



Cross-Border Estate Planning

Cross Border Planning for individuals becomes important when assets and income are split between two or more jurisdictions. If you are a foreign resident, married to a foreigner, have international sources of income, or have assets in a another jurisdiction, Cross Border Planning may be necessary to avoid unforeseen harsh Inheritance Tax consequences.

Anytime foreign laws are introduced into a plan, complexity is an inevitable outcome because contradictory legislation must be accounted for. Because laws are so different in the international arena, planning in advance becomes very important in order to meet one's goals, take advantage of opportunities and avoid nasty surprises along the way.

International Estate Planning is quite different from domestic estate planning and involves diverse analysis.

- Domicile Planning
- Last Will and Testament
- Planning for One or More Situs Wills
- Conflict of Law Analysis
- Tax Treaty Analysis
- Domiciling Assets:
 - ▶ *Portuguese Nominee Companies* for Real Estate
 - ▶ *Portuguese Nominee Company* for Investment Portfolios

What is International Estate Planning?

International Estate Planning involves connections between different countries. These connections typically arise when a citizen of one country resides in another country, owns property abroad, or has beneficiaries such as a spouse, children or other beneficiaries who live overseas.



All modern societies regulate the typical events in a human's life: Birth, death, marriage, divorce, bankruptcy, and the passing of property at death. Regulations differ, adding complexity to any planning across borders: who is entitled to assets? how much can a taxing authority claim? Legal definitions of seemingly identical terms differ. Formalities for the legal validity of typical estate planning documents like wills or trusts differ. The legal structures by which nations have attempted to build predictability into the international system of resolving cross border disputes are a patchwork of conventions, treaties, and conflicting court opinions which frequently change. Some governments and their currencies are unstable.

In the face of these changes and conflicts, an international estate planner is expected to effect the clients wishes for the distribution of assets, lessen red tape such as probate and administration costs, minimise taxes, and look into the future and predict the outcome of a client's distribution scheme by planning for unforeseen events.

If I have assets in several jurisdictions, which one will control the disposition of my assets?

Whatever jurisdiction is faced with this issue will first characterize the property as real property or personal property. Jurisdictions may use different terminology like immovables or moveables. The concepts are similar but not identical. The real property is almost universally governed by the law of the location (called *situs*) of the real property. The personal property will generally be determined by the law of the final domicile of the deceased.

Can I have more than one will?

Yes. In international estate planning, persons with assets in multiple jurisdictions can and often should have a will in each jurisdiction where assets are located. Frequently, a Will is made for the country of domicile and a second Will made in another where an asset may be located. Assets separate into two categories - domiciliary assets and non-domiciliary assets. This is done for confidentiality reasons, to speed up the probate process, and to save taxes. When utilizing multiple Wills, drafting must be carefully coordinated to avoid inadvertent revocation in other Wills and contradictory clauses must also be eliminated.



If I do not wish assets to go to certain family members, are there ways to prevent this?

Yes. there are still a number of methods for circumventing succession laws: removing assets from the jurisdiction whose succession laws frustrate the testator's intent; gifting and sale of the assets are other ways of dealing with the problem. Because Portugal applies the principle of Territoriality - limiting the scope of its laws to within its borders - the use of foreign trusts is an excellent vehicle for avoiding unwanted consequences of forced heirship where inheritance is a right of the heir rather than wish an individual.

Can I give up my domicile of origin and establish a “domicile of choice” in Portugal?

Yes. If it is your sincere intention to live our your days in Portugal and you are willing to restructure your affairs appropriately, you may well be able to take advantage of one of the major tax benefits available in Portugal: no Inheritance Tax when succession is to immediate family members. See our Leaflet nº 2, “*The 12 Badges of Domicile*”.

What is the role of trusts in international estate planning?

A trust arises when one person transfers property to another person, the trustee, who holds legal title to the property, for the benefit of another person, the beneficiary. The benefits from the trust are split from the ownership of the assets. The trustee is bound by law to fulfill the provisions of the trust with a high degree of loyalty and prudence (fiduciary duty). A trust can be a very useful device in international estate planning, but most civil law countries do not recognize trusts.

While Portugal does not formally recognise trusts (except within the free trade zone of Madeira), it does have a similar long-standing structure called “*Sociedade Civil de Simples Administração de Bens Próprios*”. The translation is quite simple: a civil company is a non-commercial company where the directors administrate the assets to the benefit of the shareholders, just as in a trust.

The role of the administrators is rigorously defined and enjoys the similar essential fiduciary relations as the trustees do in a trust. These administrators



are subject to public registry but not the shareholders so this structure also enjoys a degree of confidentiality as occurs in most trust arrangements.

- ▶ A Nominee Company provides a vehicle to manage assets professionally
- ▶ A Nominee Company can be another way of disposing of assets. If title to assets has already been transferred into a Nominee Company prior to death, the structure can avoid the expenses and burdens of probate, possibly in multiple jurisdictions
- ▶ A trust can be used to collect assets from various jurisdictions and provide one structure to hold and manage assets.
- ▶ Nominee Companies can have provisions for the administrator to manage a person's financial affairs if a disability strikes
- ▶ Foreigners who use Nominee Companies can circumvent their country of origin, citizenship, or nationality's estate or income tax laws through the utilisation of these structures
- ▶ One can have multiple Nominee Companies to hold different assets or for differing purposes.

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