International Tax Planning & Succession Planning-Part 2

EWP, (Expanded Worldwide Planning) and Succession Planning

Part 2

Private Placement Life Insurance (PPLI) in Action

PPLI: The Best Tool for the Job—Part 2

A PPLI policy is not a uniquely civil-or common-law creation. Its treatment in law is more uniform than planning solely with entities like trust, foundations, and LLCs. The unique design of a PPLI policy can greatly assist in a move between ***civil-and common-law jurisdictions***.

This can be done without the requirement of a will or trust. Upon death of the insured person(s), the value of the *PPLI policy* plus any death benefit is paid directly to the beneficiaries listed in the policy, and separate from probate.

If a PPLI policy is held by an entity, such as a trust, that is compliant in the beneficiary's country of residence, tax deferral and investment flexibility can still be preserved, even if the trust is disregarded as a foreign entity.

Gift and estate planning for life policies frequently involves establishment of a specially structured insurance trust for the benefit of a spouse and/or children and descendants. The trust acquires the policy with the premiums being contributed to the trust by the settlor/insured. In this manner, the death benefit would be paid to the trust free of estate taxes rather than going outright to the surviving family members after the payment of estate taxes.

PPLI policies also could invest in **PFICs** without creating adverse tax consequences. From a US perspective, US persons should generally be aware that most non-US collective investment vehicles will be classified as PFICs for US purposes and subject to adverse tax charges upon generating income and gains.

Unwelcomed Complexities by Country

The laws of succession and inheritance vary widely by country. By reviewing the laws of France, China, Russia, and Saudi Arabia, we give you a sampling of the complications faced by wealthy international families throughout the world. Image a family that might have family members and assets in several of these countries, and the daunting task of settling their estate.

France

Before the Napoleonic Code, France did not have a single set of laws; law consisted mainly of local customs, which had sometimes been officially compiled in "custumals" (*coutumes*), notably the *Custom of Paris*. There were also exemptions, privileges, and special charters granted by the kings or other feudal lords. During the Revolution, the last vestiges of feudalism were abolished.

France's Napoleonic code dictates how your assets must be distributed on your death. The key points are:

- For French residents, succession law applies to worldwide assets (excluding real estate outside France).
- For non-residents, French real estate is subject to the succession law rules.
- Assets do not automatically pass in accordance with your will.
- Children are protected heirs, inheriting up to 75% of your estate.
- Spouses are not automatically protected.
- You can use the EU succession regulations, termed Brussels IV, to opt for the succession law of your nationality instead of French law.

Brussels IV has been in place since August 17, 2015. Its intention was to simplify issues relating to succession across the EU. The objective of Brussels IV is to ensure that only one country's laws apply to the deceased's estate. The laws of the country in which a person is habitually resident at their death will apply to them unless they have made a declaration during their lifetime.

Brussels IV gives residents in EU countries (with the exception of the UK, Denmark and Ireland) a single set of rules which govern the jurisdiction and applicable law in succession law matters. The new rules look primarily to the deceased's place of habitual residence, but an individual may elect that his succession should be governed by the law of his nationality (whether or not he is a national of an EU member state). The new rules also introduced a European Certificate of Succession, aimed at facilitating the administration of cross-border estates.

China

Unlike common law countries, China possesses few legal instruments for processing a solid estate plan. But because China does not levy estate or inheritance tax, nor does it collect a gift tax, there is less demand for estate planning, which tends to focus on tax savings. However, family business succession is looming large in China, with many first generation entrepreneurs approaching retirement.

Under Chinese inheritance law, when a valid will is made, it is generally respected. So these estates pass to the beneficiaries designated in the will. When a person dies without having a valid will in place, the estate passes to heirs under the statutory succession rules.

China has a limited forced heirship regime under which dependents of the deceased are entitled to succession to the extent that they otherwise cannot support themselves, for example, those who are unable to work and have no source of income. As such, a family trust may be liable to forced heirship claims against trust assets.

Under the Chinese statutory succession rules, the first half of the estate is distributed to the spouse of the deceased as community property. The rest is distributed to the spouse, the parents and the children of the deceased in equal shares. The limited forced heirship regime cannot be avoided. All the assets, including those received by beneficiaries in other jurisdictions, are taken into account for the forced heirship regime.

For statutory succession purposes, the succession rules of the habitual residence of the deceased at the time of their death will apply, unless the asset is a real estate located in China where the Chinese succession rules will automatically apply. This can be avoided by making a will by the foreign national.

In the absence of a will, Chinese statuary succession rules apply to the deceased's real estate in China even if the deceased is a foreign national. Chinese laws do not recognize the doctrine of *renvoi*. By invoking *renvoi,* the court could rule that the law of another country would be the most appropriate law to apply in this case.

There are no other taxes on death or lifetime gifts unless the gifts would be deemed as a transfer of assets, for example, gifts of shares or real estate between non-family members, in which case the individual income tax on deemed gains will be imposed on the transferor.

Russia

Russian inheritance laws cover everyone who is domiciled (i.e., has his or her usual place of living, but not necessarily his or her nationality) in the Russian Federation, and also covers everyone including foreigners who own property in the Russian Federation.

Minor and disabled children of any deceased person domiciled in Russia, disabled spouse and parents, and any disabled dependants of the deceased must inherit at least one-half of the share each of them is entitled to inherit by law, irrespective of any testamentary provisions.

There are two types of inheritance: testamentary inheritance (when there is a will of a deceased) and intestate inheritance (in the absence of a will of a deceased and in other statutory cases). The deceased's estate incorporates the items and other property the deceased owned as of the date of the opening of the inheritance, including property rights and liabilities. Rights and liabilities inseparable from the personality of the deceased (e.g., rights to alimony), personal incorporeal rights and other intangible assets are not included in the estate.

If no provisions are made in prospect of death, a complex statutory order of intestate inheritance is applied to all persons covered by Russian inheritance law. The heirs-in-law (individuals only) include children of the deceased, his or her spouse and parents, brothers and sisters, other relatives and disabled dependants of the deceased.

The tax on the assets transferred through inheritance or donation that previously existed, was abolished effective January 2006. Alongside the abolishment of inheritance and gift tax, personal income tax applies in certain instances where individuals receive gifts.

In certain cases, individuals receiving income through inheritance may also be subject to personal income tax as a regular taxable income. There is no inheritance tax in Russia. There is no gift tax in Russia, although in certain cases personal income tax may be levied. There is no real estate transfer tax in Russia, although in certain cases personal income tax may be levied. There is no net wealth tax in Russia.

Russian tax residents are taxable in Russia on their worldwide income, generally, at a 13% tax rate (including, but not limited to, gifts in various forms and inheritance in special cases). For some types of income, such as dividends and material benefit, different tax rates are applied. Russian tax nonresidents are taxable only on their Russian source of income at a 30% tax rate on most types of taxable income (including, but not limited to, income earned in Russia).

There are currently no estate tax treaties between the Russian Federation and other countries.

Saudi Arabia

To understand the basis for Islamic inheritance law, you will need to be familiar with inheritance laws in Arabia pre-Islam. The sole inheritance was given to the *asaba* (male relatives) of the deceased. The surviving male relatives inherited in order of family position; the son superseded the father, the father superseded the uncles and so on.

Islam has kept the position of the male inheritance principals, but with slight modifications to give women more security. Pre-Islam men inherited, but were not required to care for the females in their families with the inheritance; Islam encourages the opposite. In Islamic Inheritance, the male inherits twice that of the female, but is encouraged to care for the single women in his family from it.

Inheritance between non-Muslims is governed by the will, which has to be registered with the Shariah Court, or witnessed by two adult Muslims. Non-Muslims cannot normally inherit from Muslims and vice versa, but if there is a will which applies to less than 30% of the estate, that portion of the estate can be transmitted across religious lines. There are no inheritance taxes in Saudi Arabia.

Saudi Arabia is governed by **Shariah Law**, which is a religious law that is based on the Quran and the teachings and practices of the Prophet Mohammed (the Sunna). It was borne out of the Islamic tradition governing all aspects of life. It regulates all of human activity, national and international, public and private, criminal and civil and is applied by courts.

Ultimately, Shariah Law has its own standards in resolving and enforcing sanctions on various cases. As such, in cases of estate settlement, inheritance and wills, certain rules apply. These cases take into consideration the allocation and distribution of shares/properties specified by the defendant or deceased to his family, company and others, following the rules of Shariah Law.

With regard to the law of inheritance, the Quran specifies that fixed portions of the deceased's estate must be left to the so-called "Quranic heirs". Generally, female heirs receive half the portion of male heirs. A Sunni Muslim can bequeath a maximum of a third of his property to non-Quranic heirs. The residue is divided between agnatic heirs.

Conclusion

Wealthy families frequently hold second passports, and have homes in foreign countries. Over time, family events like death, separation, and remarriage complicate estate plans. All of these factors can dissipate family assets.

Life insurance is recognized in almost every country worldwide as a safe, straightforward, and simple wealth transfer vehicle. The use of PPLI only adds to the benefits, since in a properly structured PPLI policy almost any asset can be held.

A PPLI policy passes assets directly to intended beneficiaries and keeps family wealth intact, giving families the maximum amount of privacy, asset protection, and tax efficiency. Contact us today to find out how your family can benefit from this unique blend of life insurance and asset structuring.

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