

The Global Guide to Trusts

Second edition

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Academy & Finance

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Each chapter is structured around the same following questions 1 to 27.

Legal considerations

1. What is the legal system based on in your jurisdiction?
2. Is the concept of trust part of your domestic law?
3. Has your country ratified the Convention on the Law Applicable Trusts and on their Recognition?
4. When the answer to the above two questions is negative, is a trust created under foreign law recognised as such? Alternatively, is the trust (or trustee) analogised to any specific type of domestic person or comparable entity?
5. Are there “similar” or comparable legal structures which can be used in your jurisdiction instead of a trust for estate planning purposes?
6. What legal constraints should be taken into consideration when transferring assets into a trust?
7. Can a trust acquire property in its own name and be registered as such when registration is required? If not, can this be achieved indirectly (for example, through a domestic or foreign corporation)?
8. Under what circumstances, might a trust be set aside in your country on grounds of sham or for any other reasons?

Tax considerations

9. What are the main taxes which are relevant in respect of trusts?
10. Has your jurisdiction developed specific tax rules to deal with trusts? As a general principle is the trust taxable as such or is it fiscally transparent with all or some taxes due differently according to the nature of the trust?
11. Are domestic and foreign trusts treated differently in relation to tax?
12. When is a trust considered to be resident for tax purposes in your jurisdiction?
13. Are the tax treaties concluded by your country applicable to trusts ?
14. Are there any specific anti-avoidance tax rules applicable to trusts? If the answer is affirmative do they apply to similar or comparable arrangements (e.g civil law foundations)? Are there circumstances under which trusts are at risk under GAAR or anti abuse of law measures?

Tax treatment of the creation of a trust

15. What are the tax consequences of the creation of a trust?
16. Are any transfer and/or capital gains tax due upon lifetime or testamentary transfers of assets to trusts?

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17. Is the treatment different depending on whether the transfer is made to a revocable or irrevocable trust? To a life interest or to a discretionary trust?

Tax treatment of income and capital gains

18. Is a trust a taxable entity?
19. If not, who is subject to income/capital gains taxes in respect of the trust's income and gains?

Tax treatment of distribution from a trust to its beneficiaries

20. What taxes apply to distributions of trust income to resident/non-resident beneficiaries?
21. What taxes apply to distributions of capital gains from a trust?
22. What taxes apply to distributions of capital from a trust?

Tax implications of settlor's death

23. What are the tax implications for the trust, trustee, settlor's estate and/or beneficiaries of the settlor's death?

Tax implications of the termination of a trust

24. What are the tax implications for the trust, trustee, settlor and/or beneficiary on termination of a trust?

Reporting obligations

25. Are the trust, trustees, settlors and/or beneficiaries subject to reporting obligations in relation to the trust?

Trustees regulation

26. Are trustees regulated in your country? What are the main regulatory requirements?

Registers of trusts

27. Is there in your country a register of trusts and/or of beneficiaries of trusts? Which trusts should be registered? What information should be provided? Who can access the information? What are the consequences of failure to comply?