Children who live overseas: the implications of Estate Planning

We live in a global world which has given South Africans opportunities to work and live abroad. What starts as a temporary ‘work and travel experience’ often becomes permanent as people, for whatever reason, settle down and decide to stay abroad indefinitely. As a result, many South African families have children who are living overseas.

This has estate and succession planning consequences and can complicate the ability to get assets in South Africa to heirs. These can be assets distributed from a deceased estate according to the Will or from the dissolution of a Trust.

Often the children have not formally emigrated and, until they do so, they will be regarded as ‘South African residents temporarily abroad’ by the South African Reserve Bank. They remain South African exchange control residents until they formally emigrate.

Inheritance

If formal emigration has not taken place, you should be aware of the exchange control requirements that need to be fulfilled before a South African inheritance can be transferred to a South African living abroad.

To obtain exchange control approval, the heir living abroad must obtain a tax clearance certificate from SARS. This can be a real problem, especially where children left South Africa many years ago and no longer have a tax reference number and/or a South African ID. To obtain a tax reference number you need an ID. Further, to get potentially many years of tax returns up to date with SARS can be onerous, to say the least.

The easier option is for the heir to formally emigrate by submitting the appropriate documents to the South African Reserve Bank. Formal emigration, also known as Financial Emigration, is the process which changes your financial status in South Africa from resident to non-resident. The status is recorded with the South African Reserve Bank.

The good news is that no tax clearance certificate is required for obtaining an emigration approval when:

· You have been resident outside South Africa for more than five years
· You have no South African assets other than the inheritance being externalised.

Although formal emigration may seem like a severe step, there is little downside. We do, however, suggest getting advice on possible tax implications before going ahead. Formal emigration does not affect your South African citizenship nor the right to retain your South African passport.

Wills

Having offshore assets and heirs living abroad does not necessarily mean an offshore Will is required. The need for an offshore Will is driven by the type of assets and where those assets are located, regardless of where your heirs live. For example, if your child lives in the UK, you do not need an offshore Will; but if you own a flat in London, you do.

There are many South African families who will be affected by this and I hope this article will create some awareness and forward planning. Conversations should be held between parents and their children, particularly where they have not placed their emigration status on record with the South African Reserve Bank. Dealing with this now rather than later will prevent frustration with heirs struggling to remit inheritance from South Africa to their country of residence. Expert advice is recommended as certain tax and estate planning implications can be complex.