BRENTHURST GLOBAL WEALTH

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Offshore investment structures can simplify tax and estate planning, but beneficiary and ownership choices are crucial.

Investors should carefully consider life assured arrangements, joint ownership, payout flexibility and alternative beneficiaries.

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OFFSHORE INVESTMENT & BENEFICIARIES

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> **Nominating alternative beneficiaries is a simple, low-cost step that is often overlooked. If your nominated beneficiary has died and no alternative is named, the proceeds go to your estate.**

The February Budget doubled the single discretionary allowance to R2 million. Add the R10 million foreign investment allowance and an adult South African can now move R12 million offshore in a calendar year. A married couple can move R24 million offshore annually. Much of that money is landing in offshore policy wrappers.

For most of the families I assist, a wrapper is the right home for offshore money. Income earned within the policy is taxed at 30% and capital gains at an effective 12%, which is a good deal if you are a 45% taxpayer facing 18% on your gains. Structured correctly, it also passes to your children without executor's fees.

The problem is that this is where most conversations end.

TWO PRODUCTS WITH ONE NAME

The industry uses the word “endowment” for two different things.

- A true endowment has a life assured.
- A sinking fund does not have any life assured.

The Long-term Insurance Act governs both, and both are taxed identically. However, what happens when someone dies is completely different.

HERE ARE THE FOUR QUESTIONS I ASK BEFORE STRUCTURING A PORTFOLIO.

1. IS THERE A LIFE ASSURED, AND WHO IS IT?

Picture a couple who take R22 million offshore and invest it in a single joint policy. The husband is the only life assured. The two children are the nominated beneficiaries. He dies.

The last life assured is gone, so the policy has to come to an end. Who gets the money? The widow, who is still a joint owner? Or the children, who were nominated as beneficiaries? And must it be paid out in cash net of the 12% capital gains tax deducted within the policy, or can it be handed over and left invested?

I have directed this question to several providers, and I have not always received the same answer. That is the point. The law leaves room for interpretation, leaving each product house to interpret it differently and implement it according to their contracts.

2. DOES THE PRODUCT ALLOW JOINT OWNERSHIP, AND DO YOU ACTUALLY WANT IT?

Joint ownership sounds like an administrative detail, where in fact it is not.

Every transaction on a jointly-owned policy needs both signatures. A fund switch, a partial withdrawal, a full surrender. If two siblings inherit a policy jointly and one is a cautious investor while the other wants to buy a house, one can simply block the other. There is no tiebreaker.

It gets worse.

IF ONE OWNER MAKES A WITHDRAWAL, CAPITAL GAINS TAX IS LEVIED ACROSS THE WHOLE POLICY ON A PRO-RATA BASIS, SO BOTH CARRY THE TAX COST OF A DECISION MADE BY ONLY ONE OF THEM.

And if one of the joint owners dies, their share will usually pass to the surviving joint owner, rather than to their own nominated beneficiaries. Ownership tends to outrank nomination, so an inheritance a parent intended for their own children can quietly end up elsewhere.

3. ON DEATH, IS THERE A FORCED PAYOUT OR A CHOICE?

An endowment with a life assured must pay out when the last life assured dies. If that happens in a negative market cycle, the family is a forced seller at the worst possible time.

A sinking fund gives the beneficiary a choice. They can receive their proceeds in foreign currency which can be paid into their offshore bank account, take the payout in rands here at home, or they can simply remain invested by becoming the new owner.

If they retain the investment, the capital gain rolls over rather than being solidified, and the five-year restriction period falls away. They inherit a policy that is already mature, even if it was only opened a year ago. **That flexibility is worth far more than people appreciate until they need it.**

4. CAN YOU NOMINATE ALTERNATIVE BENEFICIARIES?

This is the cheapest fix in the exercise and the one most often skipped. If your nominated beneficiary has already died and you have not named an alternative, the proceeds go to your estate.

This translates to capital gains tax, executor's fees at 3.5% plus VAT, and a wait of a year or more. The offshore money you structured to stay out of the estate (for administrative purposes) lands right back in it.

Naming an alternative beneficiary takes one line on a form.

A PRACTICAL NOTE FOR MARRIED COUPLES

Where both spouses are investing their own allowances, two separate policies almost always beats one joint policy. Each owns their own policy and nominates the other as beneficiary.

No executor's fees on the first death, no deadlock over signatures, no argument about whose children inherit what. Furthermore, most platforms consolidate the pricing of policies of linked family members, so each spouse having their own policy does not mean increased costs.

I will be honest about the trade-offs. If your marginal tax rate is below 30%, you are paying more tax within the wrapper than outside it. Furthermore, access to the invested money is restricted for five years. And while an endowment protects you from creditors once it has been in force for three years, a sinking fund does not, which matters if you are a business owner who has signed surety.

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