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FREE GUIDE · Trusts

Who The Trust Belongs To

Why a trust's residence is not where it was created, and why the heaviest consequences fall on the people connected to it rather than on the trust.

Trusts across borders: settlors, beneficiaries and reporting

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Trusts across borders: settlors, beneficiaries and reporting

A trust is a separate taxpayer, but its tax position is written around the people connected to it. Where the trustees exercise control decides its residence, contributions by residents can pull a foreign trust into the domestic net, and the reporting obligations land on settlors and beneficiaries personally.

Who this is for

- Settlors, trustees and beneficiaries of a trust with a connection to more than one country.
- People who became resident in a new country while a trust they created or benefit from stayed behind.
- Executors dealing with a testamentary trust with beneficiaries abroad.

Residence is about control, not registration

A trust's residence for tax purposes generally follows where its central management and control actually sits — in practice, where the trustees who make the substantive decisions exercise them. A trust deed governed by one country's law, with trustees appointed there, can still be resident elsewhere if the real decisions are taken elsewhere.

That has a practical consequence people rarely anticipate: a trustee emigrating, or a professional trustee being replaced by a family member in another country, can change the trust's residence. The change is a tax event with consequences of its own, and it happens without anyone filing anything.

Deemed residence: the rule that catches families

Canada has rules that can treat a non-resident trust as resident in Canada where there has been a contribution to the trust by a person connected to Canada. The mechanism reaches through the form of the arrangement to the substance of who funded it, and it can bring a genuinely foreign trust fully into the Canadian tax net with Canadian filing obligations.

The United States has its own regime for foreign trusts with US connections, including rules that treat the person who funded a trust as its owner for tax purposes in defined circumstances, and reporting on the trust and on distributions from it. India taxes trusts under its own scheme and reaches foreign trust interests through its foreign asset disclosure.

What all three have in common is that the burden lands on individuals: the settlor who contributed, the beneficiary who received, or the resident who has a reportable interest. Our pages onnon-resident trustsandUS grantor trust rules for Canadianscover the two most common patterns.

The reporting map

This is where the cost of getting it wrong actually sits, because the information returns carry substantial penalties independent of any tax. Canada requires reporting of transfers or loans to a non-resident trust, and separately of distributions received from one or indebtedness to one. The United States requires an annual return for a foreign trust with a US owner, a return for the US person's transactions with a foreign trust and receipts from it, and specified foreign asset reporting on the interest itself.

Meanwhile the trust may have its own return obligations in its own jurisdiction, and increased beneficial ownership reporting requirements now apply to many trusts that previously filed nothing. Building a single reporting matrix — trust, settlor, trustees, beneficiaries, by country and by year — is the only reliable way to see the whole picture.

Distributions across a border

A distribution to a non-resident beneficiary can attract withholding and require the trust to report amounts allocated abroad. The character of what is distributed matters: income, capital gains and capital can be treated differently, and some systems track accumulated income so that a later distribution of it carries a different consequence from a current-year distribution.

From the recipient's side, a distribution from a foreign trust may be taxable, partly taxable or a return of capital depending on the trust's history — which the beneficiary usually cannot see. Getting trust accounts and a statement of what the distribution consists of, at the time it is made, is what makes a correct return possible.

When a trust stops being the right answer

Trusts are created for good reasons: succession, protection, control over timing, and provision for people who cannot manage assets themselves. Cross-border mobility can erode those benefits, because the compliance cost rises with every country involved and some structures become actively punitive when a beneficiary moves.

When a family becomes internationally spread, the honest question is whether the structure still does what it was created for at a cost worth paying. Sometimes the answer is to add substance and reporting discipline; sometimes it is to wind the trust up in an orderly way. Both are better than maintaining a structure nobody has reviewed since the family moved.

Getting a cross-border trust under control

Facts first. Almost every trust problem we see began as a fact nobody recorded.

1. **Establish the trust's residence** Where substantive decisions are actually taken, who takes them, and whether that has changed since the trust was created.
2. **Trace every contribution** Who funded the trust, when, from where, and their residence at the time. This is what deemed-residence rules turn on and it is often undocumented.
3. **Map the people by country** Settlor, trustees and beneficiaries with residence histories, so the reporting obligations of each person in each year can be identified.

4. **Build the reporting matrix** Trust returns, transfer and distribution reporting, foreign trust returns and asset reporting, by person and by year. Identify gaps before they identify themselves.
5. **Fix the gaps through the right route** Where filings are missing, use a formal disclosure route rather than filing quietly. Information return penalties are the largest exposure in this area.
6. **Decide the structure's future** Keep with proper governance and reporting, restructure, or wind up in an orderly way, priced against what the trust is actually achieving.

Papers to gather

What a trust review needs:

- The trust deed and every amendment, plus any letter of wishes.
- A record of every contribution to the trust: amount, date, contributor and their residence.
- Trustee appointment and resignation documents, with each trustee's residence and dates.
- Minutes and resolutions for the last several years, showing where decisions were taken.
- Trust financial statements and a record of income accumulated versus distributed.
- A schedule of distributions with beneficiary, date, amount and character.
- All trust and beneficiary tax filings already made, in each country.
- A beneficiary list with residence histories, including contingent beneficiaries.

Where it goes wrong

- **Assuming the trust deed decides residence** Governing law and trustee appointment are evidence, not the answer. Where substantive decisions are actually taken is what determines residence, and it can change quietly when a trustee moves.
- **Not tracing contributions** Deemed-residence and owner-attribution rules turn on who funded the trust and where they were resident at the time. Reconstructing that decades later, without records, is the hardest work in this area.
- **Missing the information returns** Transfers to, distributions from, and interests in foreign trusts each carry reporting with penalties independent of tax. This is where the real exposure in a cross-border trust usually sits.

Questions this raises

Where is my trust resident for tax purposes?

Generally where its central management and control is exercised — where the trustees who make substantive decisions actually make them. The governing law of the deed and the place of registration are evidence, but they do not settle it on their own.

Can a foreign trust be treated as resident in Canada?

Yes. Rules exist that can deem a non-resident trust to be resident where there has been a contribution by a person connected to Canada. The analysis follows the substance of who funded the trust rather than the form of the arrangement.

Do I report a trust interest I have never received anything from?

Often yes. Several regimes attach reporting to holding an interest in a foreign trust, not to receiving from it, and specified foreign asset reporting can reach the interest itself. Beneficiaries frequently miss this for exactly that reason.

Should we wind up a trust when the family moves abroad?

It is a fair question to ask rather than an automatic answer. The test is whether the structure still achieves what it was created for at a compliance cost worth paying now that more countries are involved. Sometimes better governance is the answer; sometimes an orderly wind-up is.

What to do next

Start with the facts review: residence, contributions, people and filings. It is a contained piece of work and it converts an unbounded worry into a list. Where gaps exist, the disclosure route is chosen before anything is filed.

We review trusts, prepare the reporting and handle disclosures at a fixed fee agreed before work starts. Seea Canadian beneficiary of a foreign trust,trust reporting formsandtrusts before becoming a resident.

Legal Quotient Consultants

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United States: 5243 Strathmore Ave, Kensington MD 20895
Canada: 381 Front St W, Toronto ON M5V 3R8
India: A-1/2, Shakti Nagar Extension, Ashok Vihar, Delhi DL 110052

contact@lqconsultants.com · +1-416-619-0068 · +91-989-909-9030