ESTATE MATTERS

Investing offshore? You need an estate plan for this

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Since the amnesty for undeclared offshore assets in 2002/2003, exchange control in South Africa has gradually been relaxed. Currently, individuals have a discretionary foreign investment allowance of R10 million a year. Many South African investors invest offshore to improve their potential returns and reduce their risk. This has significant estate planning implications.

Specialist offshore estate planning is vital

Offshore estate planning involves a detailed assessment of your worldwide assets to decide on the most appropriate combination of estate planning structures. Unexpected tax implications or rules of forced heirship in certain jurisdictions can have unforeseen consequences if you do not take them into account when you draft your will.

Your estate includes all your global assets – irrespective of where they are

On your death, you need to have a plan to distribute your global assets to your heirs and beneficiaries as you want them to be distributed; and in a tax efficient way. The estate of a South African resident consists of all your assets, irrespective of where in the world the assets are located. However, dealing with a South African will across various jurisdictions is often complicated, time consuming and expensive.

You have a range of estate planning options to fulfil your wishes

As a foreign investor, you can consider various estate planning options:

- foreign wills
- offshore trusts and companies
- offshore investment wrappers

The table on the next page sets out the estate planning implications of offshore trusts and investment wrappers, compared to holding an investment account without it falling into such a structure.

Make sure to appoint an executor

If you have a valid foreign will in which you have appointed an executor, your executor will be responsible for passing on your estate by applying for a grant of probate. The grant of probate will give the executor the legal right to distribute your estate according to your wishes. If you have not appointed an executor in your will, the court will do so on your behalf.

Get expert advice to minimise tax

Be aware of foreign tax implications on your estate. When your estate is distributed, your assets will be taxed according to applicable tax laws. It is critical to get advice about different tax regimes when drafting your will or structuring your estate, so that you can do so as tax efficiently as possible.

Let's consider the United Kingdom (UK) as one example:

1. The UK has a unified estate and gift tax called inheritance tax. If you are not domiciled (permanently resident) in the UK but have assets situated in the UK, inheritance tax will be levied on these assets. This includes any immovable property in the UK and shares issued by the London Stock Exchange.
2. UK estates with a total value of up to £325 000 fall in the nil rate band, which means that no inheritance tax will be payable. Estates with a greater value will pay inheritance tax on the value of the estate that exceeds £325 000 (i.e. on the excess portion only). The UK levies inheritance tax at a rate of 40%.
3. Fortunately, South Africa and the UK have concluded a Double Taxation Agreement that specifically deals with estate taxes. This means that your UK-based assets will only be subject to inheritance tax in the UK, and will be exempt from South African estate duties.
4. You can further minimise your tax liability if you make certain provisions in your will. For example, if your UK-based estate passes to your husband, wife or civil partner (who is domiciled in South Africa) there will be no inheritance tax to pay, even if the estate is valued at more than £325 000. In addition, the unused nil rate band (£325 000) of the first dying spouse will be transferred to the surviving spouse. The surviving spouse will therefore only be exposed to inheritance tax on their UK-based assets in excess of £650 000 (2 x £325 000) at the time of their death.

Offshore holding	Death			Tax					Fees	Loan accounts	Investment
	Estate duty	Continuity	Estate pegging (limiting growth potential for estate duty purposes)	Income tax	Capital gains tax (CGT)	Dividends tax	Distributions	Administration	Initial and annual trustee fees		
Discretionary non-resident trusts	Calculated on the value of the loan account (equal to the value of assets in the trust) in the estate of the lender (estate owner). This depends on the use of abatements (tax reductions) in terms of s4A and s4q of the Estate Duty Act.	The investment can be retained in the trust or distributed to the beneficiaries.	The value of the loan account remains an asset in the lender's estate. Loans are denominated in rands or the foreign currency.	Income and capital gains will belong to the trust, provided that interest is charged on the loans. Deeming provisions under s7 and s25 of the Income Tax Act will determine how receipts and accruals will be treated for tax.			Beneficiaries acquiring a vested right to capital growth or retained income of a non-resident trust: The amount can be included as income in the year of assessment (s25B and s2A).	This is the responsibility of the trustees appointed by the settler/founder of the trust.	The fee depends on the complexity of the structure. Trustees will charge for time spent on the administration services they provide.	Interest to be charged on loans. The interest rate depends on the currency of the loan.	This is the responsibility of the trustees. A portfolio manager may be appointed to ensure a separation of control from the settler.
Offshore investment wrappers	Taxable on death as part of the estate. Nomination of beneficiary can save executors fees.	Beneficiaries can choose to have the portfolio distributed into contracts in their names or to have the proceeds paid as cash.	No estate pegging.	Income is taxed at 30% for individual investors.	For foreign equity instruments, the gain is the proceeds less expenditure on assets, expressed at the average or spot rate on the date they are incurred.	Not applicable.	Withdrawals will incur CGT within the contract. Payment is made net of CGT to the investor/ beneficiary.	This is governed by the contract, per the Four Funds approach (separate pools for individuals, companies, corporate entities and non-taxable entities, which are each taxed differently).	0.4% - 0.7% p.a. (depending on the product provider).	No loan accounts.	Investments are restricted to funds of the product provider. Equity instruments are limited to trading options available on the stockbroking platform used.
Individual investment accounts	Taxable on death. Probate can apply in jurisdiction if there is no recognised will.	No continuity.	No estate pegging.	Taxable as income in the investor's hands.	The gain is calculated as the foreign gain realised multiplied by the spot rate on the transaction date.	Taxable in terms of s10(B) of the Income Tax Act.	Withdrawals will incur CGT.	This is the responsibility of the investor.	0.5% - 1.5% p.a. (depending on the fee arrangement).	No loan accounts.	Investments are restricted to funds of the product provider. Equity instruments are limited to trading options available on the stockbroking platform used.