Publication: Cover
Date: Friday, September 01, 2017
Page: 83

The taxing side of offshore investment

Katya Stead, independent financial services journalist

The finer implications of investing in Silicon Valley, Mauritius and more were uncovered at the latest conference held by the Fiduciary Institute of Southern Africa (FISA).

As South Africa's financial status has seemed increasingly darkened by uncertainty, so the lights of investing offshore have burned comparatively brighter. Well and good, South Africans, but remember the taxman – this was one of the more compelling messages to come out of the 2017 FISA conference.

The 7th annual FISA conference was full of revelations about what tax practitioners deal with after local clients pass on with some international assets. Among those dealt with were South African investors with shares in US companies, assets in the UK, resort property in Mauritius and land in Namibia.

WHERE THERE'S TWO WILLS, THERE'S A WAY

First speaker for the day, **Oliver Phipps of Lester Alrdidge Solicitors** across the pond, brought the UK perspective and largely advocated the need for a second or 'worldwide' will for any client with assets far away from home.

Phipps, who spoke at recent FISA meetings on Brussels IV regulation and other European succession regulations, said that "the majority of Europe has forced heirship regimes. The European Succession Regulation (also known as Brussels IV) allows an individual to elect for the law of his/her nationality to apply to the succession of assets in order to avoid the forced heirship rules.

It should be noted though that the UK, Republic of Ireland and Denmark opted out of these regulations. I've concluded that a second will is going to be appropriate for a practitioner in those jurisdictions, because if I was a South African practitioner I would not want to be responsible for the success or not of that will, as European succession planning is quite an in-depth matter."

(NOT) BORN IN THE USA

For several years, people have fantasised about inventing a time machine and buying shares in Apple in the 1980s. Silicon Valley share-buying fever in SA shows no signs of

abating, but Phipps warned that there are downsides.

"We're seeing a real hunger to invest in US shares, in wonderful emerging tech companies that provide real opportunity for growth. However, your clients must tread carefully. A South African not domiciled in US would be recognised as a 'non-resident alien', and their inheritance tax threshold would be dangerously low. For value on shares above $60,000, things can be very punitive - taxes of up to 40 percent. It's quite a hard hit," he said, also noting that if the US shares form part of a deceased's estate, "with the IRS you only have a 9-month window after the person's death before penalties are imposed, and the process is currently taking 6 to 9 months but has been known to take 12 months."

NAMIBIAN TAX: ANOTHER DAY IN PARADISE...

"There is definitely a trend emerging of South Africans having assets outside of SA," affirmed **Mathys du Preez of Sanlam Namibia** later in the day. Some of the most talked-about revelations for the day came from du Preez' talk on cross-border estate planning in Southern Africa. According to du Preez, Namibian tax practitioners are in the sunny position of not having to deal with estate duty, donations tax or capital gains tax, which do not exist in Namibia.

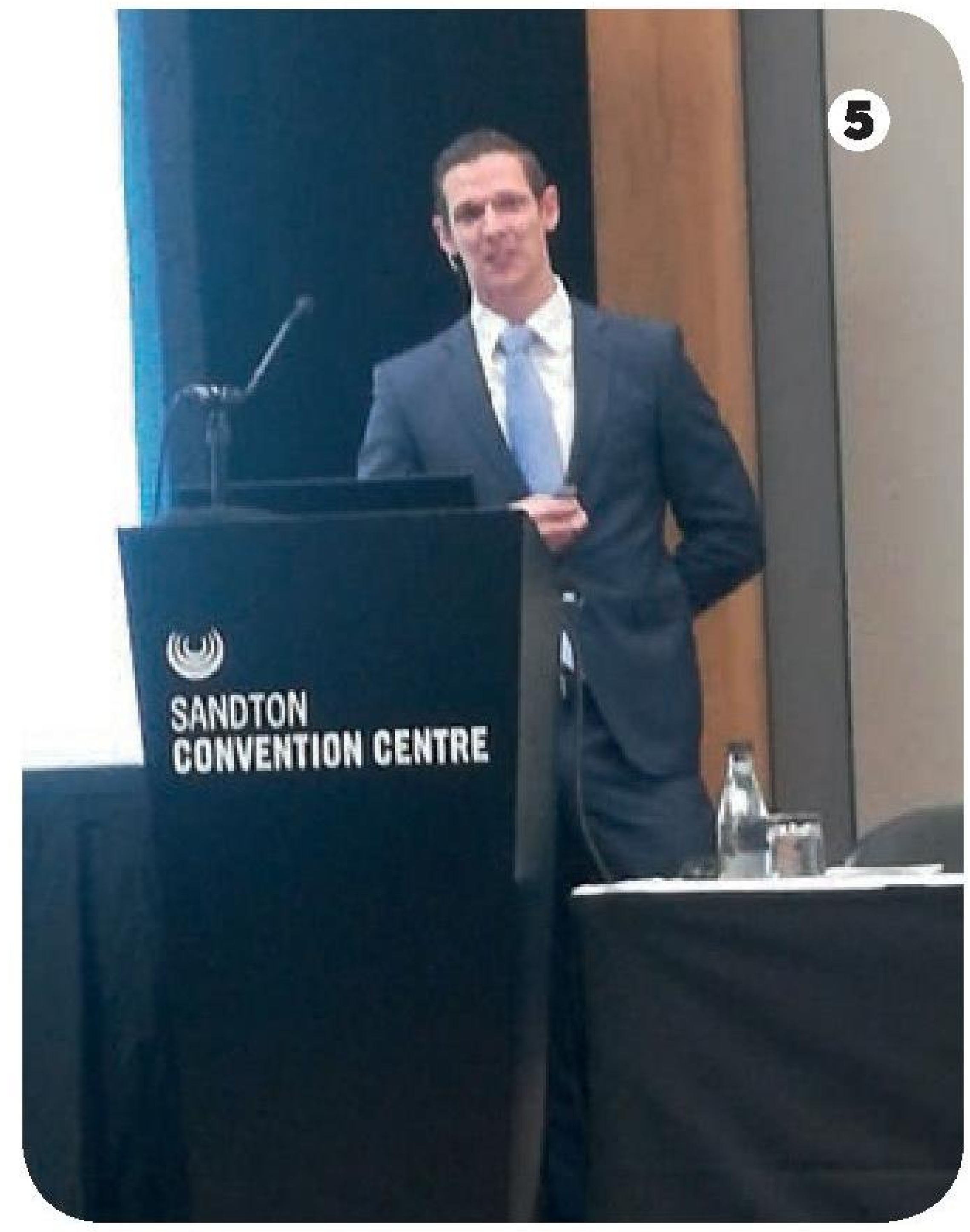
However, there are complications even in paradise. Legislation in Namibia dictates that that the State has a right of first refusal to buy all land transferred – including land inherited under a will. No transfer may be effected without a certificate that the State is waiving this right to purchase the land.

AND THEN THERE'S MAURITIUS

Up to now, the extent of Mauritian assets owned by South Africans has largely been resort properties – but that looks set to change. We at COVER published an article by deVere this year on how Mauritius is forecast to be the next financial hub of the southern hemisphere, largely because of their business and FDI-friendly policies.

What is less known is that there are some quite dramatic differences between their law and ours when it comes to South Africans' assets in Mauritius – mainly a real whopper of a forced heirship law.

Gordon Stuart of Accuro Fiduciary, Mauritius, explained that "Mauritius has forced succession – at least in Europe you have Brussels IV! Mauritius' code includes an 'unchallengeable right' for 50 percent of the estate to pass to the only child, 66percent of the estate to pass to two children and 75 percent to go to them when there are three or more children, no matter what. Only



the unreserved portion after can b bequeathed freely to whoever you choose."

This can get tricky when the children are underage. "If your children are underage, your will may state that that 'unchallengeable' portion must go into a trust until they are of age, but the SARB doesn't allow South African trusts to directly own foreign assets," explained Stuart. There is also the small matter of a surviving spouse with underage children having as little as 25 percent of the deceased Mauritian estate to survive on.

Stuart summed up the feeling for the day thereafter: "South Africans are investing a larger percentage of their wealth offshore, largely due to rising geopolitical risk. But there are pitfalls South Africans face."

I for one am certainly going to think about where and how my assets are being invested and, maybe, about how to become a tax practitioner in Namibia...

The presentations of the FISA Conference speakers are available are available in PDF format at www.fisa.net.za

Images

1 & 2 - The speakers and organisers of the 7th annual FISA conference

3 - Speaker Professor Piet Naude of the University of Stellenbosch Business School

4 - FISA Chairman Ronel Williams

5 - Speaker Mathys du Preez of Sanlam, Namibia and FISA CEO Louis van Vuren