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THE ASSET OWNER'S GUIDE

PRACTICAL ASSET OWNERSHIP STRATEGIES FOR WEALTH PROTECTION AND TAX EFFICIENCY

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Contents

'The Asset Owner's Guide' –
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About Alan Pink FCA, ATII

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About this guide

This special report looks at asset protection strategies and how to restructure asset holding arrangements in a tax-efficient way.

1 Introduction

This Asset Owners' Guide looks to provide answers to three questions:

- What methods are there of protecting my wealth from outside threats?
- How can these be combined with the set-up of tax-efficient arrangements?
- How can the transition to these arrangements be managed without triggering tax charges?

Let's look, first of all, at the whole concept of protecting your wealth.

2 Protecting your assets

2.1 What is asset protection?

In a sense, the answer to this question is obvious. If you're fortunate enough to own valuable assets, you're naturally going to want to protect them from the various threats that face them: if they are physical assets, from theft, fire or other physical destruction, or legal action taken against you by others; if they're non-physical assets, like shares in a company, or business goodwill, your main enemies are probably, let's face it, the government (in the form of taxation or other similar confiscatory powers) and the legal profession.

The concept of asset protection is one which is gradually filtering over the Atlantic, in the wake of the quite different approach to legal disputes and legal judgments over there. We've all heard the horror stories about Americans suing others to compensate them for what seems to us to be the consequences of their own stupidity: the person suing the restaurant chain for not warning them that coffee is hot; the person suing the car manufacturer for not telling them that they couldn't leave the vehicle in cruise control and go and put the kettle on at the back – and so on.

Following on from this seemingly arbitrary liability that big companies and the wealthy generally can have sprung on them, apparently quite perversely, is the whole concept of 'asset protection'.

Mostly, asset protection takes the form of moving assets from the ownership of one person or entity to another (although this isn't always the case). Whenever you move assets from one place to another, there's the potential for tax consequences to ensue. If you think of asset transfers as being like the act of throwing a stone into the middle of the pond, these consequences are like the resultant waves which spread ever wider, as will become apparent from what follows.

One of the financial predators that you need to protect your wealth against is the government, in the form of taxation, and so the whole subject of asset protection brings with it, inevitably, a consideration of how the various financial structures, through which you might hold your wealth, work from the tax point of view: not only setting them up and then running them but also their ultimate dismantling. It is necessary to consider all of these tax aspects, and indeed non-tax aspects, to arrive at your optimum financial plan.

2.2 What this report doesn't do

We need to make it clear, of course, that this report isn't, and can't be, a substitute for proper legal advice. This is, in essence, a tax publication. Whilst sufficient description of the various options for asset protection is given, we hope, in order to help you make an informed decision, and take the ideas you have formed to your lawyer for his or her advice, it's the tax aspect of the financial plan which we major on here: rightly so, we would say, because not only is tax our own particular specialism, but also the tax treatment of any action can be one of the most important factors in making any financial decision in this area.

So, a bit like information you derive from surfing the internet, on the legal side, what we are presenting can only be regarded as a starting point.

Even on the tax side, of course, a generic report such as this is no substitute for specific advice concerning your own particular circumstances. But, again, you do need some kind of starting point, and the aim of the exercise here is to give you just that. There are very few tax advisers who would be sufficiently proactive and creative to be able to answer a completely open question, such as, 'how should I protect my assets?'.

2.3 Straightforward asset protection

Often the traditional, simple ways are the best. If you are married or share your household with others, a well-worn method of seeking to protect your wealth from outside attack is spreading it between spouses and other family members. Take ***Case study 1***, for example.

Case study 1: Janet & John

Janet is an experienced freelance bomb disposal expert – after tax adviser, probably the most dangerous profession there is in today's world. She risks her life on a daily basis and, potentially risks the lives and property of others.

Although she operates through a limited company, this doesn't protect her, as we'll see, from the possibility of incurring personal liability. The law has seen to that, with its concept of tort, under which an individual who is negligent can be made personally liable, without limitation of liability, for the financial consequences of such a mistake. The first port of call for any claimant would always be the employer or company which is accepting payment for the service which is negligently carried out. But if that company etc., has no funds, the plaintiff can come after the individual who made the mistake.

Janet is well aware of this and also of the fact that whilst, of course, she has full insurance, insurance is never an absolutely infallible safeguard.

The damage done might be more extensive, financially speaking, than the amount of her cover: or the insurance company could possibly succeed in wriggling out of liability on a technicality.

For this reason, Janet ensures that any valuable assets she and her husband John have are held purely in John's name.

Whether this is an example of 'trying too hard' is a question that only the lawyers can answer. From the tax point of view, inevitably, there can be drawbacks in a married couple holding everything in a single name. For example, income from investment-type assets, like shares and buy-to-let properties, will all accrue solely to the spouse who owns those assets, and in consequence, it isn't possible to spread the income between them.

Similarly, capital gains on selling any of these assets would accrue only to the spouse that owns the assets, and the tax might be increased by doing this.

If you're looking to make transfers to other members of your household in order to protect the assets concerned (you hope) from any future claim made against you personally, you've also got to consider the basic tax consequences of making the transfer. ***Case study 2*** illustrates the difficulty which can arise here.

Case study 2 'Unmarried couple'

Paul and Becky are an unmarried couple. Paul is now a senior consultant in a firm of surveyors.

He and Becky have managed to build up a reasonable buy-to-let property portfolio, consisting of four properties, which they own jointly, and which have an equity value of over £1 million. Paul, being a worrier, is concerned that some catastrophic mistake that he might make in his professional life might result in his bankruptcy, and some official coming in to force them to sell their investment properties.

So Paul goes to his accountant and asks if he can make over the whole value of the buy-to-let portfolio to Becky. The accountant gets out the file and notes that the original costs of the properties are something like £400,000 less than the current value due to the ever-inflating property market. So he has to break it to Paul that transferring his half of the portfolio to Becky will result in a gain of something like £200,000 and capital gains tax, in consequence, of over £50,000.

Paul and Becky may decide to marry or become civil partners to benefit from the ability for legally married or civil partnered individuals to transfer assets between them without capital gains tax.

Of course, a simple solution to the CGT problem won't be available for those who want to transfer part ownership of assets to individuals who aren't, and cannot be, their spouses or civil partners: such as transfers to parents or children. For these, if they are to protect assets by sharing out