Charles Russell Speechlys

How *Families in Asia* Structure Wealth for Beneficiaries in *Canada, UK, US and Australia*

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Introducing your *speakers*



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Fact pattern

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Settlor

- Singapore citizen and entrepreneur
- Lived and worked in the UK for more than 10 years
- Former US Green Card holder
- Married an Australian citizen whilst living in the US
- Subsequently lived and worked in Canada
- Returned to Singapore with his family
- Established a Singapore trust for succession planning and wealth preservation



Beneficiaries become globally mobile:

- One child is born in the US and remains US-connected
- One child is born in Canada and later becomes a Canadian-resident beneficiary
- One child settles permanently in Australia and becomes an Australian-resident beneficiary
- One child relocates to the UK and becomes a UK-resident beneficiary

The Tan Family case study

Stage 1: The Settlor



Mr Tan

- Singapore citizen who moves to the UK on a scholarship for university studies
- Remains in London for more than ten years to build his career and business
- Relocates to New York to expand the business and obtains a US Green Card
- Marries an Australian professional whilst living overseas
- Accepts a senior management role in Toronto and relocates to Canada
- Relinquishes his US Green Card before leaving North America
- Returns to Singapore to be closer to family and oversee business interests in Asia
- Establishes a Singapore trust and family office for succession planning, wealth preservation and family governance

Stage 2: Establishment of the Trust



Mr Tan

After returning to Singapore, Mr Tan establishes a Singapore trust and family office structure to manage the family's growing international wealth.

Trust Structure

- Singapore trust
- Managed by an independent professional trustee
- Holds global investment and business assets
- Established as part of the family’s long-term wealth preservation strategy

Beneficiaries

- His Australian spouse
- Four children with connections to the US, Canada, Australia and the UK

Stage 3: The Children become mobile



Emily *(US)*

- Born in New York while the family was living in the US
- Acquires US citizenship at birth
- Raised and educated in Singapore
- Remains a US citizen and beneficiary of the family trust



Jack *(Canada)*

- Born in Toronto whilst the family was living in Canada
- Returns to Canada for university
- Establishes his career and life in Canada
- Becomes a Canadian-resident beneficiary



Jim *(Australia)*

- Studies in Sydney and develops close ties to Australia
- Accepts employment with an Australian financial services firm
- Marries and settles permanently in Australia
- Becomes an Australian-resident beneficiary



Ella *(UK)*

- Relocates to London to pursue her career
- Establishes her life and professional network in the UK
- Becomes UK resident
- Remains a beneficiary of the family trust

Key residency and trust issues across the four jurisdictions

US

- Settlor
  - *Definition of US income tax resident*
    - Citizenship, Green Card, Substantial Presence Test
    - Issues with Covered Expatriates
  - *Definition of grantor tracks economic contribution*
    - Issues with transferring property to another
    - Issues with matrimonial and community property rules
- US person beneficiaries
  - Use of FGT to halt impact of PFIC attribution, CFC attribution, and throwback tax
  - General powers of appointment as magnets of US estate and gift tax
- Assets
  - US situs assets could trigger US estate tax
  - Basis planning for underlying assets



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Canada

- Residency issues
  - Individuals: 183 days is deemed residency; but be careful of ordinary or factual tax residency based on primary and secondary residential ties
  - Companies: Non-resident companies deemed resident if central management and control is in Canada
  - Trusts: foreign trusts treated like resident individuals if central management and control is in Canada
- Foreign trusts
  - Section 94 of Income Tax Act: trust becomes taxable on worldwide income if any contribution of property by a Canadian tax resident even if central management and control is not in Canada
- Departure trusts
  - Mr Tan has become non-resident
  - However, if he settles a foreign trust within 60 months of leaving Canada, the trust income could still be taxable in Canada unless Canadian resident beneficiaries are excluded
- Foreign trusts and Canadian resident beneficiaries
  - If Mr Tan waits until after 60 months, then he can have Canadian resident beneficiaries
  - Such trust could qualify for “granny trust” treatment
  - Distributions to the Canadian resident beneficiary reportable but can be tax free if from capital
  - Income distributions are taxable to Canadian resident beneficiary
  - Reporting is accompanied by trust information and the structure will become quite transparent to CRA



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Australia

- Residency issues
  - Individuals: no 'white line' objective test – multi-factorial factual and subjective analysis of whether Australia is the taxpayers 'usual' place of residency
  - Companies: Non-resident companies deemed resident if carrying on business in Australia or central management and control occurring in Australia
  - Trusts: simply requires 'a' [singular is deliberate] Australian resident to be a 'trustee' – includes Protector, Guardian and like fiduciary roles
- Foreign trusts and Australian resident beneficiaries
  - Section 99B: any application of property for the benefit of an Australian resident beneficiary is deemed assessable
  - Burden on the Australian resident beneficiary to invoke an exception (e.g. for corpus – but not corpus related to untaxed accumulations)
  - Important and material substantiation issues (access to information from foreign trustees)
- Australian residents settling foreign trusts
  - Transferor trust provisions: settlement by Australian resident of assets or 'value' on a foreign trust can cause the Australian settlor to be assessed on an accruals attribution basis (i.e. tax without cash repatriation to Australia)



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UK

- Residency issues
  - Individuals: Number of “days” spent in the UK per year; Ties to the UK
  - Companies: Incorporated in the UK; Central Management and Control
  - Trusts: UK resident trustee; Settlor’s residence
- UK Settlors
  - Settlor interested trusts
  - Long Term Resident settlors (LTR)
  - Relevant property regime
- UK resident Beneficiaries
  - Transfer of Assets Abroad legislation / Matching rules applicable to distribution to UK resident
  - Motive defence
  - Foreign Income and Gains (FIG) regime



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Q&A

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