



OFFSHORE TAX PLANNING

Anton Maskowitz, Fiduciary and Tax Specialist

- 
1. US and UK rates
 2. Situs assets
 3. Asset Swaps
 4. US Considerations
 5. Why a wrapper works
 6. Dry Trust mechanism
 7. End



UK & US INHERITANCE / ESTATE TAX RATES

UK	US
DTA (estate duty) between SA and UK	DTA (estate duty) between SA and US
UK situs equities held by foreigners subject to flat 40% inheritance tax if exceeding NIL rate band (GBP 325,000.00)	US situs equities held by foreigners (non-resident aliens (NRAs) subject to sliding scale of 26 - 40% inheritance tax if exceeding \$60,000 (40% when US situs assets exceeds \$1,000,000)
Assets left to spouse double exemption on last dying i.e. GBP650,000 (same as our s.4A-abatement)	No special exemption applies, unless spouse is US citizen
SA will generally give credit up to max 25% Result = 40% UK inheritance tax	SA will generally give credit up to max 25%
Result = 40% UK inheritance tax	Result = up to 40% US inheritance tax

SITUS ASSETS FOR SA INVESTORS

UK AND US SITUS BY ASSET CLASS

ASSET CLASS	UK	US	UK COMMENTS	US COMMENTS
Fixed property	Yes	Yes	Built on UK soil	Built on US soil
Equities (public and private)	Yes	Yes	Share register kept and maintained in the UK	Qualifies as US corporation
Bonds (debt instruments)	Yes	Yes	Broadly, if issued by UK company as above	Broadly, if issued by US Corporation as above (certain publicly traded bonds and treasuries are excluded)
Collective investments schemes (CISs)	Yes*	Yes	As for equities, typically if fund is domiciled in the UK, but excludes authorised unit trust funds and open-ended inv. companies	Qualifies as US corporation, typically if fund is domiciled in US
Cash in bank account	Yes	No	Only GBP held in a UK bank account	Will be US situs if held in brokerage account
American depository receipts (ADRs)	Yes	No	UK situs if ADR is on UK equities	No (IRS Confirmed)
Exchange traded funds (ETFs)	No	?	Not UK situs asset to extent that the issuer is not situated in the UK	Obtain confirmation from the issuer of the ETF & Care when US Listed ETF's

* Guernsey, Jersey, Isle of Man and Ireland (EU) are NOT part of the UK
 Holding assets via an offshore nominee or custodian DOES NOT prevent assets from being considered situs assets

WHAT ABOUT ASSET SWAPS FOR INDIVIDUALS

DEPENDS ON INSTITUTIONAL INVESTOR'S MECHANISM

④ ASSET SWAP FUNCTION PROVIDED "ON" BALANCE SHEET

- Typically all SA unit trust funds with offshore exposure
- Asset is SA issued unit and no direct ownership in offshore assets
- CGT calculated in ZAR value of Unit
- Banks & Insurance Companies: if assets are held on balance sheet, then
- For bank assets, it typically constitutes a debt similar to a deposit and Insurance companies a contractual claim
- Is asset is at risk e.g. if Bank/Insurance company fails, **then likely to be "on" balance sheet**
- Under such circumstances UK & US situs rules typically do not apply.

④ ASSET SWAP FUNCTION PROVIDED "OFF" BALANCE SHEET

- Typically most brokerages/investment managers
- Client money typically held in nominee separate from **service provider assets i.e. "off" balance sheet**
- SARB requires endorsement on foreign assets held by nominee under asset swap arrangement
- Funds can only (for Excon purposes) be paid to client in ZAR
- Beneficial ownership held via nominee however remains vested in client
- SARB endorsement is purely administrative
- Therefore normal UK and US situs rules will apply.

US CONSIDERATIONS & RECENT PRESS RELEASES

- ④ Seem to suggest that US situs rules can “in practice” be ignored
- ④ Risk not only on executor appointed in the Will, but also on institution holding US situs assets
- ④ Definition of executor as contained in s.2203 of the US Tax Code states the following:

*“The term “executor” wherever it is used in this title in connection with the estate tax imposed by this chapter means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.
(own emphasis added)*

- ④ Therefore, in the absence of the executor appointed in the Will appointed, qualified and acting in the US, the institution holding the assets i.e. the relevant financial institution via its nominee would be treated as the executor commonly referred to as the “**statutory executor**”.
- ④ S.2002 of the US Tax code, specifically provides that the liability for paying estate tax sits with the executor.
- ④ On this basis it is important that institutional investors at least familiarize themselves with the potential risk associated with holding US situs assets on behalf of clients.

WHEN A WRAPPER WORKS...

④ SA

- Tax (arbitrage) paid within (section 29A)
 - 12% CGT and 30% income
- No CGT in individuals hands (para 55 of 8 the Sch.)
- Effective tax administration
- Creditor protection
- Estate dutiable (section 3 of Estate Duty Act),
 - but no executors fees (unless pays to the estate),
 - and falls outside the SA estate administration process

④ Offshore

- No US or UK estate tax or inheritance tax
- Unlimited offshore investment spectrum (equities, funds, bonds, ETFs etc.)
- No offshore probate required
- Not necessary to deal with in terms of a will (local or foreign)
- Nomination for ownership or proceeds
- Seamless transfer to next generation
- First step as a multi-generational estate planning tool

WHEN IT MAY NOT CONTINUE TO WORK!

- ④ Plan-holder emigrates from SA
 - ④ New resident country may impose different taxation rules of foreign insurance products
 - ④ Wrapper remain subject to SA tax s.29A,
 - ④ Could give rise to double taxation
- ④ Beneficiaries are resident offshore
 - ④ **Proceeds/transfer of ownership etc. at death can be treated as “death benefits” from a foreign insurer and potentially taxed as income e.g. UK.**
- ④ US Citizens or Green cardholders living in SA
 - ④ FBAR and FATCA reporting
 - ④ **PFIC Rules observed and IRS can potentially “look through” wrapper**
- ④ CRUCIAL that formal tax advice is sought in advance prior to a plan holder relocating abroad or where beneficiaries may be residing abroad.

DRY TRUST/GGLP COMBO – STEP BY STEP

SA Client is settlor and establish full discretionary offshore trust in Mauritius



- Only trust asset is funds held in bank account
- Funds donated to trust in terms of R100,000 donations tax exemption
- Settlor and beneficiaries are all SA residents
- NB, if settlor or any beneficiary may potentially relocate abroad, additional tax advice must be sought in advance
- Reduced fee arrangement

Client invests in GGLP with authorized offshore funds



- Client is owner of GGLP
- Client, spouse and children are atypically life assureds
- Mauritius Trust is noted as beneficiary (ownership and proceeds)

On death of client (as owner), GGLP ownership transfers to trust and trust becomes subject to normal trust fee scales



- Estate duty will be payable, but not CGT
- Once the GGLP is owned by the trust, trust assets can be restructured (this will trigger CGT in terms of s.29A) but resulting in no further SA taxes being applicable for the spouse or beneficiaries unless future distributions are received
- Proceeds received from GGLP can be distributed tax free to SA resident beneficiaries (para 80(3))
- In case of sovereign risk, GGLP can be donated to trust prior to death, but donations tax will be payable

The background features several overlapping, semi-transparent curves in shades of gray. A prominent blue dot is located at the intersection of two of these curves. The text "Thank You!" is centered in the lower half of the image, with a thin vertical line positioned below it.

Thank You!