

Overseas trustees, executors and beneficiaries – potential tax implications you need to be aware of

Settlers of trusts and will-makers need to be aware that if they move overseas or if any of their trustees, executors or beneficiaries move overseas, there could be tax consequences for their trust, their estate and beneficiaries. Specialist advice should be obtained if this has happened or is contemplated.

There are a number of considerations when deciding how to set up and run your trust or when updating your Will. One consideration that is often overlooked is the tax implications where settlors, trustees/executors and/or beneficiaries live outside of New Zealand. This is an issue we have been encountering more and more frequently, with many of our clients having children and grandchildren moving overseas temporarily or permanently. Some clients also choose to relocate overseas to be closer to family members.

There may be tax implications for trusts and estates where this occurs, and it is important that appropriate tax advice is sought both locally and overseas.

Trusts

Clients with trusts need to be aware of the potential tax implications on their trusts if any of the below people live overseas:

- The trust's 'settlors';
- An 'appointer';
- A trustee; or
- A beneficiary.

Tax classification

One of the key issues is the tax classification of the trust in New Zealand. Trusts in New Zealand are classified as either as 'complying trusts', 'non-complying trusts', or 'foreign trusts'. This categorisation governs the tax payable by the Trust in New Zealand. And for example, when the 'settlor' moves overseas, the trust could become a 'non-complying trust' in New Zealand and/or tax resident in another jurisdiction with the associated tax consequences.¹

Distributions to overseas beneficiaries

It is important to consider where the beneficiaries of the trust are residing. If they are in New Zealand but looking to move overseas trustees should consider where they are likely to end up living, especially if they want to assist them with trust funds in the future.

Distributions to overseas beneficiaries can result in tax consequences for those beneficiaries in the country they are living in. That is why it is important for the overseas beneficiaries to seek overseas tax advice, and for the trustees to seek New Zealand tax advice ahead of making any distributions.

In some circumstances trustees may want to loan the beneficiary funds rather than making a distribution of capital. However, problems can also arise with loans from trusts to overseas beneficiaries as they can be assessed as taxable income to the overseas beneficiary.

Some countries have tax exemptions where distributions or loans are sourced from trust 'corpus' instead of being sourced from accumulated income or capital gains. Accordingly, it is important that financial accounts prepared for trusts correctly record the trust corpus and that trustee resolutions record the source of funds for distributions and loans.

Winding up trusts can also have tax implications for

¹ Inland Revenue "Ngā rōpū kaitiaki me ngā kainoho tāke - Trusts and tax residency" (2 July 2024) Inland Revenue

<<https://www.ird.govt.nz/roles/trusts-and-estates/trusts-and-tax-residency>>

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overseas beneficiaries and there are a number of tax issues to be considered and take advice on if this is being contemplated by the trustees.

If an overseas beneficiary decides to return permanently to New Zealand careful consideration and planning is also required. In our experience it is not uncommon for a person in this situation to find out they remain overseas tax residents.

Ownership of land in New Zealand

There are also limitations on overseas entities owning certain property in New Zealand (including residential property) under the Overseas Investment Act 2005 (**Act**). Under the Act, this property can only be purchased by the following classes:

- New Zealand citizens;
- Individuals who hold a residence class visa and are 'ordinarily resident' in New Zealand; or
- Australian and Singaporean citizens or permanent residents.

Broadly speaking, a trust will be considered an overseas entity and so will not be able to purchase certain land in New Zealand unless it obtains consent from the Overseas Investment Office, if:

- more than 25% of the trustees or 'appointers' of the trust fall outside of the above classes; or
- all of the trust beneficiaries fall outside of the above classes.²

Wills

Clients need to also be aware there can be tax consequences as a result of their Wills, including where:

- They live overseas;
- They appoint someone who lives overseas as their executor; or
- They leave assets to a beneficiary who is based overseas under their Will.

Overseas Will-makers and executors

Depending on the specific country's tax laws, Will-makers who live overseas can be considered 'domiciled' in the overseas jurisdiction. Generally, if this occurs then the inheritance laws of that country will apply to their estate. This is especially important for clients who spread their time equally between a number of countries.

These are important considerations as other countries have different tax positions regarding estates. For example:

- The United Kingdom has inheritance tax on estates;³ and
- Australia treats estates in the same way as it would treat a trust. And where the central management control of an estate is in Australia (for example, where a deceased New Zealander appoints their child who is based in Australia as their executor), the estate may inadvertently become a tax resident of Australia.

Overseas beneficiaries

Overseas beneficiaries may also be subject to tax consequences in the jurisdiction they are living in. For example, beneficiaries who are Australian tax residents can be taxed in Australia on the increase in value of estate assets, in certain circumstances.

² Land Information New Zealand "Ownership or control | Overseas investment Guidance" (October 2023) <<https://www.linz.govt.nz/guidance/overseas-investment/who-needs-consent-invest/ownership-or-control#c-0-s-7>>

³ Gov.UK "How Inheritance Tax works: thresholds, rules and allowances" <<https://www.gov.uk/inheritance-tax>>.

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General

This article is solely intended to provide a high-level overview of potential tax issues, with the purpose of ensuring our clients are aware of these potential issues and of the need to seek specialist tax advice in these circumstances.

We cannot provide tax advice and if you have any questions we recommend that you get in touch with a specialist tax advisor and then contact your lawyer to assist with your trust and estate planning structure.