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The future of estate planning

FISA conference 2019

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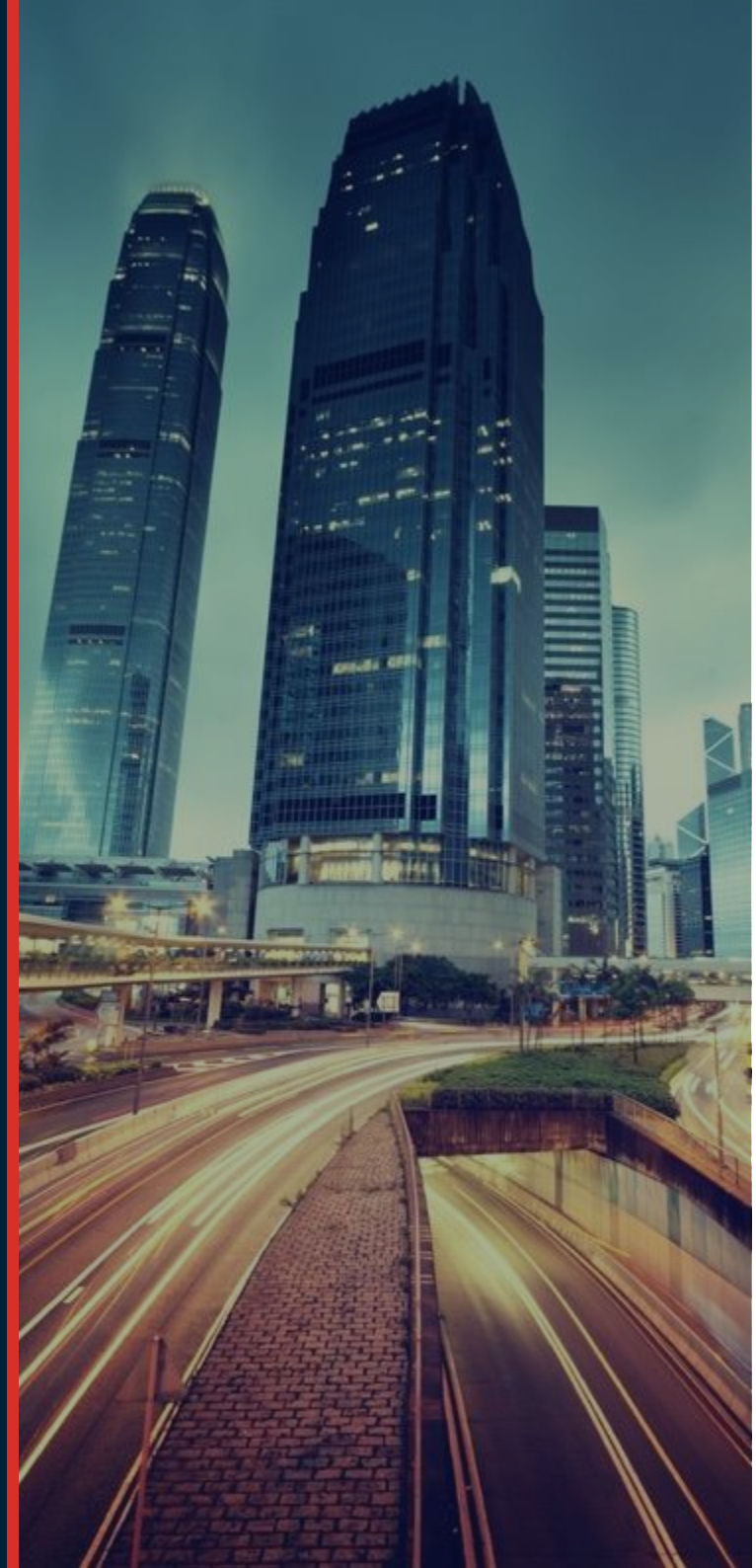

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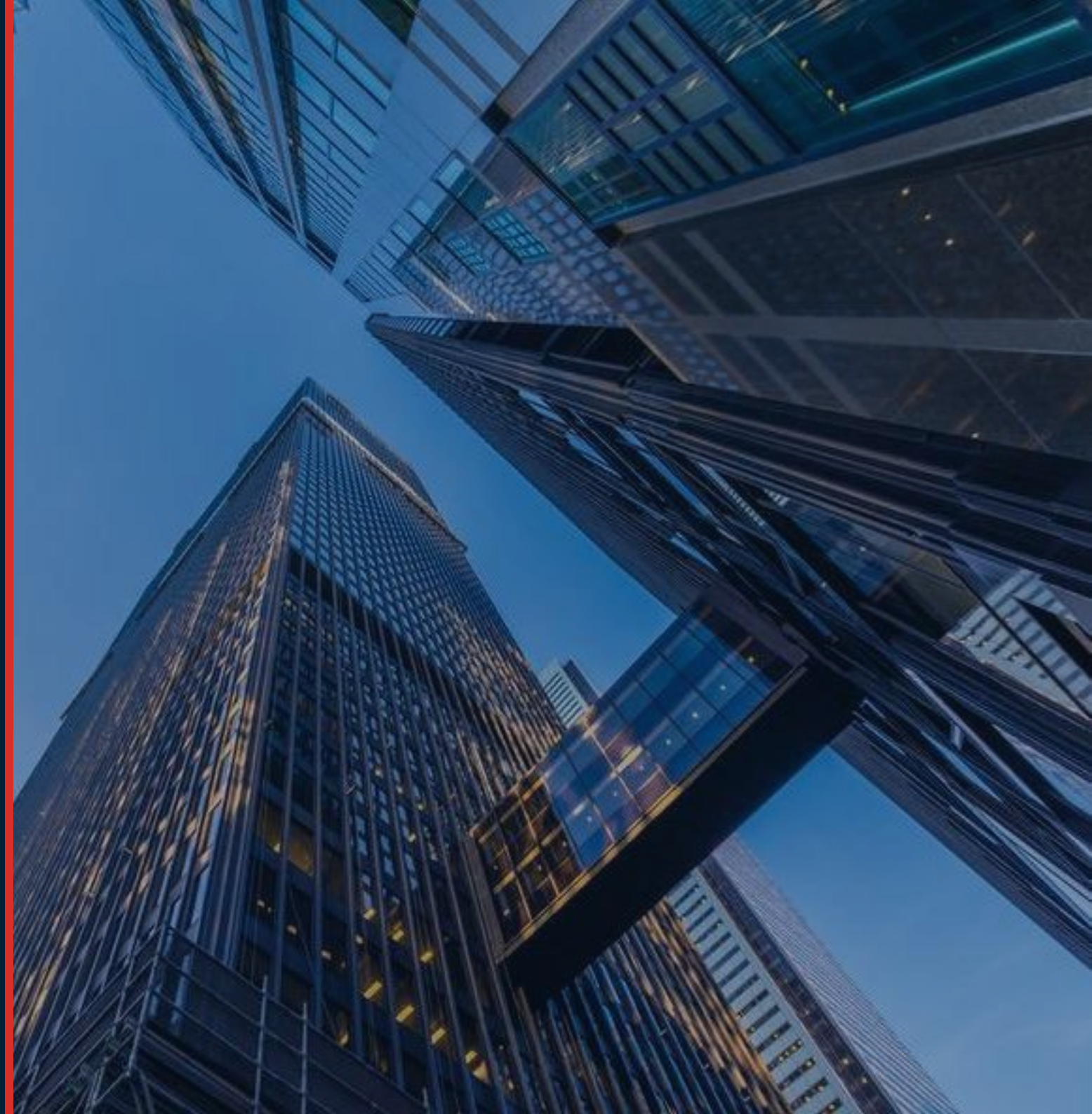
01

Estate planning



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Estate planning

Definition

https://www.merriam-webster.com/legal/estate%20planning

The arranging for the disposition and management of one's estate at death through the use of wills, trusts, insurance policies, and other devices

www.estateplanning.com

Making a plan in advance and naming whom you want to receive the things you own after you die.

https://www.definition.net/define/estate-planning

An arrangement which a person makes concerning his property so as to ensure that the property gets into the hands of one's desired heirs upon the owner's death. Estate planning may take different forms e.g. will, trust and living will.

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Estate planning

Definition - continued

https://www.investopedia.com/terms/e/ estateplanning.asp

The preparation of tasks that serve to manage an individual's asset base in the event of their incapacitation or death. The planning includes the bequest of assets to heirs and the settlement of estate taxes.

https://financial-dictionary.thefreedictionary.com/estate+planning

The preparation of a plan to carry out an individual's wishes as to the administration and disposition of his/her property before or after his/her death.

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Estate planning

Definition - continued

https://www.fisa.net.za/

The process involves the structuring of assets in the most tax effective way in order to ensure protection and preservation of assets from one generation to the next. It includes the drafting or reviewing of your will.

https://en.wikipedia.org/wiki/Estate_planning

The process of anticipating and arranging, during a person's life, for the management and disposal of that person's estate during the person's life and at and after death, while minimizing gift, estate, generation skipping transfer, and income tax. Estate planning includes planning for incapacity as well as a process of reducing or eliminating uncertainties over the administration of a probate and maximizing the value of the estate by reducing taxes and other expenses. **The ultimate goal of estate planning can be determined by the specific goals of the client and may be as simple or complex as the client's needs dictate.**

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Estate planning

Summary

Planning for life (wealth, divorce, incapacity) and thereafter (succession, future generations)

- Structuring
- Taxes during life
- Risk planning
- Savings
- Health
- Succession
- Taxes on death
- Liquidity

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03

Then and now

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Estate duty

Rate

October 2001: 25% reduced to 20%

2018: 20% on first R30 million

25% thereafter

Abatement section 4A

2001: R1 mil increased to R1.5 mil

2006: R1.5 mil increased to R2.5 mil

2007: R2.5 mil increased to R3.5 mil

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Trusts

General

- Typically used to reduce tax on death
- Funding: donation
  : loan account
- Loan account: interest
  : no interest
- Section 7C

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Trusts

Tax: distribution from non-SA trust

Trust holds > 50% of total participation rights in foreign company

Trust distributes foreign dividends received in previous tax year to SA beneficiary

Section 25B(2A) & (2B)

Beneficiary acquires vested right to capital - taxed as income in his hands if:

- amount would have constituted income had it been resident trust; and
- he was beneficiary in year in which income was earned; and
- amount not already taxed in SA

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Investment options

Asset classes

- Diversify across asset classes
  - Property
  - Shares
  - Investments
  - Unit trusts
  - Exchange traded funds
  - Hedge funds
  - Venture capital
  - Intellectual property
- Diversity within asset class
- New asset classes/types

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Investment options

Continued

Cryptocurrency

Currently 2340

eg Bitcoin, Stellar, Ravencoin, Aurora, 1irstcoin, Atomic Wallet, Etherium

Aggregate market capitalisation +_ $250 billion

- Currency vs asset?
- Premise: easier, cheaper way to transfer funds directly between two parties in a transaction, without need for third party
- Keys
  - user's wallet or account address has public key
  - private key used to sign transactions

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Investment options

Continued

Benefits

- limited threat from hackers, almost impossible to forge transaction histories
- no central authority or government with access to your funds or personal information

Downside

- virtual currency with no central repository – risk of wipe out by computer crash or loss of private key
- risk of nefarious activities

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Investment options

Continued

- SA Reserve Bank (Position Paper on cryptocurrencies) - not legal tender
- Asset - normal tax principles - revenue v capital (*taxpayer's intentions*)
- Death = executor's fees and estate duty
- Include in estate plan - price based on supply and demand

Keys crucial for transferring ownership or spending – if lost or no longer accessible = bitcoin is lost

Options:

- ✓ backup copy of wallet
- ✓ store on external hard drive with access for executor
- ✓ transcribe access details for wallet in separate document addressed to executor

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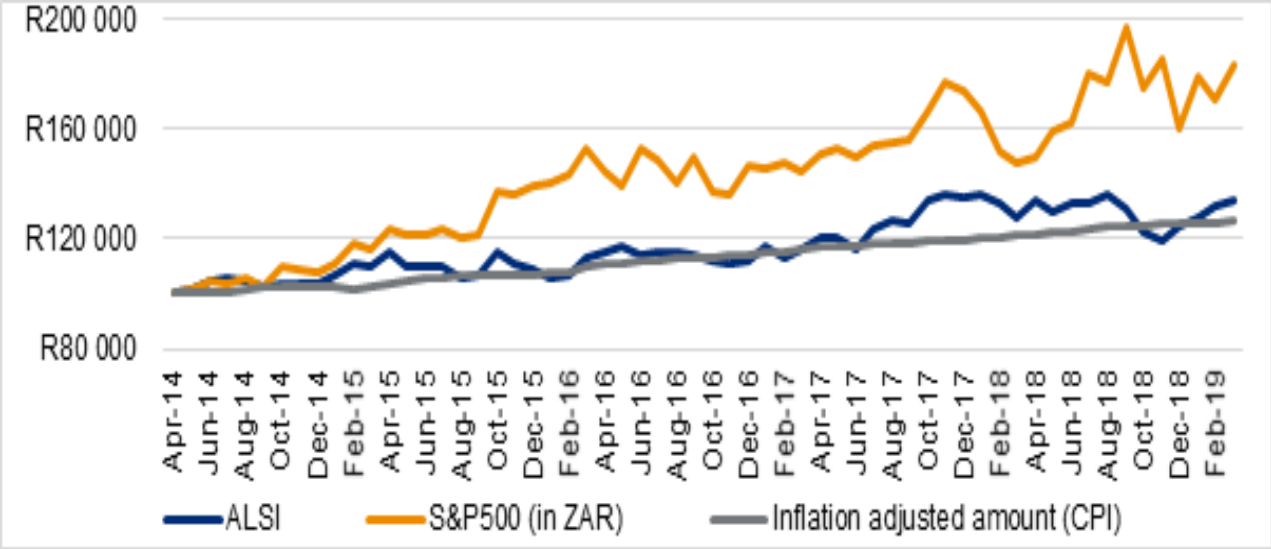
Investing offshore

Rationale

- Risk diversification

  Protection against geopolitical and currency risks



Source: Alexander Forbes Investments and Bloomberg

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Investing offshore

Rationale

- Exposure to investment options

- Access to lifestyle options = “Golden visa” Portugal, Spain, Malta, Cyprus, Greece, Ireland, Mauritius

  - Investment $300 000 - $3 000 000

  - Most funds usually redeemable after 5 years

  - Residence v citizenship

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Investing offshore

Ways to invest

Own name

- Probate
- Estate duty

Co-ownership/joint tenancy

- No probate
- Estate duty

Structure

- No probate
- Possible estate duty

Wrapper

- No probate
- Estate duty

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Investing offshore

Things to consider

Joint tenancy

- Disposal options
- Possible donation
  - Client takes funds offshore in his and spouse's name
  - Client has funds offshore and adds co-owner
- Consider estate planning/will

Separate will?

- Jurisdiction and nature of asset

Forced heirship rules

- Civil law legal systems
- European Succession Regulations (Brussels IV) offer possible solution
- Using a trust

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Investing offshore

Things to consider

Yield

Cash flow

SA trust inheriting offshore assets

SA trust cannot directly hold offshore assets

Scenario 1

Residue bequeathed to IV trust

Scenario 2

Bequest of section 4A abatement to trust

Scenario 3

Residue to spouse, failing whom to children

Children’s inheritance to be held in trust if < certain age

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Investing offshore

Things to consider

Tax on death - SA

Estate duty - section 4(e) EDA deduction

= assets acquired before first resident in SA
= assets acquired after first resident by donation or inheritance from non-resident (at time of donation/inheritance)

Tax on death - situs tax

UK: 40% IHT on assets in excess of £325 000
Rollover relief between spouses

US: 40% IHT on assets in excess of $60 000
Rollover relief if spouse is US citizen

Double taxation agreements – generally allows taxation rights for country where asset is located

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Investing offshore

Things to consider

Section 16 EDA:

There shall be deducted from any duty payable under this Act-

(c) "*without in any way modifying or adding to the rights of any person under an agreement entered into by the Government of the Republic with the Government of any other country or territory relating to the prevention of or relief from double taxation in respect of estate duty, any amount of any death duties proved to the satisfaction of the Commissioner to have been paid to any other State in respect of any property situate outside the Republic and included in the estate of any person who at the date of his death was ordinarily resident in the Republic: Provided that the deduction under this paragraph shall not exceed the duty imposed on such property by this Act.*"

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Investing offshore

Things to consider

Example 1

No spouse; exchange rate R17

Immovable property UK £500 000 (R8 500 000)

SA estate R1 500 000

UK

- £500 000 - £325 000 = £175 000
- X 40% = £70 000 (R1 190 000)

SA

- Estate R1 500 000 + R8 500 000 = R10 000 000
- R10 000 000 – R3 500 000 = R6 500 000
- X 20% = R1 300 000

Deduction

R8 500 000/R10 000 000 x R1 300 000 = R1 105 000

R1 300 000 – R1 105 000 = R195 000

Total duty

R195 000 + R1 190 000 = R1 385 000

If duty only paid in SA = R1 300 000

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Investing offshore

Things to consider

Example 2

No spouse; exchange rate R17

Immovable property UK £1 000 000 (R17 000 000)

SA estate R1 500 000

UK

- £1 000 000 - £325 000 = £675 000
- X 40% = £270 000 (R4 590 000)

SA

- Estate R1 500 000 + R17 000 000 = R18 500 000
- R18 500 000 – R3 500 000 = R15 000 000
- X 20% = R3 000 000

Deduction

R17 000 000/R18 500 000 x R3 000 000 = R2 756 757

R3 000 000 – R2 756 757 = R243 243

Total duty

R243 243 + R4 590 000 = R4 833 243

If duty only paid in SA = R3 000 000

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Investing offshore

Things to consider

Example 3

No spouse; exchange rate R17

Immovable property UK £1 000 000 (R17 000 000)

SA estate R10 000 000

UK

- £1 000 000 - £325 000 = £675 000
- X 40% = £270 000 (R4 590 000)

SA

- Estate R10 000 000 + R8 500 000 = R18 500 000
- R18 500 000 – R3 500 000 = R15 000 000
- X 20% = R4 700 000

Deduction

R8 500 000/R18 500 000 x R4 700 000 = R2 959 259

R4 700 000 – R2 959 259 = R1 740 741

Total duty

R1 740 741 + R4 590 000 = R6 330 741

If duty only paid in SA = R4 700 000

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Investing offshore

Things to consider

Other tax: UK CGT

Pre 6/4/2019 – non-resident liable on disposal of residential property

Post 6/4/2019 – non-resident liable on direct or indirect disposal of all property

Indirect disposal
Disposal of "substantial interest'" held in "property-rich" companies

Substantial interest
Non-UK resident, and connected person, held at least 25% in 2 years prior to disposal

Property-rich company
75% or more of company asset value derive from interest in UK property

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Investing offshore

Things to consider

Transparency/reporting

2010: FATCA

US law requiring all non-US foreign financial institutions to report identity and assets of US account holders to IRS

2014: CRS

Tax authority obtains info from financial institutions on account holders and exchange info with other authorities.

25/6/19 - 106 countries have signed up

Beneficial ownership registers

Details of beneficial owners of legal entities

eg 2016 EU requires all legal entities established under laws of EU country to register beneficial ownership in central register

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03

The future of estate planning

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Wealth migration

Wealth migration

"*Tax day is the day that ordinary Americans send their money to Washington DC, and wealthy Americans send their money to the Cayman Islands*."

Jimmy Kimmel

AfrAsia Bank's Global Wealth Migration Review 2019

https://e.issuu.com/embed.html?u=newworldwealth&d=gwmr_summary_presentation_2019

https://e.issuu.com/embed.html?u=newworldwealth&d=gwmr_2019

- 2018: 108 000
- 2017: 95 000

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Wealth migration

Where to?

Australia	12 000
USA	10 000
Canada	4 000
Switzerland	3 000
UAE	2 000
Caribbean	2 000
New Zealand	1 000
Singapore	1 000
Israel	1 000
Portugal	1 000
Greece	1 000
Spain	1 000

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Wealth migration

Where to?

Monaco	>100
Malta	>100
Mauritius	>100
Latvia	>100
Hong Kong	>100

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Wealth migration

Where from?

China	15 000
Russian Federation	7 000
India	5 000
Turkey	4 000
France	3 000
UK	3 000
Brazil	2 000
Saudi Arabia	1 000
Indonesia	1 000

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Wealth migration

Emerging wealth markets

Vietnam	Manufacturing, healthcare, IT, financial services
India	Financial services, IT, business process outsourcing
Sri Lanka	Technology, manufacturing, real estate, healthcare, financial services
Mauritius	Financial services
China	Financial services, IT, automotive, healthcare

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Wealth migration

Mauritius

- Financial services = 12% of GDP; >7 000 employed
- Ideal geographical position
- Favourable tax environment – 15% income tax; no CGT, inheritance tax or dividends tax
- 44 DTA's
- Political and currency stability
- Compliance with international standards – OECD white list
- Tax information exchange agreements; CRS signatory
- GDP growth +_3.6% per annum
- Inflation 1-2%
- Per capita wealth = $25 700
- Residence permit - acquisition of residential property in property development scheme ≥ USD 500,000

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International families

Planning

Inheritance

Exchange control regulations:

- Non-resident
- Emigrant
- Resident temporarily abroad

Options:

- Leave estate to grandchildren who were born abroad
- SA assets to SA heirs, offshore assets to offshore heirs with equalisation

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International families

Planning

Cross-border distributions by SA trust

Own funded trust – settlor emigrates

- Capital transferable with SARB approval
- Income distributed post emigration feely transferable subject to certain documentary requirements

Third party funded trust – beneficiary emigrates

- Capital blocked in SA
- Income:
  - trust established more than 5 years prior to emigration = transferable
  - trust established within 5 years from migration = blocked in SA

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International families

Planning

The role of tax in estate planning

"*As a result of new economic substance legislations and the move towards transparency, more high-net worth families are considering onshoring their asset-holding and investments structures, and aligning economic activities with tax residence*"

Valerie Wu Branch chair, STEP Singapore

- Greater tax transparency = mobility in tax - private planning becomes more important
- Move away from over-emphasis on taxation in asset and succession planning
- Distributions from trust – consider tax consequences for beneficiaries

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04

Summary

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In closing

- The world has grown smaller
- Tax treatment usually driven by home jurisdiction of ultimate beneficial owners/settlors/beneficiaries and/or where assets are located
- Multi-jurisdictional planning is critical
- Move away from complexity within a structure –raised compliance costs and unwanted tax consequences
- Use trusts for the right reasons:

Sally Edwards Head Private client and trusts team Ogier, Jersey: STEP journal July 2019

There is a move away from tax as a motivator for establishing trusts, and a return to many of the original reasons, ie protection of assets and succession planning. Although the reasons for the need for protection have changed since the days of the Crusades, ……., much of the basic logic remains surprisingly similar. People want to preserve their wealth so that it can pass to the next generation. Factors today may include divorce and political instability, but the essentials remain.

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