

Estate Planning in New Zealand – Past, Current & Future

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Summary of Presentation – 19 November 2024

- 1964 Perpetuities Act passed – altered trust drafting. Also Beatles Tour NZ and Marsden Point Oil Refinery opened. Death duty 40%. Gift duty 25%. Top tax rate 60% plus social security income tax 7½%, stamp duty, dividend tax, land tax, import licensing and exchange controls.
IRD required evidence of women’s source of funds. Most assets in name of husband. Wealth is with farmers and merchant princes e.g. Fletchers, Winstone’s, L.D. Nathan etc. – Main problems liquidity on death of owner.
Dunedin is main financial centre.
Trust companies like Guardian Trust and TEA had head offices there. Tigger Talks Taxes – Philip Neville – NZGT Dunedin. Waipukurau centre of trust drafting. Few trusts as constrained by death duty restrictions. Usually life interest wills were the norm.
- 1970 Muldoon increases top tax rate to 66%. Big variation from top to bottom rates – 66% - 15% - income splitting attractive.
- 1976 Matrimonial Property Act 1976 passed. Enabled sharing by S.21 agreement but IRD regarded S.21 as only applicable if the relationship had broken down. If not, considered transfer from husband to wife to be a gift.
Solution: Court orders under S.25.
- 1980 Growth in trust formation begins as personal wealth becomes more widely spread. While estate duty exists mirror trusts are popular.
- June 1983 Re Curin, IRD v Van Doorne (1983) 2 NZFLR 198 – S. 21 agreement transferring 2/5 of husband’s share of a farm to his wife not a gift.
- 28 July 1983 Estates and Gift Duties Act amended by Estates Duty Amendment Act 1983 – S.75A MPA allowing S.21 agreements up to 50% of value of relationship property and also court orders under S.25 (no limit).
- 1984 Labour government elected. Exchange controls removed. Free float of NZD.
- 1986 Top tax rate reduced from 66% to 33% and GST introduced. Income splitting less attractive.
- 1987 Stock market crash. Wealth destruction lasts several years.
- 1988 Foreign trust legislation introduces Settlor regime – stops use of offshore trusts.
- About 1990 Wybrants (Tim) Olphert devises a “cunning scheme”. Use of S.25 orders to vest assets in trust and bypass estate and gift duty – Wilson v Wilson N02 (1991) 7 NZFLR 519 and Robert’s application [1993] NZFLR 731 (after abolition of death duty).

1993	Estate Duty abolished – but not gift duty “My trusts”. “Parallel trusts” appear. Everyone wants a trust. Rest home subsidy, student allowances etc.
1995	Minor beneficiary income (minor under 16) becomes taxable as trustee income. Removes an income splitting advantage.
1998	Section FC 11 - Income Tax Act repealed.
1999	Stamp duty abolished.
2002	MPA now PRA extended to de facto relationships.
2011	Gift duty abolished – the brakes come off.
2019	Trusts Act 2019 passed.
31 January 2021	Trusts Act comes into effect.
April 2021	Individual top tax rate 39%.
April 2024	Trustee tax increases to 39%.

The future

CGT
Wealth tax
Death duty less likely

Advantages of trusts remain

Creditor protection – probably most likely
Partner protection – could be more difficult if PRA reformed
Some income splitting still possible