the US, Germany, or Italy if someone is the beneficiary of an irrevocable trust and, if so, are there alternative structures that can be used?
- Are there any tax consequences to Edmund or Daniela under Austrian law if they transfer assets to a trust or an equivalent type of structure?
- Would the civil law in Austria, Italy, or Germany prevent the transfer of the interests in any of the Companies to a trust or an equivalent structure?

## Issue # 2 - Bequests upon death by Austrians to children living in the US, Italy, and Germany

- Do the answers to the above questions change if Edmund, Daniela, and Claudia leave the interests in the Companies to the above family members via a trust upon their deaths?
- Can a trust be created under a Will under civil law?
- How do forced heirship rules in Austria impact their ability to leave assets via a trust or similar civil law structure?
- Are there alternative structures to trusts under civil law upon death?

## Issue # 3 – Leaving Assets to Spouse

Elena and her husband, who is an Austrian citizen, live in Brooklyn and unless Elena leaves any assets that she owns, including her 5% interest in each Company, to her husband in a "qualified domestic trust," the interests will be subject to US estate tax when she dies.

- What are the benefits under US law to leaving assets to a non-US citizen spouse in a qualified domestic trust ("QDOT")?
- Can the interests in GE Austria, GE Germany, and GP Italy be left in a US trust for the spouse upon her death under Austrian law, Italian law and German law, respectively?
- If not, are there alternatives in each jurisdiction that will work like a trust?

## Issue # 4- US Pre-Immigration Planning

After Daniela retires she plans to spend about six months a year in New York, in order to be closer to her daughter, Elena, and six months a year in Bavaria at the family property in the Fichtel Mountains, in order to be closer to her son, Eric. Other than brief trips to visit her father in Austria and Michael in Italy, she will not spend much time in either of these countries. She would like to transfer her assets to an irrevocable trust for her own benefit before moving to New York, in order to shelter the assets from the US estate tax.

## Issue # 4- US Pre-Immigration Planning

- What are the tax benefits under US law to Daniela creating an irrevocable trust for her own benefit with her assets before she immigrates to the US?
- Are there similar tax benefits under German law if Daniela creates a trust for her benefit before moving to Germany and, if not, is there another structure that she should consider?
- Is there an issue from an Austrian, Italian or German law perspective to Daniela creating an irrevocable trust for her own benefit, and if there is, is there a better structure that would achieve the same objective from an Austrian, German, or Italian point of view?