

CASE STUDY: US RESIDENT BENEFITING FROM A NON-US TRUST

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 US tax exposures arising from interests in non-US trusts as a result of a move to the US and, moreover, how these can be mitigated through careful planning.

**OUR ANALYSIS
CONFIRMED THAT
THE TRUST WAS
CONSIDERED TO BE
A FOREIGN NON-
GRANTOR FOR US
TAX PURPOSES.**

WHAT WERE THE ISSUES?

Mrs B is a beneficiary of a non-US trust set up by her grandfather, a non-US person.

Mrs B, also a non-US person, is intending to move to the US with her husband, an American citizen. By now, trust property consists of a large investment portfolio, with significant unrealised gains on certain assets.

The trustees naturally want to make sure that the trust is structured as tax efficiently as possible, so Mrs B and her family can continue to be well provided for.

HOW WE HELPED

The trustees engaged Frank Hirth to advise them.

Our analysis confirmed that the trust was considered to be a Foreign Non-Grantor for US tax purposes. This confirmed the issues facing Mrs B as a discretionary beneficiary of the trust, particularly with respect to the potentially penal US tax rules on the distribution of accumulated trust income and gains.

We advised that some of the underlying trust investments were regarded as Passive Foreign Investment Companies (PFICs) from a US tax perspective, giving rise to further US tax issues for Mrs B. We provided guidance on the US tax considerations depending upon Mrs B's length of stay in the US, ranging from the short term to a permanent move.

Following this guidance, the trustees focused on the ongoing management of distributions and current year Distributable Net Income (DNI), so that Mrs B could receive benefit as tax efficiently as possible.

Frank Hirth was then also engaged directly by Mrs B to provide all US Federal and State level tax compliance reporting.

We have subsequently advised further on planning following Mrs B's decision to remain permanently in the US. This guidance covered issues from distribution planning through to the use of US domestic trusts for ongoing income and estate tax planning.

**OUR GUIDANCE
COVERED ISSUES
FROM DISTRIBUTION
PLANNING
THROUGH TO
THE USE OF US
DOMESTIC TRUSTS...**