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Things to do while in isolation at home

Howard Bilton, the Chairman and Founder of The Sovereign Group, shares his insights on how to make the most of the time being spent in isolation as the world locks down in the face of the COVID-19 epidemic, drawing attention to the crucial considerations we should be contemplating, such as tax planning, estate planning, succession planning, and more.

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These are unusual times. Many are working from home and have more time on their hands than anticipated. But the title refers to using this time productively by tackling those jobs that have been put off indefinitely rather than getting your home office and household properly organised.

Most people prefer not to think about their own mortality, but the current COVID-19 crisis has made that impossible. It is estimated that over 50% of people do not have a will and have made no plans regarding their estate. This leaves their loved ones vulnerable and unprotected. Surely now is a good time to sort that out?

For UK expats this is particularly important. UK domiciled persons remain liable to UK Inheritance Tax (UK IHT) at a rate of 40% of the total value of their worldwide estate after lifetime allowances of around GBP325,000. The tax is penal but to some extent is voluntary. It can be planned out.

Most UK expats will remain UK domiciled even if they have lived abroad for many years. They may also be liable to estate taxes in their country of residence and will almost certainly have assets which are liable to be charged to estate duties in their country of situs. Without planning all three could bite and wipe out the entire value. With proper planning all three could be eradicated. With no planning they will not be.

Any person born in the UK and whose parents are UK nationals will almost certainly have a UK domicile of origin. It is difficult to lose that. If a UK domiciled person moves abroad and intends to remain there forever, they can acquire a new domicile of choice in their new country of residence. The only legal test is one of intent. If that person has no intention of ever leaving their new home, they will be domiciled in that new place. That intent needs to be evidenced by doing all the normal things that a person would do if they have established a new permanent home i.e. buying a house, taking out permanent residency or nationality, possibly marrying a local, joining local clubs, cutting ties with the UK and generally arranging ones social and economic life in the new country. Many UK expats settle in a new country but always intend to return home eventually. They all remain UK domiciled and therefore all remain subject to 40% IHT on the value of their worldwide estates.

Before any estate plan can be put into place it is important to establish where that person is domiciled so this is always the starting point for any UK nationals. This is a tricky area and specialist advice including UK Counsel's opinion is strongly recommended if not vital.

If the person is not UK domiciled, he may still have estate duty issues in his country of residence or the place where the assets are situated.

Those who are not UK domiciled can freely and without tax consequence transfer assets into trust. This is strongly recommended as if plans change and the UK national moves away from their new country, they will automatically revive their UK domicile of choice and be subject to UK IHT on their worldwide estate again. However, the assets transferred into trust will generally not be subject to this charge as they no longer form part of their estate. Thus, a trust can ensure that UK IHT does not bite irrespective of changes of circumstance and moves to other countries.

A trust also provides a very effective mechanism for organizing a person's estate while they are still around to do so. The only other alternative is a will. The two are not so dissimilar. Setting up a trust involves transferring your assets to trustees who deal with those assets according to the terms of the trust deed. With a will, assets are transferred on death to executors who then deal with those assets according to the terms of the will. One way or another, assets have to be transferred to third parties who have to be trusted to deal with the assets as laid down in the written instrument. The disadvantage of the trust is that you lose control of your assets during your lifetime and pay annual fees to the trustees. The advantages can be numerous:- you can oversee the process during your lifetime, there can be substantial tax advantages which do not apply to a will and the assets are protected from creditors, spouses, errant children, etc. because they no longer belong to you but can still be administered according to your wishes. The will is advantageous because you do not lose control over the assets during your lifetime, but the costs involved in administering an estate and distributing the assets will normally be more than those paid during your lifetime to the trustees. And most tax planning opportunities will be lost.

Trusts cannot readily be used by UK domiciled persons as the transfer into trust attracts a charge to lifetime IHT of 20% of the capital value of the assets. This is deeply unattractive.

For UK domiciled persons other planning opportunities exist. One of the most commonly used is the family investment company. FICs are relatively simple but very effective. Assets are transferred to an offshore or UK company. The rights and obligations attaching to the shares of that company are divided between shares which carry votes only, shares which carry the right to income (dividends) only and shares which carry the right to the underlying assets (capital). The transferor can retain the voting shares and therefore control of the assets and the affairs of the company. They may also retain some or all of the income shares so they can receive dividends and an income during lifetime. But the capital shares are immediately or progressively given away to family members. The gift of the capital shares would be a Potentially Exempt Transfer (PET). This means as long as the donor survives for three years the taxable value of the property given away is reduced by 20% each year. For example, if a mother gifted her property worth GBP1m to her daughter and survived for three years and five months from the date of the gift, its taxable value would be reduced to GBP800,000 (1,000,000 less GBP200,000). If she survived for 6 but less than 7 years, its taxable value would be reduced to GBP200,000 (GBP1,000,000 less GBP800,000). There is no tax to pay after the seventh year.

UK registered pension schemes now benefit from a specific exemption from UK IHT (IHTA 1984 s151(1)). The exemption extends to certain types of overseas pension schemes known as Qualifying Non-UK Pension Schemes (QNUPS). QNUPS can be set up in Malta or Guernsey.

There are other planning techniques and products which can be extremely useful to eradicate or minimise worldwide estate taxes.

What is clear is that doing nothing should not be an option. If you care about your family and prefer your loved ones to enjoy the fruits of a lifetime of hard work planning is vital. If you prefer to volunteer large amounts of money to assist the revenue services of various countries around the world there is no need to do anything. Otherwise planning is vital.

Use the time wisely, act responsibly and make sure your family is looked after if the worst happens. We will all die eventually and unfortunately at the moment some of us are going to die earlier than anticipated. Don't delay. ■

About Howard Bilton

Howard Bilton is a barrister called to the Bars of England/ Wales and Gibraltar, Chairman and Founder of The Sovereign Group and a visiting Professor at Texas A&M University.

Howard Bilton speaking at our Independent Wealth Management Forum in Hong Kong