

The Offshore Due-diligence Process

Once your money is offshore, what do you do with it? Most people never give a second thought to their financial planning strategies until after their funds are offshore, and I think that's a mistake. Investing offshore can become a life-changing decision, a decision that will provide a measure of growth and security that's difficult to obtain using domestic strategies.

For many people, the simplification of estate and tax planning actually gives a feeling of liberation – freedom from the incessant and often unfair changes to the tax codes thrust upon us by our governments. Yet many of those freedoms are lost when a financial plan is not in place, allowing opportunities to be lost, or worse, inappropriate investments to be made.

The process begins by deciding where in the world you want to invest – where being the jurisdiction of your investment firm, not the ultimate investments. Most people, especially Canadians, wish to have access to the U.S. markets. You'd think the logical choice would be to have an offshore company or trust set up an investment account in the U.S., but in reality, you couldn't choose a more flawed strategy.

The reason this strategy is flawed is that there are certain government filing requirements imposed upon brokerage firms. Upon opening an account, there are disclosures that must be made, including the account holder (the name of the offshore company or trust), and the account signatory along with their signature. It doesn't take a rocket scientist to figure out that this information will no longer be confidential as soon as it is exposed to the U.S. firm. Before you get any bright ideas about using a nominee to sign on your account, ask yourself if you are comfortable allowing someone else to exercise control over your funds.

This brings us back to the decision of which jurisdiction to choose – and fortunately, there are many excellent low-tax jurisdictions that offer varying degrees of financial privacy, asset protection, and regulatory strength. A partial listing would include Anguilla, Antigua, Austria, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Channel Islands (primarily Guernsey and Jersey), Gibraltar, Isle of Man, Liechtenstein, Luxembourg, Malta, Nevis (St. Kitts & Nevis), Panama, and others. Keep in mind that Barbados, Bermuda, the Channel Islands, and the Isle of Man do not have legislated financial privacy. Notably missing from the list are countries with specific problems that are outlined below:

- Belize – there are two main roads in Belize that run north-south and east-west. Guess who helped finance those roads in exchange for information?
- Cook Islands – favored by many asset protection attorneys who have unfortunately not taken the time to read the full text of the legislation concerning offshore companies and trusts, which contain provisions for the Cook Islands government to seize assets without retribution.
- Switzerland – strong secrecy legislation and some of the world's finest financial institutions (with fees to match) are just not good enough to overcome the U.S.-Swiss Mutual Legal Assistance Treaty (MLAT), which is dangerous because it allows U.S. authorities the power to freeze accounts in Switzerland via fax request.

The points above are not intended to scare you away from the offshore planning process – on the contrary, it is to provide you with the information you need to make an informed decision. Ultimately what is most important to your choice of jurisdiction is the integrity of the investment firm that you choose.

Of course, it is hard to judge the integrity of an investment firm when the only thing you have to go on is a glossy brochure! Fortunately, success leaves clues:

1. Investor Protection – even the strongest financial organizations can experience a setback. For example, Barings Bank, an old British firm where the Royal family maintained considerable sums, failed when one of their traders suffered heavy losses. Closer to home, Confederation Life, having previously received a favorable debt rating, failed in part due to excessive capital expenditures. Those who had their funds invested directly with Confederation lost money, however, those who were using Confederation only as a trustee for their investment accounts were largely unaffected. The point I'm making is that any firm can fail, no matter how old or how large. The key is to make sure that if the firm fails, there is adequate investor protection insurance in place to protect your account. You can easily check this out, as most firms that do carry investor protection insurance will obviously make you aware of it!
2. Independent Trustee – this is something that is unfamiliar to most investors who are accustomed to North American firms. Keep in mind that when you open an investment account with a firm in the Bahamas, for example, the Bahamian firm must in turn place your funds with a correspondent investment firm (or clearing organization) in the country where trades are required. If you wish to purchase shares in General Motors, for example, the Bahamas firm will place those trades through a U.S. clearing organization. Most U.S. clearing organizations maintain adequate investor protection insurance, along with standard SIPC insurance. The question is, does the offshore investment firm handle the funds directly, or do they either (a) use a trustee or (b) maintain insurance on their internal handling of funds? You should do your due-diligence on an offshore investment firm just as you would do so with your local investment house. You have checked out your local firm, haven't you?
3. Documents – what can you learn from the documents you're required to fill out? Fortunately, quite a bit. In your search for an effective offshore investment firm, it is important that you choose a true "offshore" firm, one that maintains their correspondent clearing accounts in their name, NOT yours. Often, the documents will tell you everything you need to know:
 - Document Package – does any single document make reference to the name or address of any U.S. or Canadian firm? For example, I know of one offshore investment firm that has their clients complete forms with the name of their correspondent broker (in this case DLJ Direct) on the form. You might not think of this as a problem, until you realize that the form is ultimately sent to DLJ to be entered into their database! So much for confidentiality. This also can lead to a more serious problem down the road. Let's say, for example, that a U.S. citizen invests through this off-

shore firm, and at some point the IRS or the SEC determines that the U.S. citizen has been improperly using an offshore account (because he has “direct access” to a U.S. securities account, and is claiming to be a “non-resident” investor). This can potentially lead to problems that could result in the account being frozen. I don’t think you’d want to have your account at the same firm.

- Account Application – does the account application you are presented with make any reference to the words RRSP, IRA, 401(k), or any other term exclusively used in the U.S. or Canada? If so, do not sign the application – go elsewhere! If you do, you can be sure that your information will be on file at the office of a U.S. or Canadian clearing firm.
- Margin Agreement – does any text in the margin agreement reference the words “Introducing Firm,” or is the agreement subject to the jurisdiction of the U.S. or Canada? If so, do NOT sign the application, as it will undoubtedly be required to be filed with the U.S. or Canadian representative clearing firm. Be especially wary if the name of the clearing firm appears anywhere on the document.
- Margin/Option Agreement – further to the point above, if the name of the clearing firm appears on the document, and if the firm is located in the U.S. or Canada, there is a good chance that if the form is completed by an offshore company or trust, and if you are an American or Canadian acting as signatory on the form, you will be in violation of SEC and/or OSC regulations.
- W-8 – this form is intended for non-resident investors placing funds in the U.S. If you are presented with this form, take this as your cue to go elsewhere. You simply do not want to have the information required on this form to expose the confidentiality of your offshore activities.
- Transferring Securities – at first glance, it seems very convenient if you are offered the option of transferring securities directly from your U.S. or Canadian brokerage account to the offshore account. However, you may wish to think about this for a moment – if you are able to directly transfer securities, anyone who may be interested in tracking your funds can simply follow the trail. Just something else to keep in mind.

To summarize, following are a few quick points you will want to check:

- Be sure that the offshore investment firm does not share information with any U.S. or Canadian correspondent clearing firm.
- Be sure that they are NOT registered as a U.S. broker/dealer.
- Be sure that they maintain adequate investor protection insurance, and that they either use a trustee for the transfer of funds, or specifically maintain insurance or bonding on their internal funds transfers.

Finally, I’d like to talk a bit about some of the investment decisions you may be faced with. The best advice that you can take is to not invest in anything offshore that is not commonly available to you in your current investment account. If anyone tries to tell you stories about opportunities that are “only available offshore,” or “minimum \$1million investment, but for

you I'll make an exception" – turn around and run! If something sounds too good to be true, it usually is! For more information, go to http://www.bca.vg/hl_caution.html.

A simple strategy for many offshore investors is to mirror their domestic investments offshore. Choosing this strategy will allow you to be familiar with your investments, giving you the confidence in knowing that your investments will be safe and secure for the long term. Going offshore should always be considered for the long-term benefits of asset protection, estate planning, and tax deferral or minimization. Don't expect to be suddenly privy to investments that are not available at home – it just doesn't happen. Instead, focus on the long-term benefits, think of it as a safe and secure long-term strategy to both protect and maximize your offshore retirement account.

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