

The Global Guide to Trusts

Edited by Jean-Marc Tirard

The massive and growing increase in the use of trusts for estate planning and asset protection, particularly in civil law jurisdictions make it increasingly important for wealth planning practitioners to understand the complexity of the legal regime and the tax treatment of trusts worldwide and to plan for optimal specific solutions in each cross-border operations. International tax planning stands to be enormously enhanced by the kind of analysis presented in this one-of-a-kind guide, combining as it does detailed answers on the tax treatment of trusts in 21 jurisdictions and practical guidance on international tax planning involving the use of trusts. The Global Guide to Trusts represents the work of a team of outstanding tax practitioners under the editorship of a leading trust specialist. It facilitates the understanding of international tax issues and provides specific guidance in several facets of international taxation of trusts.

368 pages

ISBN: 978-2-9700602-9-1

Published in May 2017

Summary

For each jurisdiction, the author answers the same set of 22 questions.

Legal Considerations

1. What is the legal system based on in your jurisdiction?
2. Is the concept of trust part of your domestic law?
3. Has your country ratified the Convention on the Law Applicable to Trusts and on their Recognition?
4. When the answer to the above two questions is negative, is a trust created under foreign law recognised as such? Alternatively, is the trust (or trustee) analogised to any specific type of domestic person or comparable entity?
5. Are there "similar" or comparable legal structures which can be used in your jurisdiction instead of a trust for estate planning purposes?
6. What legal constraints should be taken into consideration when transferring assets into a trust?
7. Can a trust acquire property in its own name and be registered as such when registration is required? If not, can this be achieved, indirectly (for example, through a domestic or foreign corporation)?

Tax Considerations

8. What are the main taxes which are relevant in respect of trusts?
9. Has your jurisdiction developed specific tax rules to deal with trusts? As a general principle is the trust taxable as such or is it fiscally transparent with all or some taxes due differently according to the nature of the trust?
10. Are domestic and foreign trusts treated differently in relation to tax?
11. When is a trust considered to be resident for tax purposes in your jurisdiction?



Since 2000, Academy & Finance, a Swiss company with offices in Geneva, Hong Kong and Dubai, is specialised in the organisation of conferences on tax and estate planning issues. In 2006, Academy & Finance published "Les trusts anglo saxons et les pays de droit civil" by Jean-Paul Beraudo and Jean-Marc Tirard.

Tax treatment of the creation of a trust

12. What are the tax consequences of the creation of a trust?
13. Are any transfer and/or capital gains tax due upon lifetime or testamentary transfers of assets to trusts?
14. Is the treatment different depending on whether the transfer is made to a revocable or irrevocable trust? To a life interest or to a discretionary trust?

Tax treatment of income and capital gains

15. Is a trust a taxable entity?
16. If not, who is subject to income/capital gains taxes in respect of the trust's income and gains?

Tax treatment of distribution from a trust to its beneficiaries

17. What taxes apply to distributions of trust income to resident/non-resident beneficiaries?
18. What taxes apply to distributions of capital gains from a trust?
19. What taxes apply to distributions of capital from a trust?

Tax implications of settlor's death

20. What are the tax implications for the trust, trustee, settlor's estate and/or beneficiaries of the settlor's death?

Tax implications of the termination of a trust

21. What are the tax implications for the trust, trustee, settlor and/or beneficiary on termination of a trust?

Reporting obligations

22. Are the trust, trustees, settlors and/or beneficiaries subject to reporting obligations in relation to the trust?

Authors

ARGENTINA Javier Canosa, Canosa Abogados

AUSTRALIA Allan Blaikie & Natalie Hickman, Clayton Utz

BELGIUM Jacques Malherbe, Simont Braun

BRAZIL Giancarlo Matarazzo & Tatiana Fernandes Bomfim, Pinheiro Neto Advogados

CANADA Marty Rochweg, Wendi Crowe & Rahul Sharma, Miller Thomson

FRANCE Jean-Marc Tirard

GERMANY Dr. Christian von Oertzen & Dr. Marcel Lemmer, Flick Gocke Schaumburg

HONG KONG William Ahern, Family Capital Conservation

INDIA Daksha Baxi & Shabnam Shaikh, Khaitan & Co

INDONESIA Freddy Karyadi, ABNR Law

ISRAEL Shaul Grossman, Meitar Liquornik Geva Leshem Tal

ITALY Nicola Saccardo, Maisto e Associati

MEXICO Miguel Jáuregui Rojas, Jáuregui y Del Valle

NETHERLANDS Thijs Clement, Van Doorne N.V.

NEW ZEALAND John W. Hart, John W Hart Limited

PORTUGAL Jorge de Abreu & Cidália Conceição, Abreu & Marques e Associados

RUSSIA Dmitry A. Pentsov, Frieriep

SPAIN Florentino Carreño, Cuatrecasas, Goncalves Pereira

SWITZERLAND Xavier Oberson, Oberson Abels

UK Clare Maurice, Maurice Turnor Gardner

USA Ryan M. Harding, McDermott Will & Emery & Christiana Lazo, Ropes & Gray