



Wealth
Management

the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC WEALTH MANAGEMENT SERVICES

Aaron Fennell, MBA, CFA
Portfolio Manager & Investment
Advisor
Tel: 416-313-6397
aaron.fennell@rbc.com

RBC Dominion Securities
181 Bay Street, Suite 2350
Toronto, ON M5J 2T3
www.aaronwfennell.com

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, regardless of how capable and willing the proposed executor/liquidator may be. This article will discuss some of those negative tax consequences as well as some other challenges a non-resident executor/liquidator may face.

This article outlines several strategies, not all of which will apply to your particular circumstances. The information is not intended to provide legal or tax 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 and/or legal advisor before acting on any of the information in this article.

Residency status of the estate – tax concerns

In Canada, the federal Income Tax Act (Act) provides that an estate is also 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 that if your executor/liquidator is a non-resident, the estate could be considered to be 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 is 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 is 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 control of the estate will generally determine the residency of the estate. If there is 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 your 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 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 is 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 obtain and provide a surety bond to the court before they are given the authority to administer the estate. This is often referred to as the

Depending on the tax rules of the country where the executor/liquidator resides, the estate could be considered a resident and taxable in that country.

requirement to “post a bond.” A bond protects the estate's creditors and beneficiaries in the event that 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.

Practical challenges for foreign executors/liquidators

Executors/Liquidators may face challenges in carrying out their duties if they do not 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 is 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

Being an executor/liquidator can be an onerous task, especially for a non-resident executor/liquidator due to the additional challenges they may face. A Canadian corporate trustee may be able to assist by taking on the role of executor/liquidator, or agent for the named executor/liquidator in administering the estate assets.

This may be a welcome option, and potentially a cost-effective one, to simplify and expedite the estate

administration for an executor/liquidator who is unfamiliar with local laws.

If you have questions about who to appoint or your executor/liquidator duties, please speak to your RBC advisor or call 1 (855) 833-6511 to find out more about the services provided by RBC Estate & Trust Services.



Wealth
Management

This document has been prepared for use by the RBC Wealth Management member companies, RBC Dominion Securities Inc. (RBC DS)*, RBC Phillips, Hager & North Investment Counsel Inc. (RBC PH&N IC), RBC Global Asset Management Inc. (RBC GAM), Royal Trust Corporation of Canada and The Royal Trust Company (collectively, the "Companies") and their affiliates, RBC Direct Investing Inc. (RBC DI) *, RBC Wealth Management Financial Services Inc. (RBC WMFS) and Royal Mutual Funds Inc. (RMFI). *Member-Canadian Investor Protection Fund. Each of the Companies, their affiliates and the Royal Bank of Canada are separate corporate entities which are affiliated. "RBC advisor" refers to Private Bankers who are employees of Royal Bank of Canada and mutual fund representatives of RMFI, Investment Counsellors who are employees of RBC PH&N IC, Senior Trust Advisors and Trust Officers who are employees of The Royal Trust Company or Royal Trust Corporation of Canada, or Investment Advisors who are employees of RBC DS. In Quebec, financial planning services are provided by RMFI or RBC WMFS and each is licensed as a financial services firm in that province. In the rest of Canada, financial planning services are available through RMFI, Royal Trust Corporation of Canada, The Royal Trust Company, or RBC DS. Estate and trust services are provided by Royal Trust Corporation of Canada and The Royal Trust Company. If specific products or services are not offered by one of the Companies or RMFI, clients may request a referral to another RBC partner. Insurance products are offered through RBC Wealth Management Financial Services Inc., a subsidiary of RBC Dominion Securities Inc. When providing life insurance products in all provinces except Quebec, Investment Advisors are acting as Insurance Representatives of RBC Wealth Management Financial Services Inc. In Quebec, Investment Advisors are acting as Financial Security Advisors of RBC Wealth Management Financial Services Inc. RBC Wealth Management Financial Services Inc. is licensed as a financial services firm in the province of Quebec. The strategies, advice and technical content in this publication are provided for the general guidance and benefit of our clients, based on information believed to be accurate and complete, but we cannot guarantee its accuracy or completeness. This publication is not intended as nor does it constitute tax or legal advice. Readers should consult a qualified legal, tax or other professional advisor when planning to implement a strategy. This will ensure that their individual circumstances have been considered properly and that action is taken on the latest available information. Interest rates, market conditions, tax rules, and other investment factors are subject to change. This information is not investment advice and should only be used in conjunction with a discussion with your RBC advisor. None of the Companies, RMFI, RBC WMFS, RBC DI, Royal Bank of Canada or any of its affiliates or any other person accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or the information contained herein. ®/™ Registered trademarks of Royal Bank of Canada. Used under licence. © 2021 Royal Bank of Canada. All rights reserved. NAV0159 (05/16)