

Private Foundations

Private Foundations are beginning to replace the old fashion Discretionary Trust as more modern and effective tax planning instrument regardless of the their status in terms of domicile.

Private Foundations operates similar to trust but have recognised legal status. Foundations incorporate all of the benefits and advantages of a trust, into a simpler and more flexible vehicle. A Foundation is an independent legal entity with which assets may be irrevocably vested, those assets then belong to the Foundation which may do with them what it pleases provided that the guidelines of the Foundation charter are complied with. Foundations should technically exist for non-profit purposes; however, a Foundation may carry out commercial activities in its own right as long as the profits are for the Foundation's stated purpose, which can be very wide ranging. Alternatively, a Foundation may act as a "holding company" and own shares in company (for instance an Isle of Man company which is seen as far more acceptable to IOM/ UK lending banks in property structures), which in turn carry out trading activities. The profits derived from these trading entities must be used for the Foundation purpose.

UK Property Owning Structure

Once a Foundation has been established to overarch the structure (and by its very nature providing the CGT proofing mechanism, no matter how many structures operate underneath its banner) there are then various different ways to organise the property structures, the most common being:

- The Isle of Man Holding Company owns individual IOM companies which are used to own each property individually - this provides for the possibility of selling the company rather than the actual property when a sale is sought and provides for mitigation of stamp duties in such cases as the shares of the company are transferred rather than the property itself. Naturally there are additional costs associated with operating greater numbers of offshore companies owned by a different offshore company. However, such cost is not prohibitive when weighed against the substantial stamp duty mitigation that can be achieved in this manner
- A single offshore company is used to own multiple properties for rental. This option would be cheaper than 1 above. This still provides for CGT avoidance under the Foundation banner, and as with (1) above can operate under the NRL (non-resident landlords) scheme. However, stamp duties would be payable in full on transfer of individual properties although CGT would be avoided.

The properties will have an agent (you) which is the UK Agent Company which will enter into a contract with the Isle of Man Property Holding Company in respect of the provision of property agency services. Hence, the UK Agent Company will collect the rent and maintain the properties on behalf of the IOM Property Holding Company and carry out their instructions in return for an arms length agency fee. You can be the directors of this UK Agent Company and own 100% of the shares. The UK Agent Company will be subject to UK Corporation Tax and the dividends you receive will need to account to UK personal tax.

The UK Agent Company is not a management company. All management decisions are made in the Isle of Man by the Directors of the Isle of Man Property Holding Company.

MAIN FEATURES AND BENEFITS OF A PRIVATE FOUNDATION:

- Foundation Charter registered at the public registry.
- A Foundation is created under the law of a Sovereign State.
- A Foundation is a Corporate entity.
- A Foundation enjoys legal personality.

- A Foundation has no Beneficial Owner.
- A Foundation can have perpetual or limited life.
- A Foundation holds title to its assets.
- The minimum patrimony is \$10,000.
- A Foundations Founder can be an individual or corporate entity.
- The Foundation Council can be located anywhere.
- Protector(s) can be appointed.
- Third Parties can be incorporated into structure.
- The Foundation Charter is in the public domain.
- The Foundation Regulations are a private document.
- The Foundation Council act according to Foundation Regulations.
- Beneficiaries are appointed via the Foundation Regulations.
- Beneficiaries can be individuals or corporate entities - could be another Foundation.
- Beneficiaries are not required at the outset.
- No Sham - Certainty is established upon registration.

Advantages of the Panamanian Foundation

The Assets placed inside a Panamanian foundation are sole and separate property and cannot be seized to satisfy any personal judgements or obligations of the founder or the foundation's beneficiaries. Assets inside a Panamanian foundation cannot be attached in order to satisfy any claims against the founder, including judgements for divorce, lawsuit and other liabilities.

The Panamanian foundation offers the best of a trust and the best of an offshore corporation. While the foundation cannot technically engage in business activities, it can own the shares of a company engaged in business activities. It is also permissible for the foundation to engage in any activity, which will increase the value of assets. This means that a foundation can be the owner of bank accounts, securities brokerage accounts and real estate holdings.

Since there are no shares of ownership in a Panamanian foundation, the founder does not own the foundation and as such gains important tax reporting and protection benefits with this.

In reality, there are quite a number of practical uses and strategies for the Panamanian Foundation. As an asset protection vehicle, there is probably no better entity in any jurisdiction at the present time for this purpose. For more information on how to use a Panamanian foundation as part of an overall asset protection strategy, and to hear about ways we have assisted other clients, please contact our office.

Therefore it can be clearly seen that the Foundation offers many benefits to both the professional advisers and the end-client.

How to Create a Private Foundation

A Foundation can be created by one or more natural persons or by a juridical entity, such as a corporation. A foundation charter is created, which is essence, is similar to the incorporation documents created for a company. Like the incorporation documents, The foundation charter document is public record. The foundation structure is directed by a council of three or more members. This is similar to a corporation, which is directed by three directors or board members. These directors of the foundation are called Council Members. In addition, like a trust, a private protector may be named to have special oversight authority. I usually suggest that the client take this position, especially if nominee council members are being used. The position of a protector is not required, but it is advisable. While the position of protector can be a private agreement between the foundation and the person acting as protector, extra protection is given to the client when this position is spelled out in the foundation charter.

Administration of a Private Foundation

Administration of a Foundation is extremely simple and follows a similar format to that of a company.

1. Inaugural Meeting:
 - a. Adopt Regulations (if applicable);
 - b. Resolve the opening of bank accounts and signatories (if required)
 - c. Appoint administration managers for day-to-day affairs (if required)
 - d. Determine basis for submitting accounts to Beneficiaries.
2. Information to be given to Registered Agent:
 - a. Material amendments to Foundation Charter;
 - b. Changes in Foundation Council members;
 - c. Change of administrator or change of administrator's address.
3. The Foundation Council must be able to render account of its administration to the Beneficiaries (if any) or to the Protector (if appointed). If neither exist then to the Founder.
4. Administration is simply carried out via resolution of the Foundation Council.

Summary

- The flexibility and advantages offered by the Private Foundation are numerous.
- The features of corporate personality and Certainty present the practitioner with a vehicle that can be lawfully structured to suit a wide variety of client scenarios, whilst at the same time relieving the practitioner of the onerous responsibilities of Trusteeship.
- When suitably structured and applying the principles of Public and Private International Law, the Private Foundation enables the practitioner to utilise a vehicle that is lawfully constituted under the law of a foreign Sovereign State.
- Management and control of a Private Foundation can however be located wherever the practitioner chooses.
- The Private Foundation can be lawfully structured in many ways and for many lawful uses and scenarios. This presents the practitioner with a unique vehicle to expand and enhance their activities and operations.

Private Foundations are modern approach to estate planning and asset protection. Your accountant will confirm this that on the UK tax return, there is an opening questions sheet on the first inside page that asks outright if you are a beneficiary of an offshore trust or company.