

Canadian Transnational Trusts

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It is becoming increasingly rare these days for a high net worth individual's business and family interests to be confined to one location. This is largely due to the emergence of a global economy, which has seen people, particularly entrepreneurs, seeking investment opportunities, or choosing to reside, in different countries or regions. Your clients have gone global and look to you to ensure they are properly structured.

In instances where an individual has 'international connections', a simple financial plan is seldom sufficient to ensure the preservation and protection of their wealth across borders, particularly if they, or their family members, are connected to country with unfavourable tax laws, changeable political, social or economic climates. Under these circumstances, I am sure you offer your clients more advanced structures such as companies, foundations and trusts, as part of their overall financial and estate plan.

As we all know, trusts provide clients with a number of benefits as a result of relinquishing ownership: including asset protection, confidentiality over their business and family affairs, avoidance of forced heirship rules, tax mitigation and an effective vehicle to transfer of assets to the next generation.

When you recommend **offshore trust structures**, some clients express concerns, no matter how conservative and conventional the planning. Traditionally, the creation and administration of a trust has occurred in the same jurisdiction – usually a reputable, well regulated offshore jurisdiction that you have recommended such as

Jersey, Guernsey, Cayman, Bahamas or Barbados. You chose that jurisdiction because of its legislation, case law, robust regulatory environments, favourable tax laws, infrastructure as well as its political and economic stability, all of which contribute towards providing a safe and secure haven for the trust assets.

While the use of one jurisdiction for the creation and administration of a trust is still the preferred option for many advisors, there has been a notable increase in the demand for a structure that separates the location of the trustee and governing law and place of administration. This is largely down to client concerns over the future of certain offshore jurisdictions (rightly or wrongly). They worry about unfavourable legislative changes, coercion by other high tax jurisdictions, stability even the removal of certain tax benefits.

I suspect many of you use flee clauses as standard practice when drafting new trust deeds and declarations, but, those clauses usually require moving the trust, moving the trustee, or decanting assets into another trust.

I'd like to talk about a solution that alleviates client concerns and protects the trust from adverse changes in the law by giving the trustee the freedom and flexibility to move the administration of the trust to another jurisdiction easily and quickly without cost, complicated administration and transfer process.

The Canadian transnational trust company.

Now any of you who have been involved with traditional Canadian trusts may be aware that a Canadian trusts generally assume the highest personal federal and provincial tax rates. For example, if I as a resident Canadian taxpayer, settled a trust for my family the

marginal tax rate for that trust would be about 46.7% in Ontario where I live.

For that reason Canada is not on any blacklists, has no reputational issues as a jurisdiction, and is not generally considered as a location for effective tax planning. Let's face it; we're a high tax jurisdiction! So why would any sane client, or any sane advisor settle a trust in Canada?

The Canadian transnational trust is a little known, tax effective vehicle, living quietly, in one of the highest tax jurisdictions in the world.

Canadian transnational trust companies have been around since the early 1970's. They came into being to provide protection from the risk of adverse changes in offshore jurisdictions. The commercial appeal of the structure lied in the fact that it allowed the trustee to move the administration of the trust away from a jurisdiction if it was no longer considered suitable in light of the client's needs and objectives.

Unlike conventional trust structures, with a transnational trust, the location of the trustee and governing law are different to the location where the administration of the trust occurs. Your client gets a Canadian resident trustee and a trust governed under Canadian trust law. Clients get the peace of mind of Canada being a country which is politically and economically stable and unlikely to make significant adverse changes to their laws. But with a Canadian transnational the actual trust administration is carried on outside Canada usually in an "offshore jurisdiction". This also results in the structure remaining tax neutral in both Canada and offshore.

The transnational trust companies in Canada are incorporated by a private act of legislation, either in the province of New Brunswick or Prince Edward Island, both of which are Canadian provinces with well developed, customised legal frameworks to facilitate such structures. The privilege of such incorporation of a transnational trust company is restricted to institutions of high repute with effective internal compliance procedures. I think there are about 10 such companies.

For tax reasons, the management and control of the transnational trust company trust takes place outside of Canada, with the administration of the trust occurring in an offshore jurisdiction. The trustee of the transnational trust company can choose the jurisdiction in which the trust is to be administered and has the freedom to move the administration of the trust to another jurisdiction at a later date without having to terminate the trust, reclaim the assets or create a new structure.

Once the trust is created the Canadian Transnational Trust company would then enter into a service administration agreement with one of its affiliated trust Companies in another jurisdiction such as the Channel Islands or Caribbean.

Transnational trust structures generally alleviate client concerns about the future of offshore jurisdictions while giving them the peace of mind of having the situs of their trust in a high tax country and their trust governed by Canadian law. They also take comfort in the fact that the trustee has the power to change the jurisdiction of administration if the current jurisdiction is no longer deemed suitable,

Some of the potential benefits to be gained from creating a transnational trust structure:

Tax neutrality and blacklist mitigation

The way in which the Canadian transnational trust is structured and operates allows settlors to enjoy many of the tax benefits that they would have enjoyed had the trust been created offshore. That is because despite the trust being established under the laws of a Canadian province with a Canadian trustee, its administration, management and control occurs outside of the country, which means it is not exposed to Canadian taxation.

To be tax effective in Canada the management and control must be carried out by non-Canadian residents, there cannot be any Canadian settlors and/or beneficiaries and the trust should not have substantial Canadian assets.

Lately, the transnational trust structure has been used for addressing concerns of Latin American clients arising out of the worldwide taxation and controlled foreign company legislation adopted by various Latin American countries. A Canadian transnational trust company is a high tax jurisdiction company and is not on their 'blacklists'. The board of the transnational trust company meets and exercises its fiduciary function anywhere in the world and most of the purely administrative transactions in running the trust may still be carried out in an offshore centre provided ultimate actual control of the transnational stays in the high tax jurisdiction, namely Canada, via the transnational trust company.

Avoidance of probate

As with any trust probate can be avoided and the assets can pass to the deceased's chosen beneficiaries in a timely and confidential manner.

Overcoming forced heirship rules

As the trustee is the legal owner of the assets held in trust, forced heirship rules are not enforceable.

Asset protection and confidentiality

Particularly important when the settlor and their family members are connected to a country with political, economic or social instability, their personal safety and the security of their assets may be compromised. Remember, a trust is a private agreement between the settlor and the trustee, any information relating to the nature, value and location of the assets held in trust is confidential.

How to choose your transnational trust company

Balance sheet, legislation, case law, expertise as trustees, credit rating, reputation, number and jurisdiction of affiliated trust companies. Don't forget the trustees have a fiduciary duty and responsibility to act in accordance with the trust deed, relevant law, in the best interests of the beneficiaries, and to seriously consider any letter of wishes from the settlor.

Who might the transnational trust company be suitable for?

1. Planners with concerns about the future of the offshore trust industry.
2. Planners looking for more conservative jurisdictions for trusts.
3. Clients who may be affected by domestic legislation which restricts their involvement with a particular jurisdiction (e.g., black list regimes).
4. Clients and planners concerned with asset protection.
5. Clients concerned about confidentiality.
6. Planners and clients looking for financially stable banks and trust companies to administer their structures