



Wealth
Management

the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC FAMILY OFFICE SERVICES

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Non-resident executors (liquidators in Quebec)

Did you know that where your executor/liquidator lives may affect the administration of your estate?

By appointing a non-resident of Canada as the sole executor/liquidator of your estate, the Canada Revenue Agency (CRA) may consider your estate to be a non-resident of Canada. This could potentially trigger some negative tax consequences. This article discusses some of those tax consequences as well as certain other challenges a non-resident executor/liquidator may face.

Residency status of the estate – tax concerns

In Canada, the federal Income Tax Act (Act) deems an estate to be a trust for tax purposes. A trust is considered to be resident where the central management and control of the trust takes place. From a tax perspective, this means if your executor/liquidator is a non-resident, the estate could be considered a non-resident too.

To further complicate matters, there are rules in the Act that may deem a trust to be a Canadian resident trust even though the central management and control takes place in another country. Therefore, it's very important to seek the assistance of a qualified tax advisor to determine the residency of the estate.

Potential tax implications of non-Canadian residency

- The non-resident estate could lose the preferred tax treatment for capital gains and Canadian source dividends that flow through to Canadian resident beneficiaries.
- A non-resident estate may not have the option, which is otherwise available to a Canadian estate, of splitting the tax burden between the estate and its Canadian resident beneficiaries.
- If the estate becomes a non-resident estate at any point during its administration, the estate will be deemed to have disposed of its assets at fair market value, potentially exposing the estate to a capital gains tax liability.

Potential solutions

- When appointing a sole executor/liquidator, choose one who's likely to remain resident in Canada. This may be achieved by choosing a professional estate and trust services provider such as a Canadian trust company.
- When appointing co-executors/liquidators, keep in mind that the residency of the individual who clearly exercises a substantial portion of the management and control of the estate will generally determine the residency of the estate. If there's equal management and control, the residency of the majority of the executors/liquidators will be the deciding factor. If this factor cannot determine the residence of the trust, the CRA will consider other factors, such as the location of the estate assets and where the legal rights with respect to the estate assets are enforceable. Speak to a qualified tax advisor if you believe the residency of the estate will be unclear.
- Appointing more than one executor/liquidator can help avoid the risk that the estate may become a non-resident estate should one of the executors/liquidators move from Canada. If an executor/liquidator is to become a non-resident of Canada, they could renounce their appointment prior to departure from Canada to avoid negative tax consequences for the estate.

Foreign residency

Depending on the tax rules of the country where the executor/liquidator resides, the estate could be considered a resident of, and taxable in, that country. This could apply regardless of whether the estate is considered to be a Canadian resident or not. In some cases, the estate could be taxable in more than one jurisdiction. Therefore, it's important to understand the tax rules in the executor's/liquidator's country of residence in addition to the tax rules in Canada.

Requirements to “post a bond”

In some jurisdictions, an out-of-country executor/liquidator may be required to provide a surety bond to the court before they're given the authority to administer the estate. This is often referred to as the requirement to “post a bond.” The value of the bond can be set by the court and in some cases can exceed the actual value of the estate. A bond protects the estate's creditors and beneficiaries in the event the assets of the estate are administered improperly.

Obtaining a bond is time consuming and an added expense. The estate usually bears this cost. You should consider this potential cost if you choose an out-of-country executor/liquidator. This may also be an issue if you choose one executor/liquidator to administer your estate that has assets located in multiple jurisdictions.

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Practical challenges for foreign executors/liquidators

Executors/liquidators may face challenges in carrying out their duties if they don't live in the country in which the estate assets are located. For example, they may not be familiar with the local legislation. This may result in a more lengthy and complex estate administration. Out-of-country executors/liquidators may also face regulatory issues with regard to their ability to give investment instructions to the deceased person's professional advisors in another jurisdiction.

It's challenging to act as executor/liquidator from a distance. There may be occasions throughout the estate settlement process where the executor's/liquidator's physical presence is required to complete certain tasks, such as valuing estate assets or making distributions to beneficiaries. This may result in an additional cost to the estate, as the executor/liquidator may be required to travel back and forth from their place of residence and the jurisdiction where the estate assets are located.

Appointing a professional estate and trust services provider as sole executor/liquidator or as agent for the executor/liquidator

The role of an executor/a liquidator is an extremely important one, involving several key legal obligations and fiduciary duties, as well as significant managerial and administrative responsibilities. Executors/liquidators are faced with many complexities and obligations and may feel burdened by the tasks of administering an estate, or simply lack the time or expertise to undertake the role. These complexities are magnified for a non-resident executor/liquidator due to additional challenges they may face.

A trust company, like RBC Royal Trust, can help by acting as the executor/liquidator, co-executor/liquidator, or as an agent for the named executor/liquidator to administer the estate assets. Some of the advantages of a corporate fiduciary include neutrality, availability, expertise and continuity for long-standing trusts. Appointing a corporate fiduciary can help ensure the administration of the estate is done in accordance with the relevant laws. It can relieve your family members and friends of

the burden of administering your estate and mitigate any potential conflict among your executors or with beneficiaries. A corporate fiduciary would be appointed according to a fee schedule determined while you're alive and can be appointed by your executor/liquidator after your passing, similar to compensation that's payable to family members, friends or other trusted professionals acting as executor/liquidator.

If you'd like to learn more about appointing an executor/a liquidator or the typical responsibilities if you've been appointed as one, please speak to your RBC advisor to find out more about the services provided by RBC Royal Trust.

This article may contain strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal and/or insurance advisor before acting on any of the information in this article.



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