

Reasons to place your confidence (and property) in trusts

Insights - 21/08/2017

Changes to the regulatory backdrop mean that the benefits – which were previously largely tax and confidentiality-based – for holding high value property assets in trust structures are no longer what they were. And yet, trust structures remain a popular vehicle for holding high value property – in this article, we consider the implications today in terms of tax, confidentiality, asset protection and succession planning, and why, amidst all of these changes, the interest in trusts remains the same.

Tax

Tax will always be a factor in considering whether or not to establish any trust, whether or not it holds property, and it also heavily influences the structure of the trust. However, many jurisdictions around the world are looking at how to increase their tax take or at least cut down on perceived loopholes which often means that trust structures come under closer scrutiny and are less likely to offer up much in the way of tax savings. In our experience, while tax planning is important and should not be overlooked, tax is no longer the driving force behind the formation of trusts to hold high-value residential property and settlors are now looking for "tax neutral" jurisdictions such as the Cayman Islands and Jersey.

Confidentiality

Confidentiality continues to be a major concern for a lot of high net worth individuals around the world and it is a subject that frequently influences how they structure the ownership of their homes and other properties. Trusts have historically been the most commonly used vehicle to help settlors who are concerned about their own security and that of their families and their property. This is quite frequently the case with families from regions including Latin America where families, justifiably, see kidnap and extortion as legitimate threats. Beneficial ownership registers are being established around the world, including in many offshore jurisdictions. Some of these registers, such as the UK's, will be publically accessible while others will remain available only to "competent authorities". The development of beneficial ownership registers is

likely to mean that the confidentiality benefits of all structures, including trusts, will be eroded over time but, for the meantime, trusts continue to be attractive to protect clients' security.

Asset protection

While the tax and privacy advantages of trusts to hold residential property are being reduced, the traditional benefits of private wealth structures continue to be attractive. Trusts are incredibly flexible and jurisdictions around the world compete to introduce more and better features to help clients achieve their goals whether that is reserved powers, purpose trusts or "firewalls". All of these features have asset protection benefits which mean that settlors have a lot of options that can help protect the family home from claims on divorce, from creditors, from forced heirship claims on death or from young or profligate children.

Succession planning

Succession planning is and will always be one of the main reasons that clients establish trusts, whether in their wills or during their lifetimes. A trust allows for the orderly transfer of wealth – including property assets – between generations and in a flexible manner that is not necessarily forced upon a testator by law. Specific directions can be given to trustees to ensure that, so far as possible, a family home is retained for future generations. As the trust fund is not owned by the settlor, it does not form part of his or her estate at death and consequently there is no need to go through a probate process with all of the expense, delay and distress that can cause.

Conclusion

One of the trends that has dominated recent discussion of trusts and their use is the increasing shift towards bespoke and high value structures, along with a shift in the driving motivation of settlors towards succession planning and asset protection, away from concerns over tax and confidentiality. With property, as with all other assets, trusts remain a flexible and practical tool for achieving these aims, and are likely to continue to do so.

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