Top Tax and Legal Considerations for Wealthy Families Going Global

By LAURA ZWICKER and STEFANIE LIPSON

In recent years, we have seen high-net-worth and ultra-high-net-worth families become, increasingly, "global citizens." As families and their assets touch multiple jurisdictions, a myriad of issues become especially important when living, working, and employing staff around the world. Among the issues that families and their team of professionals should consider:

TRUST PLANNING FOR MULTI-JURISDICTIONAL FAMILIES

Many wealthy individuals and families use trusts for gift and estate tax planning, succession planning, income tax planning, and privacy planning. However, while trusts and trust-like structures are used to varying degrees throughout the world, their recognition and tax treatment as well as the implications of a change in residence of a beneficiary, settlor or powerholder can often be unexpected to those used to looking at trusts through a purely U.S. domestic lens.

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RESIDENCY AND ACQUIRING NEW RESIDENCES INTERNATIONALLY

It is critical that wealthy individuals and families, along with their advisors, properly coordinate the acquisition of new homes, and understand the various tests used to determine whether an individual has become a tax resident in any jurisdictions in which the family has a home or spends significant time. While number of days present may play a role, often the family's connections to the jurisdiction (location of home, where children are in school, what clubs the family belongs to, where their businesses and advisors are located) may be more important than days of physical presence. Any double tax agreements (treaties) should be closely reviewed to understand application of the residency rules under the convention.

MARITAL AGREEMENTS AND MARITAL PROPERTY REGIMES

Premarital and postmarital agreements should be drafted to comply with the laws of the jurisdictions in which a couple is likely to live or own property, and should be revisited as a couple's life evolves and additional jurisdictions come into play. Even with an appropriate premarital agreement in place, if a couple moves to a civil law jurisdiction, such as France or Italy, certain additional elections can become necessary. Coordination with expert matrimonial lawyers across jurisdictions, both domestically and internationally, is imperative for proper planning.

PERSONNEL AND EMPLOYMENT ISSUES RELATED TO INTERNATIONAL STAFF

Wealthy families may employ staff for various personal and business needs, and, as a family crosses borders, it is often accompanied by staff. In addition to immigration issues, thought has to be given to whether the staff have permission to work in each country, whether any local employment tax withholding has to occur for services performed in each country, and the application of each country's employment laws to services performed. While accompanying the family for just a few days is unlikely to be problematic, appropriate employment advice should be taken for any stay longer than a few days to protect all parties.

PRIVACY AND SECURITY

In addition to physical and cybersecurity concerns, families acquiring assets outside the U.S. need to consider the information that must be disclosed to both public and private government registries depending on the structures selected to acquire those assets. Countries in the EU and UK have trust registries that require disclosures of certain information on the ultimate beneficial owners of business entities. Beyond compliance, families should consider the reputational risk of using absolutely appropriate and legitimate privacy structures that the media and general public might view as suspect. If the family's association with a privacy structure was to become a part of a data leak such as the Panama Papers or Pandora Papers, which would not distinguish between the appropriate use of these structures versus that for money laundering and criminal activity, there could be significant risk to a family's reputation.

It is now rare for wealthy families to be present and own assets in only one country. As families become increasingly global, appropriate planning and advice, especially when it occurs before establishing a presence abroad, will minimize tax costs, protect against risk, and safeguard the family's reputational and financial legacy.

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