

A vintage-style globe on a wooden desk with a window in the background. The globe is the central focus, showing a map of the world. The text is overlaid on the globe.

LOCAL AND INTERNATIONAL BENEFICIARIES: ESTATE PLANNING CONSIDERATIONS

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CITADEL
WEALTH MANAGEMENT



INTRODUCTION

In recent times people have become exceedingly “mobile”

- Everybody knows someone who has relocated abroad
- This trend is increasing even further with the current “sentiment” on SA’s future

All of us are dealing with Estate Planning, Estate Administration or Trust Administration where some of the beneficiaries are resident in another jurisdiction

- More often than not, children and clients relocated but did not emigrate

Purpose:

- To highlight some of the considerations and restrictions
- To distinguish between the different scenarios and discuss the implications for beneficiaries
- Meant to be practical

TAX RESIDENCY V FINSERV RESIDENCY



Important to distinguish for purposes of this discussion

- Estate Duty: Only applicable to SA Tax Residents and SA Situs property
- Trust distributions: Foreign tax residents – significant concerns
- Estate Distributions: Foreign resident/emigrant – may export inheritance

Tax Resident?

- Natural Person who is ordinarily resident in the Republic
- Physical presence test – if not ordinarily resident
- Not if exclusively resident in other country in terms of treaty

FinServ

- SARB process through Authorised Dealer
 - MP 336 (b)
 - Note: the fact that MP 336 (b) is presented to SARS does not automatically terminate tax residency...

FOREIGN RESIDENT BENEFICIARY: SA ESTATE



Beneficiary Emigrated (or non-resident)– Inheritance may now be transferred abroad.

- Not to Foreign Trusts with direct or indirect SA Interest – including emigrants
- Authorised Dealer must ensure that Formal Emigration has been done
- Foreign Assets may be transferred
- Same applies to Capital distributions from Testamentary Trusts

If she did not emigrate – Considered to be “SA Resident Temporarily Abroad”

- Need to use normal channels to transfer assets
- R1m p.a. Discretionary allowance
- R10m p.a. Investment allowance
- Need Tax Clearance from SARS for R10m
- Will probably have to apply from SA



ESTATE BENEFICIARIES

SA Resident Beneficiary – SA Resident Estate: Offshore Assets

- Must repatriate to SA
- Alternatively: Apply for exemption of Regs. 6&7 – FinServ – usually granted

Foreign Estate of SA Resident: Probate

- Similar, but less complicated than our Estate Administration process
- Appoint agent in jurisdiction and provide Sealed Letters of Executorship and Will
- Quite Expensive and time consuming
- Not required for all Offshore assets – check with administrator
 - E.g. preference shares in Citadel Offshore Structure
 - Certain Investments – some administrators will accept SA LOE

SA Beneficiary – Non-resident’s Estate

- 17 March 1998 – May retain offshore
- No need to report to SARB
- Free from Estate Duty



FOREIGN WILL CONSIDERATIONS

Common Law Legal Systems: Often possible to probate estate with South African will

- Recommend: Fixed property – rather execute foreign Will

Civil Law Legal Systems: forced succession in most cases

- Always execute foreign Will

Get jurisdictional specific advice

- There may be specific validity requirements for Will
- E.g. Mauritius – Will needs to be registered to be valid (Amongst others)
- Testamentary Trusts?

Work with foreign advisor to ensure SA Will is not revoked...

INTER VIVOS TRUST DISTRIBUTIONS: FINSERV



Emigrant/Non residents

- Authorised dealer will allow transfer of Income
- Capital distributions – Credited to Capital Account (Blocked Account)

SA Resident Temporarily Abroad (SARTA)

- Note: This is a FinServ designation and not necessarily Tax residency
- Therefore, may be tax resident abroad but still SARTA for FinServ
- Distribution must be paid in SA then exported through normal channels

Distribution from Foreign Trust to SA Resident

- Trust distributions (and Donations) not the same as Inheritance
- Must be repatriated
- May apply for exemption to FinServ
- **However: Recent Legal Opinion – If trust was funded with Authorised Offshore Funds distributions to funder need not be repatriated**

FOREIGN RESIDENT TRUST BENEFICIARIES -TAX



Many (if not most...) families have children who are residents abroad

Critical: Foreign resident beneficiary must obtain jurisdictional specific advice

Some examples taken from foreign legal advice

USA Resident Taxpayer

- It often happens that the tax payable by beneficiaries of a foreign trust may exceed the value of the distribution (Peter Rosenberg)
- Grantor v Non-Grantor Trusts
- Grantor Trust: Grantor retains sufficient control of the trust – E.g. may revoke trust
- Regarded that assets are owned directly by Grantor – thus not separate entity
- Taxed in Grantor's hands - if foreign grantor, only US source income subject to US income tax
- Distribution from foreign grantor trust – regarded as gift from grantor and not taxable to beneficiary

FOREIGN RESIDENT: TRUST BENEFICIARIES -TAX



Non-Grantor Trust (Typically our Discretionary Trust)

- Distribution to US resident beneficiary fully taxable
- Income from current year as well as accumulated income from previous years (“Undistributed Net Income”) is taxed in the hands of the beneficiary – similar to our sec 25B(2A) and para 80(3)
- BUT: Tax is computed and interest and penalties are imposed – May possibly exceed the distribution
- Distribution deemed to be made from
 1. Current Income
 2. Accumulated Income
 3. Capital
- Therefore no discretion as to from which “Pot” distribution is made
- Be careful of Grantor Trust as it may powers may fall within sec 3(3)(d)

FOREIGN RESIDENT: TRUST BENEFICIARIES -TAX



Australia

- Trustee is Australian Tax resident – Trust regarded as Australian Tax Payer
- Settlor becomes Australian Taxpayer: Taxed on accumulated income and capital gains of trust since inception with penalties and interest. (Client obtained aforesaid opinion)
- Distribution of income taxed in beneficiaries hands
 - If distribution from income accumulated in previous tax years – Penalties apply
 - Taxed at marginal rate
 - BUT: If distribution to anyone under 18 (including payment of school fees etc) taxed to top marginal rate for individuals – 49%

Neither the US or Australia tax distributions from deceased estates.

FOREIGN RESIDENT: TRUST BENEFICIARIES



Possible Solution (Alternative to Trust distribution)

- Remove foreign resident as beneficiary of trust
- Create additional legacy in terms of the Will
 - Value of legacy to be calculated based on a percentage of the net value of the trust
- We have administered a number of estates successfully by employing this technique
- Planning: Ensure that there are sufficient assets in the estate to provide for the said legacy.

Citadel Offshore Structure may also provide solution

- Before taking up foreign tax residency
- Father lends money to his son to purchase preference shares in structure
- Father bequeaths loan to son
- Son may now redeem shares – this is not a trust distribution
- Jurisdictional advice is still a must
- Loan may be an issue on Financial Emigration – consult Authorised Dealer

UK: RELEVANT PROPERTY REGIME (10-YEAR CHARGE)



UK Inheritance Tax Applicable to UK and Foreign Trusts

Operation

- On Every 10th anniversary of a trust
- Whenever relevant property ceases to be held in trust
 - E.g. Relevant property distributed to beneficiary – exit charge

6% of value of relevant property on 10th anniversary of trust.

Excluded Property

- Foreign Situs property
- Units in Authorised Unit Trusts (AUT's) and shares in UK OEIC's
- UK Gilts – All beneficiaries UK non-residents

Nil-Rate applies: £325 000

UK: RELEVANT PROPERTY REGIME AND SA TRUSTS?



“Asset Swap”: Often used by SA Trusts to gain offshore exposure

- Fin Serv mechanism whereby SA Management Co (Manco) provides SA Investor with Offshore capacity
- Must be repaid in Rand - FinServ
- Manco treats assets as third party assets and therefore not on their balance sheet
- No doubt who the beneficial owner is = trust
- Therefore Situs asset and will be subject to Charge

NB: SA Trust will have to register as taxpayer in UK!!

To avoid IHT and Compliance Cost

- No charge if there are no relevant property on 10th anniversary
- No charge if relevant property is switched to excluded property
- Consider Tax (CGT) implications of switching.



CLOSING REMARKS

Always: Obtain or refer client to obtain jurisdictional specific advice

- Work with them to ensure that holistic solution makes sense in both jurisdictions
- Keep in mind that they seldom understand current SA Tax
- Example: Donations Tax – UK, US (More opportunities to donate tax free)
- Example: Estate Duty: Australia (None)

Emigration: Consult Specialist – especially on Tax

- Advisor who understands the specific Double Tax Treaty (E.g. Tax Residency)
- Someone with the required global footprint/connection to utilize opportunities in foreign jurisdiction
- Do not underestimate the complexities

A close-up, low-angle shot of a dark wood door with a brass handle and decorative hardware. The word "Questions?" is overlaid in white text. The door features a prominent brass handle with a curved top and a decorative finial. The wood grain is visible, and the lighting is warm and dramatic, highlighting the textures and metallic sheen.

Questions?