

# TIME FOR A FLEXIBLE FRIEND?



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## PROFILE OF OUR AUTHOR

David has over 35 years of experience in advising clients including entrepreneurs, offshore trustees and non-doms on all aspects of personal taxation.

David joined Rawlinson & Hunter in 2019, prior to which he spent over 20 years as a partner in two of the Big 4 accounting firms. David started his career as a solicitor. David's recent work includes advice on creating a family office in the UK, pre-UK arrival planning for a senior executive, and the sale of a significant private company owned by an offshore trust.

David has appeared in court as an expert witness on a number of occasions including in the Mehjo case on non-domicile planning.

David won the 'STEP Lifetime Achievement Award' in 2018 and in 2016 won the 'Leading Individual Award' at the Wealth Briefing European Awards. He is listed in e-private clients top 50 private client advisers for 2019.

## AN INTRODUCTION FROM

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The world is in a constant of change. Never has this been more evident than over the last tumultuous year. The world and our lives will continue to change and adapt and post pandemic comes the economic recovery and attempts by governments to get back on a sustainable footing.

With a range of measures including GAAR, DOTAS, CRS, DAC VI, governments are increasingly seeking ways to 'balance the books'. The resulting deficits brought about by the pandemic are likely to bring a sharper focus on this.

Throughout this period Utmost have seen a surge in interest amongst the HNW/UHNW community in single premium life assurance planning which has seen very few, arguably no, material changes to treatment in legislation.

In this article leading tax industry expert, David Kilshaw, discusses the current climate of private client wealth planning and why single premium life assurance planning might be the right solution at the right time.

In an ever changing world it is a comfort to see some things remaining the same.

With many borders still closed, more travel restrictions than travel and only a little more room to move, the word 'flexible' is probably not one which occurs to many in 2021. However, with most countries turning their thoughts to the possibility of tax rises to plug Covid 19 holes in their economies, 'flexible' may yet prove to be the word of the year.

Many taxpayers are beginning to consider the steps they might take ahead of potential tax rises. Investment houses are reporting clients taking their profits now while tax rates are known.

Lawyers are also seeing clients moving assets to the next generation to benefit from existing estate planning rules amidst fears of new wealth taxes being introduced in the client's home jurisdiction (including the possible introduction of a temporary annual wealth tax in the UK for those with assets over a certain threshold; a time-frame of 5 years and a £500,000 base has been rumoured). Such planning is sensible. If losses are available, there is sense in using them now in case they are restricted in the future.

Similarly, there is talk in the UK about the possibility of abolishing the Capital Gains Tax (CGT) uplift on death (because it distorts behaviour) and so now may be a sensible time to move assets downstream. For example, at present the owner of an unquoted trading company may see no reason to tax plan – the shares will be exempt from both CGT and inheritance tax on the owner's (the latter because of the availability of business property relief (BPR)). But, as stated, the CGT uplift on death may not live forever and there are regular rumours that BPR may be abolished or restricted.

At present it is often possible to make lifetime gifts of such shares with no immediate tax charge and so action now – or at least a review of the position – would seem prudent.

Now too is the time to take advantage of the existing reliefs and exemptions – but this should not be allowed to drift into the realm of 'panic planning'. Experience has shown that planning based on guesswork – e.g. because of a fear of a wealth tax – is invariably wrong and often worsens the situation (either because the feared changes never arise or they have a rebasing provision or similar escape clause).

This is where 'flexibility' is the keyword. Taxpayers should be reviewing their assets, their holding structures and their plans to ensure they are sufficiently flexible to deal with any new tax changes. The key is to ensure that, whatever may be on the tax horizon, structures are flexible enough to cope.

A few examples may illustrate the point. If tax rates rise, people may wish to move themselves or their structures quickly across borders. In the UK, there are already tax charges where companies and trusts are moved offshore. It cannot be guaranteed that a similar charge may not be introduced when people try to move to a lower tax regime (and, indeed, such a change was proposed in recent reviews by the Office of Tax Simplification). Those planning to emigrate need to keep an eye on the timing of their move, a problem heightened by HMRC's less than generous relaxations to the Statutory Residence Test for Covid 19.

As indicated above, it would also be relatively easy (and in line with precedent) for the UK government to restrict still further the ability to move assets and ownership structures between generations without an immediate tax charge.

Similarly, a flexible tax planning strategy would argue against having an 'all the eggs in one basket' approach. Taxpayers, particularly those with significant wealth, should consider having more than one investment 'basket' for their wealth. To take an example, in the UK in recent times there has been a rise in the use of family investment companies (FIC): these being UK companies designed to hold investments and to allow the growth to benefit from the lower corporation tax rates rather than income tax. However, where there is a 'bandwagon' there is normally an HMRC posse riding after it. Moreover, the UK Chancellor has recently announced an increase in the corporation tax rate from 19% to 25% with effect from 1 April 2023, albeit that the 19% rate will continue to apply to companies with profits of not more than £50,000, with marginal relief for profits of up to £250,000. This may make FICs less attractive in some cases.

Taxpayers might therefore consider other options such as trusts and life assurance bonds (on which see below), with a view to having a spectrum of solutions. 'Flexibility', therefore, it is submitted, is the only effective solution to the challenges ahead.

When 'flexibility' is mentioned the words 'offshore insurance bonds' no doubt spring to mind for many advisers. They are perhaps the ultimate flexible vehicle. Unlike trusts and companies (see above), they can readily move across borders and, unlike UK trusts, bonds can be made the subject of a lifetime gift without a tax charge, thereby allowing flexible estate planning. The ability to achieve a tax deferral until encashment means bonds should be considered as an addition to, or perhaps as a substitute for, a FIC. Finally, history has shown that bonds are not generally subject to sudden and sweeping changes in the tax regime which governs them.

If 'flexibility' does prove to be the word of 2021, then offshore bonds may prove to be a key part of the definition of the word.



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