

Increasing need for cross-border estate planning as more SA investors look offshore

What advisers should consider with offshore structures and complicated cross-border estate planning

27 October 2020: Market volatility, a weakening rand, and a steep Gross Domestic Product (GDP) decline of 51% in the second quarter of 2020 are just some of the reasons why South Africans are increasingly looking to expand their international investment footprint. An integral part of including offshore assets into a portfolio is the relevant estate planning that goes with it, yet cross-border estate planning is often perceived as complex.

This is according to Bertie Nel, Head of Financial Planning and Advice at Momentum Consult, who says that there are a number of important things for investors to understand when the time comes to plan their wills – from taxes and existing estate laws, to how assets must be divided among beneficiaries. “In the event that individuals set up international trusts as part of their estate planning, this becomes an even more complex matter, since the legal frameworks of multiple jurisdictions need to be taken into account,” says Nel.

While this has the potential to lead to a number of difficulties if not appropriately addressed, he points out that many advisers are not always adequately equipped to discuss the notion of cross-border estate planning with their clients.

“It is still widely understood that trusts are an integral part of estate planning. Yet, from what we have seen, many advisers view the complexity of cross-border estate planning as one of the barriers influencing their ability to advise clients on offshore structures. It is, however, extremely important that clients receive guidance on these matters,” says Nel.

He explains that clients often decide on establishing offshore trusts or foundations as a way to leave assets and money to their beneficiaries after they pass away. “Unfortunately, without informed guidance, this can result in significant risks and costs in relation to a structure that only their advisers understand.

“It is also common that people hear about offshore trusts and believe them to be a good idea, when it may not necessarily be in their best interest. These clients – and their dependants - often bear the brunt of poor advice. Advisers therefore have a critical duty to their clients to provide adequate guidance.”

Nel unpacks some of the key considerations for advice around utilising offshore structures to secure estates:

1. The suitability of an offshore trust

When setting up an offshore structure as part of one’s estate planning, it is important to have a clear picture of the costs involved. Proper tax and exchange control advice is critical, since the structure would be subject to the tax laws of the jurisdiction where it is situated.

Clients and advisers should also consider the fees related to establishing and managing these trusts, which can be substantial. Often when clients begin to understand the financial implications of establishing a trust in another jurisdiction, they find that it may not be the best fit for them.

2. Understand the legal structure of the target jurisdiction

It is important to note that many countries and jurisdictions do not apply what South Africans understand as “freedom of testation”. For instance, in large parts of the European Union, fixed properties owned by non-domiciled individuals, are divided among living relatives in fixed percentages.

In the case of investments, he adds that there are also death taxes that are payable in the country where those assets are listed. This rate can be a lot higher than the 20% to 25% estate duty rate that we are used to in South Africa. There are also certain exemptions that apply in some countries, which the client should be made aware of when recommending investment products and solutions.

3. Choose the right fit when establishing a trust

There are many countries and jurisdictions that seem to offer attractive benefits, particularly to high-net-worth individuals (HNWIs) who wish to establish trusts in these regions. However, not all jurisdictions are equal. Setting up an offshore structure comes with a set of financial and administrative obligations.

Not only are these structures expensive to maintain, but clients are in many cases handing over control of their assets to a trustee whom they haven’t necessarily met. It is important to try and get the best possible understanding of who would be administering the client’s assets.

Another key consideration is how much is being transferred to this structure. The value of assets that the client transfers needs to be able to support the various associated costs. In this regard, it is important to understand that some jurisdictions are cheaper for the purposes of establishing trusts, while others are more expensive but may offer certain benefits. At the end of the day, it is vital to understand which jurisdiction would give the individual client the biggest benefit according to their unique situation.

4. Include all the estate needs in one document

It is possible to lay out an estate in a single document, even if assets are located across the globe. However, a common mistake that many clients make is to specify the wrong jurisdiction when listing their assets. There has, for example, been more than one occasion when a will has been executed and executors find that the assets are not listed in the UK as specified, but in Guernsey, which is a jurisdiction with notably different estate laws.

Nel adds that when clients have assets all over the world, it makes good sense for the adviser to cover these points with them before they pass away, rather than be faced with these challenges once a will needs to be executed. “While cross-border estate planning may seem daunting to some, with the right advice, it is far from complicated,” Nel concludes.

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