
INTERNATIONAL TAX PLANNING

Co-Editors: Nick Pantaleo and C. Andrew McAskile*

WORKING WITH THE NEW OFFSHORE TRUST RULES

*Katherine M. Munro and Bruce M. Harris**

In October 2002, the Department of Finance released proposed amendments to section 94 of the Income Tax Act dealing with non-resident trusts. These proposals are intended to be effective at the beginning of 2003. While the new rules will have a broad impact on non-resident trusts, in this article the authors analyze the effect of the new rules in respect of an offshore estate freeze and the creation of a non-resident trust before or after a person immigrates to Canada.

KEYWORDS: NON-RESIDENT TRUST ■ OFFSHORE TRUST ■ ESTATE FREEZE ■ IMMIGRATION TRUST ■ FAPI ■ FOREIGN AFFILIATE

CONTENTS

Introduction	959
Assumptions for Analysis	960
Maintaining the Trust Structure Offshore	961
Step-Up or Step-Down in the Adjusted Cost Base of Assets	961
Controlled Foreign Affiliate Status	962
Multi-Stage Taxation	963
Potential Deemed Dispositions	966
The 21-Year Deemed Realization Rule	966
Deemed Dispositions Under Proposed Paragraph 104(4)(a.5)	966
Deemed Dispositions When Subsection 94(3) Ceases To Apply	967
Conclusion	968
Immigrating NRT and Forco to Canada	968
Taxation of NRT if Forco Does Not Immigrate to Canada	969
Taxation of NRT if NRT and Forco Immigrate to Canada	970
Potential Deemed Dispositions	971
Conclusion	972
Winding Up NRT and Forco	972
If NRT Is Wound Up First	973
If Forco Is Wound Up First	975

* Of PricewaterhouseCoopers LLP, Toronto. The authors gratefully acknowledge the assistance of Sheryl Mapa of PricewaterhouseCoopers LLP, Toronto.

Windups in 2004	975
Other Planning Considerations	975
Conclusion	976
Appendix	977
