PLANNING CONSIDERATIONS FOR BRITISH EXPATRIATES

AS A BRITISH EXPATRIATE, IT'S IMPORTANT FOR YOU TO HAVE ARRANGEMENTS IN PLACE TO PROTECT YOUR FAMILY. TAKING OUT LIFE INSURANCE IS ONE PART OF THE FINANCIAL PLANNING PROCESS.

You will also want to ensure that you are able to pass on your assets to your chosen beneficiaries according to your wishes and in a tax-efficient manner, without compromising the quality of your life in later years.

Even though you may be non UK resident for income tax purposes, you may still be regarded as 'UK domiciled' for UK Inheritance Tax (IHT) purposes, potentially exposing you to the current 40% IHT rate.

This guide helps you to consider the key issues that can affect your plans for passing on your wealth, in a controlled and tax-efficient manner. It also summarises some potential actions that can make your planning simpler and more effective.

We do not give tax, legal or investment advice; please ensure you always speak with your financial adviser before making any decisions.

ESSENTIAL CONSIDERATIONS

It's important that you consider the following questions to make things as simple as possible for your loved ones.

1. **Do you have professionally drafted wills in place in the countries where your investments are based, and are they up to date?**
2. **Will your executors need to obtain probate in the countries where your investments are based? Are there any steps you can take to avoid the need for probate?**
3. **Will your estate be subject to UK IHT on your death and, if so, what is your exposure to it?**
4. **What simple steps can you take to reduce your exposure to UK IHT?**
5. **Should you consider more advanced forms of IHT planning?**

With the help of a qualified financial adviser and a local lawyer you can put steps in place to ensure that all of these questions are answered in line with your individual circumstances.

This should leave you free to enjoy life, secure in the knowledge that your financial planning has been taken care of.

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1. HAVING UP-TO-DATE AND PROFESSIONALLY DRAFTED WILLS IN PLACE

When putting a valid will in place abroad, there are potentially complex factors to consider. These can vary from country to country.

As well as having a will written in the country in which you are living, you may need to have separate wills for investments, life insurance policies and properties that you hold elsewhere. Where you need two or more wills, care needs to be taken to ensure that they are not at odds with each other. For example, that they do not contain any clauses which may revoke your UK will. This could potentially cause delays and disputes for your loved ones.

You can alleviate these issues by having will/wills drafted by a lawyer who has knowledge of:

- local succession laws;
- your individual circumstances and wishes;
- the countries where your other assets are held.

This will also ensure that the process of applying for probate (if it is required) is not delayed.

2. EXECUTORS MAY NEED TO OBTAIN PROBATE IN THE COUNTRIES WHERE YOUR INVESTMENTS ARE BASED

Probate is the process whereby the executors that you have appointed in your will are granted permission to take over your assets on your death and distribute them to your heirs.

UK probate cannot be granted until any UK IHT has been paid, so you will need to consider how any IHT will be paid in order that your assets can be released to your heirs.

RL360 policies written under Isle of Man law are considered an Isle of Man asset and could require Isle of Man probate even if the policyholder has no other connection to the Isle of Man.

STEPS YOU CAN TAKE TO AVOID THE NEED FOR PROBATE

You have a number of options available which will enable certain assets, including international life policies, to be passed on to your beneficiaries outside of the provisions of the will. This approach will avoid the need for your executors to obtain probate.

INTERNATIONAL LIFE INSURANCE POLICIES – AVOIDING THE NEED FOR PROBATE

1 **Taking out a jointly owned policy**
With jointly owned policies, the proceeds payable on first death pass to the survivor. If the proceeds are payable on the second death, the survivor retains full benefit of the policy until their death.

2 **Placing the policy in trust**
Setting up a trust involves transferring ownership of the policy to the trustees, who retain it on behalf of the trust beneficiaries. If you, as the life assured, die during the policy term, the insurer will not need probate, because the death benefit is paid to the trustees and not to your estate.

Using one of these methods will mean the payment of the death benefit to the beneficiaries happens much more quickly and simply. It may also save your beneficiaries the expense of obtaining probate.

3. UK INHERITANCE TAX EXPOSURE

Having established a new life overseas, you may think that paying UK tax is a thing of the past. However, even though you're no longer UK resident, you may still be 'UK domiciled' for IHT purposes.

Tax residence and domicile are completely different concepts. Unlike tax residence, which is determined by the UK Statutory Residence Test (SRT), domicile is not actually defined in UK law. Domicile is the concept used by HM Revenue & Customs (HMRC) to establish whether you are connected to the UK and whether it is considered to be your permanent home.

The SRT looks at the time you spend in the UK, making tax residence straightforward to change. However, UK domicile is not based on a physical presence and it is very difficult to lose your UK domicile status.

Many UK expatriates will have a UK domicile of origin, which is usually inherited from their father. Family history is key to establishing whether a person is a UK-domiciled individual or not.

4. STEPS YOU CAN TAKE TO REDUCE YOUR EXPOSURE TO UK INHERITANCE TAX

If you remain UK domiciled, you can put steps in place to reduce the amount of IHT payable including:

- Gifting assets away and making use of available IHT exemptions
- Investing in assets which qualify for certain forms of IHT relief
- Insuring the IHT liability using a suitable life assurance policy
- Using trusts for effective succession and IHT planning.

The most appropriate course of action will depend on your individual circumstances. You should consider whether you are ready to make gifts of capital or whether you still require access to your investments.

Various exemptions, reliefs and other planning options are available to reduce the effect of IHT on your estate.

INTER SPOUSAL EXEMPTION

This provides full exemption from IHT on transfers made between UK domiciled spouses and civil partners, both during life and on your death.

It is possible for any unused nil rate band to be passed to the surviving spouse. As a result, the nil rate band can be increased by up to 100% meaning that up to **GBP650,000** is available to the estate of the surviving spouse. Any unused residence nil rate band may be transferred in a similar way.

POTENTIALLY EXEMPT TRANSFERS

These are outright gifts, not covered by the above exemptions, made by a donor who is prepared to give up all rights to any future benefit from the assets given away. If the donor survives seven years from when the gift is made, it will become fully exempt and no longer taxable in the donor's estate. If the donor dies within seven years, taper relief may be available between years four and seven to reduce the tax on the gift.

While these gifts may not have to be notified to HMRC at the time they're made, it is important that you keep proper records. This will save time and potential disappointment for beneficiaries of your estate in future.

You should also consider the 'Gift With Reservation' provisions, as these are designed to prevent a UK-domiciled individual giving away their assets in an attempt to save IHT, whilst still enjoying their use.

Please note that lifetime gifts made from a UK-domiciled individual to a non UK-domiciled spouse will use up the lifetime exemption first.

UK IHT RATE IS 40%

A UK-domiciled individual is subject to UK IHT on their worldwide net estate over the IHT nil rate band of **GBP325,000**. With the excess taxed at 40%, not having mitigation plans could lead to a considerable amount of your wealth passing to HMRC, rather than to your chosen beneficiaries.

There is an additional nil-rate band when your residence is passed on death to a direct descendant.

Expatriates may believe they've shaken off their UK domicile by leaving the UK. However, there is a requirement for the individual not only to have left the UK, but also to have settled permanently in a new country and have evidence to show that this is the case. Moving from country to country may mean that you will retain your original UK domicile. Also, if you were born in the UK and had a UK domicile of origin at birth, you can be treated as a UK domicile for tax purposes if you live in the UK again even if you have acquired a new domicile elsewhere.

INSURING YOUR IHT LIABILITY

If you are not in a position to make large gifts of capital, one of the most straightforward ways of covering an IHT liability is to take out a life assurance policy, with the sum assured set to match the IHT liability on your estate.

The policy is held in trust to segregate it from your estate otherwise the death benefit will potentially be subject to IHT at 40%. Provided the premiums qualify under the IHT 'normal expenditure out of income' exemption or fall within the **GBP3,000** annual IHT exemption, they will be exempt from IHT.

If structured in this way, the death benefits can pay out free of any IHT and without the need to obtain probate. This provides your beneficiaries with access to cash to meet any potential IHT liabilities or other estate expenses.

To qualify as normal expenditure out of income, premiums must be made on a regular basis from income and must not reduce an individual's standard of living.

MIXED DOMICILED SPOUSES AND CIVIL PARTNERS

Care is needed with 'mixed domiciled' spouses when only one is a UK-domiciled individual. Where a UK-domiciled individual leaves assets to a non UK-domiciled spouse, there is no Inter Spousal Exemption. Instead, the non UK-domiciled spouse is entitled to a lifetime exemption of **GBP325,000** plus any unused nil rate band. An option available to mixed domiciled couples is for the non-domiciled spouse to elect to be treated as UK-domiciled for IHT purposes. This enables the couple to benefit fully from the Inter Spousal Exemption, but means that the individual making the election will potentially become subject to IHT on their worldwide assets.

Deciding whether to make an election is a complex matter requiring advice that will need to take into account a number of factors including:

- Which spouse holds the majority of the wealth and whether the assets are based in the UK or not.
- The age and life expectancy of each spouse, whether they have children and their future plans.
- Whether or not the non UK-domiciled spouse intends to live permanently in the UK.
- The timing of the election.
- Whether any gifts have been made to either spouse in the previous seven years.

5. CONSIDERING MORE ADVANCED FORMS OF IHT PLANNING

You may wish to consider some more advanced forms of IHT planning that could enable you to mitigate your IHT liability while also retaining access to your assets.

IHT MITIGATION USING TRUSTS

You may be able to mitigate your UK IHT exposure by placing the insurance policy into a trust. Trusts allow you to make a gift while at the same time placing controls over who benefits and when.

They are useful structures to use if you are not comfortable making outright gifts, perhaps because the recipient is a minor, or lacks the financial maturity to deal with potentially large sums of money or investments themselves. Instead, you appoint trustees to hold the trust assets for the beneficiaries, in some circumstances with the power to make distributions to the beneficiaries at their discretion. Typically you, as the investor, will act as one of the trustees.

RL360 currently offer three draft trust deeds that could help with potential UK IHT mitigation.

Trust types and the benefits they provide

Gift Trust

- Enables you to remove assets from your estate without being able to access the trust going forward.
- The gift will fall completely outside of your estate if you survive the transfer by seven years.

Loan Trust

- Enables you to freeze the ongoing IHT liability accruing to your estate as a result of increasing asset values.
- Future growth is immediately outside of the taxable estate and is available for the trust beneficiaries.
- An additional advantage of a Loan Trust is that you are able to retain access to all of the initial capital invested.

  For example: If **GBP100,000** is invested in a Loan Trust which grows to **GBP130,000** then the **GBP30,000** growth is outside of your estate, while you retain full access to the **GBP100,000** capital. If no action had been taken and the Loan Trust had not been set up, then the entire **GBP130,000** would remain inside your estate and be subject to IHT.

Discounted Gift Trust

- You can make a gift to the trust but also retain access to regular fixed payments from the trust fund.
- Often appeals to retirees who want regular tax-efficient payments and also wish to receive an immediate reduction to the IHT value of the gift made to the trust.

Making an investment in any of the trusts above will remove the need to obtain probate on your death.

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