

GRAHAM, SMITH & PARTNERS

International Tax Counsel

Trusts from a Dutch tax perspective

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1. Introduction

- No trust law in the Netherlands
- The Hague Convention
- 1998 case law Dutch Supreme Court
- As of 1 January 2010 Dutch tax legislation on tax treatment of discretionary trust
- Also for foundations



2. Dutch tax on trusts (1)

Discretionary vs Fixed trust

Income tax discretionary trust

- Settlor
- Heirs
- Beneficiaries
- Subject to a profit tax

Income tax fixed trusts

- Beneficiaries



2. Dutch tax on trusts (2)

Gift tax

- Discretionary trust

Inheritance tax

- Fixed trust
- Discretionary trust



2. Dutch tax on trusts (3)

Corporate income tax

- Applies if entity has a business

Unexpected taxes

- Property transfer tax
 - Replacement of trustees

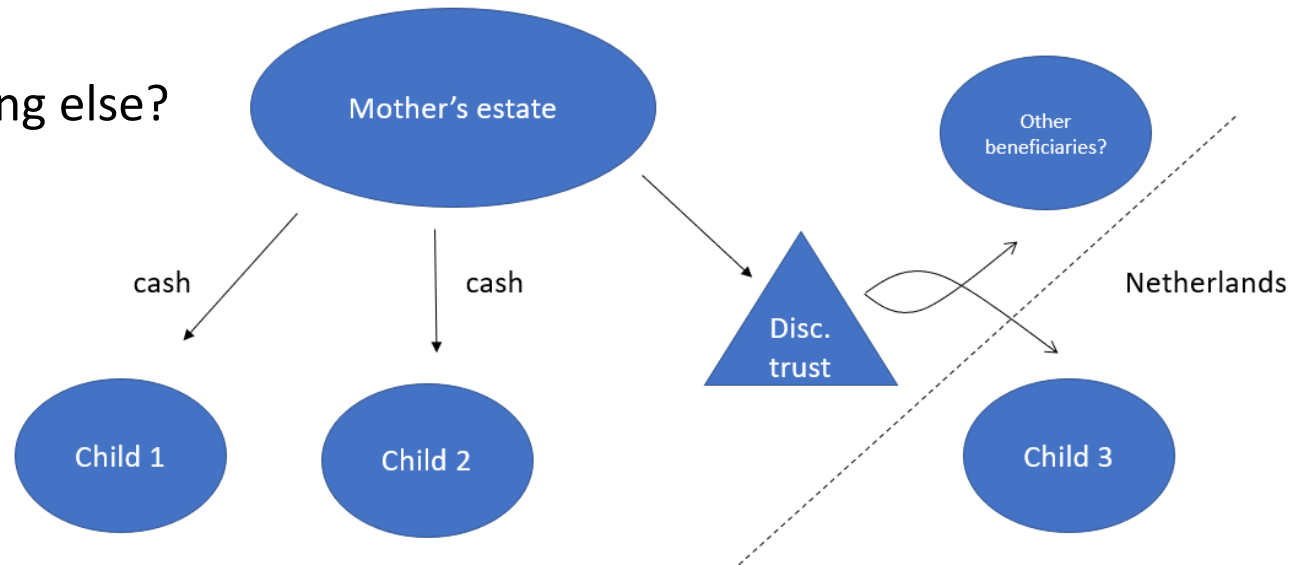


3. Cases (1)

- Mother passed away (not a Dutch tax resident)
- 3 heirs/children (1 is a Dutch tax resident)
- 2 non Dutch tax residents receive cash
- An irrevocable discretionary trust was set up for the benefit of the Dutch tax resident

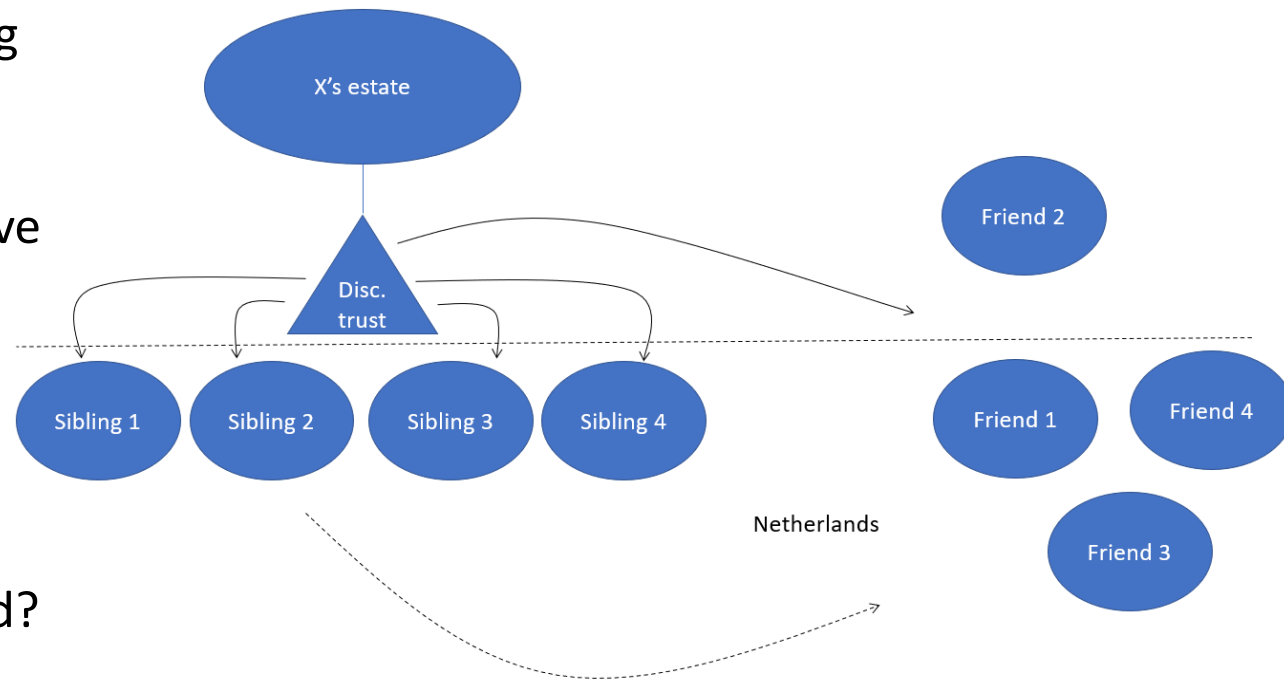
What should be allocated to the Dutch resident?

All, one-third, something else?



3. Cases (2)

- Person X passed away;
- Non-Dutch tax resident;
- 4 siblings are his heirs;
- All are Dutch tax resident;
- There is an irrevocable discretionary trust including last will;
- In addition to his siblings, another 4 friends will receive cash from the trust on the basis of a letter of wishes;
- Friends are Dutch and non-Dutch tax resident;



Is there any Dutch tax involved?

4. WHAT IS THE TRUST REGISTER?

- On 1 November 2022 the Dutch ‘UBO-register’ for trusts entered into force.
- Registration of UBOs of trusts and similar legal arrangements
- Applies throughout the EU

4. WHEN APPLICABLE?

- (i) the trustee resides or is established in the Netherlands; or
- (ii) the trustee resides or is established outside the EU and acquires Dutch real estate or enters into a business relationship in the Netherlands with a bank or certain advisors and certain other parties
- Not subject to registration in the Netherlands if registered in a Trust register of another EU Member State.

4. WHAT IS UBO?

- the settlor(s);
- the trustee(s);
- the protector(s),
- the beneficiaries; and
- any other individual who through direct or indirect ownership interest or through other means can ultimately exercise control over the trust.

4. INFORMATION AVAILABLE

TRUST

- Name and type of the trust or fund;
- Date and place of its establishment;
- Its purpose.

UBO

- Name;
- Month and year of birth;
- Country of residence and nationality;
- Percentage in the trust;
- Copy passport.

4. INFORMATION AVAILABLE TO WHO?



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Q&A

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