

Transition Challenges for Global Families

Taxation and off-shore beneficiaries

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1

Today's session

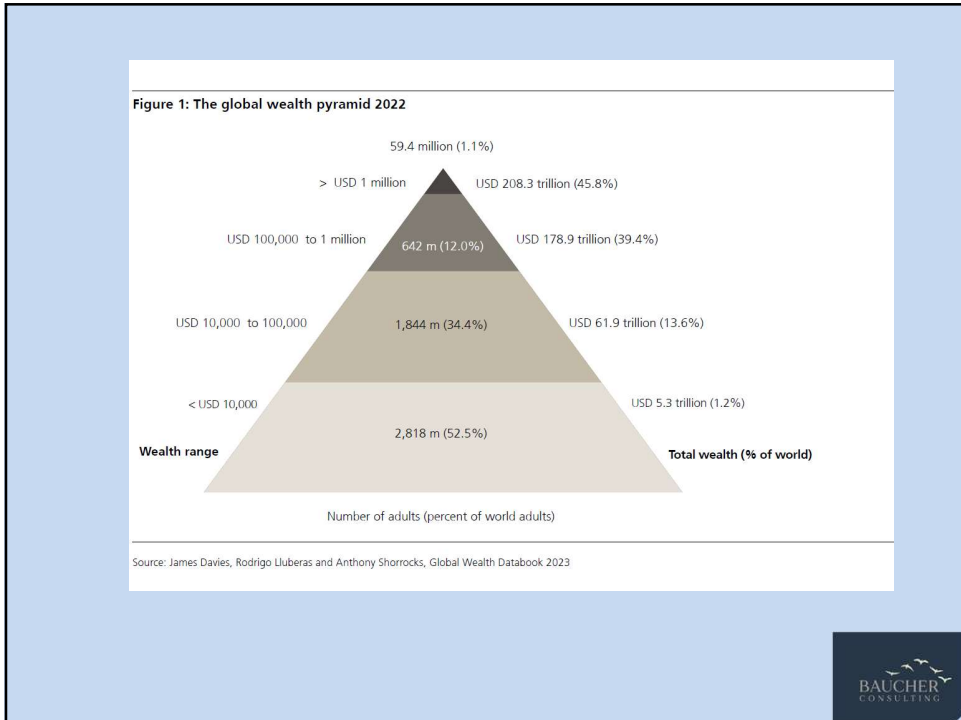
- As the richest generation in history passes away, what are the tax pitfalls involved in making bequests, distributions, or providing funds to beneficiaries who are overseas tax residents?
- What are the implications of the UK announcing the end of its "Non-dom" tax regime?
- When potential executors are overseas, what are the implications when drafting wills?



2

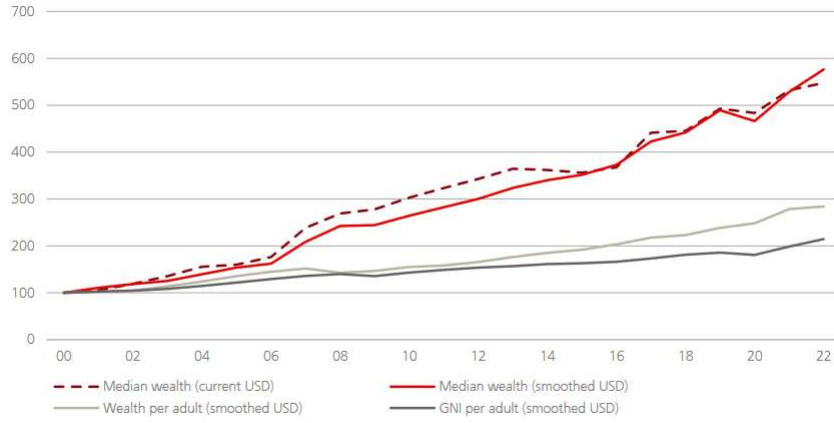


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4

Figure 3: Global trends in median wealth, wealth per adult and gross national income (GNI) per adult 2000–22 (2000=100)



Source: James Davies, Rodrigo Lluberas and Anthony Shorrocks, Global Wealth Databook 2023



5

Table 2: Market rankings by mean and median wealth per adult, 2022

Median wealth divides the wealth distribution into two equal groups where half the adults have wealth above the median and the other half below the median. Mean wealth is obtained by dividing the total aggregate wealth by the number of adults.

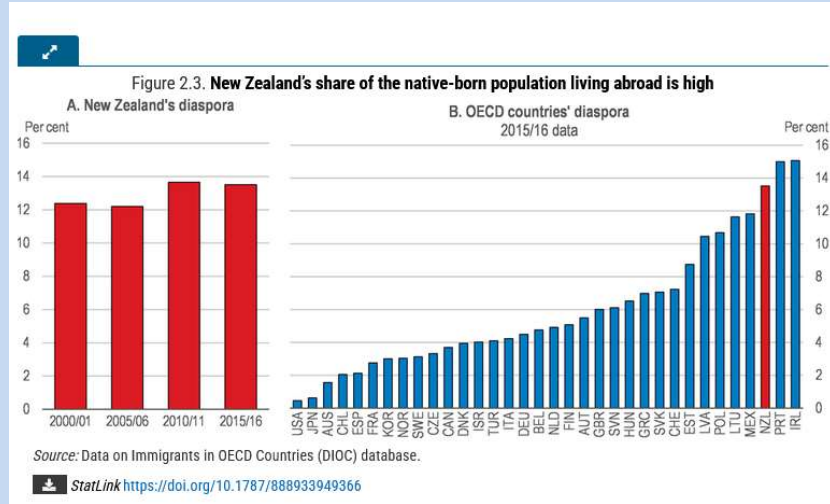
Mean wealth per adult (USD)				Median wealth per adult (USD)			
2022	Market	2022	Change 2021-22	Market	2022	Change 2021-22	
1	Switzerland	685,230	-13,450	Belgium	249,940	-7,860	
2	United States	551,350	-27,700	Australia	247,450	-28,630	
3	Hong Kong SAR	551,190	-2,170	Hong Kong SAR	202,410	-130	
4	Australia	496,820	-57,660	New Zealand	193,060	-30,640	
5	Denmark	409,950	-30,390	Denmark	186,040	-10,210	
6	New Zealand	388,760	-67,420	Switzerland	167,350	-1,230	
7	Norway	385,340	39,440	United Kingdom	151,820	-3,990	
8	Singapore	382,960	22,590	Norway	143,890	6,860	
9	Canada	369,580	-44,320	Canada	137,630	-15,320	
10	Netherlands	358,230	-44,230	France	133,140	-7,080	
11	Belgium	352,810	-13,940	Netherlands	112,450	-31,220	
12	France	312,230	-12,270	Taiwan	108,250	-3,720	
13	United Kingdom	302,780	-15,720	United States	107,740	14,460	
14	Sweden	296,800	-69,110	Spain	107,510	170	
15	Taiwan	273,790	-18,930	Italy	107,320	-7,100	
16	Germany	256,180	-14,360	Japan	103,680	-13,460	
17	Ireland	247,080	-11,290	Singapore	99,490	5,790	
18	Austria	245,220	-1,480	Korea	92,720	-10,230	
19	Israel	235,440	-24,610	Ireland	90,740	-3,650	
20	Korea	230,760	-2,130	Qatar	90,260	3,740	

Source: James Davies, Rodrigo Lluberas and Anthony Shorrocks, Global Wealth Databook 2023



6

“The grass is greener...”



7

“The grass is greener...across the Ditch”

Table 2.1. Most NZ emigrants live in Australia and many are highly educated

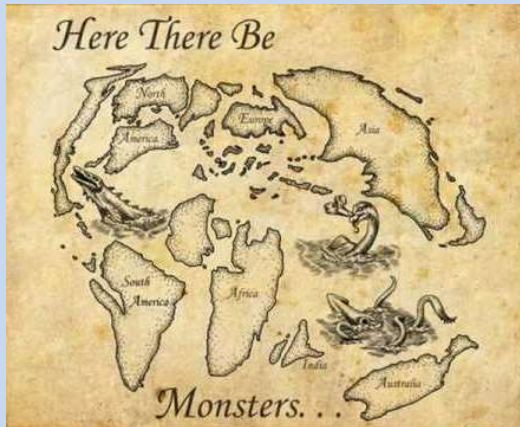
	Population 15+ (thousands)	%	Highly educated ¹ (%)
Australia	471.1	80.9	34.5
United Kingdom	50.1	8.6	61.5
United States	31.8	5.5	52.6
Canada	11.5	2.0	71.7
Japan	3.6	0.6	..
Netherlands	3.0	0.5	34.7
France	2.0	0.3	55.2
Ireland	1.8	0.3	55.5
Switzerland	1.5	0.3	57.6
Other OECD	6.1	1.0	45.9
Total	582.5	100.0	39.2

¹ Individuals with tertiary education.
 Source: Database on Immigrants in OECD Countries (DIOC).



8

“Here There Be Monsters...”



Capital Gains Tax

Inheritance Tax

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Trust distributions – the opportunity

Distributions to overseas beneficiaries could be a means of reducing tax bill for a complying trust.

For example, trust has income of	\$100,000
Tax as trustee income @39%	\$39,000
Distribute \$25,000 to four non residents	
Tax on \$25,000 = \$3,395 each	<u>\$13,580</u>
Possible saving	<u>\$25,420</u>

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Meet Carol

- Widowed but in good health now living in Auckland after living in America, Australia and the United Kingdom
- Carol's assets are held in trust for asset and estate planning purposes
- The beneficiaries include Carol's two children and five grandchildren
- Carol would like to make regular distributions to her family together with large distributions to enable her grandchildren to purchase homes

11

Australia

- Lucy, one of Carol's grandchildren, has been living and working in Sydney since 2021.
- She qualifies as a "temporary resident" for Australian tax purposes.
- As such Lucy is NOT taxable on non-Australian sourced investment income and capital gains.
- This would cover distributions of New Zealand interest and rental income, and dividends from non-Australian companies

12

Australia – Capital Distribution (1)

- In December 2017 ATO finalised Taxation Determinations TD 2017/23 and TD 207/24 relating to the treatment of capital gains made by foreign trusts
- Under Determination TD 2017/23 where a foreign trust distributes a capital gain which does not represent “taxable Australian property” for capital gains purposes to an Australian resident, the beneficiary is assessed on that gain as if it is ordinary income

Australia – Capital Distribution (2)

- Under the Determination the distribution does not retain its character as a capital gain
- The 50% discount for capital gain is therefore no longer available and capital losses of the beneficiary are not available for offset against the gain
- Accordingly, such a distribution to an Australian-resident beneficiary could be taxable at up to 45%
- It is NOT clear if Determination TD 2017/23 applies to any distribution received by someone who is a temporary resident

Australia – Capital Distribution (3)

- Furthermore, the two Determinations also deem the full amount of a loan made by a New Zealand trust to an Australian resident beneficiary to be income
- Again it is not clear if the temporary resident exemption is available in such circumstances
- This treatment could also apply to distributions of trustee income
- A distribution to a New Zealand resident beneficiary which is subsequently gifted to an Australian resident would also be taxable

The logo for Baucher Consulting, featuring the company name in a serif font with a stylized bird or wing graphic above the word 'CONSULTING'.

15

United Kingdom Capital Distribution (1)

- During the year ended 5th April 2024 the Capstan Trust sold a flat acquired in April 2017 and used as an investment property
- The sale realised a gain of £250,000
- Carol, the Settlor and a trustee of the Capstan Trust would like to distribute this gain to Lizzie to enable her to purchase a property in London

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16

United Kingdom Capital Distribution (2)

- Distribution would be treated as a capital gain for Lizzie taxable at up to 28% - potentially £70,000
- (Lizzie can offset her CGT annual tax-free allowance of £6,000 against the distributed gain, but this will make minimal difference)

17

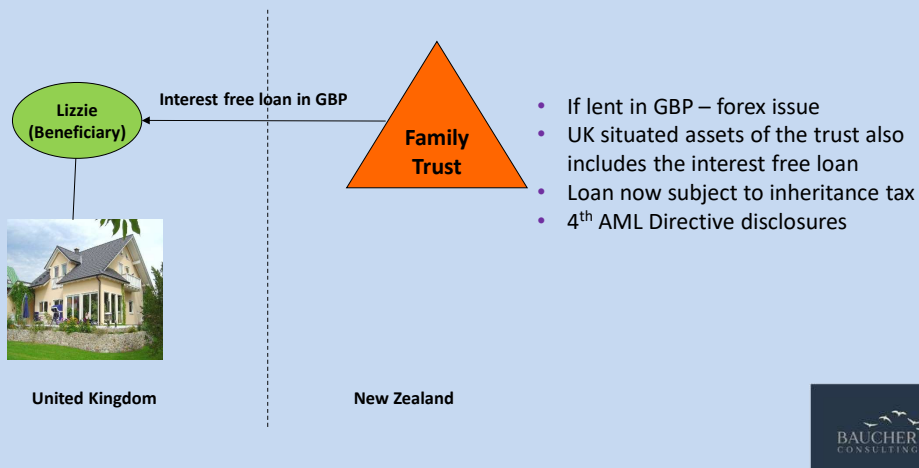
United Kingdom Capital Distribution Alternative (1)

- Trustees suggest distributing the capital gain to Carol who then gifts it to Lizzie
- Under anti-avoidance provision UK resident beneficiaries will be taxed on distributions of accumulated income and capital gains made to them
- No longer possible to “wash-out” accumulated income and gains by distributing them to other persons not resident in UK unless three years have passed since the distribution

18

United Kingdom Capital Distribution Alternative (2)

Instead of a distribution Carol's lawyer suggests the Capstan Trust lends the £250,000 to Lizzie



19

New Zealand tax Financial Arrangements Regime

- If loans to beneficiaries not NZD denominated, then forex issue under financial arrangements regime arises
- For example, in July 2024 the Capstan Trust advances £250,000 to Lizzie
- July 2024 value £250,000 @ 0.55 \$454,545
- 31st March 2025 value £250,000 @ 0.50 \$500,000
- Unrealised foreign exchange gain \$45,455

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Beneficiaries in the UK – Disclosures (1)

Reg 45(14) The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in force 26th June 2017

A New Zealand trust will have reporting obligations to HMRC in every year in which trustee **LIABLE** to pay **ANY** of the following taxes in the UK:

- Income tax;
- Capital gains tax;
- Inheritance tax;
- Stamp duty reserve tax; and
- Stamp duty land tax.

Beneficiaries in the UK – Disclosures (2)

If a New Zealand trust has a reporting obligation, then it must provide following information:

- Name, date of establishment, country of residence and country of administration of trust, and details of the trustee;
- Name, tax number, address, passport number, and date of birth of settlor, all current beneficiaries, and “all controlling persons” (including protectors and any other person with the ability to influence the trustee’s decisions);

Beneficiaries in the UK – Disclosures (3)

Reporting obligations continued:

- Description of the class of “potential” beneficiaries, INCLUDING any wishes as to future beneficiaries by the settlor in a Memorandum of Guidance or other document;
- Details of the trust’s worldwide assets including current market value; and
- Details of the trust’s legal, financial and tax advisors.
- If not already registered with HMRC must report by 31 January following end of tax year

Wills and debt forgiveness – a potential trap for non-resident beneficiaries?

Wills and debt forgiveness – a potential trap for non-resident beneficiaries (1)

- Carol settled the Capstan Trust under New Zealand law in 2007
- She sold assets worth \$2 million dollars to the trustees in exchange for an interest-free loan (subject to a Marshall Clause)
- Although a regular debt forgiveness programme was initiated, following the repeal of Gift Duty in 2010 this fell into abeyance
- At present \$1.8 million remains outstanding and under Carol's current will this will be forgiven on her death
- The trust presently has assets worth \$4 million and has for UK purposes unrealised capital gains worth \$2 million



25

Wills and debt forgiveness – a potential trap for non-resident beneficiaries (2)

- Lizzie is a beneficiary of the Capstan Trust and under Carol's current will she would be liable for UK CGT on any distribution of capital gain from the trust
- Alternatively, if Carol does NOT forgive the debt owed to her by the Capstan Trust the debt would form part of her estate
- The Capstan Trust would be required to repay the debt to Carol's estate
- This sum could then be distributed by Carol's estate to Lizzie WITHOUT triggering a UK CGT charge
- Carol's grandchildren in Australia and the US face similar issues



26

Wills and debt forgiveness – a potential trap for non-resident beneficiaries (3)

- Where a trust has several overseas beneficiaries review the will of the settlor to check
- Given the overseas tax treatment of distributions of capital gains from trusts it may be worth considering whether some, or all, of the settlor's assets should continue to be held in trust
- Be very wary about forgiving debt – it may effectively pass a tax liability to a foreign beneficiary

27

How would HMRC, the IRS, the ATO find out?



Major-General John Sedgwick
"They couldn't hit an elephant at
this distance." 9th May 1864

- Common Reporting Standards on automatic exchange of information (CRS)
- Double tax agreements (DTA) with Australia, the UK and the USA all provide for information sharing outside of CRS
- The Australian and UK DTAs also allow mutual enforcement of tax debts

28

The end of the Non-dom regime – welcome to FIGS

29

United Kingdom – Remittance Basis

- Currently the remittance basis is available for persons who are tax resident but not domiciled in the UK, commonly referred to as “Non-doms”
- These persons are only taxable on income and gains remitted to UK. Carol’s granddaughter Lizzie qualifies as a Non-dom
- But the Spring Budget on 6th March announced the Non-dom regime would end on 5th April 2025

30

United Kingdom

Remittance Basis Example 1

- For the year ended 31st March 2025 Carol's family trust proposes distributing New Zealand interest of £1,900 to Lizzie
- The distribution will be credited to her beneficiary current account
- As Lizzie is a non-dom and the income has not been remitted to the UK she can exclude it from her UK tax return for the year
- She is still entitled to her UK tax-free personal allowance of £12,570 for the year ended 5th April 2025



31

United Kingdom

Remittance Basis Example 2

- Alternatively, Carol's trust proposes distributing New Zealand rental income for the year ended 5th April 2025 of £15,000 to Lizzie
- Lizzie can exclude the rental income from her UK tax return for the year
- If she does this, she will then NOT be entitled to the UK tax-free personal allowance of £12,570
- Trade-off between lower tax for trust and higher tax for Lizzie



32

United Kingdom – new FIGS regime (1)

- The remittance basis regime is to be replaced from 6th April 2025 which exempts foreign income and gains (FIGS) from UK income and capital gains tax for new UK tax residents
- To qualify the person must not have been UK tax resident in the ten tax years prior to becoming tax resident
- The exemption will apply for the first four tax years of tax residence
- A person's domicile is irrelevant (so returning UK domiciles can qualify).

United Kingdom – new FIGS regime (2)

- Foreign income and gains arising during the exemption period CAN be remitted to the UK without triggering UK tax
- Anyone who has claimed the remittance basis may remit their foreign income and gains to the UK between 6th April 2025 and 5th April 2027 and be subject to a flat 12% on remittances (as opposed to potentially 45% at present)
- BUT foreign income and gains of non-resident trusts could fall within the 'settlor interested' regime & be taxable at 45%

United Kingdom – Inheritance Tax (1)

- At present Inheritance Tax (IHT) applies on assets situated in the UK or worldwide if the person is domiciled in the UK
- A person is deemed to be domiciled in the UK if they have been tax resident for 15 of 20 years
- Currently IHT is charged at 40% on estates worth more than £325,000
- Inter-vivos transfers to trusts are chargeable at 20%
- Assets held in trust may be subject to a “10-year charge”, typically 6% of the value of the trust assets over £325,000



35

United Kingdom – Inheritance Tax (2)

- Details are still to be released about the new IHT rules from 6th April 2025
- It's expected assets situated in the UK will still be subject to IHT
- It appears a person will be subject to IHT on their worldwide estate after 10 years of UK tax residence
- Furthermore, they will remain subject to IHT for the first ten years of non-residence
- Non-UK assets in trusts settled by Non-doms before 6th April 2025 should continue to be exempt from IHT



36

Non-resident executors – beware of the risks

37

Non-resident executors – be alert

- The New Zealand tax treatment of trusts is generally determined by the tax residence of settlors
- However, in many jurisdictions it is the tax residency of the TRUSTEES which determines the tax position
- Trustees in this context INCLUDE executors
- Therefore, when drafting wills remember to consider the tax residency of executors
- Also critical to regularly review the tax residency of potential executors

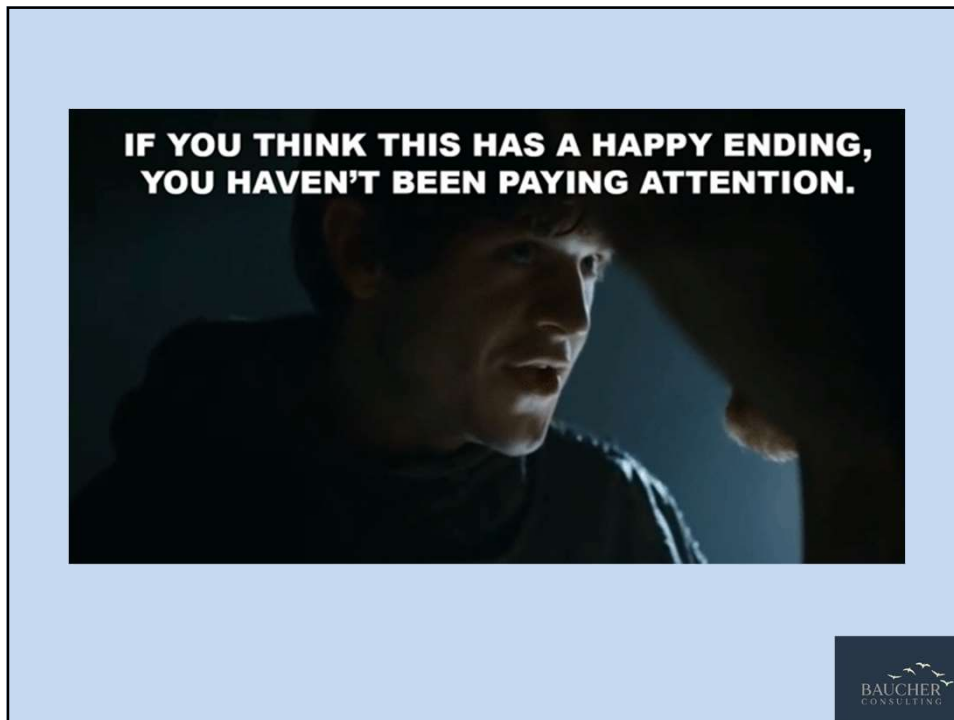
38

UK – what is a non-resident trust?

- None of the trustees are resident in the UK for tax purposes
- If some of the trustees are resident the trust will still be deemed non-resident if the settlor was either:
 - not tax resident when the trust was set up or funds were added; or
 - not domiciled or deemed to be domiciled in the UK when the trust was set up or funds were added(Note reference to funds being added)

Australia – the unlucky country?

- Australia deems a trust be tax resident in Australia if ANY trustee is tax resident in Australia
- A trustee's eligibility for the 'temporary resident' exemption does NOT affect a trust's status
- The 'temporary resident' exemption does NOT apply to distributions of capital gains realised from non-Australian situated property
- A distribution of a non-taxable gain arising from the sale of a property such as the (New Zealand resident) settlor's main home IS a taxable capital gain for Australian purposes



41

Conclusions

- Growing likelihood of overseas beneficiaries & therefore need to consider overseas jurisdictions treatment of capital distributions from trusts in estate planning
- Gift forgiveness may inadvertently trigger tax liabilities for non-resident beneficiaries
- May be more beneficial to hold assets personally
- New UK FIGS regime offers planning opportunities
- Be careful about choosing executors

42

Questions



43