

# Common sense prevails

Henry Brandts-Giesen reports on the abolition of gift duty in New Zealand



#### ABOUT THE AUTHOR

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The New Zealand government has announced that it will introduce legislation that will include the repeal of gift duty. The announcement follows a review by the government to assess the impact on creditor protection and social assistance targeting. The review found that gift duty offered minimal protection for these areas and did not justify the NZD70-million annual compliance costs involved. Once enacted, the abolition of gift duty will be effective from 1 October 2011.

Gift duty in New Zealand is an anachronism from the days when estate (or inheritance) tax was levied. Estate tax was abolished in New Zealand in 1992, but gift duty remained. Under the gift duty regime a person can gift only NZD27,000 per year (or NZD54,000 between a husband and wife) without incurring any duties.

This meant that NZ residents establishing family trusts to own the family home or other family wealth would typically 'sell' the assets to the trust and receive a debt back. They would then forgive the debt gradually over time so as to not trigger a gift duty liability.

This process, known as a 'gifting programme', is very inefficient and costly for both private individuals, lawyers and the Inland Revenue (IRD) and raised very little revenue for the New Zealand government. Furthermore, it often defeated the very purpose for which many trusts were established in the first place because, at least in the short to medium term, it left the person(s) establishing the trust with a large



asset still on his or her or their balance sheet in the form of the debt owed by the trust.

Common sense has prevailed and gift duty has now been abolished meaning that when a new trust is established assets can be transferred into the trust virtually immediately. There are 'claw back' provisions in insolvency and property legislation intended to prevent transfers made to defeat existing or anticipated creditors or relationship property claims.

This may make the establishment of a trust more attractive for NZ residents. Having said that, there are currently no major tax benefits in doing so, with the top marginal tax rates for individuals resident in New Zealand being aligned with the tax rate for domestic trusts at 33 per cent.

NZ residents should always talk through the options with a lawyer who specialises in asset planning. This is particularly so for new migrants to NZ from the UK and the US, of which there are vast and increasing numbers.

UK HM Revenue and Customs will tax the value of transfers to trusts above the

nil-rate band at a rate of 20 per cent where the transferor is 'deemed domiciled' in the UK (even if they are no longer resident in the UK for income tax purposes). Similarly the Internal Revenue Service (IRS) taxes US citizens on their worldwide income regardless of where they live and the establishment of a trust in New Zealand by a US citizen living in New Zealand will have serious tax consequences and IRS reporting requirements unless that US citizen expatriates.

The repeal of gift duty and the statements in the foregoing paragraphs have no consequence to the NZ 'foreign' trust regime or the international wealth structuring industry in general. A trust established in New Zealand by a non-resident of NZ, which does not earn any NZ sourced income, will not incur any form of tax in NZ. The same is true of NZ limited partnerships which have no NZ resident limited partners nor sourced income. From 1 April 2011 NZ companies with five or fewer shareholders will also be able to elect this 'look through status'. ■