

The image features a close-up, macro shot of a red brush with white bristles, set against a blurred background of red and purple light. A dark purple, semi-transparent shape overlaps the top right corner of the image. The Dentons logo is positioned in the upper left, within a dark purple arrow-shaped box.

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The rationale, benefits, and important considerations involved in cross-border wealth structuring

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The private and business affairs of wealthy families can be complex and involve multiple jurisdictions, tax regimes and asset classes. This article will discuss the rationale, benefits, and important considerations relevant to cross-border wealth structuring.

Reasons for cross-border structuring

There are many legitimate reasons for individuals and family offices to set up wealth holding structures and procure related solutions in a different jurisdiction to that in which they live and/or operate and invest.

Sometimes these people live in countries where their personal safety is at risk if details of their private wealth became public knowledge or otherwise disclosed. Therefore, they may choose to structure their wealth through a structure set up in a neutral jurisdiction which is safe, well governed and politically stable.

Other more common reasons include:

- Estate planning
- Confidentiality
- Creditor protection
- Providing for vulnerable beneficiaries
- Tax planning
- Mitigating geo-political and sovereign risk
- Diversification (including currency, market, asset class, and counterparties)
- Avoiding forced heirship regimes
- Accessing new asset classes (including private equity funds, hedge funds, and direct investments)
- Accessing new markets
- Procuring specialised expertise and solutions
- Multiple citizenship and residency planning
- Pre-immigration planning
- Family governance and advice
- Succession planning for businesses
- Managing risk through private placement life insurance and captive insurance
- Registration and custody of esoteric assets like aircraft, yachts, art, precious metals, and collectables
- Cross-border philanthropy

To prevent assets from being taxed twice (i.e., once in the jurisdiction in which they are situated and again in the jurisdiction in which the structure is set up) a neutral jurisdiction that does not levy tax on the structure may be strategically selected. Whilst double tax agreements are also intended for this purpose it can be more expedient and efficient for the structure to simply not be taxed in the place where it is set up. However, the structure will likely be subject to tax in the place where the assets are situated. For example, if a structure owns commercial real estate then it would likely be taxed domestically on rent receipts and capital gains and stamp duties. If beneficiaries receive distributions from the structure then they will usually need to account for these in their personal tax returns in the country in which they live.



Important considerations for any cross-border wealth structuring strategy

Expert advisors will explain to their clients the benefits and implications of setting up a structure in a jurisdiction other than that in which they are primarily resident or hold assets.

Important considerations include:

- Any tax implications from the transfer of capital to the structure.
- Any tax on the distribution of capital/income from the structure.
- Any tax on the accumulation of capital/income within the structure.
- Tax information reporting and exchange obligations.
- Registration of beneficial ownership information (including whether public or private).
- Implications for domestic fiduciaries, officers, controllers, and other forms of power holders.
- Whether domestic remedies could be applied to domestic assets.
- Any domestic restrictions on foreign structures owning domestic assets.
- Any tax on death, restructuring, or changes in circumstance.



Structural and product solutions

Trusts are a common form of wealth structuring solution and used in combination with other types of structures and products. Their benefits are well known and familiar to families and advisors in the common law countries. However, they are not universally recognised or understood in some regions. Furthermore, they may not always be appropriate for the circumstances. Trusts are typically used as ultimate holding and group / family financing vehicles rather than for transactional or operational purposes. For those types of activities corporate vehicles are usually more appropriate.

The range of private wealth structuring and product options include:

- Trusts:
 - Discretionary
 - Fixed Interests
 - Revocable
 - Irrevocable
 - Dynastic (Multi-generational)
 - Settlor/Grantor/Protector Directed
 - Testamentary
- International Business Companies
- Limited Partnerships
- Foundations
- LLCs
- Private Placement Life Insurance Policies
- Private Placement Funds
- Protected Cell Companies
- Captive Insurance Policies

Typically, these types of structures can be utilised in combination with each other.

Jurisdictional selection

Specialised governance and administration and related financial services are provided in many jurisdictions to cross-border wealth structures. Each of the prominent structuring jurisdictions have their own specialisms and characteristics and sometimes it can be difficult to distinguish between them.

As to which jurisdiction is best will depend on circumstances and objectives plus a combination of other relevant factors.

Key considerations include:

- The legal and regulatory framework of the relevant jurisdiction (e.g., for structures like trusts, LLCs, and private funds and functions like banking and investment management).
- Taxation of structures and people (nowadays, administrative expediency and compliance efficiency is as, if not more, important than the actual size of the tax wedge, although neutrality is usually a preferred starting point).
- Economic and political stability in the chosen jurisdiction (especially primacy of the rule of law and independence of the judiciary).
- Access to markets, experts, and institutional support (i.e., an established and sophisticated ecosystem of trustees, advisors, and financial institutions to support structures, people, and operations).
- Quality of life and connectivity (for family and any on the ground advisors and operational teams).
- Any special features of the laws in the relevant jurisdiction(s) (e.g., dynastic trusts, privacy protection, divorce protection, non-charitable purpose trusts, firewall provisions, shortened limitation periods, reserved powers, tax concessions, etc).
- The availability of residency visas or citizenship in return for investment and/or other avenues for attracting globally mobile talent and capital.

A multi-jurisdictional (fragmented) strategy can often be accommodated and may be optimal, depending on the circumstances. But, whatever the strategy, it should be holistic, deliberately designed, bespoke to the family, and operationally cohesively.

Regulatory safeguards from abuse

Although there may be some tax benefits these are not typically a core reason for the establishment of a legitimate cross-border structure. Nowadays, illegally avoiding disclosure to tax authorities is a predicate offence to money laundering and has criminal consequences for the professionals involved. Trusts, trustees, settlors/grantors, and beneficiaries are, typically, required to report information about the structure and its holdings to their revenue authority.

A responsible advisor must always ensure that the person setting up the structure is acting honestly and in good faith. In practice this means carrying out extensive due diligence to confirm:

- The identities of the people involved.
- Whether they have any political connections or otherwise could be “high risk”.
- The source of the funds to be transferred into the structure.
- Whether there are existing creditors and, if so, whether the transfer leads to insolvency.
- The structure is compliant with all applicable laws and regulations.

Anyone considering setting up a structure or procuring a related product should anticipate questions from advisors and service providers and must be prepared to explain and provide full and complete supporting evidence of compliance – from the outset and on an ongoing basis. This often involves getting foreign legal and tax opinions.

Strategic advice

It is important for wealth owners to receive agnostic and strategic advice on the matters discussed in this article, including:

- Structural and product selection for the circumstances and objectives.
- Jurisdictional selection for legal structures, operational functions, and family residency/citizenship.
- Procurement and on-going monitoring of service providers (e.g., trustees and corporate administration) and product providers (e.g., wealth management).

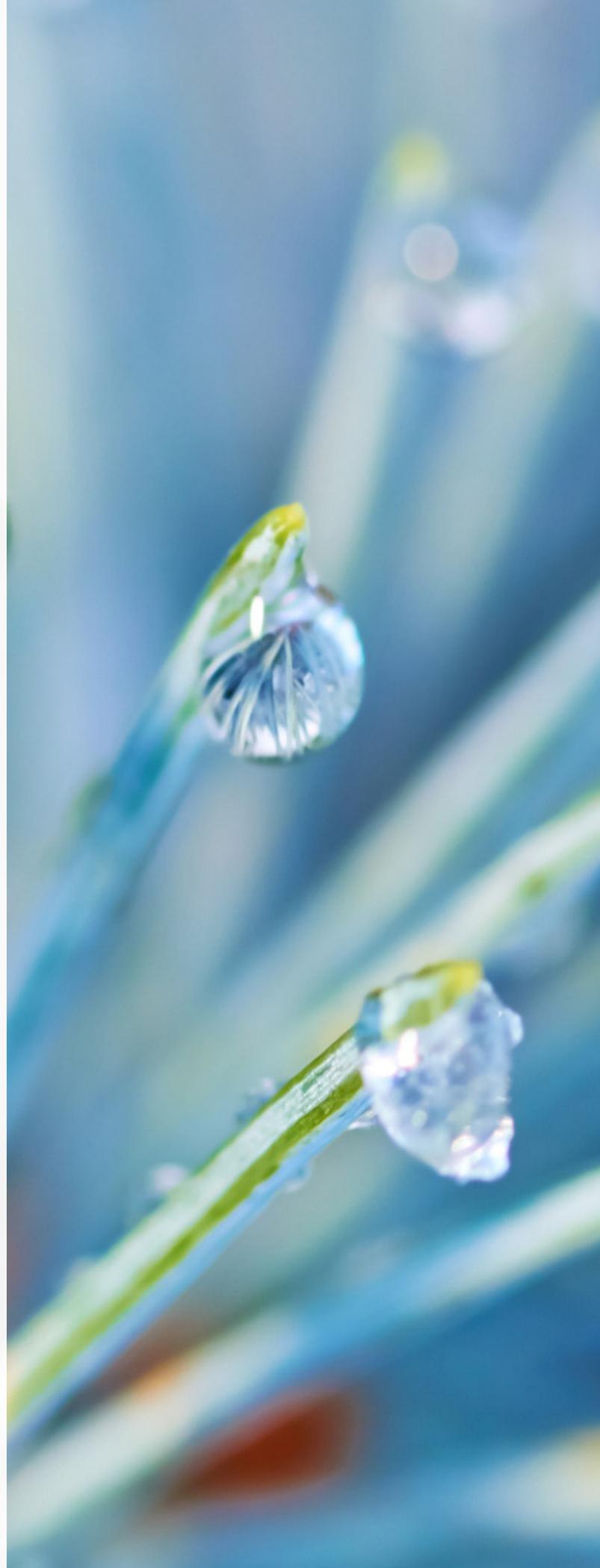
These are strategic decisions that should be made with advice from experts who have a holistic view of the options, extensive knowledge and experience with these situations, and are not conflicted by jurisdictional biases, commissions, retrocessions, or other forms of influence that may not deliver the best outcome for the client.

An expert advisor will generally take clients through a phased approach:

- Exploration: Understanding the present circumstances, reviewing existing legal structures and arrangements, and agreeing the objectives.
- Design: Making a strategic plan to achieve the objectives.
- Implementation: Executing the plan (e.g., setting up structures and/or procuring services and products).
- Ongoing support: Providing tactical advice, monitoring compliance, ongoing general counsel, and supporting governance.

Once a structure is set up it should be reviewed regularly for efficacy, operational efficiency, compliance, and relevance to the family's circumstances and objectives.

For more information on how Dentons works with family offices, please visit www.dentons.com/familyoffice



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