The Use of International Trusts
By Canadians
A Growing Presence

Scotia Private Client Group

INDIVIDUALITY. WELL PLACED.

Mexico (3) 2010
El Salvador
Costa Rica 2010
Panama 2010
Peru (2)
Chile 2010

Bahamas (SPCG + Scotiatrust)
Cayman Islands (SPCG + Scotiatrust)
Barbados
Dominican R.
Puerto Rico
Turks & Caicos
Trinidad & Tobago
Jamaica

Hong Kong (Scotiatrust)
Canada taxes based upon residency – a Canadian resident is liable to CRA for his/her worldwide income

A Canadian resident cannot defer or avoid paying taxes in Canada simply by settling a trust in a foreign/offshore jurisdiction – there are however, still viable international planning opportunities in select circumstances

Planning for Canadians focuses on tax and legally compliant solutions that arise due to:

- Pre-Immigration Planning
- Expatriation Planning
- Asset Protection Needs
- Cross Border Estate Planning
Immigration Trusts

- Trust established for the benefit of new immigrants to Canada or for those who have not been resident for a cumulative period of 60 months.

- Primary benefit: income and capital gains realized by assets while in the trust will be **exempt** from Canadian income taxes for up to 60 months following the arrival of the immigrant to Canada.

- Key elements:
  - Trust must be resident offshore with mind and management of the trust operations outside Canada;
  - Trust property must be foreign assets settled by a non-resident Settlor (or within 60 months of their arrival);
  - Trust must be fully discretionary.
Important to consider date of trust settlement as well as prior jurisdiction of residence or citizenship in order to maximize trust benefit.

At the end of the 5 year period, the trust will be deemed resident and taxable in Canada – 3 options:

- Assets can be distributed at a bumped up cost base to Canadian resident beneficiaries;
- The trust can remain offshore (now taxable in Canada) for asset protection purposes;
- Domesticate the trust to Canada by changing trustees – operates as a Canadian Inter-vivos trust.
Expatriation Trusts

- Trusts created for clients who cease being Canadian residents and re-locate to other jurisdictions

- Ability to create a tax advantageous platform that includes estate planning and asset protection

- Key factor is the tax regime of the new jurisdiction
  - Benefits may exist for individuals who plan to move to countries which tax on a remittance basis;
  - Individual pays tax only on income that they receive or earn within the new jurisdiction;

- E.g. Retirees moving to Latin American countries such as Costa Rica, executives who are being relocated to favorably taxed locations or individuals moving to the UK to take up non-domiciled residency
Asset Protection Trusts

- Trusts settled by a Canadian resident individual for asset security and estate planning – not a tax driven solution

- Desire to create a greater degree of protection for assets than would be afforded by a domestic Inter-vivos trust – concern for future liabilities, marital breakdown, privacy and confidentiality

- Trusts are deemed Canadian resident trusts and must file returns and pay tax in Canada

- Often created after the Canadian Settlor has participated in a liquidation event (sale of business or significant asset) or received a large payment of cash (lottery/insurance/court award)
To be effective, trusts must be created prior to any litigation or claim, and the client must be solvent.

Choice of trust jurisdiction is important as countries have express statute of limitation periods – i.e. assets must be in the jurisdiction for a period of time before they are “protected” by the foreign regime.

- The Bahamas – 2 years
- Cayman Islands – 6 years

Require legal advice related to viability of trust prior to establishment of structure.
Cross-Border Gift/Inheritance Trusts

- Trusts settled by a non-resident contributor for the benefit of Canadian resident beneficiaries – commonly referred to as “Granny Trusts”

- Key benefit exists in the ability to capitalize income on a tax free basis and make capital distributions to Canadian resident beneficiaries tax free

- Trustee must be non-resident with mind and management outside Canada

- Non-resident contributor can be a Canadian citizen but they must be a non-resident for 60 months prior to the establishment of the trust

- Trust is fully discretionary with usually a class of beneficiaries – often guided by a letter of wishes from the Settlor

- Ideal way to transfer wealth across jurisdictions and provide a lasting legacy that combines tax effectiveness and asset protection
THANK YOU

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