

US ESTATE TAX PLANNING: HOW CAN AN INVESTMENT LINKED INSURANCE PRODUCT HELP?



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How can an Investment Linked Insurance Product help?

Investors that have assets based in a different jurisdiction to where they are resident or domiciled can sometimes be unaware of the potential tax consequences of doing so. This could include exposure to inheritance and estate taxes as well as probate requirements in the jurisdiction where those assets are situated.

One such country is the United States (US). The purpose of this document is to explain how transferring US situs assets owned by a non-US person* into an investment, linked insurance product may:

- a) Mitigate the value of a non-US persons' US gross assets, for US Estate Duty purposes and;
- b) simplify the administration of a non-US person's estate upon death

Examples of US situs assets could be stocks held on a trading platform or through a brokerage account, regardless of where certificates are held.

What is the current situation?

An executor for a non-US person must file an estate tax return (form 706-NA) if the fair market value at death of the deceased's US situated assets exceeds \$60,000. In the absence of a comprehensive double taxation agreement between the deceased's country of residence and the US, a 40% estate duty charge can apply to the balance of assets which exceed \$60,000.

An executor could also be subject to lengthy and costly probate procedure in order to obtain control of the assets to be transferred into a beneficiary's name.

How can US estate duties & probate requirements be avoided?

Once legal ownership of the assets is transferred into the name of the insurance company, the non-resident individual is deemed to have relinquished all legal and beneficial rights to those assets. However, their value will still be linked to the product which the individual holds with the insurance company.

Upon the client's death, as they no longer own any US situs assets, their value is not assessable to any US estate duty and their executors will not have to go through the US probate processes**.

Other Considerations

Whilst the transfer of the US assets into the insurance product would be a disposal for capital gain tax (CGT) purposes, CGT is not typically applicable to non-US residents, unless the assets are directly or indirectly related to the sale of US real property or connected with a trade or business in the US. CGT may still be applicable in the jurisdiction that the non-US individual is currently resident.

Owning an Isle of Man asset could mean that Isle of Man Probate is required upon death. Linking the insurance product to a simple trust structure such as the Beneficiary Trust can avoid the requirement for the deceased's estate to obtain Isle of Man Probate in order to access the value of the product.

Important notes

For financial advisers only. Not to be distributed to, nor relied on by, retail clients.

Please note that every care has been taken to ensure that the information provided is current and in accordance with our understanding of applicable law and tax legislation.

You should note however, that we cannot take on the role of an individual taxation adviser and independent confirmation should be obtained before acting or refraining from acting upon the information given.

* A non-US person is an individual who is neither a US citizen, US green card holder nor long-term resident.

** Depending on the tax legislation of the country in which the client is resident or domiciled, the value of the insurance product may be factored in to any local Inheritance/Estate Tax.