



# International Families with Canadian Connections

IWP  
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# Canadian Tax Environment

- worldwide tax on residents
- citizenship and domicile are irrelevant
- income taxed at 46%
- capital gains taxed at 23%
- no estate or gift tax, but CGT applies

## Taxation of Offshore Trusts - Background

- new rules first proposed in February 1999 Federal Budget
- 8<sup>th</sup> version of draft legislation released on 24 October 2012
- not yet adopted in law
- effective retroactively from 1 January 2007



## When is an Offshore Trust Deemed Resident in Canada?

- two tests for deemed residence:
  - resident contributor (Canadian settlor alone)
  - resident beneficiary (Canadian beneficiary and former Canadian resident settlor)
- transactions (direct or indirect) between a Canadian and a trust = contribution
  - services provided by Canadian resident
  - loan repayment
  - guarantees

# Reporting and Tax Exposures for Offshore Trustees

- foreign trustees of deemed resident trusts:
  - directly (and personally) liable for tax in Canada
  - must file a tax return for the trust and report information on underlying companies and other foreign property

## Settlor and Beneficiary Obligations

- Canadian settlor jointly liable with offshore trustees for tax
- settlors must file trust deed
- beneficiaries in Canada also jointly liable up to amount of distributions received
- beneficiaries must report all receipts from trusts

# Taxation of Distributions

- Canadian resident beneficiary of non-resident trust
  - capital
  - income
- non-resident beneficiary of deemed resident trust
  - distribution of non-Canadian income to foreign beneficiary = Canadian withholding tax
  - grandfathering for trusts established before 30 October 2003 with no further contributions by any person after 17 July 2005

## Planning Opportunities Preserved

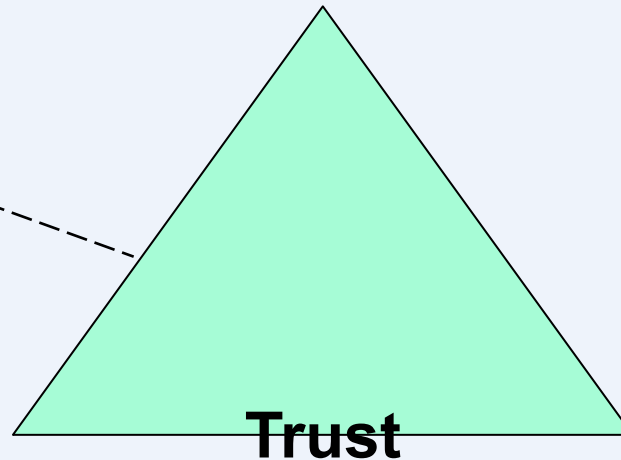
- gifts/bequests by foreigners for Canadian residents
- immigrant trusts
- capitalised income from foreign trust can be distributed tax-free to Canadian residents
- trusts settled after settlor emigrates from Canada



# Deemed Resident Trust

## Contributor

Canadian resident



- trust deemed resident in Canada, residence of beneficiaries is irrelevant
- trust taxed in Canada on worldwide undistributed income and gains as determined for Canadian tax purposes

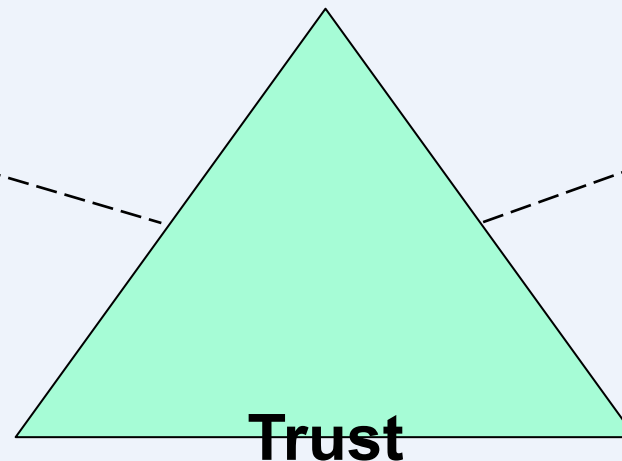
# Deemed Resident Trust

## Contributor

long term resident  
establishes trust while  
living abroad and  
returns to Canada  
within 5 years

## Beneficiaries

Canadian residents



- trust deemed resident retroactively to year of establishment

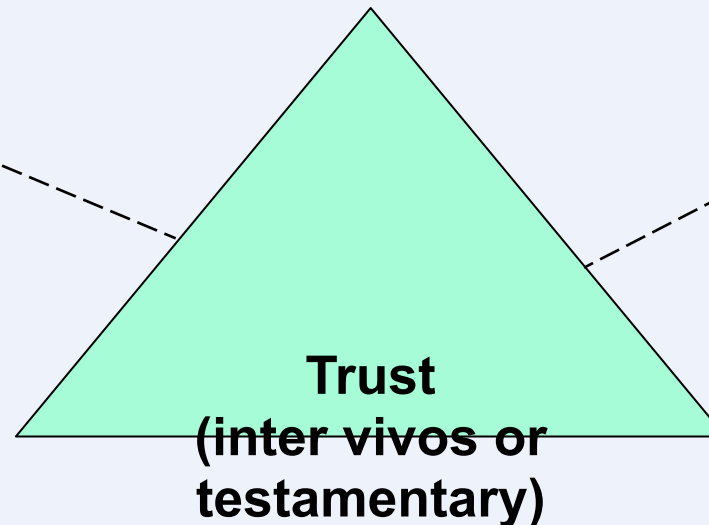
# Non-Resident Trust - Gift or Bequest

**Contributor**

**Beneficiaries**

non-Canadian

Canadian residents



- trust not deemed resident
- Canadian beneficiary not taxed on capital distributions (including capitalised income)
- all distributions are reportable

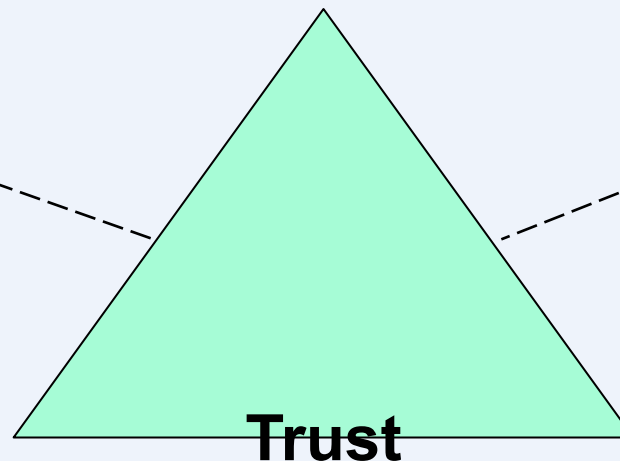
# Five Year Immigration Trust

## Contributor

non-Canadian  
establishes trust and  
immigrates to Canada

## Beneficiaries

Canadian residents  
(may include the settlor)



- trust not deemed resident for up to 5 years after settlor moves to Canada
- Canadian beneficiary not taxed on capital distributions (including capitalised income)
- all distributions are reportable

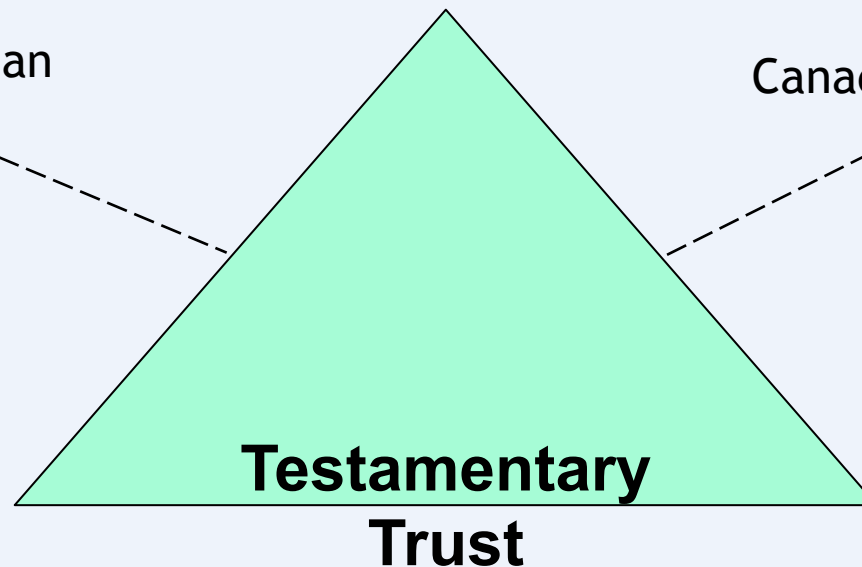
# Leaving Canada

Contributor

Beneficiaries

former Canadian

Canadian residents



- trust not deemed resident if settlor passes away at least 18 months after leaving Canada

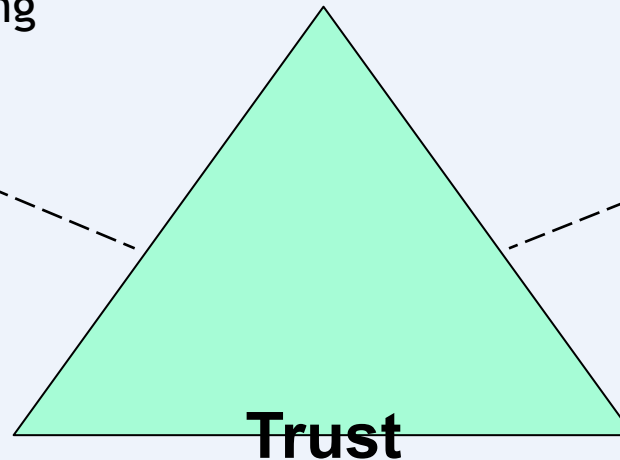
# Leaving Canada

## Contributor

former Canadian  
establishes trust within  
60 months after leaving  
Canada

## Beneficiaries

Canadians benefit  
after death of  
the settlor



- trust not deemed resident until the settlor passes away

## Canada Tackles International Tax Evasion

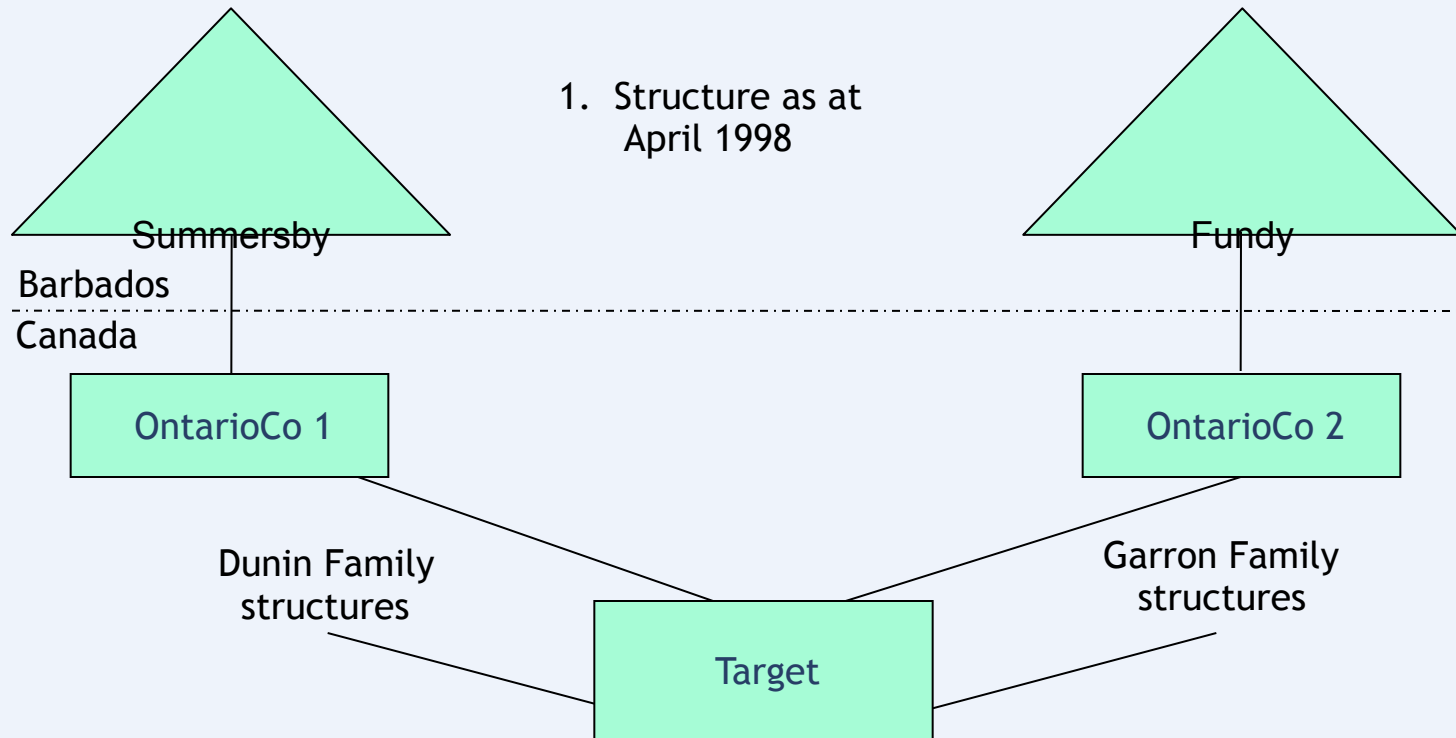
- 21 March 2013 federal budget
- AML wire transfer reporting to be sent to CRA from 2015
- whistleblower programme
- broader disclosure of foreign property and reassessment period extended by 3 years for filing defaults
- additional \$30m of funding committed to CRA

## Voluntary Disclosures

- favourable regime - pay tax; no penalties or prosecution
- CRA may grant partial relief for interest
- requirements:
  - voluntary
  - complete disclosure
  - penalty applicable
  - more than 1 year past due
- can start the disclosure on a no-names basis



# Trust Residence: Garron Case



2. Sales by Summersby and Fundy Trusts of respective OntarioCos to Third Party Purchaser in August 2000.

**Intended Result:** trusts resident in Barbados + tax treaty protection = gains not taxable in Canada

## Garron - Conclusions

- test for trust residence: where central management and control actually abides
- substantive decisions made by Dunin and Garron directly or indirectly through their tax advisors
- trustee acted in administrative role only
- evidence of trustee's activities in Barbados insufficient to show mind and management outside of Canada
- trusts resident in Canada and capital gains taxable in Canada



## For further information

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