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Trusts and asset protection strategies for expats

Those living abroad should understand regulatory standards too.

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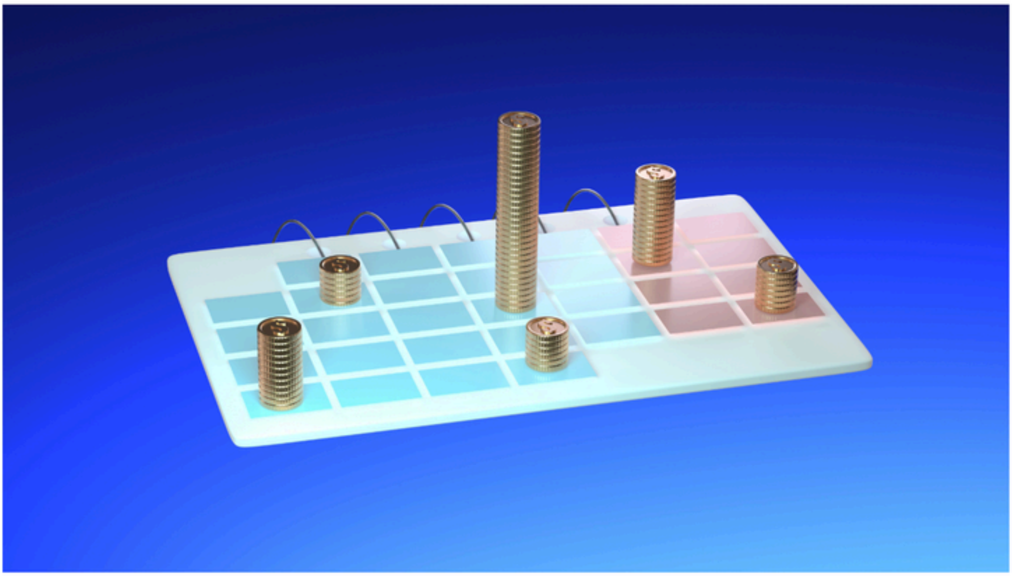

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Two of the most common questions I get asked as an expat-focused investment company owner is how to invest as an expat and the best investments for expats.

These are legitimate questions. People looking to invest while living abroad do face unique circumstances—banks and brokerages that may close down accounts once you leave your home country, complicated tax issues, and much else.

For that reason, these questions will always be bread and butter for companies in this space.

However, most expats and high-net-worth individuals should look beyond pure investments and focus on asset protection. While nothing written here is legal, tax, financial, or any other kind of advice, this article will touch on why you should focus on your financial affairs in a holistic fashion if you are in this category.

Why is asset protection important?

Before discussing pure asset protection, know that some expats want to “kill two birds with one stone,” achieving asset protection, investing success, and succession planning in one strategy.

For instance, if you die as an expat, probate can take years in your home country and even longer if you have assets in numerous countries. If an insurance company owns your asset, or a trust owns assets in an insurance bond, the process of passing down your assets to loved ones is easier, compared to owning them directly yourself.

This is because you can add named beneficiaries to your account with insurance providers. Your beneficiaries can usually get the money without going through probate in this situation.

Any solutions which can shorten the probate period is worth its weight in gold. If you can do it alongside protecting your asset, then all the better!

Going beyond the probate issue, shielding assets from creditors and divorce can be a key objective for wealthier people. This is one reason why trusts in the Cook Islands and Nevis are popular, because they don’t accept foreign judgements and require re-litigation in local Cook Islands courts.

This structure worked well for decades until the Common Reporting Standard (CRS) came along.

Asset protection after the CRS

The world changed in 2013/2014 after the OECD bought out the CRS, which is an information standard for the automatic exchange of informationabout financial accounts on a global level. That meant that countries that have signed up for the CRS, such as St. Kitts and Cook Islands, would be willing to share information with financial tax authorities, even if they wouldn't recognize foreign judgments. As a result, this makes it more difficult for people to shield their assets from creditors.

As CRS expert Mark Morris has stated, Cook Islands trusts are highly vulnerable to contempt of court cases for a simple reason. U.S., UK, and many foreign courts can compel the return of assets from the Cook Islands, with the threat of imprisonment, if obligations are unmet because they know where the assets are due to the CRS.

Courts are unlikely to accept the "impossibility defense" because the settlor set up the Cook Islands trust to begin with.

Specific asset protection strategies

Given that information, you may wonder how to protect assets in this CRS age. Ultimately, having a legal way to get around the CRS issue is key.

Morris developed the custodian special purpose vehicle (SPV) institution. It sounds complicated but it has a two-tier structure:

1. The trust (custodian) legally owns an investment entity, which holds your assets.

2. The investment entity holds stocks, ETFs, bonds, or other passive income assets.

Banks usually recognize the custodian as the account holder, limiting look-through reporting obligations.

This structure works well if it is combined with a UK non-resident trust (trusts covered by UK law, but the trustees and settlers are not UK residents). If these trustees are located in places like Svalbard in Norway, which is a tax autonomous region and excluded from the CRS by Norway, this can offer more privacy for settlors.

The trustee's only job in this situation is to hold the underlying company, not to make investment decisions. This allows investors to retain more control over their assets than a typical trust structure.

One size does not fit all

Everybody's situation is different. Any asset protection strategy for an expat needs to factor in how much you have, what you want to achieve, and your individual situation.

Asset protection strategies have become more complicated, though, in a world where governments are collecting more data. It's important to find legal ways to retain more privacy.