BANQUE ERIC STURDZA

WEALTH PLANNING NEWSLETTER : THE CHALLENGES OF CROSS-BORDER PLANNING

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THE CHALLENGES OF CROSS-BORDER PLANNING

Personalised services have always been at the heart of Eric Sturdza Bank's proposition. In order to deal with increasingly complex situations, the Bank relies on its expertise in Wealth Planning to meet the ever more specific expectations of its clients. Wealth Planning is an essential part of our holistic approach. It allows us to get to know you, your family and your aspirations, above and beyond investment issues.

The mission of Wealth Planning is to walk you through a solution, which fits your personal circumstances and needs. In this process, we work closely with your tax and legal advisors and specialists such as corporate service-providers, accountants and trustees. While we do not provide tax or legal advice, our teams have selected and developed a network of renowned independent professionals with whom we can assist you if necessary.

Wealth Planning is at the crossroads of multiple disciplines: law, tax, economy, etc. For our future Wealth Planning newsletters, we will select themes which we believe are of interest to you. For this first issue, we have decided to illustrate the risks and opportunities generated by cross-border situations:

In a globalised world, with mobility of assets and persons, we are all exposed to the legal and fiscal systems of multiple countries. It can be through foreign investments or businesses, a secondary residence in a neighbouring country, or a family member having settled abroad.

Cross-border means complexity and challenges. Without careful planning, cross-border exposure may, for example, lead to a chaotic transfer of your wealth upon your demise, to attack against your assets by third parties, or to higher taxes. In this newsletter, we will also show how well advised families use their cross-border exposure to access opportunities unattainable in a domestic environment.

OPENING A BANK ACCOUNT ABROAD

Opening a bank account outside your home country, gives you access to more sophistication and to a richer palette of products and services. It is particularly true if you bank in Switzerland, a first class hub for the servicing of wealthy individuals. Your foreign account additionally enables you to mitigate your country and/or your currency risk.

On the other hand, opening a foreign bank account brings you in scope for rules different from those prevailing in a purely domestic environment such as :

- foreign exchange control rules
- special reporting duties
- automatic exchange of information under the CRS and FATCA legislation
- taxes in the bank location (stamp tax, VAT, etc.)
- process which applies in case of demise of the bank account holder

Understanding the rules prevailing where your foreign bank operates and their interplay with the laws of your home country is critical.

We would be delighted to help you assess the implications of a foreign bank account in your case and determine the best way to set it up in light of your needs: individual account, joint account, account in name of a legal structure, trust, etc.

BUILDING A DIVERSIFIED PORTFOLIO

In a globalised world, geographic diversification of the assets is good practice. This means that your portfolio includes securities from a wide range of countries and with it, the potential risk of additional taxation :

- When buying shares and bonds issued by companies outside your home country, you are exposed to cross-border flows of dividend and interest. For example, if you own a Swiss share, a withholding tax of 35% applies on the dividend unless you are eligible to an income tax treaty. The dividend received might additionally be taxable in your home country
- Some countries have enacted anti-tax haven rules - e.g. Belgium, France, Italy, Portugal -which penalize investments in low tax territories through punitive tax rates or onerous tax reporting obligations
- If your investment qualifies as “situs asset”, you may be exposed to gift or inheritance taxes when the asset passes to the next generation. If, for example, you own US shares in your name, upon your death, estate tax may apply in the USA and in your country of residence if you are not eligible to a gift/inheritance tax treaty

The main driver behind an investment is and should be its intrinsic economic value. Factoring the taxation of the investment has become critical though in a fiscally transparent landscape.

Each country having different tax rules, your portfolio should be built bearing in mind the rules defined by your country of residence and sometimes in accordance with the specific tax regime applicable to you in your country (e.g. “Resident Non Domiciled” in the UK, “Non Habitual Resident” in Portugal or lump sum taxpayers in Switzerland).

Selecting an investment protected by tax treaties, investing in collective funds established in tax neutral jurisdictions, avoiding toxic investments, acquiring situs assets through appropriate structures will lead to a higher after-tax return.

In order to take a holistic approach, we would be glad to coordinate with your tax advisors and our investment specialists, the implementation of investment mandates taking into consideration your fiscal constraints.

ALTERNATIVE RESIDENCE/ CITIZENSHIP

Covid has been as a wake-up call for many of us with the objective to improve quality of life. This materialises for some of us with a change or the desire to change the country of residence to enjoy a more robust health care system, a stronger education system, a healthier environment, or simply better weather conditions.

A cross-border relocation has wide reaching implications with questions touching on all areas of the family’s life. Maturing such a decision takes time.

Having a first conversation in this regard with your wealth planner will provide you with comparative jurisdiction overview, knowledge of what others are doing, key factors guaranteeing a successful move, etc.

We often see international families with members living around the world. Planning a smooth and efficient transfer of wealth in these circumstances requires sophisticated succession plans taking into consideration the laws applicable in the country of the deceased, in the country of the heirs and possibly in the country of investment.

For example, families with French or US children would respectively rely on life insurance policies or foreign trusts. US family members are particularly challenging for international families, as most financial institutions outside the USA are not licensed to provide investment advice to US clients. If you are in this situation or anticipate being, please note that we have in place arrangement to cater for situations with US nexus.

If you are concerned with protecting your loved ones in your home country, obtaining the right for them to live, study and work in another country is probably high in your priority list. Likewise, if you travel extensively and originate from a country subject to travel restrictions, acquiring the citizenship from a country with greater travel freedom might be a must.

Families, more and more, consider acquiring alternative residence/ citizenship as a must-have to diversify their jurisdictional risk. Numerous countries offer residence and citizenship through investment programmes. In Europe alone, Portugal, Italy, Malta, and many more offer attractive programmes. Several Caribbean Islands also position themselves in this niche. Finding your way in the multiple programmes is tricky. We are well equipped to walk you through the steps: providing you with a roadmap of the options, introducing you to specialists (i.e. immigration lawyers, tax advisors), accompanying you throughout your pre-immigration plan, and last, but not least, investing your account in accordance with the rules of your new country of residence.

FOREIGN OWNERSHIP STRUCTURE

Some of you own your (non-)financial assets through wealth structures. To name a few, French SCIs (partnerships) are popular to own real estate in France, Dutch or Luxembourg holding companies to own participations, or concentrated equity positions, trusts and foundations to organize complex succession of international families, private investment fund for sophisticated investors.

The drivers behind those structures are multiple: plan the sale of an asset, consolidate assets across asset classes, organize a smooth transition of the wealth to the next gen, enhance the protection of the assets, cement a family around a charitable project or values, etc.

In a fiscally transparent landscape, it should be taken for given that foreign structures will come under the scrutiny of the tax authorities. It is therefore of critical importance to review the structure on a regular basis and make sure it complies with the latest applicable laws.

According to our experience, many wealth structures have become obsolete, due to the recent enactment of anti-avoidance rules and the adoption by many countries of new standards in tax planning (e.g. BEPS, ATAD, MLI, DAC6, etc.). It is worth noting that under the pressure of the international community, offshore financial centers such as the Channel Islands, the British Virgin Islands, the Cayman Islands, no longer provide protection as they have started applying similar legislation to their structures.

Some of the wealth structures we see no longer bring any benefit. Sometimes they weaken your tax situation compared to what would apply in their absence, or even put your personal security at risk by forcing you to release sensitive data to corporate providers based in inadequately protected jurisdictions.

Nowadays, corporate structures are required to show adequate substance with staff on the payroll, dedicated office space, local management and local income generating activity. Substance is expensive and therefore not accessible to all.

New generations of wealth structures have also emerged. For example, tax neutral companies or trusts, which provide families with more flexibility with regard to their control and governance issues or life insurance policies, supported by the tax policies of many countries as they incentivize the long-term savings of their fellow citizens.

As wealth planners, we are here to assist you in the (re)structuring of your assets, by participating in brainstorming sessions with you and your advisors, introducing you to an expert in any particular structure type, or coordinating the implementation of a structure with the relevant service-providers (trustees, insurance companies, corporate service providers, etc.).

IN SUMMARY

We are product neutral and independent in our assessments. Our holistic approach is complementary to the laser focus advice of your tax and legal advisors. We bring to the picture the constraints, which apply to you beyond your borders.

Wealth Planning is part of the suite of services provided by our Bank. We hope this introduction will make you want to meet with our wealth planner. In the meantime, please feel free to email topics you would like us to cover in our future Wealth Planning newsletters. (c.martin-mathy@banque-es.ch)