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# Offshore companies simplify estates

I READ WITH INTEREST THE ARTICLE ON THE need to consider having more than one will if you have foreign/offshore assets ("Where there's a will"). What the author, Oliver Phipps, does not mention is how to simplify large estates spread over the world. People should examine the possibility of holding foreign assets via an offshore company. This simplifies the inheritance process, because only the shares of the offshore company are bequeathed to the heirs, and only the jurisdiction of the offshore company is involved. Forced heirship is not an issue, unless the testator has a close personal relationship to the jurisdiction of the forced heirship.

Name withheld

**Anton Maskowitz, a fiduciary and tax specialist at Sanlam Private Investments and member of the Fiduciary Institute of Southern Africa, comments:** There has been a steady decrease in the number of offshore companies and trusts being established by South Africans for tax-planning purposes, but this is due more to increasing complexity and cost than any decrease in value or relevance.

However, for anyone who is fortunate enough to have substantial assets in a foreign jurisdiction, or more than one, the fees may be a small price to pay for the estate planning benefits these structures can provide.

Much has been said and written about the single will/multiple will question when it comes to holding assets in foreign jurisdictions, particularly if those foreign jurisdictions are civil law (forced heirship) countries, but there are alternatives.

As the reader suggests, an offshore company can be used very efficiently to combat the succession laws and inheritance tax implications of owning assets in some common law and most civil law countries. Simply put, this is because the company does not die with the shareholder and, as a consequence, the assets owned by the company are unaffected by the death of a shareholder.

Instead, it is the shareholding of the company that will be subject to the succession laws and inheritance taxes of the country where the company is situated. If this country is a financial services centre such as one of the Channel Islands, Mauritius or the Cayman Islands (to name a >>



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>> few), no inheritance tax is applicable and the shareholding can generally be dealt with in terms of a simple offshore will, or even in terms of a single worldwide South African will. The shareholding will, however, still form part of the dutiable South African estate.

In addition to the South African estate duty obligations, some countries, such as the United Kingdom and the United States, will also seek to levy estate taxes at death on most assets (fixed assets, in particular) owned by an individual if the assets are situated in those countries ("*situs* assets"). Both the UK and the US broadly levy estate tax/inheritance tax at a rate of 40 percent. US estate tax will be applicable if a non-US tax resident owns US *situs* assets in excess of US$60 000. UK inheritance tax will be applicable if the UK situs assets are in excess of £325 000. The fact that there are existing estate duty double-taxation agreements (DTAs) in place between South Africa, the UK and the US does not, unfortunately, prevent the application of US or UK estate taxes, and, in most cases, the DTA merely reduces the total tax liability from 60 percent to 40 percent.

It is therefore quite possible to consolidate foreign assets owned in multiple jurisdictions under one umbrella – that is, by ensuring that they are held by an offshore company established in an appropriate financial services centre. On death, neither the succession laws nor the estate/inheritance taxes in the countries where the assets are situated will apply to the assets owned by the company.

However, the shareholding of the company must be dealt with in accordance with the deceased's will, subject to the succession laws of the country where the company is situated. If this country is among the financial services centres mentioned above, the succession laws are such that an offshore will drafted under English law, or a South African will, will be able to deal with the shareholding effectively.

Thus, for individuals who own assets, or are contemplating acquiring assets in multiple jurisdictions spread across common and civil law countries, the use of a foreign company may be the ideal vehicle to eliminate the requirement of various wills drafted in accordance with each specific country's legal requirements and may have the additional benefit of reducing unnecessary foreign estate or inheritance taxes. Of course, the reader is strongly advised to obtain professional tax advice before establishing an offshore company or transferring assets into such a company.