WEALTH TAX

Increasingly frequently, we are asked about wealth tax. Clients are concerned that a wealth tax might be introduced, and want to know if anything can be done to protect against this eventuality. The main questions (and our responses) are set out below.

Q: I am concerned that a wealth tax might be introduced in future. Is there anything I can do now to protect myself against this potential future charge?

- If you have adult children, transferring wealth to your children would spread the wealth among all the family members and should reduce the family's overall wealth tax bill.
- If you have no adult children, or if they do not have any further scope to receive tax free gifts from parents, there is an alternative.
- We think that if assets are transferred to an offshore trust or foundation before any wealth tax is introduced, there is a good chance that those assets will be protected from wealth tax.

Q: Why might a transfer to an offshore trust or foundation work?

- The domicile levy in 2010 introduced an annual levy (a form of wealth tax) for Irish domiciled citizens with Irish assets over EUR5m
- The domicile levy was based on the value of any assets owned by an individual or transferred by that individual to a trust or foundation on or after 18 February 2010
- If assets had been transferred to a trust or foundation prior to 18 February 2010 they would have been outside the scope of the domicile levy
- We believe that any wealth tax charge is likely to recycle the legislation that was used for the domicile levy and therefore a transfer to an offshore trust or foundation before the introduction of the tax is likely to be successful.

Q: Is a wealth tax likely?

- We believe that there is a risk (albeit a small one) that a wealth tax might be introduced.
- There is public support for a wealth tax (an Ipsos MRBI poll in November 2010 had 82% of respondents in favour of a wealth tax of 1% on assets over EUR1m).
- There is also a precedent, with a short-lived wealth tax in the mid 1970s that was introduced by a Fine Gael / Labour coalition government.

Q: Is it worth the cost of running an offshore structure?

- An offshore trust would cost in the region of EUR6,000 to run annually (costs will vary according to location) Foundations are generally more expensive to set up than trusts, but should have similar annual running costs

- Assuming a future wealth tax charge of 1%, assets of EUR1m+ would need to be put into the trust in order to justify the saving if the structure is to be set up for wealth tax purposes alone

- However, offshore structures can be useful tools in estate planning and it may be advisable to hold part of your wealth through an offshore trust or foundation for estate planning purposes in any event. If the trust/foundation served a number of purposes, the costs could be justified at lower levels.

Q: Would I use a trust or a foundation?

- Foundations are generally expensive and more time consuming to set up

- However, foundations do have a marginally higher chance of successfully protecting against any wealth tax charges in future. If Revenue were to introduce a wealth tax based on the old 1975 wealth tax legislation (as opposed to the more recent domicile levy legislation), then only transfers to a foundation will be protected from the wealth tax charge. Transfers to a discretionary trust will not have been successful in protecting against wealth tax. For various reasons we believe that any new legislation will follow the domicile levy rather than the old wealth tax legislation but this is by no means certain.

Q: You suggested that perhaps part of my wealth should be held through an offshore structure in any event. Why?

1. Protection of that part of your wealth against future creditors.

2. Estate planning. The assets in the trust/foundation pass separately on death (outside of your Will), which offers a number of benefits:

- Privacy (your Will is a public document so the value of your estate passing under your Will may be publicised)

- No probate issues so spouse/children can have access to the funds in the trust/foundation straight away if there are delays in obtaining probate for the Will

- Easy to update as children grow older (and easy to increase/decrease the amount of money that passes via the trust/foundation rather than the Will)

- Spreads risk of mis-management/mis-appropriation of estate

- If there are any vulnerable beneficiaries, the trust / foundation framework ensures that they should not receive appointments until the time is right.

- Flexibility for tax planning.

Q: What kind of assets should I transfer to the trust / foundation?

- Non-Irish assets (it is likely that Irish assets owned by non-residents would be liable to wealth tax so transferring these to a trust / foundation is unlikely to achieve savings)

- Assets that are not standing at a significant gain (to minimise tax on the transfer into the structure).