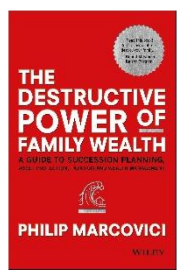
Thoughts on Mobility and Related Planning – Excerpted from *The Destructive Power of Family Wealth – A Guide to Succession Planning, Asset Protection and Wealth Management*

By Philip Marcovici*

Published by John Wiley & Sons Limited, and reproduced with permission

http://eu.wiley.com/WileyCDA/WileyTitle/productCd-1119327520.html



Mobility and Citizenship Planning,

and Fixing Historical Tax Non-Disclosure

Play by the rules or get out. These are the only choices wealth owners have – the third choice of staying connected to a country by residence, domicile, citizenship or otherwise and hoping that no one will find out is simply not an option in a world of growing transparency and one where tax laws are increasingly and more aggressively enforced. Tax laws are laws, and there is no choice but for compliance with them.

Getting out means sorting out any historical tax liabilities, and then moving on to exiting a tax system and finding a new one, and ideally a more favorable one, to become subject to.

Given the upcoming automatic exchange of information between countries, many countries are moving to ensuring that there are reasonable means for taxpayers to regularize their historical tax affairs, recognizing that this will increase revenues and help ensure longer term tax compliance. This represents an opportunity to review the current situation and make some strategic decisions.

Getting Out

Once historical tax issues are addressed, and the wealth owner is clearly "playing by the rules," he or she can consider the important question of whether "getting out" is a good option.

Mobility, and taking advantage of the ease with which a wealth owner can move from one country to another is an important element of not only tax planning, but the achievement of a number of other objectives that he may have. The reality is that different countries have different tax rules, and where someone lives (and in some cases, where one holds citizenship or is domiciled) may drastically affect tax exposures. Apart from tax, residence choices will affect the question of what information which government will hold about a wealth owner's income and assets, an important issue in a world where challenges to wealth are only increasing, and where it is not always safe for information about wealth to be in the hands of governments. Such information can fall into the hands of criminals such as kidnappers or be misused politically or otherwise.

The first step in mobility is the question of how to exit the country you are currently connected to. Those looking at mobility almost always begin by asking the wrong question – how long do I need to spend in Monaco or the Bahamas or wherever to be a resident there? The reason that this is the wrong question is because the key first step is to work out how to exit the country you are currently connected to, whether by residence, domicile or citizenship or a combination of these.

A growing issue relevant to leaving the taxing jurisdiction of a country is the question of whether exit taxes apply. An increasing number of countries impose an exit tax on those who give up taxable residence (and in the case of the US, citizenship or long term "green card" status), often through a deemed sale of assets at fair market value on the date of departure. Canada, for example, has long had an exit tax that operates in this way. A resident who leaves the country is taxed on their departure on the basis of their being considered to have sold their assets when they leave. If the individual owns appreciated assets, exposure to capital gains taxes thereby arise.

Where exit taxes apply and there are rules that deem the sale of assets on a departure, it is useful to consider an exit when asset values are low, such as during an economic downturn. In a wealth owning family, it is also relevant to consider having those in the younger generation of the family undertake mobility planning before and not after they come into wealth.

Once planning in relation to leaving a country has been undertaken, the question arises as to where the wealth owner can go. Sometimes a related question is where a wealth owner can obtain a second or further citizenship.

When mobility planning is undertaken, there are often many choices regarding where a wealth owner can move to. Obvious tax advantaged choices include jurisdictions that impose no tax at all, such as the Bahamas or Dubai. Other choices can include countries that impose tax on a territorial basis, such as Hong Kong or Singapore, where a resident (or nonresident) only pays tax on their locally sourced income, not on worldwide income. Jersey, with its proximity to the UK and France is an interesting option, and its territorial approach to taxation attractive for wealth owners. There are also a number of countries, such as Switzerland and others, that offer special "deals" on taxation for specific groups of taxpayers. The UK and more recently Italy offer special tax incentives for "non-domiciliaries", an attractive option for many.

In all these cases, care needs to be taken in planning one's affairs to reflect the way in which one's new country imposes tax, and it is critical to consider planning on a "pre-immigration" basis – taking steps before one becomes a resident of the new country.

Demand in relation to mobility is increasing, and this is resulting not only in more in the way of exit taxes, but also in greater difficulty in obtaining resident permits in desirable locations, as well as higher costs for those seeking to take advantage of tax attractive locations.

Interestingly, there is much in the way of planning that an individual can undertake before a move to even what may be perceived as being a high tax country. Here pre-immigration planning again comes into the picture, and a variety of approaches, sometimes involving use of trusts and other wealth planning "tools" becomes relevant. In very simple terms, for a retiring couple, for example, some simple steps can reduce tax dramatically before a move to a new country. Gifting assets to children, directly or through structures, if properly done may well result in the assets no longer being owned, meaning that tax in relation to income earned on those assets will be avoided in the new country of residence.

Citizenship is available in a number of circumstances, and a good starting point is often to consider what citizenships may be available as a result of family history or religion. A number of countries have laws that consider the children and further descendants of a citizen to be a citizen. So if your mother or grandfather was born in a particular country, you may find that you are eligible to become a citizen of that country. In fact, you may already be a citizen, and it is only a case of proving your right to obtaining a passport as proof of that citizenship.

There are also countries that, in effect, sell citizenship. This is often achieved through investment and other programs, and in some cases the countries involved are even members of the European Union, affording their citizens freedom of movement within Europe and wide access to visa free travel to many countries. Other countries require a considerable period of physical residence before citizenship can be obtained, and this includes countries like Australia, Canada and the United Kingdom. But unlike the US, these are countries where once citizenship is obtained, if one is not resident, there is no exposure to worldwide taxation –whether a citizen or not, tax only arises on locally sourced income if one is not resident there.

In the longer term, it is likely to become more and more difficult to obtain and keep second, third and further citizenships. Like in the area of mobility, where there are an increasing number of countries that impose exit taxes and whose residence and related rules are getting tougher and tougher, it is likely that more countries will seek to limit the circumstances in which second, third and further citizenships are permitted. For now, however, multiple citizenships can be an important safety net for wealth owning families, and not only from a tax perspective.

**Philip Marcovici is retired from the practice of law and consults with governments, financial institutions and global families in relation to tax, wealth management and other matters.*

Philip was a partner of Baker & McKenzie, a firm he joined in 1982, and practiced in the area of international taxation throughout his legal career. Philip was based in the

Hong Kong office of Baker & McKenzie for twelve years, relocating to the Zurich office of Baker & McKenzie in 1996. Philip has also practiced law in each of New York and Vancouver, British Columbia. Philip retired from Baker & McKenzie at the end of 2009.

In 2013, Philip received a Lifetime Achievement Award from the Society of Estate and Trust Practitioners.

www.marcoviciasia.com