

Fiduciary Matters

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Legacy and offshore trust planning: too complicated?

Offshore trusts

Notwithstanding all the time, effort and resources spent by marketing teams across the globe to entice people to partake in the wonderful world of legacy planning, the numbers of people who actually do proper legacy planning remain limited.

Why is something so important such a difficult sell?

Is it because we cannot learn from past experience?

After all there are no second chances - once you are gone you are gone.

Is it because so few people had the privilege of growing up in a legacy wise home, so as wealth is created, the creators of the wealth simply do not appreciate the value and power that proper legacy planning will bring to the long term success and prosperity of their family and heirs?

Most of us have the ability to learn from experience.

You only run out of fuel so many times before you start paying attention to the fuel gauge; and we have the capacity to embrace new technology such as GPS navigation, Twitter and tablets with unbridled enthusiasm, but very few people pay attention to the lasting wealth a little bit of common sense can create and preserve for future generations.

Why is it so difficult to grasp the concept of protecting and maximising the family wealth that took so much effort to build?

Many people will confirm that it required wisdom, insight and hard work to create legacy wealth.

In contrast it should only require common sense to appreciate and understand the value of legacy planning.

The wisdom comes as standard. It is what created the wealth in the first place.

Common sense then dictates that the same principles should be applied in preserving and growing wealth for your beneficiaries and future generations.

Any legacy plan will be substantially enhanced by incorporating the benefits of an offshore trust and a well designed structure.

An offshore trust should limit country specific risks through asset and currency diversification and provide asset protection against personal disasters of the beneficiaries.

As opportunities expand for individual cross border business, investment and residency so tax planning regarding income tax, capital gains tax and estate duty and structuring of business interests and personal assets also becomes vitally important.

Two cases in point:

- An investor is allowed to export his investment and discretionary allowance for international investment purposes.

This should form an integral part of his legacy plan and the incorporation of an offshore trust into the legacy plan will provide significant advantages regarding long term planning. The value of the initial investment

can be as low as R2m, and still provide significant advantages, provided that the correct structures are used. The funding of the trust should be done according to professional tax advice, which should take the personal circumstances of the investor and his family into account. The offshore planning benefit regarding estate duty is well established and it should also provide an effective personal tax plan to manage personal tax regarding the accrued income and growth.

This will create the opportunity to use the initial investment to provide long term multi-generational benefits for beneficiaries and, if the planning includes the final will of the investor, should also result in significant CGT benefits and the ability to make tax free distributions to second and third generation beneficiaries.

- The ability of South Africans to participate in international business, entertainment and sporting opportunities has increased significantly in recent times and the incorporation of an offshore trust and international business company can add several layers of benefit to such a business structure. Intellectual property rights,

Limit country specific risk

image rights, consultancy business and any business with an international footprint can benefit from the strong legislation in Guernsey that provides protection of these rights, as well as the favourable tax regime of the International Finance Centre.

It will again be important to obtain professional tax advice to ensure maximum benefit is derived from double taxation treaties, tax legislation and the distribution of income to interested parties. It is also important to ensure compliance with tax and exchange control legislation. This structure will provide the ability to grow significant legacy wealth outside of the estate duty net, and may provide the ability to receive income with a low tax obligation.

It is therefore essential to explore the potential benefits that offshore structuring may add to legacy wealth and to incorporate the necessary structures into the individual legacy plan.

This article was written by FISA member Rudi Bodenstein, Business Development Executive, at FNB International Trustees Limited.

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