

# GLOBAL WEALTH, LOCAL LAWS: WHAT EIGHT INTERNATIONAL ESTATE PLANNING ISSUES SHOULD HIGH NET-WORTH INDIVIDUALS CONSIDER?

This article discusses eight issues that are important to consider when planning an estate that contains international assets.

Stefan Dunkelgrun

More high net-worth individuals own property in more than one country than ever before, which requires consideration when planning an estate. Traveling has become so easy that many people don't think about how laws vary by country, particularly when it comes to property ownership and estate planning.

Each country has jurisdiction over assets within its borders, and each country has its own laws regarding inheritance, taxation, and property rights. Additionally, just like each state in the U.S. may have different laws, some countries may have regional differences as well.

The international traveler needs to be aware of how those laws may impact their own plans. Here are eight things to consider when planning an estate with international assets.

## 1. INTERNATIONAL LAWS AND JURISDICTIONS

Fundamentally, there are three main legal systems in the world: (1) common law that we use in the U.S. and that is prevalent in the countries of the former British Empire, like Australia and Canada; (2) civil law, which is used in all other European and South American countries; and (3) religious law, particularly Islamic law in North Africa and the Middle East (although there are still regional differences). Many countries, particularly China, India, and most of Africa, supplement customary laws and traditions, or may use a combination of different legal systems.

It is important to ensure that any estate plan consider the different requirements, restrictions, and procedures in the different jurisdictions where someone has assets.

## 2. VALIDITY OF WILLS AND TRUSTS

There is an international convention on wills, which has been ratified by 13 countries

and signed by another seven, including the U.S. However, in the U.S., the validity of a will is a matter of state law, not federal law. Each state has different requirements as to the validity of a will – for example, some states accept a handwritten and some do not. Most states will accept a will that is valid in the jurisdiction where it was created if it is in writing and signed by the Decedent. Many other countries will likewise accept a will that was validly executed in the U.S.

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Many attorneys side-step the issue by advising the use of separate wills for each country, such that the U.S. will only covers U.S. assets, and the will in the foreign country only covers the assets in that country. Care must be taken to ensure that one will does not accidentally invalidate or override another will, as it is standard practice for a will to invalidate all other wills.

Trusts are becoming more and more popular as an estate planning tool, and most common law jurisdictions have dedicated trust laws. Additionally, more and more other jurisdictions, while not having their own dedicated trust laws, have statutes that govern trusts created in other countries. For example, a trust cannot be validly created under the laws of Switzerland, but

Swiss law recognizes and regulates trusts that are created in another country.

## 3. SUCCESSION LAWS

Even in the U.S. regional differences can ruin an estate plan, such as Florida's strict homestead law or Community Property rights in California and Texas. Those same issues are amplified internationally, especially in jurisdictions with forced heirship rules, such as many South American countries, or the ordained shares in many Islamic countries.

While in the U.S. most people believe that we can leave our assets to whomever we want, that isn't entirely true, as state laws generally have provisions for minor children and a surviving spouse may be entitled to an elective share. Most other countries are more restrictive, dictating the manner in which a part (or all) of your assets must be distributed. In many South American countries half your assets are spoken for and under Islamic law 2/3rd of your assets must be distributed according to specific shares.

In jurisdictions that recognize trusts, it may be possible to sidestep any forced heirship laws by having the trust own property, while in jurisdictions that do not recognize trusts sometimes a corporate structure can help.

## 4. REAL PROPERTY

Depending on the situation, there may be a difference in treatment between financial accounts, moveable property, and real estate, and particularly restrictions on ownership of real estate. Most countries in Southeast Asia do not allow foreigners to own real estate, Australia essentially limits

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foreigners to new construction only, and in many parts of Switzerland there is a limit to the number of foreigners who can buy property. Some other countries allow for temporary ownership, such as a 50-year bank trust in Mexico's restrictive zone or a 99-year lease in Egypt.

While such workarounds may work for the buyer, anyone who owns property in a country that restricts property rights should find out what the implications are for their heirs.

Note that this doesn't only apply to foreign countries but may also apply on tribal lands within the U.S., and there are approximately 100 land-lease buildings in New York City.

## 5. ASSET PROTECTION AND LIABILITY

Assets held abroad may be safer than assets held at home, or they may be at greater risk.

Some countries are known for their friendly asset protection laws and are used to safeguard assets from potential risks. Jurisdictions like Belize, the Cook Islands, Lichtenstein, and Nevis are often used to safeguard assets that might otherwise be at risk, thanks to friendly laws relating to bankruptcy protection, foreign judgments, fraudulent transfers, and more.

However, some countries are particularly corrupt, and you may lose your assets to criminals, local officials, or the government itself.

U.S. citizens and permanent residents need to file tax forms with the IRS to notify the government of any assets held abroad, including assets held in trusts.

## 6. TAX PLANNING

Nobody wants to pay more taxes than absolutely necessary, yet without proper planning people with assets in multiple countries may find themselves with unexpected tax bills. U.S. income and estate taxes apply to a citizen's income and assets held anywhere in the world, while most other countries only tax income and assets held within their borders. While the U.S. has treaties to avoid double taxation with most countries, there can be significant differences in how some assets and transactions are treated, which can lead to unexpected results. For example, while the U.S. has a relatively high estate tax rate, there's also a high exemption, whereas a lower estate tax rate may be applied to more assets in another country. Or a country could have higher income tax and lower capital gains tax rates.

## 7. DUAL CITIZENSHIP, NONRESIDENT ALIENS, AND LAWFUL RESIDENTS

In addition to all the above, countries may have different laws that apply to citizens, nonresident aliens, and lawful residents. The U.S. Tax Code certainly makes that distinction. Anyone who is a dual citizen, resides in another country, or has assets in another country, needs to be mindful of what rights and obligations they have.

## 8. FEDERAL ESTATE TAX

When a U.S. citizen or resident alien passes away, the Federal government requires that estate taxes are paid on the estate. There is a lifetime exemption, so the first \$13.61 million of assets (in 2024) is not taxed, only the excess is taxed.

Furthermore, assets passing to a citizen spouse receive a marital deduction, so that the assets passing to the citizen-spouse are not taxed. However, this does not apply to a spouse who is not a citizen, even if they are a permanent resident.

While assets passing to a non-citizen are not exempt from the estate tax, the tax can be deferred, by setting up a Qualified Domestic Trust (QDOT). Essentially, no estate tax is paid on assets transferred into a QDOT, but the estate tax is payable when the assets are distributed from the QDOT. ■