Estate Planning Practitioners Limited (Reg. No 200900189E) Licence No. MCI (P) 078/12/2021// Issue No.20 // Year 2022

THE CUSTODIAN

ESTATE PLANNING AND WEALTH SUCCESSION NEWSLETTER

Chairman's message

By Lee Chiwi
AEPP®
Chairman,
Estate Planning Practitioners Limited (EPPL)

A warm welcome to readers! Upon reflecting 2021, it was a year that continued to be shaped by the global pandemic. Most would describe the year as one of frustration, waiting or disruption of plans. Yet it was when most of us had more time to focus on our family's well-being and balance priorities in life. Many clients did allocate time to do their estate planning with us and we are grateful that the year ended well for us at PreceptsGroup.

2021 was also a record setting year for the property market despite the continuing Covid 19 restrictions on our economy. Property prices surged up by almost 11% for the year before the announcements of higher additional buyer's stamp duty rates were made on 16 December 2021. As residential properties form a significant portion of the total assets of most clients, we believe that going forward, the succession of real estate will predominate many discussions. There are so many issues surrounding the stamp duty regime and to be alerted on the potential pitfalls.

Covid-19 also created the impetus for us to move on the technological frontier, adding new solutions that will differentiate our services and meet future market demands and stay ahead of the competition. Our maiden digital trust solution, ProviTrust which enhances the CPF Nomination is expected to go full swing this year.

The Standby Trust remains the ideal cost-effective solution for the entire basket of assets that may be left behind by many clients. In Prime Minister Lee Hsien Loong's Keynote address **at GIC's 40th Anniversary Dinner in November 2021**, he said "We will treat the reserves as a rainy-day fund, draw prudently and sustainably on them for present needs, but continue growing our nest egg whenever we can." "We will look out for the well-being of future generations yet unborn, even as we take proper care of ourselves."

What PM Lee said connotes well with the idea of setting up family trusts and resonates with the objectives of our several hundred clients who have set up their family trusts with us. We are confident that this trend will continue as more clients will want to secure and protect the inheritance they pass down to their descendants.

For now, we wish everyone a safe and prosperous 2022! Stay safe and connected with us.

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The Importance Of Holistic Estate Planning

Elijah* (not his real name) had written his Will with Precepts. He passed away recently, leaving behind his wife and his special needs daughter. He had expressed that in the event of his demise, the care of his special needs daughter was paramount.

Elijah was a businessman, whose business generated good profit to provide for him and his family. Thinking that he had a sustainable source of income, he had not paid much attention to include life insurance in his estate planning. Unfortunately, his business was badly affected due to the Covid-19 pandemic. By force of circumstances, he had to downsize his business which took a toll on his health. This led him to fall ill eventually and he did not recover from it. Prior to his passing, he had resorted to using his savings and other means to keep his business afloat while providing for his family at the same time. A substantial part of his savings was depleted in the process.

With Precepts Trustee Ltd acting as the executor of his estate, we had the responsibility of collating his assets and to administer his business. As he was the sole shareholder and sole director running his business, his passing had left a void in the business. His wife or employees were not able to replace him.

The major concern was the lack of liquid assets to provide for the family and the employees of the business while waiting for the extraction of the grant of probate and calling-in of other assets in the estate. The estate also had some outstanding mortgage loans faced with inadequate liquid assets. Hence the likely scenario is that the executor will have no other options but to sell the property.

This brings us back to the importance of holistic estate planning and the routine review to cater for life changes. From the case of Elijah, the lessons learnt are:

a) The importance of keeping reserves for rainy days.

b) Having sufficient coverage on the life of the breadwinner of the family as part of estate planning. In the event of premature demise, this would provide adequate liquidity to the estate and family members.

c) Importance of reviewing your estate plan every 2 to 3 years or if you have experienced changes in life, such as addition of new family members, change of career, change of personal financial position, falling ill or losing an important family member.

d) If you are a business owner, you need to have in place a successor or an exit plan for the business. This is to ensure the business continues to function in your absence. Depending on your objectives, setting up a trust may help to put the plan in place.

Please approach our Estate and Succession Practitioner for advice if you have any concerns on your estate planning matters.

**Facts and background of Elijah has been altered due to privacy reasons.*

Leong Mun Kid
Head of Department, Trusts
Precepts Trustee Ltd

My Legacy Is In The Name Of My Trust

Jenny Tan
AEPP®
Trust Manager
Precepts Trustee Ltd

How do I choose a name for my Trust? Should it carry my name? Should it follow my child's name? Or should I name it to a unique memory or places my family had been to?

When you establish a Trust, you are required to provide a formal name to identify the Trust to its trustees, the beneficiaries and the relevant legal authorities. Besides appearing on all Trust documents, the selected Trust name will also appear on bank accounts which hold your Trust assets, the CPF and insurance nomination forms which you nominate your Trust as the beneficiary. Very often, the names of the Settlors are most commonly used to name the Trusts.

If a Trust name is too long, for example *'The Robert V. and Patricia S. Hernandez Family Trust'*, it is not possible to fit into the limited space for the bank account name to hold the Trust assets or name of the CPF/ insurance nominee when filling in the nomination forms.

On the other hand, if it is too short, where the Settlor's surname is commonly used, for example 'Tan Family Trust', it might be too common and does not differentiate from other similar trust name like 'Tan Sui Family Trust', that may create confusion in sorting out legal documents. Although using the Settlor's surname carries the Settlor's family identity, it may give rise to concern over privacy issues.

Things to keep in mind when naming a Trust:

1. Consider the Settlors and Beneficiaries

The most obvious choice is to create the Trust in the name of the Settlor, the person setting up the Trust. For example, if Jenny Chang is the Settlor, the Trust can be named *'Jenny Chang Family Trust'*. Otherwise, consider the beneficiaries who will benefit from the Trust, such as the minor children. For example, *'Joseph and Mona Chang Trust'*. If the beneficiary is an organization or a charity, the trust name which can facilitate the ease for registration with The Commissioner of Charities should be considered.

2. Keep the Name Short

Before you finalize on a Trust name, consider the practical aspects of your choice. Because it is necessary to re-title any property in the name of the Trust, choose a Trust name that can conveniently appear on checks, titled deeds and bank accounts. For example, "Hernandez Trust" is less cumbersome than "The Robert V. and Patricia S. Hernandez Living Trust Fund."

In Precepts, the rule of thumb in choosing a Trust name is

(i) The name of the Trust should not be too abbreviated.

(ii) To keep the Trust name within total characters not exceeding 30 spaces for the ease of opening and operating bank accounts and CPF/ Insurance nomination.

(iii) The name of the Trust should not carry an apostrophe ['s] or any special symbol [+, -, @, #, $, *, %, !] to avoid any ambiguity and potential typographical errors. The symbol [&] which denotes 'and' is acceptable though not encouraged.

If the Settlor would like to keep his/ her Trust confidential, the name of the Trust can be any name not related to his/ her actual name subject to the above rules when choosing a Trust name.

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Professional Executor Expedites Estate Settlements

Alvin Lai
PreceptsGroup International Pte Ltd

Precepts Trustee Ltd. provides professional executorship services which is fast becoming the preferred choice for people who are drawing up their Wills. While testators (persons drawing up a Will) may have a strong preference of appointing their family members as executors, it will also be prudent to appoint Precepts Trustee Ltd. as a substitute executor in the event their intended layperson executor is unable to execute his or her role.

An executor undertakes estate administration duties when a testator passes on. It may seem like an honourable appointment, but layperson executors often do not have the time, commitment and technical knowledge when met with unexpected circumstances. This may result in an unfortunate deadlock situation and other resulting emotional entanglements.

Here is a case highlighting the estate administration of a Housing Board (HDB) property.

Background

Our client was a filial single man who wrote a Will indicating that Precepts Trustee was to be appointed as the executor and the original Will was kept in custody with Precepts Legacy.

As soon as Precepts was alerted of our client's passing, we initiated an asset search compilation according to the Inventory of Assets provided by our client. At the same time, we conducted a Will Reading session for his beneficiary, his aged mother who was accompanied by his 3 siblings.

A Twist of Circumstances

As raised by his siblings, it was discovered that our client was also pending an inheritance from his late father. It was a HDB property which the family of 6 lived in and which was intended to be passed down to all 4 children. The HDB property was owned equally as Tenants in Common by both parents and in their respective Wills, the 4 children were to inherit 50% share jointly upon the parents' respective passings.

Before our client's father passed away in 2018, he had appointed his 4 children, which also included the deceased, as joint executors and beneficiaries of his estate. Unfortunately, as the executors had little idea on how they were to proceed to apply for the grant of probate nor could they transfer the said 50% to themselves as beneficiaries, the matter was left unattended and soon forgotten. Over 2 years had passed, and the estate administration process had not even started.

Disagreements

With an unsettled inheritance from our client's late father, we were unable to sign off the estate until all assets were fully transferred/ distributed to our client's mother. Our client's siblings were however unwilling to budge and insisted on executing their late father's Will and transfer the shares of the HDB property to themselves despite each already owning a HDB property. They were adamant that they should co-own their family home where they grew up together with their mother.

The Final Resolution

At the same time, Housing Development Board wrote to our client's siblings as executors of their late father's estate and Precepts Trustee Ltd., being the executor of our client's

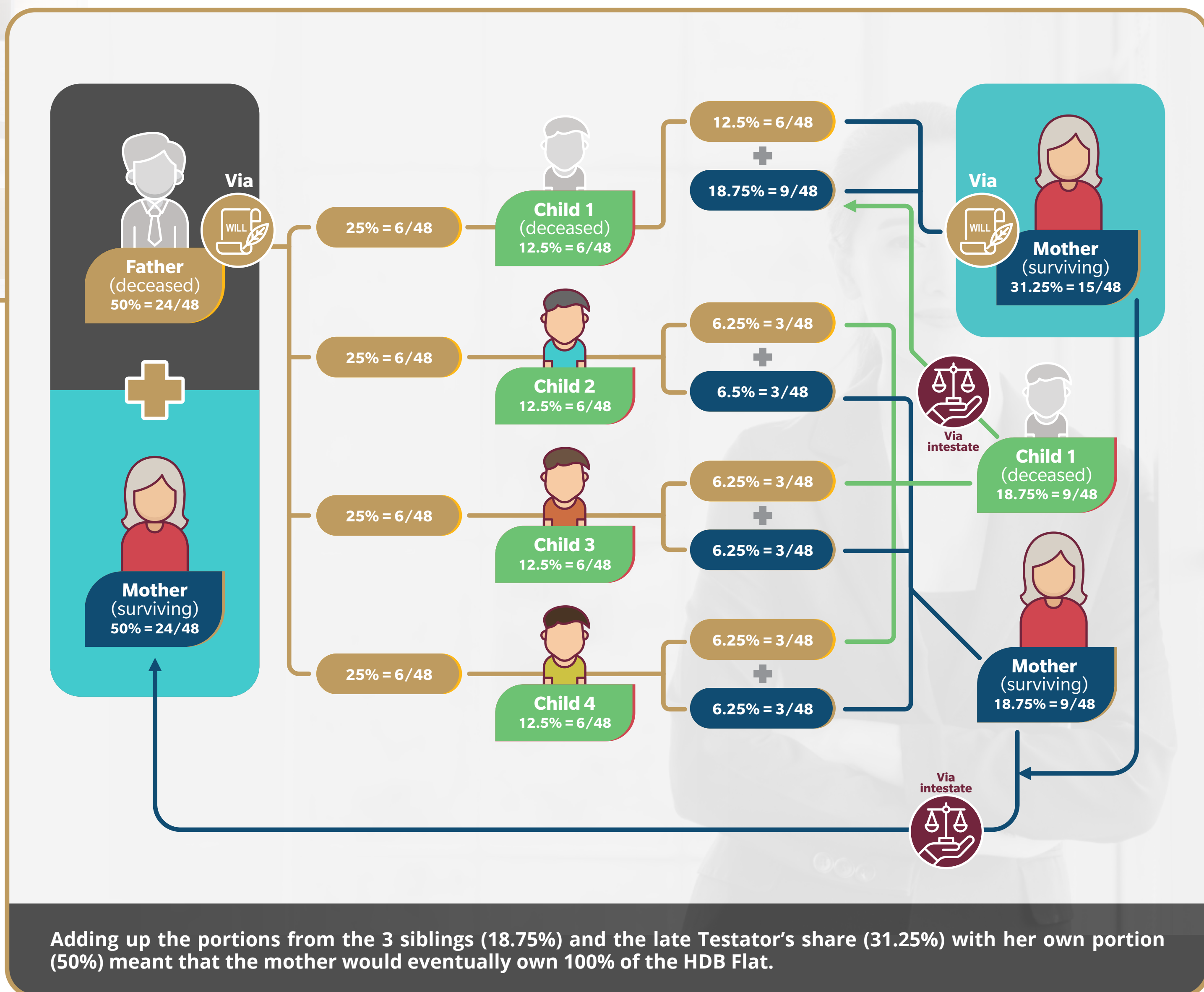
estate. It then became clear to the family that they would not qualify to own another HDB property, even a fraction of it, as they had an existing property. The HDB property had to be sold and the proceeds would be split amongst the beneficiaries.

This was a logical solution, but it meant that the elderly mother would be left with no place to live as her children were unable to accommodate her in their respective homes. With Precepts Trustee's involvement, we suggested that they renounce their rights to receive the HDB property as a more straightforward solution. This move would render the HDB property to fall under the purview of the Intestate Succession Act. The consequences therefore resulted in the transfer of the property to the deceased's spouse and the deceased's child – our client and his mother.

Although it took them several months for deliberation, they eventually agreed to it.

The Role of Precepts Trustee Ltd

Precepts Trustee took over the estate administration duties and provided the written renouncement of rights by the 3 siblings as well as computation of the portion for transfer. The breakdown of the share for transfer to the mother is illustrated below for reference:



Adding up the portions from the 3 siblings (18.75%) and the late Testator's share (31.25%) with her own portion (50%) meant that the mother would eventually own 100% of the HDB Flat.

The estate settlement took about a year from the demise of the Testator to the entire disbursement to the beneficiaries. Without the team's perseverance and diligence to follow up and work with the parties involved, it would have been another stalemate with no alternative but to adhere to HDB's requirement to sell and distribute the sale proceeds of the HDB property which would not have been the ideal solution.

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ProviTrust CONGRATULATORY CEREMONY

Joyance Quek
Estate and Succession Practitioner

Joy Koh
AEPP®
Estate and Succession Practitioner
Executive Club Member
(Honours, 3 years)

ProviTrust is a revocable trust designed to receive one's CPF savings upon the person's demise to distribute to the named beneficiaries according to the manner indicated in the trust deed. Being the first of its kind, ProviTrust has garnered interest among our Estate and Success Practitioners (ESPs) and clients alike.

Helmed under EPPL Digital owned by Estate Planning Practitioners Limited (EPPL), we celebrated the success of our ESPs Joy Koh and Joyance Quek on 07 October 2021 for closing their first ProviTrust. The two cases were the harvest of their hard work, and among the pioneer cases of ProviTrust with the appointment of Precepts Trustee Ltd as the Corporate Trustee.

The virtual ceremony was graced by PreceptsGroup CEO, Mr Lee Chiwi and Head of Precepts Trustee Ltd, Mr Leong Mun Kid. Both Joy and Joyance shared their success stories in offering ProviTrust as a solution to fill in the gap of estate planning for their clients.

Ooi Sen Tee
AEPP®
Relationship Manager
Precepts Trustee Ltd (PTL)/
Estate Planning Practitioners Limited (EPPL)

Qn: What motivated your client to set up the ProviTrust?

Joyance: While helping my client to draft her Will, I explained to her that she cannot Will away her CPF monies and the only way to specify her CPF distribution is through a CPF nomination. She shared her concerns with this arrangement due to the lump sum pay-out to her beneficiary who is currently a minor. She highlighted her preference to distribute the payout periodically to this minor beneficiary, after her demise. I could resonate with her as she had worked very hard since young to accumulate this amount of CPF savings and she really wanted to benefit her family in the right manner to avoid misuse of the funds.

Joy: It started with a talk that I conducted. In my sharing, there was one segment where I shared about the two pain points for someone who is divorced or having a dysfunctional marriage. First, I led them to think by asking: "If you are divorced, it is very natural for the nomination to be made 100% to your children. However, what if common disaster happens and both your children and you were to perish together? According to the intestacy law, you being the

For more information, please visit digital.epplasia.com

older one is deemed to have died first. Would you want your ex-spouse as the surviving parent to receive your entire CPF monies?" There was a resounding NO from the audience. Next, I asked them "Would you want to depend on your ex-spouse to fund your children and decide on their education funding, or bother your children for monies knowing that your children will receive your CPF monies at age 18?" The answer again is a unanimous NO. Given these 2 pain points, one of the attendees who is divorced decided to arrange a meeting with me.

Qn: How did you introduce ProviTrust to this client?

Joyance: I have been in contact with this client regarding her estate plan. When we met to discuss her Will, I shared with her the concept of delayed distribution, so she understood the importance of setting a Trust to safeguard her assets. Back then, the only way to achieve this distribution objective for our CPF monies is via a Standby Trust. However, cost was a concern for her because it's a big jump in fees from a Will with Testamentary Trust to a Standby Trust set up fee. Afterall, one of her substantial assets is CPF savings, and as a practitioner, I understand that a Standby Trust might not meet her needs and consideration for cost efficiency. When ProviTrust was introduced in July, and I brought this solution to her, we both reckoned that this innovative solution bridged the gap and fulfilled the distribution objective that she needed for her CPF savings, to benefit her beneficiaries.

Joy: After the talk, the attendee and I set up a meeting. From the meeting, he echoed that the pain points are indeed his greatest concerns. He is especially worried that his ex-spouse will bother his children for monies, knowing that after his demise, they will inherit this pool of money when they turned 18. He wanted to ensure that his ex-spouse would not benefit from his CPF savings and to protect the monies for his children. If his children do not survive him, the monies should go to his parents instead. I presented to him the solution with ProviTrust, to address his concerns. The CPF savings will be protected with a Trust, and the appointed trustee will distribute according to his wishes to provide for his children. I advised him to set up a discretionary trust and name his parents as substitute beneficiaries. The decision was made to appoint Precepts Trustee Ltd as the trustee, for the assurance that a corporate trustee is perpetual, and he seeks for ultimate protection on his CPF savings.

Qn: How has the experience been for you and your client on this digital platform?

Joyance: The portal is very straightforward and simple. The digital platform allows you to do everything virtually without having to meet the client, especially under the current Covid-19 restrictions. My client was pleased with the efficiency of the process. One tip to share is, before submission at the portal, ESPs can pre-empt clients on the information needed for individual trustee and beneficiaries, and the options for distribution manner at the portal.

Joy: I have a standard operating procedure for the process. First, I shared with my client screenshots on the steps to set up ProviTrust. Then we arranged a date and time to go through the steps over Zoom. We had some hiccups at that meeting, when we realized that he didn't have his email address updated at his Singpass portal. This was easily resolved when he updated it. Hence, this is something to take note of. Over the zoom, he shared his screen and I guided him with the steps to complete the submission, while addressing his queries. It was an easy experience and very efficient too.

From the EPPL Digital management team: we are heartened by their efforts to take the first step into this new digital trust solution. We would like to extend our appreciation to both Joyance and Joy, in taking time to share with us their valuable experiences with setting up ProviTrust for their clients. As practitioners and trusted advisors, it is invaluable to be able to present a solution for your clients and address their concerns. With ProviTrust, we can now fill the gap for a complete estate plan.

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The Malaysian Budget 2022

Some Key Tax Changes

Mike Grover
Former Head of Tax at
International Accounting Firm

The largest ever Malaysian Budget is directed at kick starting its Covid-19 ravaged economy and helping needy Malaysians. RM332 billion has been allocated for an extensive range of far-reaching initiatives. To help fund these, significant tax changes are proposed. Of these, four key tax changes are highlighted below.

The first of these is a block-buster Prosperous Tax hike that may reap significant tax revenues from a limited group of taxpayers for a brief time. The remaining have been chosen for their lasting effects on a far wider range of Malaysians with the Tax Identification Number proposal being the most insidious of them all.

The Prosperous Tax

The headline grabbing Prosperous Tax went down like a lead balloon on the stock market which saw billions of RM wiped off its value following the announcement. It is common knowledge there were business winners during the pandemic. Super-profits in the past have incurred excess profits tax and windfall taxes. This time round, it is the Prosperous Tax. The proposal is that for high-income companies other than SMEs to be taxed at 24% on the first RM100 million and thereafter at 33%. The Prosperous Tax is slated to be introduced for just one year, in 2022.

Foreign Source Income Received in Malaysia by Malaysian Residents

The Malaysian Income Tax Act 1967 charges to tax the income of any person accruing or deriving income from Malaysia or received in *Malaysia from outside of Malaysia*. In a move to encourage the remittance of foreign source income to provide inputs to the Malaysian economy, an exemption from taxation was granted. The exemption took effect from 2004 and since then, individuals and companies (apart from certain specialized businesses of banking, insurance or sea or air transportation) remitted foreign source income free of Malaysia tax. This will end on 1 January 2022.

From this date, income tax will be imposed on Malaysian residents with income derived from foreign sources and received by them in Malaysia. This change will potentially affect all Malaysian residents with a foreign source income producing activity unless they choose to leave the income offshore. Examples of foreign income producing activities taxable on remittance include employment income of employees commuting overseas, consultants working overseas on foreign contracts, rental income from foreign property, wealth management involving foreign investments, holding companies with foreign subsidiaries, treasury functions of international groups, special purpose vehicles for foreign joint ventures. The list goes on.

The change may be to bring Malaysia's tax system in line with best practices at the international level. Yet it is notable that Hong Kong with its 'pure' territorial tax system, pure because it only taxes locally sourced income and has no concept of foreign source remitted income, has so far resisted making any change. Further, Singapore

which has a similar foreign source income tax rules to Malaysia has enacted a range of significant and practical exemptions which include an exemption if the headline tax in the foreign location is 15% or more. Similarly, Singapore has not rushed to make any change.

But equally so, the Malaysian Government hopes the removal of the exemption will create a rich new source of tax revenues. But with the removal of the exemption, Malaysia's tax system may venture back into an area of 'fuzzy' tax law involving taxpayer uncertainty over which is unacceptable under its Self-Assessment System.

Difficulties exist in distinguishing between capital and income. Should the settling of a debt incurred in Malaysia with foreign source income outside of Malaysia be deemed 'received' in Malaysia? Would there be an element of retrospectivity applying to foreign income accumulated prior to 1 January 2022 but received in Malaysia by a Malaysian resident after this date? Will dividends received in Malaysia by residents from an offshore activity of a Labuan Company be henceforth taxed?

And then there may be double taxation issues. Tax may have been paid on the foreign source income in the foreign location. Whilst it may be possible for tax relief under current tax rules to extinguish or reduce the Malaysian tax payable, the correct amount may be difficult to ascertain. For instance, take the example of separate sources of foreign income accumulated over years in various locations and the effort required, the documents involved and the costs to calculate the amount of foreign tax relief.

These examples involve areas of considerable tax controversy. Yet the list is not comprehensive. There will be other uncertainties and contentions. In addition, the cost of collecting tax on remitted foreign source income may prove expensive compared to the collection of tax from other sources of income.

It is a fine line between encouraging inputs to the economy via untaxed remitted foreign source income and generating new tax revenues by taxing it on remittance. To achieve the optimum position, Malaysians will at a minimum want to have tax certainty and need clarity on the 'safe harbour' transactions.

Perhaps also the final legislation should include targeted exemptions to allow certain foreign source income to be remitted tax free. Exempting foreign source income subject to tax at a headline rate of 15% or more in the location of source would make a good start. Failing which, the proposal may result in the flow of repatriated foreign source income being stemmed and net tax revenue after costs lower than expected.

Tax Identification Numbers

In another move to bring Malaysia's tax system in line with international practices, Tax Identification Numbers (TIN) will be introduced in 2022 with the aim of broadening the tax base and to prevent leakages of taxation.

The TIN is a discrete set of characters or numbers issued automatically by a tax authority to both individual and non-individuals whether they have a tax file number or not. Because a TIN will be given to everyone and every entity, the TIN is designed to identify the TIN holders whenever a transaction is made enabling a check on compliance with their tax obligations.

The TIN is required to be given by both parties to a transaction and potentially enables the tax authority to monitor for tax evasion. One might imagine that a tax file number will be required to take out a life insurance policy,

open a share trading account, invest in a unit trust or to purchase a motor vehicle. This information is then relayed to the tax authority to examine whether the transaction is reflected in an income tax return, or the expenditure or activity is consistent with the income declared by the taxpayer.

Even those who believe they are presently under the tax radar screen, the high possibility of being detected by the TIN system should weigh heavily on their minds and make them think more carefully about meeting their tax compliance obligations and paying their fair share of tax.

Tax Compliance Certificates

In a further move to discourage tax evasion and make sure the system is working fairly, a Tax Compliance Certificate (TCC) will be required as a pre-condition for tenderers to participate in government contracts. No details have been issued concerning the TCC, but it will be an official document as proof of being current with tax filings and payment of taxes.

The TCC will only be issued if the tenderer is listed as a taxpayer, is up to date with tax filings and whether income tax is paid as of a certain date. Internationally, such reviews also embrace custom duties, withholding taxes, indirect taxes, and sometimes immigration compliance. Quite possibly the TCC may be given on an annual basis.

To obtain the TCC, certain information and documents may need to be submitted. The TIN (mentioned earlier), the tax file number, proof of the tenderers address, and details of the business bank account are probabilities. In what might be an interesting development, the TCC process may even drill down to the 'good standing' of the owners of the business; and in the case of a company, its directors, before the tenderer can obtain the TCC.

Much of the above is speculative for discussion purposes but nevertheless based on historical and international experiences. Further developments are keenly anticipated.

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Evolution Of The Estate Planning Industry – An Insider's Perspective

Allow me to give a brief account on how the estate planning industry has evolved in this region. We started as a pioneer in bringing estate planning to the masses in 1995. Hitherto, estate planning was the domain of family offices, trust companies and private bankers catering to the elite and privileged, and their modus operandi have not changed much over time. The middle class and mass affluent were largely unaware or had little means of sourcing inexpensive estate planning services from the providers.

What struck me then was that the financial industry that houses hundreds of thousands of employees and handles trillions in asset value for people while they are alive was doing very little about the transition to the other side. The planning and management of wealth transfer from the departed to the living heirs was pretty much left to an eclectic mix of people, some professional, some not so – an estate planning industry that was highly fragmented and not well organised. This revelation conjures up immense possibilities for the industry when properly organised.

The model that we created was a network of franchisees who market to the populace and take instructions based on standard operating procedures (the distributor) along with a centralised office of legally trained personnel for vetting for quality and uniform presentation (the manufacturer). Getting this to fruition required a significant amount of capital and holding power as well as a lot of public education.

This was somewhat of a unique model in the world. Outside Malaysia and Singapore (and on a limited scale, in India and China), all other modes of providing estate planning services to the retail market on a large scale were either online self-service or through a loose alliance of like-minded estate planners. While these modes could be efficient, they were at best offering products in a limited way to the mass market, without fulfilling needs of clientele holistically (for objectives that are met by a trust set-up for example).

The launch of this model caused consternation among quite a few lawyers, not all but some were openly hostile. Many took the position that we were upstarts trying to encroach into the traditional domain of the legal profession. However, it can be seen that practitioners, left to their own device, would not have the inclination to invest in a non-core service for the long term in development of people, systems and infrastructure that could reach the masses in an efficient and cost-effective manner.

It was also very hard during the formation years to broach the subject of death. We believed that this fledgling industry would develop along a trajectory similar to that of life insurance, which is slow growth with consumer reluctance to planning for death, followed by growth from gradual acceptance and then, increasing growth due to life insurance being regarded as essential by most.

So, despite the brickbats thrown at us and consumer resistance, we persevered, with a lot of capital funding for losses, until past breakeven. Many do not realise this but the gestation period to reach breakeven can take several years. This is because investment in various systems such as custody tracking, resource training and building a distribution network can be very expensive without economies of scale. Until critical mass is reached, operations will be loss-making.

For the first decade, it was mostly red ink and a lot of shareholder support was called for. In the next decade, more players started to come into the industry, principally bank-owned trust companies. The attraction for them was to tap into their extensive customer base either through their branch network and/ or through their insurance/ mutual fund agency network. While backed by deep pockets, by and large, these attempts have failed to gain traction, beyond some limited success with online Will purchases, because of various factors. For one, when template Wills are given free to premium customers, it is not generally seen as of value. Secondly, provision of personalised estate planning services requires face-to-face interaction to answer questions and clear doubts on issues that bother clients. Thirdly, use of networks that are accustomed to selling off-the-shelf products, for sale of customised products, is problematic. It detracts from focus on sale of prime banking products. And finally, perhaps the biggest impediment to success, is the lack of understanding in managing a network of agents, who are essentially self-driven entrepreneurs, which requires a very different mindset from the control and compliance-centric mindset of bankers.

Coming into the third decade, we have seen a sharp increase in the entry of non-bank players. Especially after the pandemic set in, financial planners, agents and even entrepreneurs were hungry to look for new sources of income and the market after two decades of development looked sufficiently attractive for growth, with a seemingly low entry barrier. Writing a Will for others requires very little capital beyond computers and a website set-up. However, many do not understand what it takes to get this business up to scale which as mentioned earlier, requires heavy investment and economies of scale. For mass market penetration, merely being a manufacturer is not going to cut it without building a distribution network.

And so, many of the new entry players resorted to price undercutting to gain market share. This is a futile exercise because any price cut that wipes out profit margin (which is not particularly rich in this industry and non-existent for many newbies) means the more sales are made, the higher the loss. This loss is exacerbated by the continued entrance of me-too players who adopt the price cutting strategy. Thus, like flying ants flocking to the light and dropping off, many of the new players get attracted to the industry, have limited capital and recede after two/ three years. What has been achieved in all this is the filtering of customers who demand cheap pricing irrespective of all else and those who choose value of service; and this is good for established players.

So where is the industry heading? My belief is that those who are in the business for the long term will thrive if they differentiate from the rest by investing in the raising of quality of service and efficiency in delivery. This market segment is the one that sustains a reasonable profit margin, is still largely untapped and will continue to grow strongly well into the future.

Johari Low
Group Chairman
Rockwills International Bhd

UK Estate Planning Focus: Residence Nil Rate Band Planning

Siobhan Smith
Lead Tutor for The College of Will Writing
The Society of Will Writers, UK

For clients who are domiciled within the UK, or who are domiciled elsewhere but own property within the UK, the Residence Nil Rate Band (RNRB) is of key importance. This is the largest and latest change to UK estate planning in recent years, and since its introduction on 6 April 2017 a key trend in UK estate planning has revolved around making use of this allowance.

The RNRB is an additional inheritance tax (IHT) allowance to the current nil rate band (NRB) which currently stands at £325,000. It was introduced in stages and only reached its full amount of £175,000 starting from 6 April 2021. Like the ordinary NRB it is transferable, thus allowing the surviving spouse to make use of the allowance on their own death if it was unused on first death. This means that a married couple or civil partners may potentially pass up to £1m IHT free.

The availability of the RNRB is dependent upon a number of conditions being met. The deceased must have possessed a qualifying residential interest, all or part of this interest must be left to their direct descendants or a spouse of their descendants ("closely inherited") and their estate must not exceed the taper threshold to a point that the entire RNRB is taped away. This leaves a person with no children, stepchildren or adopted children unable to qualify for the relief. It is also unavailable to many high-net-worth individuals.

Tapering

The RNRB is lost if the deceased's estate far exceeds the taper threshold. If the deceased's net estate exceeds £2 million at death, RNRB will be tapered away at a rate of £1 for every £2 over this threshold.

The effect of this is that no RNRB is available for estates with a net value in excess of £2,350,000, or £2,700,000 at the date of death of a surviving spouse where 100% of the RNRB was available to transfer from the deceased spouse.

Tapering can act to reduce the amount of RNRB that is actually available to transfer on the death of the surviving spouse. This is the case even if the RNRB was not used on first death.

Last Will and Testament

The property itself does not need to be located in the UK. It is possible for the RNRB to be applied to a foreign property provided all of the above requirements are met. However, this will be affected by the deceased's domicile. If a person is domiciled in the UK, their worldwide estate is subject to UK IHT and so the RNRB may be applied to a property that is located abroad. If a person has a non-domiciled status, then their property must be located in the UK for the RNRB to apply, as only their UK estate will be subject to UK IHT.

Modern Estate Planning Techniques

Since the introduction of the RNRB, there has been a decline in the number of clients utilising Flexible Life Interest Trust (FLIT) and Discretionary Wills to protect their interest in real property. This is due to the fact that these types of Trust fail to meet the requirement that the qualifying residential interest is closely inherited.

There are therefore two modern solutions to protect the property with a trust while also qualifying for the RNRB. The first is to separate the qualifying residential interest from the rest of the estate and deal with this separately by placing it into an immediate post death interest trust for the surviving spouse, with the children nominated to inherit it immediately on the spouse's death. This allows the residue of the estate to fall into the FLIT or discretionary trust to allow protection for generations to come, while still qualifying for the RNRB.

The second is to still utilise the FLIT over the whole estate but limit the trustees' discretionary powers in a way that means they cease on second death. This retains all of the flexibility of the FLIT over all assets while the surviving spouse is alive, and also over all assets except the property after their death.

Both approaches unfortunately come at the cost of less protection over the property, as any protection can't be extended beyond second death. NRB discretionary Trusts have also seen a resurgence as a result of the RNRB. This type of Trust planning had largely declined for married couples since the ability to transfer NRB was introduced in 2007, but they are now seeing a new use to help avoid loss of the RNRB due to tapering.

This use of the NRB trust involves directing assets away from the surviving spouse so that on second death, their estate doesn't exceed the taper threshold. If leaving assets on first death directly to the surviving spouse or to an immediate post death interest for them is likely to result in pushing their estate over the taper threshold, then there may be a benefit to directing assets to a NRB trust on first death instead. On second death, the assets in the NRB trust created on first death will be outside of the estate value for IHT and if the result is that the estate is kept below the taper threshold then the RNRB is not lost, provided of course all other requirements for the RNRB are met on second death and the property is being closely inherited at that point.

Qualifying for the RNRB

With the introduction of the RNRB, a number of new definitions were added to the UK IHT legislation, the Inheritance Tax Act 1984:

A *"Qualifying residential interest"* – An interest in a dwelling house which has been the person's residence at some point during their period of ownership. (Section 8H Inheritance Tax Act 1984). This definition will include a property that has been purchased and used as a residence but at the time of death was rented out, but it does not include a property purchased as a buy to let.

"Closely inherited" – Inherited by will, intestacy, or survivorship by one or more of the person's direct lineal descendants. (Sections 8J & K IHTA 1984). Also, where the interest is left on trust where the descendant is treated as owning the asset. This means a property left to a direct descendant via a bare trust, immediate post death interest, bereaved minor's or bereaved young person's trust qualifies for the relief.

"Direct lineal descendants" – Children, grandchildren, and remoter issue as well as their spouses or civil partners. Also includes stepchildren, adopted children, foster children, and children of which the person had guardianship while they were under 18.

If estate exceeded the taper threshold, then the unused RNRB that is available to transfer will be reduced. If the first to die's estate exceeded £2,350,000 then there will be no RNRB to transfer.

The RNRB may only be applied to a single property. If a person has more than one qualifying residential interest that could qualify for the relief, then their personal representatives must nominate a property to apply the RNRB to.

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