

CURRENCY CONVERSION CONSIDERATIONS IN ESTATE PLANNING: HOW TO PROTECT YOUR ESTATE FROM LOSING ITS VALUE

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ABSTRACT

This Comment discusses the effects and implementation of currency conversion planning in an estate. Potential areas of concern are addressed; there are few, if any, negative consequences of incorporating currency conversion planning into estate planning practice. Currency conversion planning for foreign estates would impact a quarter of the United States population today, and the effected population will continually increase. It is surprising that with such a large potential impact and the simplicity of implementing these practices, currency conversion planning for estates has not been practiced or discussed before.

At present, estates are significantly devalued by fluctuations in currency conversion rates. Current estate planning only accounts for currency conversion when the grantor of the estate dies. In nearly any other international transaction—such as business, travel, remittance, etc.—forethought is given to currency conversion rates to maximize profits or minimize losses; however, estate planners do not consider these conversion rates in current estate planning practices. Instead, current practices allow conversion rate fluctuations to significantly devalue any estate with foreign beneficiaries by converting all liquid assets to the beneficiary's domestic currency around the grantor's time of death. If the settlor's domestic currency has a weak conversion rate against the beneficiary's domestic currency, and the period of weak currency conversion coincides with the grantor's time of death, foreign beneficiaries can lose a large portion of the estate's value.

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Estate planners should change their current practices to account for currency conversion rates in estate plans with foreign grantors. The foreign exchange market (Forex) provides basic tools that estate planners can explain to clients without a complex understanding of investing or currency exchange. Hiring professionals to use Forex to transfer assets to the U.S. and holding those assets in the United States Dollar (USD) is a simple way to ensure an estate is converted to USD at favorable currency conversion rates for American beneficiaries. Forex also allows beneficiaries to protect illiquid foreign assets, such as real estate, after the settlor's death. Estate planners and clients only need to plan converting currency to prevent losses; they do not need to make a profit for the client using Forex to successfully protect the value of the estate, further simplifying currency conversion planning.

Trusts present a financial vehicle for foreign grantors to store currency in USD in the United States and protect these assets from international legal conflicts. Trusts allow grantors to open U.S. bank accounts and store assets in USD while retaining the ability to retrieve those assets if they are needed during the grantor's lifetime. Using a properly structured trust will protect trust assets that are stored in the U.S. from conflicts with international law, ensuring that currency conversion planning is not quickly undone at the grantor's time of death.

ABSTRACT.....	1
I. INTRODUCTION.....	3
A. Hypothetical.....	4
II. FOREIGN ESTATE PLANNING AND INHERITANCE SYSTEMS AROUND THE WORLD.....	5
A. Immigrants in the United States	5
B. Foreign Estate Planning Generally.....	7
1. United States Taxes on Foreign Inheritance.....	8
C. Estate Planning in Foreign Grantor's Domiciled Country.....	9
1. Countries that Follow English Common Law for Inheritance	9
2. Countries that Follow Forced Heirship Laws	10
3. Countries that Follow Sharia Law	12
D. Understanding Foreign Currency Exchange and How These Values Are Created.....	13
E. Current International Estate Planning Does Not Encapsulate Currency Conversions	14
III. ESTATE PLANNERS MUST INCORPORATE CURRENCY CONVERSION RATES INTO CLIENTS' FOREIGN ESTATE PLANS	16
A. Creating a Trust in Texas as a Foreign National.....	17
B. Using a Trust to Open a U.S. Bank Account	18
C. Using Forex for Currency Conversion	20
1. Spot Transactions.....	20

2. <i>Currency Options</i>	22
3. <i>Forward Contracts</i>	24
IV. CONCERNS ABOUT IMPLEMENTATION	25
A. <i>Concerns About Administrability of the Trust</i>	25
B. <i>Grantor Access to Funds Converted</i>	26
C. <i>Enforceability of the Trust Against International Inheritance Laws</i>	28
D. <i>Protecting Real Property in Foreign Countries</i>	30
E. <i>Concerns About Fiduciary Duties Involving Engaging the Currency Exchange Market</i>	34
F. <i>Concern About Costs</i>	35
G. <i>Tax Concerns</i>	37
V. CONCLUSION	39

I. INTRODUCTION

Estates planners that deal with foreign estate planning or foreign currency should change their current practices regarding incorporating currency conversion rates into estate plans.¹ Current estate planning practices minimally account for currency conversion rates and how the changing values of these rates affect an American inheritance received from abroad.² Using trusts as a financial vehicle with the foreign currency exchange market can make a significant impact on the value of an estate and should be incorporated into future estate planning.³ American beneficiaries and their estate planning attorneys should protect the beneficiaries' estates from currency conversion rate changes by planning for these rate changes as soon as estate planning starts, upon the grantor's death, and until the estate is properly resolved.⁴ Planning to protect an estate from currency conversion rates throughout the estate planning process is not complicated or costly and can prevent an estate from losing significant value due to currency rate changes while the grantor is alive.⁵

Protecting an estate from negative currency conversions is relevant for a large portion of the U.S. population.⁶ Between the large population of immigrants and individuals with immigrant origins in the U.S. and the vast amounts of money that flow to and from these individuals from foreign countries, protecting a foreign estate with American beneficiaries from

1. Author's original thought.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* See generally Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Mar. 13, 2023), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states> (showing the enormous immigrant population in the U.S. this proposal applies to) [<https://perma.cc/9JPW-4342>].

negative currency conversion rate changes would increase the wealth of both the American beneficiaries and their foreign grantors.⁷

This Comment will first provide information to consider before adding currency conversion planning to an estate plan.⁸ Next, it will discuss using a foreign grantor trust as a financial vehicle to open a U.S. bank account to allow the implementation of currency conversion and asset protection.⁹ Then, it will explain how to use the foreign exchange market in combination with the trust bank account to properly convert currency.¹⁰ Finally, concerns about complications with administrability, cost, taxes, and international laws will be addressed.¹¹ This Comment discusses strategies for attorneys to consider when creating an estate plan and assumes that attorneys will explain the basics for currency conversion planning to their clients and then hire professionals to execute the strategies for the client.¹²

A. Hypothetical

The Ford family is planning a trip to Thailand for a week.¹³ They are by no means wealthy, but with careful planning, they discovered the United States Dollar (USD) conversion rate is incredibly strong against the Thai Baht.¹⁴ Thailand is in their sights, but the Fords' dream vacation is to go to Italy.¹⁵ Before the Fords booked their tickets to Thailand, they noticed the USD was getting much stronger against the Euro, and a week after the USD started to get stronger, one USD was worth more than one Euro.¹⁶ The Fords can now afford their dream vacation to Italy because the USD has such a strong exchange rate against the Euro!¹⁷

The Fords paid attention to currency exchange rates and capitalized on the strength of their currency to make the memory of a lifetime.¹⁸ A vacation is a small part of life, while an inheritance is the sum of an entire life's work.¹⁹

7. Author's original thought. See generally Batalova, *supra* note 6 (showing the enormous immigrant population in the U.S. this proposal applies to); *Remittance Flows Worldwide in 2017*, PEW RSCH. CTR. (Apr. 3, 2019), <https://www.pewresearch.org/global/interactives/remittance-flows-by-country/> (showing how much money is sent to and received from other countries in the form of remittances) [<http://perma.cc/S7S7-W6RK>].

8. See discussion *infra* Part II.

9. See discussion *infra* Section III.A–B.

10. See discussion *infra* Section III.C.

11. See discussion *infra* Section III.D–J.

12. Author's original thought.

13. Author's original hypothetical.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Author's original thought.

Why is it that estate planning, which culminates a lifetime's worth of work and assets, does not take currency conversion rates into account?²⁰

Foreign grantors with American beneficiaries can protect their assets against changes in currency conversion rates that would significantly devalue their entire estate.²¹ Foreign currencies experience rapid fluctuation all the time due to inflation, demand, politics, government policies, geopolitical events, and more.²² As of October 24, 2022, Hungary was experiencing very high inflation.²³ On October 24, 2022, one USD bought 418 Hungarian Forint (HUF); one year prior, one USD bought 314 HUF.²⁴ In one year's time, any American that was a future heir to a Hungarian estate lost nearly a quarter of their total inheritance due to currency conversion rate changes.²⁵ In October of 2013, one USD bought 211 HUF; in nine years Hungarian assets lost 50% of their total value when compared to the USD.²⁶ Using simple tools on the foreign currency exchange market, estate planners can mitigate the effect of poor currency conversion rate changes on the value of assets in an estate.²⁷

II. FOREIGN ESTATE PLANNING AND INHERITANCE SYSTEMS AROUND THE WORLD

A. *Immigrants in the United States*

Foreign nationals wanting to pass assets to individuals in the U.S. may sound like a unique scenario that does not occur often; however, immigrants and their U.S. born children account for approximately 84.8 million people.²⁸ These immigrants and their children make up over 25% of the U.S. population, and many have family outside of the U.S.²⁹ The Pew Research Center projects that 36% of the U.S. population will have immigrant origins by 2036.³⁰

The second largest immigrant population by state is in Texas.³¹ In 2019, Texas had 5 million immigrants, and over 800,000 of those immigrants came

20. *Id.*

21. *Id.*

22. See Florence Couëdel, *Understanding Currency Volatility: An Overview*, CURRENCYTRANSFER (Mar. 11, 2022), <https://www.currencytransfer.com/blog/expert-analysis/currency-volatility-overview> [http://perma.cc/7MMK-F6Q4].

23. See *United States Dollar - Hungarian Forint (USD - HUF)*, MKTS. INSIDER, <https://markets.businessinsider.com/currencies/usd-huf> (last visited Dec. 15, 2022) [http://perma.cc/J3SF-7Y2M].

24. *Id.*

25. See *id.* (showing the value of Hungarian currency has dropped significantly in a year).

26. See *id.* (showing the price of USDs has double against Hungarian currency in nine years).

27. See generally FOREX, <https://www.forex.com/en-us/> (last visited Dec. 15, 2022) (trading platform for currency exchanges that can be used to reduce the risk of currency conversion rates devaluing an estate) [https://perma.cc/F9WV-DTZL].

28. Batalova, *supra* note 6.

29. See *id.*

30. *Id.*

31. *Id.*

to Texas between 2010 and 2019.³² In addition to the 5 million immigrants, another 4.5 million native-born Americans in Texas had at least one immigrant parent.³³ Mexican immigrants comprise the largest group of immigrants in the U.S., with 24% of immigrants coming from Mexico.³⁴

Payments that leave the U.S. going back to relatives or friends outside the U.S. are called remittances.³⁵ Remittances are often sent to support an immigrant's family in the family's home country.³⁶ These remittances are "sent all across the globe in huge amounts. They play a very important role in the economies of various low to middle-income nations."³⁷ Remittances increase savings, facilitate access to financial institutions, and promote financial literacy and investment.³⁸ If a family business exists, migrants are more likely to send money to the family's home country in anticipation of future bequests.³⁹

Remittances are sent in huge amounts both in and out of the U.S.⁴⁰ Immigrants "sent an estimated \$11.7 billion to relatives and friends outside the United States" during a twelve month period before the August 2008 Immigration Survey.⁴¹ However, this only includes data immigrant families voluntarily gave to the U.S. Census Bureau.⁴² Worldwide, it is estimated that in 2011 these international remittances exceeded \$483 billion; unrecorded payments are believed to total at least 50% more than those that go through official channels.⁴³ Between 2022 and 2030, an estimated \$5.4 trillion USD will be sent in remittances.⁴⁴ In 2017, immigrant households in the U.S.

32. *Id.*

33. *Immigrants in Texas*, AM. IMMIGR. COUNCIL (Aug. 6, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-in-texas> [http://perma.cc/M46V-YPCP].

34. Batalova, *supra* note 6.

35. Yorbol Yakshilikov, *The Unexpected Rise in Remittances to Central America and Mexico During the Pandemic*, INT'L MONETARY FUND (Sept. 21, 2022), <https://www.imf.org/en/News/Articles/2022/09/19/cf-the-unexpected-rise-in-remittances> [http://perma.cc/Z85Z-GBE4].

36. Dilip Ratha, *Remittances: Funds for the Folks Back Home*, INT'L MONETARY FUND, <https://www.imf.org/external/Pubs/FT/fandd/basics/76-remittances.htm> (last visited Dec. 15, 2022) [http://perma.cc/V7EA-SDKP].

37. Chris B. Murphy, *Remittance: What It Is and How to Send One*, INVESTOPEDIA, <https://www.investopedia.com/terms/r/remittance.asp> (Aug. 12, 2022) [https://perma.cc/766C-CE4L].

38. Catalina Amuedo-Dorantes, *The Good and the Bad in Remittance Flows*, IZA WORLD OF LAB. (Nov. 2014), <https://wol.iza.org/articles/good-and-bad-in-remittance-flows.pdp> [https://perma.cc/MJ7K-B9JR].

39. *Id.*

40. *Id.*

41. Elizabeth M. Grieco et al., *Who in the United States Sends and Receives Remittances? An Initial Analysis of the Monetary Transfer Data from the Aug. 2008 CPS Migration Supplement*, U.S. CENSUS BUREAU (Nov. 2010), <https://www.census.gov/library/working-papers/2010/demo/POP-twps0087.html> [https://perma.cc/KH9A-3R7E].

42. *Id.*

43. Ratha, *supra* note 36.

44. *What Are Remittances? A Complete Guide*, WORLDREMIT, <https://www.worldremit.com/en/blog/finance/what-is-remittance/#spanstylecolorrgb12963214howdoremittancesaffecttheeconomyspan> (Sept. 28, 2022) [https://perma.cc/W43P-Q4YL].

received an estimated \$5.6 billion to \$6.6 billion from other countries.⁴⁵ Notably, \$2.43 billion came from Mexico and Canada.⁴⁶

Individuals watch the currency exchange rate, and plan remittances around them.⁴⁷ When the currency of the country the migrant is working in appreciates, migrants are more likely to send remittances back home, and they are less likely to send remittances when the currency of that country is depreciating.⁴⁸ The flow of remittances is so large that countries receiving a significant volume of consistent remittances take into consideration the impact these remittances have on exchange rate volatility and their impact on currency markets.⁴⁹

B. Foreign Estate Planning Generally

The median age of the U.S. immigrant population is 45.7 years old, and this takes into account children of immigrants that bring down the median age.⁵⁰ These immigrants likely have parents or other relatives in their sixties or older and should have an estate plan to decide where older relatives' assets will go.⁵¹ Estate planners recommend that estate planning should start much earlier, with basic estate planning as soon as an individual is eighteen, and should have some basic plan by the time they are twenty, including power of attorney and beneficiaries for financial assets.⁵² A large pool of immigrants can benefit substantially by having the estates of their foreign national family members modified or created.⁵³

Foreign estate planning is complex.⁵⁴ Without careful estate planning, different tax laws and inheritance laws can be detrimental to the desired goal of an estate, such as leaving assets to individuals the decedent did not plan on or incurring hefty tax bills.⁵⁵ Protecting an estate from currency

45. *Remittance Flows Worldwide in 2017*, *supra* note 7; Grieco et al., *supra* note 41.

46. *Remittance Flows Worldwide in 2017*, *supra* note 7.

47. *See Effects of Currency Volatility on Remittances*, COMPAREREMIT, <https://www.compareremit.com/money-transfer-tips/effect-of-currency-volatility-on-remittances/> (Mar. 16, 2022, 10:17 AM) [<https://perma.cc/HSL8-5565>].

48. *Id.*

49. *Id.*

50. Batalova, *supra* note 6.

51. *Estate Planning Tips for Every Age*, THE L. OFFS. OF PATRICIA E. TICHENOR, P.L.L.C. (Aug. 10, 2022), <https://www.novaestatelawyers.com/estate-planning-tips-for-every-age/> [<https://perma.cc/C7XK-YRFG>].

52. *Id.*; Amy Rotering, *At What Age Should You Make an Estate Plan?*, MUNDAHL L. PLLC (June 21, 2022), <https://www.mundahlaw.com/at-what-age-should-you-make-an-estate-plan/> [<https://perma.cc/Q7M4-ZY6A>].

53. *See* Batalova, *supra* note 6.

54. *The Best Will in the World*, WORLDWIDE LAWS., <https://worldwidelawyers.co.uk/the-best-will-in-the-world/> (last visited Dec. 15, 2022) [<https://perma.cc/Z9L8-EK2T>].

55. *See* Roger Healy, *Guide to International Estate Planning for Cross Border Families*, CREATIVE PLAN. INT'L., <https://creativeplanning.com/international/insights/guide-to-international-estate-planning-for-cross-border-families/> (Aug. 2, 2023) [<https://perma.cc/25SY-RGRY>].

conversion changes is most effective if the foreign estate is well planned and will not lose beneficiaries' assets due to poor estate planning.⁵⁶

1. United States Taxes on Foreign Inheritance

Creating a foreign estate plan with American beneficiaries will require attention to tax laws in the U.S.⁵⁷ Fortunately, the U.S. does not impose an inheritance tax on American beneficiaries, whether that inheritance is coming from within the U.S. or abroad.⁵⁸ While the Internal Revenue Service (IRS) does impose an estate tax on certain estates, the threshold amount of the assets before they are taxed is very high.⁵⁹ Most estates will not be taxed; in 2023, the threshold for taxation was \$12.92 million for an individual and doubled to \$25.84 million for a married couple before the estate is taxed at 40%.⁶⁰

U.S. tax law requires American beneficiaries of foreign inherited assets to report those assets to the IRS even if the estate will not be taxed.⁶¹ Any U.S. citizen, green card holder, or taxpayer must report all bequests and gifts received from foreign persons that exceed \$100,000 in a calendar year using IRS Form 3520.⁶² While the IRS does not impose an inheritance tax, the IRS taxes U.S. citizens and resident aliens on their worldwide income.⁶³ The IRS has an interest in foreign assets coming into the U.S., and although these assets are not taxed themselves, any income generated by these non-U.S. assets are subject to the U.S. income tax going forward.⁶⁴

State taxes on inheritance and estates are important considerations when planning a foreign estate.⁶⁵ Texas does not have an estate tax or an inheritance tax, so a beneficiary in Texas need only watch the federal guidelines.⁶⁶ If the beneficiary does not reside in Texas, state laws of the beneficiary's state

56. See generally *id.* (detailing a number of complex foreign estate planning issues).

57. See Frederic Behrens, *Receiving an Inheritance from Abroad: Special Considerations for U.S. Taxpayers*, CERITY PARTNERS (Jan. 10, 2023), <https://roundtablewealth.com/resources/receiving-an-inheritance-from-abroad/> [https://perma.cc/A668-FVXW].

58. *Id.*

59. *Estate Tax*, IRS (Nov. 27, 2023), <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> (Nov. 27, 2023) [https://perma.cc/Z8XX-5LDA].

60. *Id.* See Matt Odgers, *Discover the Latest Federal Estate Tax Exemption Increase for 2024—Are You Ready?*, OPELON LLP, <https://opelon.com/federal-estate-tax-exemption-amount/> (last visited Jan. 24, 2024) [https://perma.cc/UTY3-AVKV].

61. Behrens, *supra* note 57.

62. *Id.*

63. *Foreign Earned Income Exclusion*, IRS, <https://www.irs.gov/individuals/international-taxpayers/foreign-earned-income-exclusion> (Feb. 7, 2024) [https://perma.cc/R6H4-6494].

64. Behrens, *supra* note 57.

65. See Janelle Fritts, *Does Your State Have an Estate or Inheritance Tax?*, TAX FOUNDATION (June 21, 2022), <https://www.taxfoundation.org/state-estate-tax-inheritance-tax-2022/> [https://perma.cc/J4LX-ZSJC].

66. See *id.*

should be checked because other states, such as Maryland, may impose an inheritance tax or estate tax.⁶⁷

C. Estate Planning in Foreign Grantor's Domiciled Country

A foreign grantor's domiciled country may tax their estate or the recipient of the bequest.⁶⁸ In addition to different tax laws, non-U.S. jurisdictions may not use the U.S. common law system of inheritance to govern how an estate will be distributed.⁶⁹ Estate planners looking to include currency conversion rates should be aware of two major inheritance law systems that differ from the U.S. common law inheritance system—forced heirship and Sharia law.⁷⁰ These systems govern inheritance distribution depending on where the grantor is domiciled at the time of their death or the grantor's religious beliefs.⁷¹ A foreign estate planner must carefully observe the laws of the foreign grantor's country of domicile or hire an attorney from that country to aid in the estate planning because proceeding without caution can lead to small oversights that turn into large, long-term U.S. tax problems.⁷²

Taxes paid to the country the inheritance originated from can be offset against tax obligations in the U.S.⁷³ To offset any amounts paid to the payment origination country, IRS Form 706-CE, Certificate of Payment of Foreign Death Tax, must be filed.⁷⁴ Countries can have high inheritance tax rates; for example, the United Kingdom charges a 40% inheritance tax on any inheritance over £325,000.⁷⁵ It would be a costly mistake to fail filing Form 706-CE and potentially be taxed in addition to that 40%.⁷⁶

1. Countries that Follow English Common Law for Inheritance

In England and Wales, inheritance law has evolved to give people the freedom to choose who inherits their property after they die.⁷⁷ Other countries

67. *See id.*

68. Behrens, *supra* note 57.

69. *Id.*

70. *Id.*

71. *Id.*

72. *See id.*

73. *Receiving Inheritance Money from Overseas — Tax and Transferring Funds*, WISE, <https://wise.com/us/blog/receiving-inheritance-money-from-overseas> (May 26, 2019) [<https://perma.cc/23CH-SNL3>].

74. *Id.*

75. *About Form 706-CE, Certification of Payment of Foreign Death Tax*, IRS, <https://www.irs.gov/forms-pubs/about-form-706-ce> (Mar. 7, 2023) [<https://perma.cc/2YP2-XBCL>].

76. *See How Inheritance Tax Works: Thresholds, Rules and Allowances*, GOV.UK, <https://www.gov.uk/inheritance-tax> (last visited Dec. 15, 2022) [<https://perma.cc/H75G-B4N6>].

77. *Inheritance and Estate Taxes in the UK*, EXPATICA, <https://www.expatica.com/uk/finance/taxes/inheritance-tax-uk-1040799/> (Jan. 12, 2024) [<https://perma.cc/AZL4-JLXD>].

have similar laws, including the U.S.⁷⁸ Countries that decide inheritance under a common law regime usually use an instrument—commonly a will—to dictate how the individual’s assets will be distributed upon their death.⁷⁹ These countries allow the foreign grantor to create a will that can dictate how any assets the grantor holds in the U.S. will be distributed, including a U.S. trust.⁸⁰ If no will is created, then these countries have intestate succession which will distribute the assets based on the country’s intestate laws.⁸¹

One drawback to using the English common law system is multiple wills from different countries could invalidate one another.⁸² An international will is one tool that could avoid issues with multiple wills if the countries the estate planner is considering have all agreed to accept international wills.⁸³ If the estate planner drafts a will in a country that follows the English common law regime, and that will includes distributions of property in countries that do not follow this regime, the other countries may not honor the will or any trusts.⁸⁴

2. Countries that Follow Forced Heirship Laws

Forced heirship laws are common in European countries, and if the foreign grantor residing in one of these countries attempts to leave property to certain individuals, the inheritance may not succeed or may be open to dispute.⁸⁵ Forced heirship laws dictate where certain property from an estate will go regardless of whether an instrument conveys how the grantor wanted the property distributed.⁸⁶ For example, in France between 50% and 75% of a decedent’s assets must pass to their children.⁸⁷

Europe introduced the European Succession Regulation in 2015 which determined the jurisdiction and succession laws of an individual’s entire estate based on their last place of habitual residence.⁸⁸ This 2015 regulation also “gives expatriates an overriding right to elect for their estate to be

78. See Healy, *supra* note 55.

79. *Id.*

80. See *id.*; discussion *infra* Section III.A.

81. See *Intestate Succession*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/intestate_succession (last visited Jan. 24, 2024) [<https://perma.cc/7FLJ-E9LJ>].

82. *Ensure That Your U.S. & U.K. Wills Don’t Override One Another*, L. OFF. OF JANET L. BREWER (Mar. 10, 2021), <https://www.calprobate.com/blog/ensure-that-your-u-s-u-k-wills-dont-override-one-another/> [<https://perma.cc/M9UP-JFNP>].

83. *Id.*

84. Healy, *supra* note 55.

85. Jan Atkinson, *Property Abroad? Beware of Forced Heirship Rules*, OSBORNES L. (Oct. 22, 2019), <https://osborneslaw.com/blog/property-abroad-beware-of-forced-heirship-rules/> [<https://perma.cc/6PCF-SX76>].

86. See *id.*

87. *Id.*

88. *European Succession Regulation (Regulation (EU) No.650/2012)*, STEP 1, 1 (Feb. 12, 2024, 11:45 AM), <https://www.step.org/public-policy/european-succession-regulation-regulation-eu-no650-2012> [<https://perma.cc/C7UF-DF9T>].

governed by the law of their home country.”⁸⁹ Planning an estate in a European country that follows the Succession Regulations helps simplify international estate planning because all aspects of the estate are governed by that country’s laws.⁹⁰ Unless the individual is willing to move to another country in Europe to choose what succession laws apply to their estate under the last habitual residence rule or renounce their citizenship and move, the country where that individual habitually resided must govern their estate.⁹¹ However, their freedom to choose succession laws to apply to their estate is still restricted.⁹²

Forced heirship is not confined to Europe; if a resident of a non-European country that follows forced heirship does not carefully plan where they leave their assets upon death, that country will most likely distribute the assets of the estate according to its own laws.⁹³ Brazil gives the decedent the right to distribute 50% of their estate freely, while the other 50% follows Brazil’s forced heirship laws and often vests in the surviving spouse and children regardless of the decedent’s wishes.⁹⁴

Moving property into trust in Texas may be a way to avoid the forced distribution laws in the foreign grantor’s home country.⁹⁵ Physical property, such as real estate or money left in the foreign grantor’s domiciled country, will typically be distributed according to the country’s forced heirship laws.⁹⁶ Texas courts would allow the enforcement of international inheritance law if the property is held in the foreign country unless the property is in trust.⁹⁷ While no Texas court has yet ruled on how forced heirship would apply between Texas and a European country, in *Boman v. Gibbs*, the Seventh Court of Appeals held:

We think it has been definitely decided in this State that the law of actual domicile of the testator is to govern in relation to his testament or personal property, where the property is situated within the domicile of the testator, or in a foreign country; but in respect to real property of the testator, the place where the property is situated is to govern not only as to the capacity of the testator and the extent of his power to dispose of the property, but

89. *Id.*

90. *See id.*

91. *Id.*

92. *See id.*

93. Atkinson, *supra* note 85.

94. *Worldwide Estate and Inheritance Tax Guide 2020*, EY 1, 42 (2020) https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/tax/tax-pdfs/ey-world-estate-and-inheritance-tax-guide.pdf [<https://perma.cc/9LLP-K6JE>].

95. *Boman v. Gibbs*, 443 S.W.2d 267, 271 (Tex. Civ. App.—Amarillo 1969, writ ref’d n.r.e.). *See* Ryan McLearn, *International Forced Heirship: Concerns and Issues with European Forced Heirship Claims*, 3 EST. PLAN. & CMTY. PROP. L.J. 323, 338–39 (2011).

96. *See* Atkinson, *supra* note 85.

97. *Boman*, 443 S.W.2d at 271; *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950).

also as to the forms and solemnities necessary to give the Will its due attestations and effect.⁹⁸

The language “actual domicile . . . govern[s] in relation to . . . personal property, where the property is situated within the domicile of the testator, or in a foreign country” excludes personal property located elsewhere.⁹⁹ Using a trust created in Texas that contains personal property in Texas likely circumvents international forced heirship laws because the property is not located within the testator’s domicile.¹⁰⁰

3. Countries that Follow Sharia Law

Sharia inheritance law determines where an individual’s wealth is disbursed upon their death in accordance to the Quran.¹⁰¹ Sharia inheritance law is like forced heirship law because it requires that certain portions of wealth must be transferred to certain pre-determined individuals upon the grantor’s death.¹⁰² The Muslim faith and Quran state that “Allah has dominion over everything in the heavens and on earth,” and Sharia inheritance law requires individuals to distribute wealth upon death in accordance with Allah’s wishes.¹⁰³ Sharia inheritance law has a formula for how the inheritance is distributed.¹⁰⁴

Sharia inheritance law may or may not apply to foreign grantors in every Muslim-majority country, and estate planners should make sure that any estate plan follows their client’s religious beliefs.¹⁰⁵ Sharia law is not law in the sense of being a complete legal system; Sharia law is a set of “perfect, immutable values understood only by God.”¹⁰⁶ While Sharia law is not an actual legal system, it does influence Islamic laws in many Muslim-majority countries.¹⁰⁷ Sharia law may determine how a grantor must distribute their estate based on their religious beliefs, even if the grantor resides in a country that does not follow Islamic laws.¹⁰⁸ However, since Sharia law is not a legal system, should an estate planner have a client who does not want to follow

98. *Boman*, 443 S.W.2d at 271.

99. *Id.*

100. *See Mullane*, 339 U.S. at 313.

101. Ahmed Shaikh, *Islamic Inheritance: A Guide for American Muslims*, ISLAMICINHERITANCE.COM, <https://islamicinheritance.com/islamic-inheritance-guide/> (last visited Dec. 15, 2022) [<https://perma.cc/4HHZ-5JN3>].

102. *Id.*

103. *Id.*

104. *Id.*; *Property Distribution According to Islam*, ISLAMICWILLS, <https://www.islamicwills.usa.com/property-distribution-islam/> (last visited Dec. 15, 2022) [<https://perma.cc/XTB3-FZWZ>].

105. *See* Kali Robinson, *Understanding Sharia: The Intersection of Islam and the Law*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/background/understanding-sharia-intersection-islam-and-law> (Dec. 17, 2021, 2:00 PM) [<https://perma.cc/5M2G-HUPU>].

106. *Id.*

107. *Id.*

108. *Id.* *See* Shaikh, *supra* note 101.

Sharia inheritance laws, the estate planner must only check the laws of the foreign grantor's country for complications on the inheritance distribution.¹⁰⁹

D. Understanding Foreign Currency Exchange and How These Values Are Created

Understanding foreign currency exchange rates is simple; however, foreign currency exchange will only be an effective part of a foreign estate plan if a competent estate planner considers the law of the grantor's domiciled country and those laws are taken into account during estate planning.¹¹⁰ Once the estate planner has done their due diligence, they may continue to hire a professional to help their client with currency conversions.¹¹¹ Foreign currency exchange rates are the rate that one currency can be converted into another currency.¹¹² The rates also determine the relative value between two currencies.¹¹³ Exchange rates can "influence the decisions of individuals, businesses and the government" by showing how much economic power or wealth an amount of one currency will be able to buy in another, thus, affecting international financial decisions.¹¹⁴

Foreign currency exchange rates are shown in pairs.¹¹⁵ These pairs allow easy identification between the exchange rate of two currencies as one number.¹¹⁶ A currency pair is shown as an abbreviation of two currencies with a price.¹¹⁷ For example, the currency pair "USD/EUR 2" shows that the price to buy one USD is two Euros at the present market price.¹¹⁸ The price next to the currency pair always shows how much of the second currency listed the pair is required to purchase one of the first currency listed.¹¹⁹

Foreign currency exchange rates are determined by the foreign exchange market (Forex).¹²⁰ Forex is a trading platform and a price index—

109. See generally Robinson, *supra* note 105 (noting some Muslim-majority countries have Sharia-based laws, but their actual laws vary; Sharia law is not a legal system that legally binds an individual or property unless they choose to be bound to Sharia law based on religious beliefs and practice).

110. Author's original thought.

111. *Id.*

112. *Foreign Currency and Currency Exchange Rates*, IRS, <https://www.irs.gov/individuals/international-taxpayers/foreign-currency-and-currency-exchange-rates> (Dec. 27, 2023) [<https://perma.cc/LV96-74M3>].

113. *Id.*

114. See Adam Hamilton, *Understanding Exchange Rates and Why They Are Important*, RSRV. BANK OF AUSTRALIA (Dec. 13, 2018), <https://www.rba.gov.au/publications/bulletin/2018/dec/understanding-exchange-rates-and-why-they-are-important.html> [<https://perma.cc/LH4P-4TB2>].

115. James Chen, *Forex (FX): How Trading in the Foreign Exchange Market Works*, INVESTOPEDIA, <https://www.investopedia.com/terms/f/foreign-exchange.asp> (Nov. 27, 2022) [<https://perma.cc/H9NU-3RU8>].

116. *Id.*

117. *Id.*

118. Author's original thought.

119. See Chen, *supra* note 115.

120. FOREX, *supra* note 27.

similar in many ways to stock exchanges such as NASDAQ—where currency pairs are listed on the Forex website showing the current price updating in real time.¹²¹ Forex determines foreign currency exchange rates based on several factors: inflation, interest rates, speculation, change in competitiveness, relative strength of other currencies, balance of payments, government debt, government intervention, and economic growth or recessions.¹²²

The USD is the most actively traded currency on Forex and in the world.¹²³ In 2019, the USD was the largest share of currency trades with 88% of all currency trades, while the Euro was second with 32% of trades, and Japanese Yen in third with 17% of trades.¹²⁴ The huge margin of currency trades using the USD comes from the USD's stability and extensive use.¹²⁵ Most currencies are available to trade against the USD, and its extensive use and stability make it a great currency to hold rather than other currencies around the world that are more likely to succumb to inflation.¹²⁶

E. Current International Estate Planning Does Not Encapsulate Currency Conversions

Foreign estate planning should include currency conversion considerations throughout the entire process: when the estate plan is made, at the time the grantor dies, and protecting assets that are not liquid and cannot immediately be converted.¹²⁷ Common practice for foreign estate planning does not involve any planning for foreign currency exchange rates or how they may change between the present to when the estate will be administered.¹²⁸ Currently, currency exchange rates are only considered at the time of the grantor's death, when currency is being transferred to the U.S.¹²⁹

121. *Id.*; Chen, *supra* note 115.

122. Tejvan Pettinger, *Factors Which Influence the Exchange Rate*, ECONS. HELP (May 28, 2022), <https://www.economicshelp.org/macroeconomics/exchangerate/factors-influencing/> [https://perma.cc/7Y37-HKUB].

123. *See* Chen, *supra* note 115.

124. *Triennial Central Bank Survey: Foreign Exchange Turnover in April 2019*, BANK FOR INT'L SETTLEMENTS 1, 3 (Sept. 16, 2019), https://www.bis.org/statistics/rpfx19_fx.pdf [https://perma.cc/7SC5-B8VC].

125. Sophia Mason, *Why Is USD the Most Traded Currency in the World?*, SIGNAL SKYLINE (Sept. 29, 2019), <https://www.signalskyline.com/blog/2019/09/29/usd-traded-currency-world/> [https://perma.cc/XE5B-HKHK].

126. Clinton Nwachukwu, *5 Reasons Why You Should Save in Dollar*, YELLOW CARD (Aug. 22, 2023), <https://yellowcard.io/blog/why-save-in-dollar/> [https://perma.cc/XT6Y-ZZRV].

127. Author's original thought.

128. *See generally* *Receiving Inheritance Money from Overseas — Tax and Transferring Funds*, *supra* note 73 (explaining that, to repatriate funds, individuals should determine whether a person's regular bank or transfer provider will give the best exchange rate).

129. *See id.*

Getting the best conversion rate for a beneficiary when transferring money at the time of a foreign grantor's death is only a small piece of using currency exchange rates to maximize the value of the foreign estate.¹³⁰ The current practice of only obtaining the best exchange rate after the death of the grantor completely ignores how the market for currency exchange behaves; the currency exchange market is constantly changing, and the conversion rate is based on many factors including "political events, economic events, trade figures, investors' confidence, and possibly the weather."¹³¹

Currently, estate planning for currency conversion mirrors behavior that corporations abandoned to make sure they protect against currency conversion rates.¹³² The practice of choosing the best conversion rate when the grantor dies mirrors the practice of corporations choosing a single point in time and converting currency at that time with no regard to the features of the foreign exchange market.¹³³ For example, multinational corporations used to have Canadian subsidiaries pay dividends at the end of the calendar year.¹³⁴ Today, treasurers for these corporations now spread out their foreign exchange trading throughout the year and pay more attention to conversion rates on the foreign exchange market, diminishing the effect of currency exchange markets reducing the value of these dividends.¹³⁵

Using currency conversion at a fixed point in time while ignoring other market conditions is "unwise," and the current practice of currency conversion in foreign estate planning should change.¹³⁶ Including currency conversions into a foreign estate plan is not difficult or costly.¹³⁷ The Forex platform displays exact current currency conversion rates and shows the conversion rate in the past.¹³⁸ Information on when the grantor should exchange currency and transfer it into a trust is easy and quick to acquire, and the estate planner and the grantor can decide to convert the currency and transfer it into a U.S. trust without hiring a professional (although hiring a professional is advised).¹³⁹

130. Author's original thought.

131. *What Is the Best Day to Exchange Currency?*, MONEY WAY FIN. GRP., <https://Moneyway.com/blog/2020/12/13/what-is-the-best-day-to-exchange-currency/> (Aug. 19, 2021) [<https://perma.cc/LE4J-EUBD>].

132. *Id.*

133. *See id.*

134. *Id.*

135. *Id.*

136. Author's original thought. *See What Is the Best Day to Exchange Currency?*, *supra* note 131.

137. *See generally Effects of Currency Volatility on Remittances*, *supra* note 47 (noting remitters watch currency exchange rates and send remittances based on exchange rates; having an estate planner or grantor periodically check exchange rates and alert the other when rates are favorable is neither difficult nor time consuming).

138. *See Chen*, *supra* note 115.

139. *See id.*; discussion *infra* Section III.A.

III. ESTATE PLANNERS MUST INCORPORATE CURRENCY CONVERSION RATES INTO CLIENTS' FOREIGN ESTATE PLANS

Estates that involve foreign estate planning or foreign currency should adopt new practices for incorporating currency conversion rates into their estate plan.¹⁴⁰ An estate plan which allows a grantor to use tools to begin converting currency into USDs while they are alive and utilizes these tools after their death to protect illiquid assets will lead to better protection for estates from currency exchange rate fluctuations.¹⁴¹ Any estate planner can use basic tools to protect an estate from losing value; the estate planner does not need in-depth knowledge of foreign financial markets and investment strategies to prevent currency conversion rates from devaluing an estate.¹⁴² The estate planner can remind the client to reach out to the financial professional hired to aid with currency conversion when conversion rates are good.¹⁴³

Practitioners should change their estate planning practice by creating foreign grantor trusts as a financial vehicle, affording the grantor access to a U.S. bank account in which they can keep their money in USDs.¹⁴⁴ Once the trust is created and a bank account is opened by an American trustee, the estate planner and foreign grantor can hire a financial professional to immediately begin monitoring the Forex and using spot transactions, currency options, and forward contracts to begin converting currency into USDs and putting it in trust.¹⁴⁵ Risk of the estate devaluing due to a poor currency conversion rate at the time of the grantor's death is mitigated because part of the estate will already be converted to USDs at a rate that was planned for by the estate.¹⁴⁶ The money will be in an American trust which may prevent other countries from disbursing the property under their inheritance regime, and it is in USDs, which is a very stable currency.¹⁴⁷

Practitioners should also have financial professionals use currency options and forward contracts after the grantor's death to protect illiquid assets from currency conversion rate changes.¹⁴⁸ Taking out a currency option or forward contract can be used like an insurance policy to prevent a poor currency conversion fluctuation from devaluing an asset that is not dispersible at the time of the grantor's death.¹⁴⁹ For example, taking a

140. Author's original thought.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Nwachukwu, *supra* note 126.

148. *What Is the Best Day to Exchange Currency?*, *supra* note 131.

149. See Troy Segal, *Hedging Risk with Currency Swaps*, INVESTOPEDIA, <https://www.investopedia.com/articles/forexII/hedging-with-currency-swaps.asp> (Dec. 31, 2021) [<https://perma.cc/FFL3-D9L9>].

currency option to cover the value of foreign real estate can protect the value of that real estate against a currency conversion rate fluctuation until it is sold and the money is disbursed to beneficiaries of the estate.¹⁵⁰

The proposed practices are simple ways for all estate planners to incorporate currency conversion into estate plans.¹⁵¹ To reduce the complexity of incorporating these practices into estate planning, the proposed practices focus on mitigating the risk of estate devaluation, protecting assets from loss of value, not playing foreign exchange markets, and increasing the value of the estate.¹⁵² Focusing only on mitigating the risk of using the foreign exchange market will not increase chances of the trustee violating their fiduciary duties.¹⁵³ Further, with the precedent set in *Boman v. Gibbs*, using a trust as a vehicle to move currency into the U.S. may help estate planners avoid conflicts with international laws.¹⁵⁴

This Comment argues for simple changes that any estate planner can begin using; however, estate planners with advanced financial literacy or in-depth knowledge on foreign currency exchange trading can build on the practices recommended in this Comment.¹⁵⁵

A. Creating a Trust in Texas as a Foreign National

Trusts are an excellent tool for estate planners who want to protect an estate against an unfavorable currency conversion rate change.¹⁵⁶ The Texas Property Code gives grantors the ability to reserve interests and broad powers over a trust and trust property while restricting the powers of the trustee designated for the trust.¹⁵⁷ Because grantors have so much discretion in which powers they reserve and which powers they pass to the trustee, grantors can take advantage of specific benefits and powers of a trust and use the trust as a tool to achieve specific goals they would otherwise be unable to achieve.¹⁵⁸

Foreign nationals can create a trust in Texas because the Texas Property Code does not distinguish foreign individuals from Texas or U.S. residents in the sections governing trusts.¹⁵⁹ Courts have jurisdiction and proper venue over a trust based on the location of the trustee, not the grantor.¹⁶⁰ If the

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *See Boman v. Gibbs*, 443 S.W.2d 267, 271 (Tex. App.—Amarillo 1969, writ ref'd n.r.e.).

155. *See discussion infra* Part III.

156. *See Jiah Kim, Can Non-US Citizens Use US Trusts in Their Estate Plans?*, JIAM KIM & ASSOCS., <https://jiahkimlaw.com/estate-planning/can-non-us-citizens-use-us-trusts-estate-plans/> (Sept. 2, 2020) [<https://perma.cc/CP32-CQBH>].

157. TEX. PROP. CODE ANN. §§ 112.003, 113.001.

158. *See generally id.* (noting a grantor can use the written instrument creating a trust to achieve a nearly endless amount of possibilities regarding what the trust can be used for).

159. *See id.* § 112.001.

160. *See id.* §§ 115.001–002.

grantor creates a trust and designates a citizen of Texas as the trustee, the county where the trustee resides may be the proper jurisdiction and venue for the trust.¹⁶¹ A foreign grantor can create a trust in Texas if the designated trustee resides in Texas, unless the trust is created for an illegal purpose or require the trustee to commit any act that is criminal, tortious, or contrary to public policy.¹⁶²

A trust created by a foreign grantor will likely be considered a foreign trust by the U.S. Federal Government unless it meets the criteria of Internal Revenue Code Section 7701(a)(30)(E)(i)–(ii).¹⁶³ Under this section, the foreign grantor will likely not give a “United States Person” the authority to control all substantial decisions of the trust.¹⁶⁴

The IRS taxes the beneficiaries of the trust for trust assets as income, unless the trust meets one of three criteria that make the trust a grantor trust.¹⁶⁵ A foreign trust is a grantor trust if the terms of the trust allow the grantor to revest absolutely without the consent of any other person or if the amounts distributed from the trust during the grantor’s lifetime are only distributable to the grantor or their spouse.¹⁶⁶ A grantor trust avoids the beneficiaries being taxed on the trust assets as income because a grantor trust is not computed in the beneficiary’s income.¹⁶⁷ In *Reinecke v. Smith*, the Supreme Court of the United States held that income tax is assessed to the grantor, not the trustee or beneficiary, when the trust is revocable solely by the grantor.¹⁶⁸ The control of corpus and the income retained by the grantor justify the tax being assessed against the grantor to limit the use of trusts for tax evasion.¹⁶⁹

B. Using a Trust to Open a U.S. Bank Account

Using a trust as a vehicle for financial management allows an individual to have a trustee access the individual’s assets without giving up complete control.¹⁷⁰ A grantor or their trustees are able to open trust bank accounts and deposit funds in the bank accounts that are being held pending investment, distribution, or for the payment of debts.¹⁷¹ A foreign grantor or their trustee can deposit currency in an American bank account opened by the trustee once

161. *See id.* § 115.002(b).

162. *See id.* § 112.031.

163. I.R.C. § 7701(a)(30)(E), (a)(31)(B).

164. *Id.* § 7701(a)(30)(E)(ii), (a)(30) (stating the statutory definition of a “United States Person”).

165. *See id.* § 671.

166. *Id.* § 672(f)(2)(A).

167. *See id.* § 672(f)(1).

168. *Reinecke v. Smith*, 289 U.S. 172, 176 (1933).

169. *Id.* at 178.

170. WILLIAM H. BYRNES, TEXAS ESTATE PLANNING § 30.01 (Matthew Bender & Co., Inc., 2017).

171. TEX. PROP. CODE ANN. § 113.007; Troy Werner, *What Is a Trust Checking Account?*, THE WERNER L. FIRM (July 21, 2020), <https://wernerlawca.com/what-trust-checking-account/> [https://perma.cc/T24E-XSJ2].

it is converted from the foreign currency into USDs.¹⁷² Foreign grantors may give the trustee additional assets or add assets to the trust themselves at any time after the trust is created.¹⁷³ A grantor may limit any powers of the trustee through the instrument creating the trust.¹⁷⁴ These limitations may be used to prevent the trustee from using the grantor's assets in any way while providing the grantor a place to store currency in a bank account created through the trust.¹⁷⁵

There are multiple ways for a foreign national to open a bank account in the U.S.¹⁷⁶ A foreign national may have a bank in their home country that has an affiliation with U.S. banks and allows for international bank accounts.¹⁷⁷ If the foreign national travels to the U.S., they can get an Individual Taxpayer Identification Number (ITIN) that will help them open a U.S. bank account.¹⁷⁸ If there is a corporate entity in the U.S., a corporate bank account can be opened.¹⁷⁹ These methods for opening U.S. bank accounts can be complex and require many documents and, in some cases, even a U.S. residential address.¹⁸⁰ Having a trustee open a U.S. bank account for a foreign grantor allows these complex methods to be circumvented because a trustee domiciled in Texas will have a U.S. residence, social security number, trust documents, and other documents that allow the trust to easily open a U.S. account.¹⁸¹

A trust is the easiest way for many foreign nationals to obtain access to a bank account for transferring currency to hold in the U.S. if they plan on leaving those assets to American heirs upon their death; however, designating foreign beneficiaries, including foreign real property in the trust, or being governed by local laws of the country where the grantor is domiciled can lead to undesirable consequences.¹⁸² A grantor should check the laws of the country they are domiciled in because gift and inheritance tax laws might reduce the value of assets more than planning for a favorable currency conversion rate will protect the value.¹⁸³ For example, in Canada, a "capital gains tax will be periodically assessed on trusts holding Canadian real

172. See PROP. § 113.007.

173. See *id.* § 113.004.

174. *Id.* § 113.001.

175. See *id.*

176. *How to Open a Bank Account in the US as a Non-Resident*, BOSS REVOLUTION, <https://www.bossrevolution.com/en-us/blog/us-bank-account-for-non-resident> (last visited Dec. 16, 2022) [<https://perma.cc/E9PS-MV8D>].

177. *Id.*

178. *Id.*

179. *Id.*

180. See *id.*

181. See *Trust Checking Account: How to Open a Trust Account*, TR. & WILL, <https://trustandwill.com/learn/how-to-open-a-trust-checking-account> (last visited Dec. 16, 2022) [<https://perma.cc/SX2Q-EFJG>].

182. Healy, *supra* note 55.

183. *Id.*

property,” and France requires a French domiciled grantor to report the trust and have it taxed.¹⁸⁴

C. Using Forex for Currency Conversion

Assuming the trust has been created, the trust bank account opened, and the estate planner has checked the laws of the country the grantor is domiciled in—and no undesirable tax consequences will occur—the financial professional can begin using Forex (the primary currency exchange market) to seek a favorable currency conversion rate.¹⁸⁵ Although Forex has many different functions for trading, this Comment is not meant to explain advanced market tools; instead, it will focus on three types of transactions that protect the value of an estate from currency conversion changes: spot transactions, currency options, and forward contracts.¹⁸⁶ A spot transaction occurs when currency is exchanged on the market for the current exchange rate.¹⁸⁷ A currency option allows a buyer to purchase currency at a preset price before a preset date; if the price is unfavorable to the buyer, they can allow the option to expire and conduct a spot transaction at the current exchange rate.¹⁸⁸ A forward contract allows the buyer to exchange currency at a set rate on a predetermined date; however, unlike an option, the buyer must go through with the transaction on a forward contract.¹⁸⁹ These three tools are relatively easy to explain to an estate planner’s client and allow the client to understand why hiring a professional to convert currency may protect their estate.¹⁹⁰

1. Spot Transactions

A spot transaction is made at the current market exchange rate between two currencies.¹⁹¹ The date and time the trade is made determines the price of the trade, and typically, the funds are delivered two business days after the trade is confirmed.¹⁹² Notable exceptions to the two-day delivery time are USD/CAD (Canadian Dollar) and USD/MXN (Mexican Peso) trades; instead of two business days, these will be delivered in one business day.¹⁹³ A spot transaction is easy to understand because the market exchange rate shows as

184. *Id.*

185. Forex, *supra* note 27.

186. *What Is the Best Day to Exchange Currency?*, *supra* note 131.

187. *Id.*

188. *Id.*

189. *Id.*

190. Author’s original thought.

191. James Chen, *What Is Spot Trading and How Do You Profit? How It Works*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/spottrade.asp> (Apr. 5, 2022) [<https://perma.cc/8N37-JXUW>].

192. *Id.*

193. *Value Dates*, LONDON FX, <http://www.londonfx.co.uk/valdates.html> (last visited Jan. 26, 2024) [<https://perma.cc/5ZNM-CHGW>].

a number, and the estate does not have to worry about the factors that influence currency exchange rates over time such as “a country’s current rate of inflation and expected future inflation rates, the country’s balance of payments, the monetary and fiscal policies of the country’s government, various economic indicators which create expectations about the country’s economic health, differences between foreign and domestic interest rates, and central bank interventions.”¹⁹⁴

The estate will use a spot transaction if it is happy with the current market exchange rate and wants to transfer its native currency into USDs and put it in the trust bank account at that time.¹⁹⁵ Liquid assets such as fiat currency are necessary for a spot transaction because of the two-day delivery window; if funds are not immediately available for the trade, a spot transaction cannot occur.¹⁹⁶ If the estate wants to keep things as simple as possible while protecting its currency against an unfavorable conversion rate change, using a spot transaction is a quick way to ensure its currency is in USDs in a U.S. bank account.¹⁹⁷

Spot transactions benefit from speed, low cost, and accessibility.¹⁹⁸ Entry costs are low to begin trading on the Forex market; because the market is open twenty-four hours a day for five and a half days a week, it can be utilized immediately to protect liquid assets when the estate believes the grantor’s native currency might drop.¹⁹⁹ Since the exchange rate paid is the current market rate, the only costs associated with a spot transaction are commissions or fees that a trading platform or broker charges.²⁰⁰ A foreign grantor with a revocable grantor trust can have their financial professional use spot transactions to convert USD back to the grantor’s native currency when they need to use the money, leaving most of their assets in USDs for stability and periodically transferring sums to use for their spending needs.²⁰¹

Spot transactions have disadvantages; mainly, for currency to be exchanged, the grantor must have the amount to be traded available in liquid currency.²⁰² Any real property held by the grantor or other illiquid assets must be protected with a currency option or a forward contract because they are not readily convertible into currency.²⁰³ In the U.S., the average time it takes

194. *Understanding FX Spot Transactions*, MICROFIN. CURRENCY RISK SOLS. 1, 2, <https://web.archive.org/web/20170517021942/https://mfxsolutions.com/wp-content/uploads/2013/03/IV-Guide-to-FX-Spot.pdf> (last visited, Jan 28, 2023) [<https://perma.cc/G4KE-3YBD>].

195. *See id.*

196. *See id.*

197. *See id.*

198. Chen, *supra* note 115.

199. *See id.*

200. *See The Cost of Trading Forex*, TRADIMO, <https://learn.tradimo.com/dont-go-broke-protect-your-capital/the-cost-of-trading-forex> (last visited Dec. 16, 2022) [<https://perma.cc/MDW7-RGYV>].

201. Author’s original thought.

202. *See Understanding FX Spot Transactions*, *supra* note 194, at 3.

203. *See How Long Does It Take to Sell a House Today?*, HOMES.COM (Dec. 1, 2015), <https://www>

to sell a home, including the time the house is on the market and closing, is between fifty-five and seventy days.²⁰⁴ These assets cannot be protected from currency conversion changes with spot transactions.²⁰⁵

2. Currency Options

The most versatile tool for protecting illiquid assets from currency exchange rate changes is a currency option.²⁰⁶ Specifically, a “put” option contract is the currency option used to protect assets against currency conversion rate changes.²⁰⁷ The purchaser of the option can allow it to expire if they do not wish to exercise the option.²⁰⁸ The purchaser of the option cannot trade or sell the option; once it is purchased, it must be exercised or allowed to expire.²⁰⁹ Purchasing a currency option allows a buyer to set the amount of currency they would like to buy, the price they would like to buy at (the strike price), and the date the option expires.²¹⁰ A seller of the option then asks for a premium that is to be paid for the buyer to have the right to that option, which can be costly.²¹¹ If the currency conversion rate falls below the strike price, the buyer of the option is able to buy the amount of currency specified at the strike price before the option expires, and the seller is obligated to buy the foreign currency at the strike price.²¹² If the grantor’s currency is worth more than the strike price once the estate gets currency from the illiquid asset, they let the option expire and enter a spot transaction to get the more desirable rate.²¹³

Currency options can protect illiquid assets against an unfavorable currency conversion change for the period of time set in the option.²¹⁴ Using a currency option to hedge the risk of losing an asset’s value is essentially getting insurance on the currency rate that the grantor desires.²¹⁵ The estate

.homes.com/blog/2015/12/long-take-sell-house-today/ [https://perma.cc/8W3L-KMVF]. See generally Kristijonas Umbrasas, *What Is the Average Time to Sell a House?*, ZILLOW (Nov. 26, 2019), <https://www.zillow.com/learn/average-time-to-sell-a-house/> (showing average time it takes to sell a home in the United States) [https://perma.cc/8WVF-CSC3].

204. Umbrasas, *supra* note 203; *How Long Does It Take to Sell a House Today?*, *supra* note 203.

205. See *Understanding FX Spot Transactions*, *supra* note 194, at 3. The time it takes to sell a home and receive funds is longer than the two-day delivery window of spot transactions. See *id.*

206. James Chen, *Currency Option: Definition, Types, Features and When to Exercise*, INVESTOPEDIA <https://www.investopedia.com/terms/c/currencyoption.asp> (June 5, 2022) [https://perma.cc/C7TS-SVZ3].

207. *Id.* (explaining that call option contracts operate differently from put option contracts, but for currency hedging, they should not be used and will not be covered in this Comment).

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. See *Understanding FX Spot Transactions*, *supra* note 194, at 2.

214. See Segal, *supra* note 149.

215. See *id.*; author’s original thought.

can take out a currency option for the price it believes the real property will sell for; selling the real property within the time limit of the currency option will protect that real property from losing any value due to currency conversion rates changing.²¹⁶

Hypothetically, if a house is listed for \$200,000 CADs and the currency conversion rate between CAD/USD is 2:1, the seller expects the house to sell for the equivalent of \$100,000 USDs.²¹⁷ The seller of the house can specify the terms of a currency option on the Forex market (the seller wants to buy \$100,000 USDs at a 2:1 CAD/USD conversion rate with the option open one year), and an option seller can request a premium for selling that option (premium is \$5,000 USDs); then the option would allow the seller to protect the house from currency fluctuations.²¹⁸ If the currency conversion rate is 4:1 CAD/USD when the house sells for \$200,000 CADs without a currency option, the house would have been sold for the equivalent of \$50,000 USDs and lose half its value in USDs.²¹⁹ If the seller of the house exercises the option, then the seller will receive \$100,000 USDs (\$95,000 net after the premium is deducted) and will successfully protect the beneficiary's estate from losing 50% of the house's value.²²⁰

Currency options do not limit the option buyer from profiting off a favorable currency rate change.²²¹ The buyer of the option has no obligation to go through with the currency trade; they only need to pay the premium the option seller asks for.²²² Using the hypothetical above, if the rate of CAD/USD is 2:1 when the option is purchased and becomes 1:1 by the time the house is sold, the seller of the house will let the option expire and take advantage of the stronger currency rate.²²³ The seller of the house is not obligated to exercise the option and fully benefits from the new conversion rate, receiving the equivalent of \$200,000 USDs from the sale of the house and losing only what they paid for the option premium.²²⁴

Trustees have the power to grant professionals the use of options "involving a sale, lease, or other disposition of trust property," or to "acquire and exercise an option for the acquisition of property."²²⁵ To guarantee that a financial professional can purchase currency options, a grantor may want to give their trustee the power to allow the professional to buy currency

216. Author's original thought. See Segal, *supra* note 149. See also Will Robson & Bryan Reid, *Global Real Estate: To Hedge, or Not to Hedge*, MSCI (Sept. 12, 2018), <https://www.msci.com/www/blog-posts/global-real-estate-to-hedge-or/01104930600> (noting global real estate investors are finding that currency is becoming a growing source of risk) [<https://perma.cc/NA6K-CKQE>].

217. Author's original hypothetical. See Segal, *supra* note 149.

218. Author's original hypothetical. See Segal, *supra* note 149.

219. Author's original hypothetical. See Segal, *supra* note 149.

220. Author's original hypothetical. See Segal, *supra* note 149.

221. See Chen, *supra* note 206.

222. *Id.*

223. Author's original hypothetical. See Segal, *supra* note 149.

224. Author's original hypothetical. See Chen, *supra* note 206.

225. TEX. PROP. CODE ANN. § 113.003.

options in the trust instrument.²²⁶ For the estate, exercising currency options is important to allow it to protect the real property against currency conversion changes if the grantor leaves real property or other illiquid assets in the trust for the beneficiaries upon the grantor's death.²²⁷

One of the downsides of exercising a currency option is cost.²²⁸ Currency options are calculated using intrinsic value and time value.²²⁹ Depending on how long the term of the option is, how volatile the currency is, how favorable the strike rate is to the option buyer, how many opportunities the buyer has to exercise the option, and the different rates used to calculate intrinsic value, premiums for currency options can become expensive.²³⁰

3. Forward Contracts

Forward currency contracts are similar to options; however, they have a few key differences: upon the expiration date that the transaction must occur, these contracts often use a formula to determine what the exchange rate will be; they do not require a premium to be paid because both parties are locked into the contract and the contract is assignable to other parties; and if an individual's currency becomes more valuable against the currency they will trade for, they do not benefit from the better spot rate.²³¹ A forward exchange contract is more desirable than a currency option in the fact that there is no premium to pay for its use; however, buyers are required to pay the value of the contract on the expiration date.²³²

A trader uses forward contracts to guarantee the value of their currency against the currency they are trading for.²³³ A forward contract should primarily be used when the trader has the funds to fulfill the forward contract secured; if the trader does not have these funds, there is a risk that they will default on their forward contract because they are obligated to pay when the contract expires.²³⁴ If an estate needs a tool that will allow it to frequently protect assets from currency conversion change, a forward contract will likely provide the best protection because, without fees, it can provide protection in repeated instances; this is why forward contracts are often used

226. See *id.* § 113.002.

227. See Segal, *supra* note 149.

228. See *The Components of FX Option Pricing*, CHATHAM FIN., <https://www.chathamfinancial.com/insights/fx-option-pricing> (last visited Dec. 16, 2022) [<https://perma.cc/VA3J-ZAB8>].

229. *Id.*

230. *Id.*

231. James Chen, *Forward Exchange Contract (FEC): Definition, Formula & Example*, INVESTOPEDIA <https://www.investopedia.com/terms/f/forward-exchange-contract.asp> (Feb. 18, 2021) [<https://perma.cc/ZA97-HUYH>].

232. *Id.*

233. *FX Forward*, CHATHAM FIN., <https://www.chathamfinancial.com/insights/what-is-an-fx-forward> (last visited Dec. 16, 2022) [<https://perma.cc/BZ7K-G9JW>].

234. See *id.*

in the international purchase of goods—they provide predictability without costing extra money.²³⁵

Forward contracts allow predictability and future planning for other aspects of the estate.²³⁶ A grantor may wish to take out a forward contract to ensure their currency does not lose value before setting up a trust in the U.S.²³⁷ The grantor can set up that trust with the knowledge of how much currency they will be sending to the trust bank account.²³⁸ With multiple forward contracts, an estate plan can be more easily executed without the risk of currency conversion changes losing the grantor money and forcing them to change their plans.²³⁹

IV. CONCERNS ABOUT IMPLEMENTATION

A. Concerns About Administrability of the Trust

Upon first blush, creating a foreign trust with a foreign grantor opening a U.S. bank account and the use of a foreign currency exchange market to protect the value of the estate sounds complicated and hard to administer.²⁴⁰ Fortunately, the requirements to avoid taxation by the IRS on trust assets ensures a trust that is straightforward to administer.²⁴¹ If the grantor has a complete reversionary interest in trust assets, certain powers over the trust that benefit the grantor, and the power to revoke the trust without any other person's authority, the trust assets are not taxed as beneficiary income.²⁴² The grantor has all this power over the trust, so administrability becomes straightforward because they can control everything in the trust.²⁴³

Ensuring that administrability issues do not arise after the grantor dies requires careful crafting of the trust-creating instrument, examining laws in the grantor's domiciled country, and checking that there are no conflicts with the U.S. trust structure.²⁴⁴ Countries that follow Sharia law and countries that follow forced heirship law will likely conflict with the grantor leaving the trust assets to beneficiaries.²⁴⁵ Muslims follow Sharia law, which is not

235. See *Currency Forward*, CFI, <https://corporatefinanceinstitute.com/resources/foreign-exchange/currency-forward/> (last visited Jan. 26, 2024) [<https://perma.cc/PZ6K-J85N>].

236. See *id.*

237. See *FX Forward*, *supra* note 233.

238. See *Currency Forward*, *supra* note 235.

239. See *id.* (addressing how forward contracts help estate planners stabilize purchasing prices, help businesses with planning, and create a comprehensive plan).

240. Author's original thought.

241. See I.R.C. § 1.671.

242. *Reinecke v. Smith*, 289 U.S. 172, 176 (1933). See I.R.C. §§ 672(f)(1), 671.

243. See TEX. PROP. CODE ANN. § 113.001 (noting the trust creating instrument will give most powers over the trust to the grantor).

244. See Healy, *supra* note 55.

245. See Atkinson, *supra* note 85. See also *Property Distribution According to Islam*, *supra* note 104.

actually law, but observed according to a person's chosen religious beliefs.²⁴⁶ Muslims who want to observe their faith will need to abide by Sharia law inheritance rules, and this can make administrability of a foreign trust complicated.²⁴⁷ Unlike Sharia law, countries with forced heirship will force a certain percentage of the foreign decedent's property to be inherited by certain individuals, and the administration of the U.S. trust could be open to dispute.²⁴⁸

The domicile country of the foreign grantor may have tax laws that conflict with the administrability of the trust, and estate planners and grantors must make sure that their estate meets the tax regulations of their domiciled country.²⁴⁹ Situs rules deal with location of property to determine legal status.²⁵⁰ Real property located in a different country will be considered situs property for that country and be exposed to the country's estate, inheritance, tax, and transfer laws; the U.S. based trust will not apply to this property.²⁵¹

B. Grantor Access to Funds Converted

Grantors that convert currency and transfer it to a U.S. trust may need access to that money while they are alive.²⁵² Grantors can retain control of their assets in trust easily using a revocable trust.²⁵³ To make the trust revocable, the grantor must exclude express terms from the instrument creating the trust that say the trust is irrevocable.²⁵⁴

Grantors trying to avoid taxation on the grantor trust are very limited in who can access property in trust while they are alive; fortunately, the grantor will have the power to revest absolutely or distribute funds from the trust to themselves or their spouse.²⁵⁵ The grantor or their spouse must be the only ones who access assets of the trust during their lifetime in order to keep the trust as a grantor trust, otherwise the beneficiaries are able to be taxed on trust assets.²⁵⁶ Although the rule about what can be done with the money in trust might be strict, the power to revest all property from the trust allows the

246. Abdullahi Ahmed An-Nai'm, *Sharia Law*, MUSLIMS FOR PROGRESSIVE VALUES, <https://www.mpvusa.org/sharia-law> (last visited Dec. 16, 2022) (noting Shari'a law is not mandatory law, so Muslims can observe these rules voluntarily and have the chance to be rewarded by God for making good choices) [<https://perma.cc/HDT9-LYAW>].

247. *See id.*

248. Atkinson, *supra* note 85.

249. *See* Frederic Behrens, *International Estate Planning: Five Key Issues to Consider*, CERITY PARTNERS (Nov. 4, 2022), <https://ceritypartners.com/insights/international-estate-planning-five-key-issues-to-consider/> [<https://perma.cc/53Q3-PQFA>].

250. *Id.*

251. *Id.*

252. *See* TEX. PROP. CODE ANN. § 112.051.

253. *Id.*

254. *Id.*

255. I.R.C. § 672(f)(2)(A).

256. *Id.* *See* Treas. Reg. § 1.671-1(a).

grantor to use any money converted for safekeeping for nearly anything they want after it is removed from the trust.²⁵⁷

The grantor can pull money from the trust at any time if they need access to those funds.²⁵⁸ This allows the grantor to allow professionals to focus on currency conversion rates and convert money that goes into the trust without fearing that they will run out of money without those assets.²⁵⁹ The grantor can hold their assets in trust in USDs and will only need to plan for the period of time it takes to pull their money out of the trust account and for a spot transaction to finish before they can use the needed money.²⁶⁰

Any money that is not in the trust is not subject to the terms of the trust, and the grantor can do whatever they would like with the money.²⁶¹ The trust bank account should only be used for storing money in USDs while the grantor is alive to avoid U.S. income taxation on those assets.²⁶² To avoid these restrictions, the grantor can simply take the money out of the trust account for themselves, then distribute these funds as they please.²⁶³ This extra step allows the grantor to use the money in the trust to do things they otherwise could not do without having the entire assets of the trust taxed.²⁶⁴ For example, if the grantor wants to make a gift to the beneficiaries from trust money, revesting the money in themselves before distributing it to their beneficiaries will keep the trust as a grantor trust and avoid it being taxed.²⁶⁵

Grantors may retain wealth that they otherwise would have lost because they included currency conversion in their estate planning.²⁶⁶ The grantor will enjoy the stability of their assets held in USDs, as will the beneficiaries.²⁶⁷ If the value of the foreign grantor's currency depreciates relative to USDs, the grantor will have to revert a smaller portion of their estate that is held in the U.S. trust to fund themselves.²⁶⁸ The grantor's wealth and buying power in their country of domicile would grow stronger by holding their money in the U.S. trust as their native currency weakens against USDs.²⁶⁹

257. See PROP. § 112.051 (noting trust assets taken from a trust are no longer bound by trust rules).

258. *Id.*

259. See *id.*; Randall A. Denha, *Transferring Assets Into and Out of a Trust*, DENHA & ASSOCS., PLLC, <https://denhalaw.com/transferring-assets-into-and-out-of-a-trust/> (last visited Dec. 16, 2022) [<https://perma.cc/X9QR-2Y9L>].

260. See PROP. § 112.051; James Chen, *Spot Date: What It Is, How It Works, Example*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/spot-date.asp> (Sept. 28, 2022) (noting spot transactions typically settle in two days.) [<https://perma.cc/3SAC-WCTD>].

261. See PROP. § 112.051.

262. See I.R.C. § 672(f)(2)(A).

263. See *id.*; PROP. § 112.051.

264. See PROP. § 112.051; I.R.C. § 672(f)(2)(A).

265. See *Reinecke v. Smith*, 289 U.S. 172, 176 (1933); I.R.C. §§ 672(f), 1.671.

266. Author's original thought.

267. *Id.* See generally PROP. § 112.051 (inferring that because the trust is revocable, any assets can be used by the grantor and retained value is a benefit to them).

268. See Nwachukwu, *supra* note 126.

269. See *Long-Term Investing: Remember Inflation*, EQUITABLE, <https://equitable.com/retirement/articles/inflation-and-long-term-investing> (last visited Dec. 16, 2022) [<https://perma.cc/8PFD-HP6T>].

C. Enforceability of the Trust Against International Inheritance Laws

A major concern of converting currency and leaving it in trust in the U.S. is the conflict international laws may present; using trusts, it is unlikely the grantor will have to convert all the money back and distribute it according to the inheritance laws of the grantor's domiciled country.²⁷⁰ Current statutes and precedent in Texas suggest that property in a U.S. trust account would be safe from international forced heirship laws, and that it would be distributed according to the grantor's estate plan.²⁷¹ Notwithstanding Sharia law, which may still present issues if a Muslim grantor wishes to observe their religious beliefs, Texas courts will likely allow the property to circumvent international inheritance laws.²⁷²

A Texas trust containing property in the U.S. is likely to be distributed according to the provisions in that trust regardless of another country's inheritance laws.²⁷³ This allows a grantor to use a trust to store assets that have been converted from their domestic currency to USDs without having to worry about the currency being converted back at the time of the grantor's death.²⁷⁴ Having the certainty of USDs stored in the U.S. being protected from converting back to the grantor's domestic currency is important because without that protection, all the USDs in that trust will be subject to a large conversion at a fixed point in time at an unknown currency conversion rate.²⁷⁵

Even if a foreign country forced trust assets to be converted back to their domestic currency at the time of the grantor's death, holding foreign assets in a U.S. trust in USDs would still provide assets protection from the volatility of the grantor's domestic currency during their lifetime.²⁷⁶ Creating a trust and storing assets in that trust would still be beneficial without protection from having the currency converted back because of the USD's stability; however, it is unlikely assets from the trust will be converted back to the grantor's domestic currency.²⁷⁷ The value of the assets in U.S. trust will be stable and predictable upon the grantor's death.²⁷⁸

Texas statutes concerning recognition of a foreign-country judgment would likely not extend to the recovery of the USDs stored in the U.S. trust

270. See McLearn, *supra* note 95.

271. See *Boman v. Gibbs*, 443 S.W.2d 267, 271 (Tex. App.—Amarillo 1969, writ ref'd n.r.e.); McLearn, *supra* note 95, at 338–39.

272. See Robinson, *supra* note 105.

273. See McLearn, *supra* note 95, at 338–39.

274. See *id.*

275. Author's original thought. See *What Is the Best Day to Exchange Currency?*, *supra* note 131. It is better to convert currency when conditions are favorable than to convert currency at a fixed point in time with an undetermined rate. See *id.*

276. See Nwachukwu, *supra* note 126.

277. See *id.*

278. Author's original thought. See *What Is the Best Day to Exchange Currency?*, *supra* note 131 (explaining that forced currency conversion at an undetermined point in time could lead to a significant loss of value).

account.²⁷⁹ The trust account would be protected because it was created in relation to an estate, and estates are often created regarding familial relationships or domestic relations.²⁸⁰ Absent an error with how the estate was created, any disputes brought from individuals contesting how the estate is distributed would be an issue of domestic relations.²⁸¹ Foreign-country judgments in connection with domestic relations are exempt from being effective in Texas.²⁸² A foreign-country judgment related to any taxes, fines, or penalties are also exempt, further protecting the estate from sending the converted money back to the grantor's domiciled country.²⁸³ Texas law explicitly applies this statute to a "foreign-country judgment [that] . . . grants or denies recovery of a sum of money" and cannot be interpreted to apply only to what the domestic relations are.²⁸⁴

USDs stored in the trust account is also likely protected from international inheritance laws by precedent from the Supreme Court of the United States.²⁸⁵ The Supreme Court held that the state in which a trust is created and administered has the absolute right to determine a claim regarding the trust:

[W]hatever the technical definition of its chosen procedure, the interest of each state in providing means to close trusts that exist by the grace of its laws and are administered under the supervision of its courts is so insistent and rooted in custom as to establish beyond doubt the right of its courts to determine the interests of all claimants, resident or nonresident, provided its procedure accords full opportunity to appear and be heard.²⁸⁶

If the trust is created in Texas, the assets are in a Texas bank account, and the trustee is domiciled in Texas, Texas courts can decide the outcome of trust property when the trust is closed or settled.²⁸⁷

Texas courts have jurisdiction over a Texas trust and should apply the wishes of the grantor from the instrument creating the trust.²⁸⁸ Texas courts could give international inheritance laws power over personal property and apply precedent from *Boman v. Gibbs*, but this application would be

279. See TEX. CIV. PRAC. & REM. CODE ANN. § 36A.003(b)(3).

280. See *Estate Dispute Resolution*, PHLOX ADR MEDIATION-ARB., <https://phloxadr.com/family-matters/> (last visited Dec. 16, 2022) [<https://perma.cc/KY5D-Z85E>].

281. See *Domestic Relations*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The domestic relations are the relations existing between the members of a family or household. According to the usual classification, these relations are four in number, namely, the relations of (1) husband and wife; (2) parent and child; (3) guardian and ward; (4) master and servant.").

282. CIV. PRAC. & REM. § 36A.003(b)(3).

283. *Id.* § 36A.003(b)(1)–(2).

284. *Id.* § 36A.003(b).

285. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950).

286. *Id.*

287. *Id.*

288. *Id.*; TEX. PROP. CODE ANN. § 112.031.

incorrect.²⁸⁹ A trust can be created for any purpose that is not illegal, and the written instrument that controls the trust should be applied in court.²⁹⁰

Sharia law may prevent estate planners from using a trust to make sure currency does not convert back to the grantor's domestic currency.²⁹¹ To protect a Muslim's religious beliefs, an estate planner must carefully consider the use of a trust to convert currency into USDs.²⁹² An estate planner could have the written instrument of a trust conform to Sharia law, but this is risky because if the trust violates Sharia law, a Texas court may enforce the trust in a manner that violates the grantor's religious beliefs.²⁹³

An estate planner can have the grantor include a provision in the trust instrument to void any part of the trust that violates Sharia law; however, because Sharia law is not a legal system, these provisions should be very specific or mention a particular country's legal system that follows the client's beliefs.²⁹⁴ Alternatively, the written document could terminate the trust entirely if it violates Sharia law, or the client could entirely forego using the trust.²⁹⁵

D. Protecting Real Property in Foreign Countries

Real property does not need protection by a trust to implement currency conversion planning because using Forex to protect its value is only applicable once the beneficiaries are certain they will receive the property.²⁹⁶ Unlike money converted to USDs and stored in a Texas trust account, the trust does not protect any real property that is not in Texas.²⁹⁷ Any real property located in the country where the foreign grantor is domiciled will be subject to that country's inheritance laws.²⁹⁸ This will not impact currency conversion planning because distribution of the property to beneficiaries will occur, and the estate can use a currency option or forward contract to protect the property's value.²⁹⁹

Protecting property inherited abroad from currency conversion rates is relatively simple compared to the process of successfully taking possession

289. Boman v. Gibbs, 443 S.W.2d 267, 271 (Tex. App.—Amarillo 1969, writ ref'd n.r.e.).

290. PROP. § 112.031. See Frost Nat'l Bank v. Newton, 554 S.W.2d 149, 153 (Tex. 1977).

291. See Shaikh, *supra* note 101; Robinson, *supra* note 105.

292. See Shaikh, *supra* note 101 (noting a trust may force a Muslim client to disregard their religious beliefs).

293. See Frost Nat'l Bank, 554 S.W.2d at 154 (holding that a court may enforce a trust based on the written instrument even when the beneficiaries have agreed that the trust should terminate).

294. PROP. § 112.031. See Robinson, *supra* note 105.

295. PROP. § 112.031.

296. Author's original thought.

297. Boman v. Gibbs, 443 S.W.2d 267, 271 (Tex. App.—Amarillo 1969, writ ref'd n.r.e.).

298. *Id.*

299. Author's original thought.

of that foreign property.³⁰⁰ Using Forex to protect real property or assets generated by real property is limited to protecting current or future liquid assets that will come from the sale of that property or revenues from the ownership of that property.³⁰¹ Whether the American beneficiary decides to keep or sell the foreign property will determine what they can protect with Forex trading.³⁰² The law of the land where the real property rests will govern what happens to the property and may create complications or even prevent the beneficiary from taking possession of the property.³⁰³

Real property is governed by its situs.³⁰⁴ The property, by its nature, has a fixed location, and the government that controls the land where the property is located will govern that property.³⁰⁵ The Amarillo Court of Appeals held that government where the situs property is located will determine how the property can be distributed and whether the will or other instrument for distribution is valid.³⁰⁶ The property will not be protected by a U.S. trust if the physical property is not within the U.S.³⁰⁷ In fact, it is likely that a Texas court will follow the suggestive precedent set in *Boman*.³⁰⁸ Even though *Boman* is not binding on every court in Texas, another Texas court will almost certainly hold that it does not have jurisdiction over the foreign property and cannot adjudicate title to that property.³⁰⁹

Foreign property laws do not guarantee American citizens the absolute right to property they inherit in all cases.³¹⁰ Before a beneficiary receives foreign property, they must consider the laws where the property is located.³¹¹ Some countries may not allow an American beneficiary to own inherited real property at all.³¹² In Thailand, foreigners cannot own land, and they only have one year to get rid of any land they have inherited.³¹³ In Italy, foreigners can own real property they inherit; however, if they accept the inheritance, they

300. See Sara Clemence, *Inheriting Property Overseas can be a Dream Come True, but it Comes with Challenges*, WASH. POST (May 29, 2018), https://www.washingtonpost.com/realestate/inheriting-property-overseas-can-be-a-dream-come-true-but-it-comes-with-challenges/2018/05/25/d41f154a-44dd-11e8-8569-26fda6b404c7_story.html [https://perma.cc/4G95-UBK2].

301. See *id.* See also Segal, *supra* note 149 (discussing risks with currency exchange).

302. See Clemence, *supra* note 300.

303. *Boman v. Gibbs*, 443 S.W.2d 267, 271 (Tex. App.—Amarillo 1969, writ ref'd n.r.e.). See Clemence, *supra* note 300.

304. *Situs*, BLACK'S LAW DICTIONARY (11th ed. 2019).

305. *Boman*, 443 S.W.2d at 271.

306. *Id.*

307. See *id.*

308. *Id.*

309. See *id.*

310. See Clemence, *supra* note 300.

311. Behrens, *supra* note 249.

312. See *Inheritance & Succession*, JUSLAWS & CONSULT INT'L L. FIRM, <https://www.juslaws.com/civil-litigation/inheritance-succession> (last visited Jan. 28, 2024) [https://perma.cc/6SEE-UFED].

313. *Id.*

are personally liable for all debts the grantor had; in most other countries the estate would be liable for those debts.³¹⁴

Choosing to keep real property inherited overseas is a tough choice.³¹⁵ Owning real property in a foreign country does not confer citizenship or residency in some nations.³¹⁶ One woman that inherited an Italian estate had difficulties earning revenue from the property because of her lack of residency.³¹⁷ Capital gains tax must be paid to the IRS by a U.S. citizen on any revenue earned from the operation or sale of foreign properties.³¹⁸ Ultimately, the beneficiary will have to decide if keeping the property or selling it is the best option for them.³¹⁹

Forex should be used to protect the value of real property from currency conversion fluctuations as soon as the beneficiary decides to sell foreign real estate.³²⁰ Once the decision to sell real property is made, estate planners should quickly buy a put currency option contract (this is different from a call-currency option contract) or enter a currency forward contract.³²¹ These options and forwards hedge against the risk that the asset will lose value in USDs because of currency fluctuations.³²² As mentioned above, a currency option is a more flexible tool to protect the value of the real estate from currency conversion fluctuations while forward contracts offer a less expensive option that is more rigid.³²³

Choosing between using a put option contract or a forward contract will be influenced by the other residue of the estate.³²⁴ Earlier discussion showed how to use a put option contract and a forward contract; this section will focus on what to choose based on the estate it will protect.³²⁵ Generally, a put option contract should be used for smaller estates when the value of the property being protected is low, and a forward contract should be used for high-value estate properties.³²⁶

A put option contract is a safer option that will be used when an estate or the beneficiary does not have enough liquid assets to cover the currency

314. Luca Salerno, *Italy: Inheriting Property or Other Assets Situated in Italy*, MONDAQ (Mar. 9, 2021), <https://www.mondaq.com/italy/wills-intestacy-estate-planning/1045230/inheriting-property-or-other-assets-situated-in-italy> [https://perma.cc/88NA-TM68].

315. See generally Clemence, *supra* note 300 (showing some of the difficulties of keeping real property in a foreign country).

316. *Id.*

317. *Id.*

318. *Id.*

319. See generally *id.* (showing some of the difficulties of keeping real property in a foreign country and why someone may choose to sell foreign real property).

320. Author's original thought.

321. See Segal, *supra* note 149. Call option contracts operate differently from put option contracts; for currency hedging, they should not be used and will not be covered in this Comment. See *id.*

322. See *id.*

323. See Chen, *supra* note 206 (using a put option as "insurance"); Chen, *supra* note 231.

324. Author's original thought. See Segal, *supra* note 149.

325. See discussion *supra* Section III.C.2–3.

326. Author's original thought. See Chen, *supra* note 206; Chen, *supra* note 231.

conversion in the event the real property does not sell.³²⁷ Because the currency option contract can expire, it allows beneficiaries to use an option in unstable housing markets when it is uncertain if the property will sell before the option expires.³²⁸ An option is also ideal when other assets left by the estate are small and will not cover the full value of the real property that the beneficiary wants to protect.³²⁹

Currency option contracts are preferable over forward contracts in volatile currency markets when prices fluctuate regularly.³³⁰ If there is a better conversion rate when the property sells, a currency option will allow the beneficiary to let the option expire and get more value in their domestic currency from the sale of the property.³³¹

The downside to the flexibility of a currency option is the cost; for estates that leave little money to their beneficiaries, the cost can dip into personal savings before the property sells and the beneficiary receives that money.³³² Currency options will be favorable when the value of real property is lower because option premiums increase the higher the value of the option.³³³ For low valued properties, the option contract is likely worth the cost of the premiums, but for large estates, costs may quickly take over the benefit of using the option.³³⁴

An appropriate analogy for currency put options is treating it like insurance.³³⁵ A premium is paid for the option, and the buyer also receives the absolute benefit of the option because they can let it expire if it is unfavorable.³³⁶ Like insurance with more coverage, the higher the amount of the option, the more expensive the premium.³³⁷ Unlike insurance, the buyer must have the funds to exercise the option when they want to take advantage of it.³³⁸

Currency forward contracts are free of any premium costs associated with option contracts.³³⁹ The lack of cost is a major upside, notwithstanding the flexibility benefits of a currency option.³⁴⁰ Forward contracts allow beneficiaries to protect high value estate properties from currency conversion

327. See generally Chen, *supra* note 206 (providing general information about currency options).

328. See *id.*

329. See *id.*

330. See *id.*; Chen, *supra* note 231.

331. See Chen, *supra* note 206.

332. See *id.*

333. See *id.*

334. See *id.*

335. See *id.*

336. See *id.*

337. See *id.*

338. See *id.*

339. Chen, *supra* note 231.

340. See *id.*

fluctuations without expensive premiums, but there are downsides to consider.³⁴¹

Forward contracts achieve the main goal of planning for currency conversion changes and protecting the value of assets in the estate.³⁴² A buyer loses their ability to back out of a forward contract, but focusing on this negative aspect ignores the goal of protecting the value of the estate.³⁴³ The goal of implementing these practices into estate planning is to protect estates from losing value; the goal is not to play Forex and invest to make a profit.³⁴⁴ A forward contract achieves that goal by ensuring the estate does not lose any value while real property is waiting to be sold.³⁴⁵

Forward contracts should be used when a beneficiary has the assets to complete the contract even if the real property does not sell in time.³⁴⁶ One issue with forward contracts is that both parties in the contract must mutually agree to end the contract.³⁴⁷ Absent a mutual cancellation, the beneficiary must go through with a forward contract on the pre-specified date for the swap.³⁴⁸ If the beneficiary has the assets to cover the amount of the forward, then choosing a forward contract over an option contract will yield lower costs.³⁴⁹

E. Concerns About Fiduciary Duties Involving Engaging the Currency Exchange Market

Trustees have a duty to administer the trust in good faith according to the terms of the trust and duties that are imposed by common law.³⁵⁰ Engaging with the foreign exchange market may concern the trustee regarding what duties and liabilities are imposed on the trustee; however, with a duty to administer the trust in good faith, the trustee should not have any breach of duty.³⁵¹ The conservative nature of the foreign exchange market transactions discussed so far make it difficult for a trustee to violate their fiduciary duties to the trust because all three transactions primarily serve the function of hedging risk and protecting the value of the estate.³⁵² The

341. *See id.*

342. *See id.*

343. *See id.*

344. Author's original thought.

345. *See* Chen, *supra* note 231.

346. *See id.*

347. *See id.*

348. *Id.*

349. *See id.*

350. TEX. PROP. CODE ANN. § 113.051.

351. *Id.*

352. *See* Segal, *supra* note 149; *Understanding FX Spot Transactions*, *supra* note 194; *Currency Forward*, *supra* note 235.

trustee, grantor, and estate planner should hire financial professionals to engage in Forex trading to properly adhere to their fiduciary duties.³⁵³

Trusts with a foreign grantor will likely be structured in a way that allows the grantor full power to revoke the trust and limits trustee liability until the grantor passes away to avoid the taxation of trust assets.³⁵⁴ The grantor should have the most control over the trust and will engage with the professionals who will convert and transfer assets into the U.S. trust bank account while the grantor is alive.³⁵⁵ Another limit to trustee liability in a revocable trust may come from the grantor's creation of the trust instrument because the grantor may severely limit trustee power while the grantor is alive to ensure that the grantor can use any assets in the trust during their lifetime without interference.³⁵⁶

The trustee is more likely to neglect its duties in areas such as reporting assets to the IRS as foreign assets.³⁵⁷ Even though assets passed through a grantor trust may not be taxed by the IRS, they must be declared by filing a report of foreign bank and financial accounts (FBAR) if the amount of those assets is over \$10,000 USDs.³⁵⁸ The trustee is responsible for filing FBAR paperwork when the foreign grantor of a revocable trust dies, and failure to do so can incur penalties on trust assets and potentially open the trustee to liability for failing to report foreign assets in good faith to the IRS.³⁵⁹ To avoid this, the trustee should hire a tax professional to assist with the filings.³⁶⁰

F. Concern About Costs

Costs of compensating the hired professionals for their administration of the currency exchange transactions may be a concern for grantors and beneficiaries.³⁶¹ Using the foreign currency exchange market to protect an estate against currency conversion rates is not complex; the transactions made by the trustee should not take up too much time nor incur many costs to the trustee.³⁶² The use of Forex to protect the value of the estate should not incur significant costs to the estate unless the foreign estate is complex and

353. Author's original thought.

354. See generally I.R.C. § 672(f)(2)(A) (demonstrating that keeping power vested in the grantor is crucial to avoiding taxation on the trust assets and will likely result in significantly reduced fiduciary duties of the trustee during the life of the grantor).

355. See *id.* § 672(f)(2)(A).

356. See PROP. § 113.001.

357. See *Report of Foreign Bank and Financial Accounts (FBAR)*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar> (July 5, 2023) [<https://perma.cc/A6FW-6HKY>].

358. *Id.*

359. See *id.*; PROP. § 113.051.

360. Author's original thought.

361. See PROP. § 114.061.

362. See *id.*

vast; the costs incurred by the trustee could be offset by the value the trustee is able to protect for the estate.³⁶³ Spot transactions and forward contracts avoid costs that would be incurred by taking a currency option and having to pay a premium.³⁶⁴

The costs of using a currency option to protect against currency conversion change can be reduced by only partially hedging the value of the assets that are planned to be converted to USDs; however, such strong actions to reduce costs should be avoided as they undermine the purpose of taking an option to protect assets in one-time scenarios.³⁶⁵ The optimal hedge ratio for a currency option depends on what the application is.³⁶⁶ For portfolio investing, the optimal hedge ratio is 80% of the value of the portfolio being hedged against currency conversion changes with a currency option.³⁶⁷ While reducing the amount of the assets covered by the option can lead to lower option costs, the figure is misleading because it applies to a portfolio being hedged over time rather than a one-time protection that would be used to protect the value of real estate from currency conversion rates while it is waiting to sell.³⁶⁸

There, the portfolio gets a smaller variance on return because costs eat up less of the profit from the portfolio while a large portion is still protected.³⁶⁹ Here, the estate is using the currency option to prevent assets from losing value, and the goal is to protect assets from losing value, not to get a positive return on a portfolio.³⁷⁰ Fully hedging the assets with a currency option may cost more than partially hedging the risk on the assets, but protecting the assets is a short-term, non-repetitive task for the estate, and the main purpose is insurance on the value of the asset; if the trustee chooses not to fully hedge the asset with a currency option and a portion of the asset loses significant value, the beneficiaries lose that value because the asset is not a long term or repetitive investment.³⁷¹ If a currency option is taken out on the value of the entire asset, the maximum loss for the option buyer can only be the premium paid for the option.³⁷²

363. See Segal, *supra* note 149.

364. See Chen, *supra* note 231.

365. See *Global Real Estate Portfolios and Local Currencies – to Hedge, or Not to Hedge*, ASIA GREEN REAL EST. <https://www.asiagreeen.com/en/news-insights/global-real-estate-portfolios-and-local-currencies-to-hedge-or-not-to-hedge> (last visited Dec. 16, 2022) [<https://perma.cc/BL4S-6L35>].

366. See *id.*

367. *Id.*

368. See *id.*

369. *Id.*

370. See *id.*

371. See Chen, *supra* note 231 (using a put option as “insurance”).

372. *Id.*

G. Tax Concerns

An individual or trust will be taxed based on their country of residence.³⁷³ To determine whether a gain has been made if the trustee hires someone to engage in a Forex transaction, the IRC determines the foreign trust's functional currency.³⁷⁴ The residence of the foreign trust set up in the U.S. is "a country other than the United States" or most likely is considered the country where the grantor is domiciled.³⁷⁵ The source to calculate the gains or losses of the grantor are determined by the country where the trust is domiciled (the grantor's residence).³⁷⁶

U.S. income taxation may only apply after the grantor has died if the foreign trust is a grantor trust because the assets of the trust and currency exchange transactions will be assessed by the grantor's domiciled country.³⁷⁷ This means the foreign grantor will be free to use the revocable trust during their lifetime without having to worry about U.S. income taxation on their currency change transactions that move in and out of the trust.³⁷⁸ The beneficiaries of the foreign grantor trust will not be subject to income taxes on any money that the foreign grantor has put into the trust before the time of their death; however, the beneficiaries will still be taxed on additional income the trust generates after this point.³⁷⁹

Spot transactions are taxed as ordinary income under IRC Section 988.³⁸⁰ There is a special rule for forward contracts and options; if the taxpayer makes an election and identifies the transaction before the close of the day the transaction is entered into, it can be treated as a capital gain or loss, and these options and forward contracts can also be filed under IRC Section 1256.³⁸¹ Having foreign currency transactions taxed as ordinary income or loss is beneficial for the taxpayer when they are not making much money off of or reporting losses from these transactions.³⁸²

For the purposes of protecting assets against currency rate changes, the taxpayer will be better off filing under IRC Section 988 since they are not

373. See Fxigor, *Forex Tax Free Countries in 2024*, FOREX.IN.RS, <https://www.forex.in.rs/forex-tax-free-countries/> (last visited Feb. 12, 2024) [<https://perma.cc/7DTP-YGSX>].

374. I.R.C. § 985(b)(1).

375. See *id.* § 988(a)(3)(B)(i)(III).

376. See *id.*

377. See *Reinecke v. Smith*, 289 U.S. 172, 178 (1933).

378. Carlyn S. McCaffrey et al., *Foreign Nongrantor Trusts for US Beneficiaries: Dos and Don'ts*, 28 TRS & TRS 306, 306 (2022). See *Reinecke*, 289 U.S. at 178 (noting as long as the trust remains a foreign grantor trust, the United States should not tax its transactions).

379. McCaffrey et al., *supra* note 378. See *Reinecke*, 289 U.S. at 178; Jeffrey D. Scibetta, *Grantor Trusts Explained: Trusts You Can't Trust*, KNOXL (Oct. 15, 2017), <https://www.kmgslaw.com/knox-law-institute/publications/grantor-trusts-explained-trusts-you-cant-trust> [<https://perma.cc/EA6W-FKV6>].

380. I.R.C. § 988(a)(1)(A).

381. *Id.* §§ 988(a)(1)(B), 1256.

382. Barclay Palmer, *How Forex Trades Are Taxed*, INVESTOPEDIA, <https://www.investopedia.com/articles/forex/09/forex-taxation-basics.asp> (Sept. 16, 2023) [<https://perma.cc/3YER-D6PJ>].

planning on using the market to make money, and with the revocable foreign trust in the U.S., the grantor will likely be making frequent spot transactions to cover their daily living costs.³⁸³

Transferring assets to a U.S. trust during a grantor's lifetime may lower the taxes a beneficiary has to pay on their inheritance.³⁸⁴ Many countries outside the U.S. have an inheritance tax.³⁸⁵ For example, in Italy, inheritance can be taxed up to 8%; in the United Kingdom, inheritance is taxed at 40% for estates over £325,000; and in France, taxes can reach 60%.³⁸⁶ Moving these assets before death may be a way to avoid inheritance taxation of the grantor's domiciled country.³⁸⁷

To successfully avoid inheritance taxes, estate planners will have to carefully examine foreign inheritance law and gift taxes of an individual country.³⁸⁸ As mentioned, France can tax up to 60% of an inheritance; however, this can be avoided by using a U.S. trust because of who and what France taxes.³⁸⁹ France does not tax the French estate; instead, it taxes individual beneficiaries based on certain factors.³⁹⁰ These taxes are levied on non-French residents when the asset being inherited is located in France.³⁹¹

The U.S. taxes estate assets of non-U.S. residents and only allows a \$60,000 exemption on those assets with a tax rate range of 18% to 40% above the exemption.³⁹² Comparing the tax rate schedule in the IRC Section 2001(c) to foreign estate taxes and then applying the exemption will guide estate planners in determining whether the U.S. estate tax or foreign estate tax is lower.³⁹³ For example, no matter how much is taxed in the foreign grantor trust, the maximum 40% tax will always be lower than the 60% tax France may levy on the estate.³⁹⁴ For many estates, the \$60,000 exemption will be enough to reduce tax consequences without further steps.³⁹⁵ Estate planners may also check for international tax treaties to help alleviate tax burdens.³⁹⁶

383. *Id.* See I.R.C. § 988(a)(1)(A).

384. *See* Behrens, *supra* note 57.

385. *Id.*

386. *Main French Personal Tax Rates*, ASHTONS LEGAL, <https://www.ashtonslegal.co.uk/your-life/french-legal-services/main-french-personal-tax-rates/> (last visited Jan. 28, 2023) [<https://perma.cc/R686-U5EW>]; *Inheritance Tax*, AGEUK, <https://www.ageuk.org.uk/information-advice/money-legal/income-tax/inheritance-tax/> (July 6, 2023) [<https://perma.cc/DX6Q-9QXC>].

387. *See generally French Inheritance Tax and Succession Planning*, AXIS, <https://axis-finance.com/tax/french-inheritance-tax/> (last visited Jan. 28, 2023) (discussing an overview of French inheritance tax and who gets taxed) [<https://perma.cc/MGV4-5J4Z>].

388. *See generally id.* (showing France's specific inheritance tax).

389. *See id.*

390. *Main French Personal Tax Rates*, *supra* note 386.

391. *French Inheritance Tax and Succession Planning*, *supra* note 387.

392. I.R.C. §§ 6018(a)(2), 2001(c).

393. *Id.* § 2001(c).

394. *See Main French Personal Tax Rates*, *supra* note 386.

395. I.R.C. § 6018(a)(2).

396. *See United States Income Tax Treaties - A to Z*, IRS, <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z> (Feb. 6, 2024) [<https://perma.cc/VW6P-VFLJ>].

For high value estates, estate planners may have to employ other methods to change the situs of the property outside the U.S. and avoid the higher tax rate, such as creating a foreign holding company and placing the shares in trust or putting funds into life insurance.³⁹⁷ These methods are outside the scope of this Comment and can be used in conjunction with the currency conversion techniques proposed.³⁹⁸

Transferring assets from the grantor to a U.S. trust will move the location of the asset, and the USD in the trust account can pass to U.S. beneficiaries while avoiding France's inheritance taxes.³⁹⁹ This may not avoid French gift taxes.⁴⁰⁰ Conversely, here the benefits of transferring assets to a foreign grantor trust may avoid both taxes.⁴⁰¹ Because the property does not change ownership in a foreign grantor trust, France may not levy its gift taxes.⁴⁰² Upon the grantor's death, the beneficiaries receive the trust assets located outside of France without paying inheritance tax.⁴⁰³

V. CONCLUSION

Changing current estate planning practices to focus more on how currency conversion rates affect the estate will increase the wealth of beneficiaries and foreign grantors.⁴⁰⁴ Implementing these changes already has the potential to affect at least 25% of the U.S. population, and this estimate does not include any beneficiaries with foreign grantors who do not have familial ties.⁴⁰⁵ Implementing currency conversion rates into the estate planning process is not only inexpensive and simple, it also has no significant drawbacks that would deter its implementation.⁴⁰⁶

Foreign grantor trusts and Forex allow estate planners to implement these practices without difficulty.⁴⁰⁷ These tools are simple to use and allow currency conversion planning while avoiding tax and other logistical

397. I.R.C. §§ 2104(a), §2105(a). See Gary Forster, *Using the Foreign Corporation to Avoid Estate Tax*, MASS. SOC'Y OF CPAS (June 9, 2022), <https://www.masscpas.org/news/4f60e981-86e2-47a3-a263-a14ec2df3669:using-the-foreign-corporation-to-avoid-estate-tax> [https://perma.cc/DY7K-JY2K]; Christopher Hartman & Katherine Walter, *US Estate Tax: Not Just for US Citizens*, THE TAX ADV. (May 1, 2023), <https://www.thetaxadviser.com/issues/2023/may/us-estate-tax-not-just-for-us-citizens.html> [https://perma.cc/7ARF-XBKZ].

398. See discussion *supra* Part III.

399. See *id.*

400. See Suzanna Chambers, *Six Ways to Reduce Your French Inheritance Tax*, THE CONNEXION (Nov. 3, 2021, 9:08 AM), <https://www.connexionfrance.com/article/Practical/Money/Six-ways-to-reduce-your-French-inheritance-tax-a-guide-to-succession-laws-and-estate-planning-in-France> [https://perma.cc/6248-CJLJ].

401. See Scibetta, *supra* note 379.

402. See *id.*; Chambers, *supra* note 400.

403. See Scibetta, *supra* note 379; Chambers, *supra* note 400.

404. Author's original thought.

405. Batalova, *supra* note 6.

406. Author's original thought.

407. *Id.*

issues.⁴⁰⁸ Implementing currency conversion into estate planning has significant benefits to a large population and minimal drawbacks; every estate planner should consider currency conversion rates in their practice moving forward.⁴⁰⁹

408. *Id.*

409. *Id.*