



**Wealth Management**  
Dominion Securities

# Why your executor/ liquidator's residency matters to you

If your executor or liquidator is a non-resident, your estate could be considered to be a non-resident too – and potentially trigger negative tax consequences.

Under Canadian tax law, an estate is considered a trust for tax purposes. A trust is considered to be resident where the central management and control of the trust takes place. This means that if your executor/liquidator is a non-resident, your estate could be considered to be a non-resident too, which could potentially trigger some negative tax consequences and other challenges. That's why it is very important to seek the assistance of a qualified tax advisor to determine the residency of your estate.

## **What are the potential tax implications of non-Canadian residency?**

- Loss of preferred tax treatment for capital gains and Canadian-source dividends that flow through to Canadian resident beneficiaries
- Loss of the option to split the tax burden between the estate and its Canadian-resident beneficiaries
- Potential for capital gains tax liability if the estate becomes non-resident at any point during its administration, triggering a deemed disposition of its assets at fair market value

## **Potential solutions**

- When appointing a sole executor/liquidator, choose one who is likely to remain resident in Canada. You may also accomplish this by appointing a professional estate and trust services provider such as a Canadian trust company.
- When appointing co-executors/liquidators, keep in mind:
  - 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



For more information, please contact your RBC Dominion Securities advisor.

- If there is equal management and control, the residency of the majority of the executors/liquidators will be the deciding factor
- If the residence of the trust is still unclear, the Canada Revenue Agency will consider other factors (e.g. location of the estate assets and where the legal rights with respect to the estate assets are enforceable)
- If an executor/liquidator expects to move from Canada, renouncing their appointment prior to their departure can avoid negative tax consequences for the estate
- **Requirements to “post a bond”** – Depending on the province or territory, an out-of-country executor/liquidator may need a “surety bond” before they can administer the estate (which can be time-consuming and expensive)
- **Practical challenges for foreign executors/liquidators** – Long-distance challenges to consider include:
  - Lack of familiarity with local legislation
  - Regulatory issues relating to providing investment instructions for the estate assets to professional advisors in another jurisdiction

#### Other considerations:

- **Foreign residency** – Depending on the country, the estate could also be considered a resident of the executor/liquidator’s country of residence and taxable there too
- Added travel expenses between countries to complete certain tasks in person (e.g. valuing estate assets and making distributions to beneficiaries)

#### Appointing a professional

A Canadian corporate trustee like RBC Estate & Trust Services 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 help simplify and expedite the estate administration for an executor/liquidator who is unfamiliar with local laws.

\*Naming or appointing RBC Estate & Trust Services refers to appointing either Royal Trust Corporation of Canada or The Royal Trust Company.