

CASE STUDY: NON-US TRUSTS SETTLED BY A US PERSON

People create trusts for numerous reasons, and US tax implications are not always a priority. This is particularly relevant when the original settlor and beneficiaries are, at the time the trust is created, not US persons.

Interests in non-US trusts often carry significant US tax reporting and compliance requirements where a US person is a beneficiary. Given the often international dynamic of a family trust, and the continued attractiveness of the US as a destination, it is not un-common at some point during a trust's existence for a beneficiary to become a US person.

We are experienced in advising trustees, individual beneficiaries and their families on the historical tax exposures arising from interests in non-US trusts, and we are routinely involved in assisting with a period of delinquent compliance in order to bring an individual's, or a trust's, affairs up to date with the IRS.

INTERESTS IN NON-US TRUSTS OFTEN CARRY SIGNIFICANT US TAX REPORTING AND COMPLIANCE REQUIREMENTS WHERE A US PERSON IS A BENEFICIARY.

WHAT WERE THE ISSUES?

Mr D lives in Europe. In 2000, he established a non-US trust for the benefit of his children and their offspring. In 2014, there was a change in trustees. The new trustees decided to review their reporting requirements, in light of the recent introduction of the Foreign Account Tax Compliance Act (FATCA). They realised that Mr D is a US citizen as he was born in the US.

HOW WE HELPED

The trustees engaged Frank Hirth to advise them on this situation.

Our analysis focused on specific anti-avoidance legislation regarding foreign (i.e. non-US) trusts settled by US persons for the potential benefit of US persons. We confirmed that the trust is regarded as a Foreign Grantor Trust for US tax purposes, and provided further guidance as to the trustees requirements to file Form 3520-A, Annual Information Return of a Foreign Trust with a US Owner, and Mr D's requirements to file Form 3520, Annual Return to Report Transactions with Foreign Trust and Receipt of Certain Foreign Gifts.

We were also engaged by Mr D directly to provide him with advice on his personal US tax situation. We advised both the trustees and Mr D on the options to regularise their US tax filings and prepared all related compliance. We continue to assist with their ongoing compliance requirements.