

INTERNATIONAL TRUSTS & ESTATES

Hodgson Russ's trusts and estates attorneys have extensive experience assisting clients with cross-border interests in protecting their assets. Whether for high-net-worth individuals, businesses, nonprofits, or corporate trust departments, we advise clients on the full range of the U.S. legal aspects of planning, administration, settlement, and taxation of estates and trusts.

We create and implement effective estate plans that take into account the effects of U.S. tax laws on U.S. family members and on non-U.S. families that own U.S. assets. We collaborate with clients' trusts and estates lawyers in their countries of residence to ensure estate plans that coordinate the laws of multiple jurisdictions. We have significant experience advising on related income tax issues that can arise for international families, including ownership of interests in foreign trusts, corporations, or other entities. Hodgson Russ attorneys also represent such families in income, gift, and estate tax controversies with the IRS. In addition, with offices in New York State and Florida, Hodgson Russ is particularly well positioned to assist clients who spend time in both states.

Our International Trust Estate Legal Expertise

Hodgson Russ is known for developing and implementing strategies to protect the assets of our international clients from creditors, including spousal creditors in the event of a divorce. This can reduce significantly, and in some cases eliminate completely, death taxes that can otherwise consume more than half of the wealth accumulated over a lifetime, allowing these asset-protection and tax-saving features to continue for future generations. Hodgson Russ was among the first law firms to implement estate planning strategies involving the use of family limited partnerships and related entities.

Hodgson Russ attorneys serve as advisors to nonprofit organizations with cross-border interests to develop strategies to enhance the tax benefits of lifetime and testamentary charitable giving, both to public charities and to private and supporting foundations. Hodgson Russ attorneys routinely counsel foreign clients regarding the effective use of living trusts and durable powers of attorney to avoid the need for expensive and time-consuming guardianships and probate, and thus to enable the families of our clients to settle the affairs of a deceased family member with minimum delay and publicity and at minimum cost.

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The Advantages of Working with Our International Trust Estate Attorneys

Hodgson Russ's trusts and estates attorneys work closely with the Firm's business and tax attorneys to structure personal retirement plans for high-net-worth individuals and family gift programs to accomplish the multigenerational transfer of assets, as well as to integrate corporate and operational business considerations in the sale or other transfer of closely held corporations to family members or others. The focus is on minimizing taxes and facilitating family and estate-planning objectives. This area of practice encompasses advice on insurance planning, structuring family partnerships, and business-succession planning.

In conjunction with Hodgson Russ's Employee Benefits Practice, our trusts and estates attorneys offer international clients highly specialized experience and advice in the field of taxation of pension plans, profit-sharing plans, IRAs, and other forms of retirement plans. In addition to working with businesses, professional practices, and self-employed individuals on the design and structure of retirement plans, we frequently advise clients concerning tax and other issues related to distributions from qualified plans and IRAs. Absent successful planning through a complicated maze of federal and state pension and tax rules and regulations, retirement plan assets are subject to both income and estate taxes that can consume in excess of 70 percent of the asset value.

Occasionally litigation arises in cross-border situations with respect to various estate and trust instruments, including will contests, interpretation of wills and trust agreements, accountings, and breach of fiduciary duty issues. Our experience ranges from simple will contests to complicated and occasionally high-profile cases. We have experience dealing with the IRS and state departments of taxation and revenue and, when necessary, we represent our clients in connection with tax audits and litigation. We are frequently consulted by accountants, trust companies, and other advisors to assist in a "special counsel" capacity in various tax dispute resolution matters.

Clients advocating for or against changes in the U.S. tax law and regulations are assisted by Hodgson Russ's government relations team. Our international clients are alerted to legislative and administrative developments by receiving "early warning" services.

Hodgson Russ has been awarded a prestigious "Best Law Firms" National Tier 1 ranking by *Best Lawyers/U.S. News & World Report* in the Trusts & Estates Law category.

Experience

Hodgson Russ serves as general U.S. tax counsel for a large, privately held business with Canadian owners (senior family members) and U.S. owners (junior family members). For this client, we provide services related to cross-border limited partnership structures; U.S. tax planning for Canadian acquisitions, including use of Canadian unlimited liability companies; 338 elections; tax planning for cross-border distributions of profits; use of family trust structures for U.S. estate tax planning and creditor protection purpose; and general integration of U.S. and Canadian tax rules and objectives.

Hodgson Russ provides U.S. tax and estate planning advice to numerous trust companies that act as trustees or advisors of foreign-based family trusts, applicable to when the trust acquires U.S.-situs assets or has a beneficiary who becomes a U.S. resident. Our services to these clients include U.S. tax advice to avoid the U.S. accumulation distribution rules applicable

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to distributions from foreign trusts to U.S. beneficiaries and to avoid potential application of the U.S. passive foreign investment company (PFIC) rules for shares of foreign companies held by the trust, U.S. reporting obligations on IRS Form 3520, and recommendations for appropriate language in the trust agreement to provide U.S. estate tax protection for trustees or beneficiaries who are U.S. residents.

Hodgson Russ provides U.S. income tax and estate tax planning advice and documentation to more than 100 Canadian clients with respect to structuring for the ownership, operation and disposition of U.S. real estate investments by Canadian residents, including both commercial and personal use real estate. Our services to these clients include structuring involving family trusts, structuring involving tiered (U.S. and Canadian) limited partnership structures, special limited partnership structuring involving Canadian limited partnerships utilizing “check-the-box” elections for U.S. tax purposes, double-blocker corporate structures, offshore structures, use of non-recourse debt, optimization of special exemptions and benefits available under the U.S.-Canada Tax Treaty, and coordination and integration of U.S. and Canadian tax objectives.

Hodgson Russ acts as general U.S. tax and corporate counsel for a private multinational joint venture group of entrepreneurial companies with a principal owner domiciled in Hong Kong and business operations headquartered in the United States and Canada. Our services to this client include the integration of U.S. and Canadian tax planning for U.S. and Canadian shareholders with respect to structuring for new ventures and sales of U.S. and Canadian member entities, tax planning for the ownership of intellectual property rights, tax planning for the sale of a minority equity interest to a private equity firm, and general U.S. income tax and estate planning for foreign owners of the enterprise.

Hodgson Russ acts as U.S. tax counsel to a large, family-owned Canadian enterprise with value in excess of \$500 million with respect to U.S. tax planning for the owner-family members who are U.S. citizens and U.S. residents. Our services to this client include use of cross-border foreign grantor trust structures, special U.S. tax planning with respect to dividends that qualify as tax-free capital dividends in Canada, U.S. tax structuring for dispositions occurring under the Canadian “21-year rule,” and tax planning for structuring of foreign operations to minimize potential adverse U.S. tax consequences under the controlled foreign corporation (CFC) and passive foreign investment company (PFIC) rules.

In the News

Refresher on US Estate Tax Filing for Canadians
Canadian Tax Highlights, November 18, 2019

Economic Flow from Canada Creates Business and Legal Opportunity
Buffalo Business First, May 17, 2019

Buying Property Across Border Is Complex
Buffalo Business First, March 21, 2014

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Press Releases

Hodgson Russ Celebrates 25 Years With an Office in Canada
Press Release, March 20, 2014

Publications

Cross-Border Philanthropy: Obtaining a U.S. Income Tax Deduction for a Donation to a Canadian Charity
New York Law Journal, January 22, 2021

Uncle Sam Follows Ex-U.S. Citizens and Green Card Holders – Even Past the Grave
STEP Connection, Toronto Branch Newsletter, April 2016

Minimizing Estate Tax on U.S. Real Property
Lawyers Weekly, November 29, 2013

Residence Trusts: How to Eliminate Estate Tax for Canadian Owners of U.S. Real Property
Lawyers Weekly, May 9, 2008

Presentations & Events

STEP Canada's "Canada/US Cross-Border Estate Planning" Course
March 6, 2023

Update on Cross-Border Tax Planning
November 19, 2020

US-Canadian Estate Planning for Cross-Border Clients
October 30, 2018

Senior Estates and Trusts Practitioners' Forum
Cambridge, ON, October 14-16, 2018

Estate Planning and Trusts
Technical Seminar and Live Webcast
1250 Rene-Levesque West, Montreal, QC, Canada, April 4, 2018

Canadian Bar Association Seminar: Will, Estate and Trust Fundamentals for Estate Practitioners
Toronto, ON, October 17, 2015

Canada/U.S. Cross-Border Estate and Income Tax Planning
Toronto, Ontario, September 17, 2014