

Beyond Borders: What to Know Before Diversifying Wealth Globally



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Many of the families we work with consider acquiring foreign assets at some point in their lives. Circumstances and motivations may vary – a vacation home, a foreign investment opportunity, the cross-border expansion of an operating business, or a sense of security from jurisdictional diversification. However, cross-border wealth ownership creates complexity in the form of exposure both to the laws of a foreign country and to the U.S. cross-border reporting and tax regime.

In Pathstone's experience helping clients navigate these complex issues, we have found that proactive planning is essential in cross-border matters – "an ounce of prevention is worth a pound of cure" given the magnitude of potential consequences. In this note, we outline some of the key issues to consider before deploying capital in a foreign jurisdiction, whether acquiring assets, forming entities, making gifts, or establishing residency or citizenship abroad. We also highlight the importance of engaging expert tax and legal guidance well before any business or financial engagement in a foreign country.

LAWS, REGULATIONS, AND WEALTH PLANNING CONSIDERATIONS

The laws, regulations, and planning considerations regarding cross-border wealth structuring are highly technical. Also, rules that feel familiar in the U.S. – from the common-law foundation of our legal system, to legal recognition and tax treatment of trusts and LLCs, to when and how assets and income are taxed, to the right to dispose of property when and how we see fit – may differ in other countries. Below are some of the key legal, tax, and regulatory questions to consider:

- **What is the legal system in the foreign jurisdiction?** How does it affect issues of asset ownership, inheritance, wealth structuring, and taxation? Are there constraints on one's rights to decide how their estate can be distributed? Is separate or supplemental business or estate planning required or recommended?
- **What are the local rights and duties** that accompany asset ownership? Is insurance readily available?
- **What is the system and rate of taxation** in the jurisdiction? Is withholding required? Is there a tax treaty between the foreign country and the U.S.? Will the asset be subject to foreign capital gains or death/estate/inheritance tax?
- **What legal, tax, or regulatory filings are required** in the foreign jurisdiction? With whom will information be shared? Will information be available as a matter of public record?
- **Are there other administrative considerations** as to investment or treasury operations? Are local financial institutions able and willing to create accounts for U.S. persons or U.S.-affiliated entities? What is required to transmit funds into or out of the country? What is the timing and information required to open and transact on offshore accounts? Are investment options limited by U.S. or foreign legal or tax considerations?
- **What legal, tax, or regulatory filings will be required in the U.S.?**
 - Owners of foreign bank or financial accounts may be required to file an annual disclosure.
 - Owners of interests in foreign business entities may face additional reporting, withholding, or tax on income derived from passive foreign investment companies (PFICs) or controlled foreign corporations (CFCs).

- U.S. beneficiaries of foreign trusts face additional reporting requirements and may be exposed to additional taxation, particularly if care is not taken with respect to distributed and undistributed net income.

Acquiring assets in a foreign jurisdiction may create a significant administrative burden: multiple, sometimes conflicting legal and regulatory systems; both up-front and ongoing costs for legal and tax advice as to structuring and administration; and compliance risk when evaluating the desirability of acquiring and holding foreign assets. Penalties for non-compliance can be severe and may include criminal sanctions for willful or repeat offenders.

Care must be taken to ensure the rules of both the U.S. and the foreign country are considered and ownership structures are harmonized across all jurisdictions. Any entities must be maintained with skill and diligence and typically involve professionals experienced in cross-border administration. Establishing foreign residency or citizenship, whether intentionally or otherwise, and particularly expatriation from the U.S., comes with yet additional considerations.

SUGGESTED NEXT STEPS

Before making cross-border investments, it is important to be prepared for the complexity and potential risks involved. We encourage seeking advice from legal and tax advisors with expertise in cross-border practice well before any business or financial engagement in a foreign country. We also encourage retention of local counsel in the foreign jurisdiction to advise on local law matters, especially concerning real estate acquisition and ownership. Many practitioners have developed expertise in cross-border planning between the U.S. and a specific country or region. During both the planning phase and ongoing administration, we encourage you to have an ally working on your behalf to coordinate with the right professional resources.

Pathstone is able to provide tailored guidance on diversifying wealth across borders, which may include referrals to professionals qualified to provide appropriate services.

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