

Estate Planning

IS THAT WHAT WE'RE WORKING FOR NOW?

Don't we all want the best for our children? We provide them with a safe and sheltered home, we raise them well, make sure they get an education and try to give them the tools to find their way through an increasingly complex world.

By **Yolanda Bokhorst**

What role does money play in all of this? The question that arises is, of course: how can we best transfer our assets to our children - the following generation(s)?

Dutch Taxes

Many people think that this largely involves trying to reduce taxes. Of course, taxes play a role, but opinions differ as to whether minimizing taxes should be the determining factor.

Be it as it may, when you live in the Netherlands, you deal with two types of taxes when you transfer property: gift tax and inheritance tax. Gift tax is owed by the recipient over any gifts made by a donor during their lifetime. Inheritance tax is due by the beneficiary over what they inherit upon the death of a person. The rates of these two taxes are the same. Both gift tax and inheritance tax have exemptions - these are not the same; you can find the rates and exemptions on www.belastingdienst.nl.

When determining whether taxes are due, the Netherlands applies the principle of domicile: if the donor or deceased lived in the Netherlands, Dutch inheritance and gift tax apply. If a home that is located in the Netherlands is gifted, transfer tax also applies, but when a home is inherited, it does not. When shares in a privately-owned

‘The aim of estate planning is to limit the tax effects of the transfer of your assets to the next generation’

company are gifted or inherited, then in some cases income tax is due. In short, when it comes to estate planning, there can be a maze of tax consequences.

Foreign Taxes

From an international perspective, taxes have not been harmonized, and personally I believe this will be hard to accomplish. The plain fact is that each country has its own tax rules. These various rules can apply when a non-Dutch person, who is living in the Netherlands, gifts something to their children or passes away here. This could give rise to double taxation, should the country of nationality levy taxes based on nationality while the Netherlands levies taxes based on domicile. In this case, it is up to tax treaties or unilateral regulations to make sure that double taxation is avoided - or at least limited as much as possible.



Estate Planning

The aim of estate planning is to limit the tax effects of the transfer of your assets to the next generation. The basic principle in the Netherlands is that the entire family profits most if the assets are split 50-50 among the parents first, after which they are passed on to the children in two equal parts. This allows everyone to make optimal use of the gift and inheritance tax exemptions and rates.

‘Administrators are appointed in order to avoid that the children gain control over what they are gifted or what they inherit’

The next point to consider is whether the assets should be transferred before or after the death of the parents. Sometimes, it is a good idea to gift them and to accept the consequences of gift tax (at a lower rate), knowing that more taxes might be due if it is all inherited in one go.

Three Pillars

In short, there are three different areas in which matters must be arranged - all of which must be coordinated with each other:

- **Matrimonial Property Law:** a prenup can help you ensure that your assets are split 50-50 over both parents. When the first parent passes away, the first half goes to the children, when the second parent passes away, the second half does.
- **A gifting plan:** when and what do you gift your (grand)children? And how much should you hold on to for now, for yourself?
- **The will:** how do you ensure that, after your death, the assets go to the right persons?

No Trust

In Common Law countries, many people make use of a trust to arrange matters. This is not only often fiscally advantageous, but

it is also an excellent way to manage the assets. This helps avoid that children, at a young age, have a say in what happens to the family assets. In the Netherlands, no one makes use of trusts. It is not fiscally attractive and therefore quickly becomes unappealing. Trusts set up abroad might be recognized in the Netherlands, but then they have to meet certain criteria. Which means that their fiscal consequences in the Netherlands remain unclear.

Limiting the Children's Say

In the Netherlands, administrators are appointed in order to avoid that the children (who are too young) have control over what they are gifted or what they inherit. A parent who gifts something can remain administrator until the children reach a certain age. This way, the children cannot access the assets themselves. Of course, the assets can be used for 'wise' things, but the person who decides whether this is the case is the administrator, and not the children.

In a will, you can also appoint an administrator, who will manage the assets your children inherit upon your death. Depending on the type of assets, there are other ways of limiting the say your children have over them. But this is something I can go into in more detail some other time.

Finally

Estate planning has to be tailor-made. It should take into account not only fiscal aspects, but also the way you want your assets managed within the family. A civil law notary, who is specialized in international inheritance law, can tell you more about this. ✕



ABOUT THE AUTHOR

Yolanda Bokhorst is a deputy civil law notary with Van Buttingha Wichers Notarissen in The Hague. She can be contacted at tel.: 070 - 356 68 00 or by e-mail: y.bokhorst@vbwnotarissen.nl

www.vbwnotarissen.nl