NON-RESIDENT TRUSTS AND FOREIGN INVESTMENT ENTITIES

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THE ADVANCED INTENSIVE PROGRAM IN WILLS, ESTATES AND TRUSTS

OSGOODE HALL LAW SCHOOL
MARCH 25 – 26, 2010

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INTRODUCTION

In 1972 the *Income Tax Act* (Canada) (the "Act") introduced the rules for the taxation of non-resident trusts and in 1984 the rules dealing with the taxation of offshore investment funds were introduced. These rules were designed to prevent Canadian residents from deferring or altogether avoiding Canadian income tax by accumulating income in non-resident trusts ("NRTs") and "offshore investment funds" tax free outside of Canada. These rules have recently gone through a multitude of proposals and amendments in order to prevent conceived abuses.

The original proposal to fundamentally amend the existing taxation of non-resident trusts ("NRTs") and foreign investment entities ("FIEs") date back to the 1999 Federal Budget and were the subject of significant controversy due to the complexity and broad application of the outstanding rules. As a result, frequent amendments to the proposals have been made following extensive submissions made by many interested parties. In December, 2008, A Final Report of the Advisory Panel on Canada's System of International Taxation was submitted to the Ministry of Finance making broad recommendations.

After 10 years of uncertainty concerning outstanding and proposed draft legislation and revisions, the 2010 Federal Budget provides the most recent amendments to the NRT and FIE rules. The 2010 Federal Budget proposes substantial changes to the NRT rules, and shelves the previous outstanding FIE rules, instead proposing relatively minor amendments to the existing FIE rules as set out in section 94.1 of the Act. The 2010 Federal Budget did not provide draft legislation; instead the public is being requested to submit comments to the Department of Finance, regarding the proposed amendments, before May 4, 2010, following which the Department of Finance will develop draft legislation. It is proposed that the draft legislation will have retroactive application to 2007.

The NRT and FIE rules are broad and encompass many innocent estate planning transactions. Hence, it is of great importance to estate planners to familiarize themselves with these rules, in particular where multi-jurisdictional families are concerned. This paper is intended to provide a brief overview of the existing, outstanding and revised, as per the 2010 Federal Budget, NRT and FIE rules.

NON RESIDENT TRUST ("NRT") – Section 94

Existing Section 94

Section 94 of the Act provides for the taxation of NRTs which are not exempt trusts. Section 94 of the Act generally applies if a person that is resident in Canada has transferred or loaned property to a NRT that has one or more beneficiaries resident in Canada.

Pursuant to paragraph 94(1)(c) of the Act, a NRT may be deemed to be a resident of Canada for purposes of Part I of the Act if distributions made by the trust to its beneficiaries depend upon the exercise by the trustees of their discretionary powers. In effect, section 94 of the Act taxes a NRT on its Canadian source income and its foreign accrual property income ("FAPI"). The beneficiaries are each jointly and severally, or solidarily, liable to pay the Canadian income tax of the trust. However, a beneficiary of the trust is only liable for the Canadian income tax of the trust to the extent that the beneficiary has received a distribution from the trust or proceeds from the sale of an interest in the trust.

Paragraph 94(1)(c) of the Act only applies to discretionary trust; however, paragraph 94(1)(d) of the Act may apply to a NRT which is not a discretionary trust. If paragraph 94(1)(d) of the Act applies then a trust is treated in much the same manner as a non-resident corporation. Pursuant to paragraph 94(1)(d) of the Act, if a Canadian resident beneficiary holds an interest in a trust with a fair market value equal to 10% or more of the total fair market value of all beneficial interest in the trust, the trust is deemed to be a controlled foreign affiliate of the beneficiary. The result of paragraph 94(1)(d) of the Act is that the Canadian resident beneficiary is required to include a portion of the FAPI of the trust in his or her income. Canadian resident beneficiaries whose beneficial interest is less than 10% of the total fair market value of all interests in the trust may be subject to tax under the offshore investment fund rules in section 94.1 of the Act. If neither section 94 nor section 94.1 applies, then the Canadian resident beneficiary is only taxed if trust income becomes payable to them in the year in which it arises.

Case Law Respecting Residency of a Trust

As is apparent from the above, in order for section 94 of the Act to apply, the trust has to be a non-resident of Canada. As such, determining the residency of a trust is of importance. Recent case law has potentially expanded the common law test for residency of trusts, concluding that trusts established in preferential tax jurisdictions are resident in Canada, based upon their manner of administration.

The Canadian jurisprudence dealing with residency of a trust is sparse. For the last 31 years, the case of *Thibodeau Family Trust* v. *The Queen*,[1] has been held as authority that the residency of the trustees determines the trust's residency for purposes of the Act. In that case the Court held that a trust was a resident of Bermuda and not Canada because the majority of the trustees were resident at all material times in Bermuda and the trust agreement only permitted a majority decision on all matters of trustees' discretion.

In September 2009, the *Thibodeau* decision was examined by the Tax Court of Canada in *Garron et. al. v. The Queen*.[2] In that case the Court rejected the notion that *Thibodeau* stood for the proposition that the deciding factor in determining the residence of a trust is the residence of the trustees and instead held that the appropriate test for determining the residence of a trust is the central management and control test, with modifications.

Garron - Residence of a Trust - Central Management and Control

The facts in *Garron* are that in 1992, PMPL Holdings Inc. ("PMPL") was incorporated in order to hold the shares of two operating companies. In 1998, in the course of a reorganization of the share structure of PMPL, two trusts with Canadian beneficiaries were settled by an individual resident in the Caribbean. The sole trustee of each of the trusts was a corporation resident in Barbados. As part of the reorganization, the trusts subscribed for shares of newly incorporated Canadian corporations and these new corporations, in turn, subscribed for new common shares of PMPL. In 2000, $450 million in capital gains were realized by the trusts on the disposition of shares of the Canadian corporations held by the trusts. Under Barbados domestic law, the gains were not subject to tax. The potential Canadian income tax on the $450 million in capital gains

[1] 78 DTC 6376 (FCTF).

[2] 2009 DTC 1287 (TCC), under appeal.

was remitted by the trusts to the Minister of National Revenue (the "Minister") under the withholding procedures of section 116 of the Act. In filing their returns for the 2000 taxation year, the trusts requested a refund of the amounts remitted under section 116 of the Act on the basis that the capital gains were exempt from Canadian income tax under the Canada–Barbados Income Tax Agreement. The Minister assessed the trust, denying the exemption. In addition to assessing the trusts, the Minister assessed four individual Canadian residents since they all had interests in PMPL either directly or through a holding corporation prior to the reorganization. The trusts and the individual Canadian residents appealed to the Tax Court of Canada.

Justice Woods, speaking for the Tax Court of Canada, held that the trusts were liable to tax in Canada. In coming to her conclusion Justice Woods examined the residence of the trusts and rejected the notion that *Thibodeau* stood for the proposition that the deciding factor in determining the residence of a trust is the residence of the trustees, she stated the following: "First, I cannot agree with the appellants' submission that *Thibodeau* sets out a test of trust residence based solely on the residence of the trustee."[3] Justice Woods held that the appropriate test in determining the residence of a trust is the "central management and control test" subject to modification, she stated: "I conclude, then, that the judge-made test of residence that has been established for corporations should also apply to trusts, with such modifications as are appropriate. That test is "where the central management and control actually abides."[4]

In examining the test the Court found the central management and control of the trusts to be in Canada with the two Canadian principals, directly or indirectly through their advisors. Factors that she considered included:

- The "protector" could replace the Barbados Trustee, the Canadian principals and their spouses could replace the "protector
- Internal memoranda of the Trustee evidenced a very limited role contrary to the trust documents
- Investment decisions appeared at the direction of the Canadian principals with Canadian investment advisers
- Virtually no documentation showing the Barbados Trustee took an active role in the trust's management
- Documentary evidence consistent with a limited role for the Barbados Trustee
- Barbados Trustee was arm of an accounting firm which had provided significant tax advice on the structure. Questionable whether the Barbados trustee had expertise in managing trust assets
- Canadian principals did not show the interest in the Barbados trustee's activities and competence which would be expected if the Barbados trustee was actively involved in the share sale

[3] *Ibid*., at para. 136.
[4] *Ibid*., at para. 162.

- Bank contact was made in Toronto (the Bahamas branch was used for one of the Trusts)
- Barbados Trustee had little information about the transactions to be approved before the transactions were ratified
- One of the Canadian principals oversaw the sale of the shares

Justice Woods indicated that it could not be assumed that the Barbados trustee ensured that the transactions undertaken by the trusts were in the best interests of the beneficiaries. In addition, there was no evidence that the Barbados trustee had expertise or significant experience in trust management nor was it a well-recognized trust corporation with significant experience and expertise in managing trusts.

The *Garron* case is under appeal. However, regardless of whether one agrees or disagrees with the test espoused by the Court, the practical implications of Justice Wood's decision are that one cannot solely rely on the residence of the majority of the trustees, if those trustees are mere agents and only exercise minimal decision making power. Rather, include other indicators and document them well, such indicators might be the following:

- majority of Trustees resident in preferential tax jurisdictions act by majority alone
- bank account is located in and operated in the preferential tax jurisdiction
- consider where investment advice should be received and investment decisions made. If investment decisions are delegated, preferential tax resident trustees might actively select the delegate, receive the reporting and periodically review the performance
- trustee meetings in preferential tax jurisdiction
- adequate time and information provided for significant decision-making

Outstanding Subsection 94(1) - Prior To 2010 Federal Budget

Outstanding section 94 of the Act was intended to prevent tax avoidance by broadening the scope of the NRTs to which deemed residence would apply. Accordingly, pursuant to outstanding subsection 94(3) of the Act, a trust that is otherwise not resident in Canada is deemed to be resident in Canada throughout the particular taxation year and subject to Canadian taxation on its worldwide income if there is a resident beneficiary or there is a resident contributor to the trust.[5]

Subsection 94(3) of the Act applies if:

1. the trust is a non-resident; and

[5] The resident beneficiary, the resident contributor and the trust may all become jointly and severally, or solidarily, liable for the Canadian income tax on the worldwide income of the trust.

(a) there is a resident beneficiary of the trust; or

(b) there is a resident contributor to the trust.

Resident Contributor

The term “resident contributor” means an entity that is a contributor,[6] and is resident in Canada other than:

1. an individual (other than a trust) who has not been resident in Canada for periods that total at least 60 months (immigration trusts); or

2. an individual (other than a trust) if the trust is an *inter vivos* trust that was created before 1960 by a person who was a non-resident when the trust was created and the individual has not made any contributions after 1959.

In order to be a resident contributor to a particular trust at any time, an entity must, at that time, be resident in Canada and a “contributor” to the particular trust. A contributor remains a contributor after death or dissolution; however, the status of resident contributor will terminate on death or dissolution.

Generally, the term “contribution” includes any transfer or loan (other than an arm’s length transfer”) of property to a trust.

Resident Beneficiary

In order to determine if there is a Resident Beneficiary the following two components have to be meet:

1. there must be a beneficiary resident in Canada; and

2. there must be a “connected contributor”.

Beneficiary Resident in Canada

Beneficiary is a defined term pursuant to subsection 94(1) and it includes a person that is beneficially interested and a person who may receive income or capital of the trust indirectly through other entities.

A successor beneficiary who is a resident in Canada is not considered to be a beneficiary for the purposes of this definition. A successor beneficiary is a beneficiary whose interest must arise only after the death of an individual who is alive and a contributor to the trust or on the death of a person related to the contributor.

[6] The term “contributor” is defined as an entity (including an entity that has ceased to exist) that, at or before that time, has made a contribution to the trust.

Connected Contributor

The term "connected contributor" means an entity that has made a contribution to the trust other than:

1. an individual (other than a trust) who has not been resident in Canada for a period of more than 60 months or periods totaling 60 months (immigration trusts); or

2. a person whose contribution to the trust is made during a non-resident time which means a particular time at which the entity is non-resident (or not in existence) throughout the period that begins 60 months before the contribution time (if the entity is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time) and ends at the earliest of

   (a) 60 months after the contribution time;

   (b) if the entity is an individual, the death of the individual; and

   (c) the contribution time.

As such the term "resident beneficiary" basically requires a beneficiary that is resident in Canada as well as a contributor that was a resident in Canada within five years of the time of contribution, before or after.

Criticisms of Outstanding Section 94 of the Act

Outstanding section 94 of the Act has been the subject of much criticism over the course of the last decade. The NRT rules set out in outstanding section 94 of the Act have been criticised as being practically unworkable, complex, and overly broad, going well beyond the tax planning which is intended to be prevented; mainly, the use of foreign trusts to accumulate income offshore without tax for the benefit of an ultimate Canadian beneficiary. For example, outstanding section 94 of the Act would apply to a NRT

1. with a resident contributor regardless of whether there is a Canadian resident beneficiary; in contrast to no Canadian tax obligation regarding any future appreciation of an outright gift by a Canadian resident to a non-resident;

2. where the NRT has a Canadian resident beneficiary and the contributor had been resident in Canada within 60 months of having made the contribution to the trust; and

3. unless certain exceptions apply, a NRT subscribing for shares of a Canadian corporation could cause that trust to be deemed resident in Canada

2010 Federal Budget

The 2010 Federal Budget substantially revises outstanding section 94 of the Act.

1. Tax Exempt Entities

Under the outstanding proposals an entity exempt from tax pursuant to section 149 of the Act could become jointly and severally or solidarily, liable for the NRT's income tax liability.

However, pursuant to the 2010 Federal Budget, it is proposed that all persons exempt from tax pursuant to section 149 of the Act will be specifically excluded from taxation under the NRT rules. These persons will be exempt from resident contributor and resident beneficiary status. However, if these persons are utilized as conduits by a Canadian resident making contribution to a NRT, then the Canadian resident would be considered a resident contributor to the trust.

2. Commercial Trusts

Under the outstanding proposals investors were often unable to determine whether any particular commercial trust would be deemed resident in Canada and that a commercial trust might be deemed resident in Canada due to circumstances beyond the investor's control.

Pursuant to the 2010 Federal Budget, non resident commercial trusts will be excluded from taxation under the NRT rules if:

(a) Each beneficiary is entitled to both income and capital of the trust,

(b) Interest in the trust cannot cease to exist except by way of redemption or cancellation where the beneficiary is entitled to receive the fair market value of the beneficiary's interest,

(c) Any transfer of an interest in the trust by a beneficiary is a disposition for Canadian income tax purposes;

(d) The income or capital payable to a beneficiary does not depend on the exercise of, or failure to exercise, discretion (except discretion as to timing of distributions);

(e) Interest in the trust are listed and regularly traded on a designated stock exchange or, if the trust has a least 150 investors, are available to the public in an open market;

(f) The terms of the trust cannot be varied without the consent of all the beneficiaries, or of a majority of the beneficiaries for a widely held trust; and

(g) The trust is not a personal trust.

3. Loans from a Canadian Financial Institution

Under the outstanding proposals a conventional loan made by a Canadian financial institution to a NRT in the ordinary course of its business could be considered as a contribution to that trust.

Pursuant to the 2010 Federal Budget, in contrast, a loan from a Canadian financial institution to an NRT will not cause the financial institution to be a resident contributor, and so will not by itself cause the NRT to be deemed resident in Canada as long as the loan is made in the ordinary course of the financial institution's business.

4. Taxation of a Deemed Resident Trust

Pursuant to the 2010 Federal Budget, where the NRT rules apply, the NRT will only be taxable on either:

(a) Income attributable to property acquired by the trust from Canadian residents or certain non-residents or property substituted therefore, and

(b) Canadian source income under normal rules (the “Resident Portion”). Income from the trust’s other property (the “Non-Resident Portion”) will not be taxable in Canada. Distributions to resident beneficiaries will come first out of the Resident Portion of the trust’s income. Distributions to non-resident beneficiaries will come first out of the Non-resident Portion. Distributions to non-resident beneficiaries out of the Resident Portion of the trust’s income will be subject tot withholding tax. Distributions to non-resident beneficiaries out of the Non-resident Portion will not be subject tot withholding tax.

5. Liability of Resident Contributor

Under the outstanding proposals, resident contributors and resident beneficiaries are jointly and severally, or solidarily liable for the trust’s Canadian income tax. The resident contributor’s liability for the trust’s Canadian income tax could have been unlimited in many instances because often times resident contributors do not have authority or control in relation to the trust or access to details regarding the trust’s assets resulting in the resident contributor being unable to comply with the reporting obligations imposed by section 233.2 of the Act.

The 2010 Federal Budget proposes to effectively limit the resident contributor’s liability for the trust’s tax to an amount equal to the resident contributor’s proportionate share of the trust’s income for Canadian tax purposes. The trust income attributed to the resident contributor will be proportionate to the fair market value of the property contributed by the resident contributor compared to the fair market value of all property contributed by all connected contributors. The income so attributed to the resident contributor will be reduced by losses of the trust from other years and the trust may allocate a share of its foreign tax credit to the resident contributor. The normal reassessment period will be extended by three years for income attributed from a deemed resident NRT.

No relief was granted in regards to the liability of resident beneficiaries. Resident beneficiaries will be liable with respect to the trust’s income tax payable to the same extent as under the outstanding proposals.

6. Treaty Residence

Pursuant to the 2010 Federal Budget, it is proposed that the *Income Tax Conventions Interpretation Act* will be amended to provide that a trust deemed to be resident of Canada under the NRT rules will be deemed to be a resident of Canada for treaty purposes. This responds to recent court decisions which suggest the opposite.

Application of Revised NRT Measures

It is proposed that the revised measures for NRTs be applicable to the 2007 and subsequent taxation years. The attribution of trust income to resident contributors will only apply to taxation years ending after March 4, 2010.

FIE

Section 94.1 of the Act is an anti-avoidance provision which was introduced in an attempt to prevent residents of Canada from avoiding or deferring Canadian income tax by investing in offshore investment funds that are resident in preferential tax jurisdictions and that derive their value from portfolio investments.

Prior to section 94.1 of the Act, residents of Canada could own up to 9.9% of the shares of an offshore corporation which would invest in securities such as Canadian government bonds the income of which could be exempt from Canadian withholding tax. The annual income would be allocated to the resident of Canada via stock dividend and eventually cash would be received by the resident of Canada through the redemption of shares by the offshore corporation thereby converting the underlying interest income into a capital gain.

Existing FIE Rules

Existing section 94.1 of the Act taxes Canadian residents on investments in foreign entities, other than controlled foreign affiliates that earn passive investment income if one of the main reasons for the taxpayer’s acquisition of the interest in the foreign investment was to reduce tax. The existing FIE rules require a Canadian resident to include in income a minimum annual amount in respect of investments in offshore investment fund property.

Pursuant to section 94.1 of the Act, the Canadian resident is required to include in income the product of the “designated cost” of his investment multiplied by the prescribed Canada Revenue Agency (the “CRA”) rate less the income otherwise reportable in the year other than capital gains. This calculation is made monthly, based on the designated cost at each month end and $1/12^{th}$ of the prescribed CRA rate prevailing during the month.

Pursuant to paragraph 53(1)(m) of the Act, the adjusted cost base of the Canadian resident’s property in the offshore investment fund is increased by any amounts included in income under section 94.1 of the Act. Hence, the amount included in income by a Canadian resident pursuant to section 94.1 of the Act is fully taxable whereas the increase in adjusted cost base of the property in the offshore investment fund reduces the capital gain on a future. Consequently, where section 94.1 of the Act applies there is an overall increase in taxable income.

The existing FIE rules have not been extensively applied by the CRA and have been largely ignored by Canadian taxpayers. Hence, in 1999 the Department of Finance introduced proposals that would make it easier for the CRA to pursue Canadian taxpayers that were using non-resident entities to avoid tax. These outstanding FIE rules apply to a wider range of interest than the existing section 94.1 of the Act.

Outstanding FIE Rules – Prior to 2010 Federal Budget

The outstanding FIE rules were first introduced in June 2000 (and have been modified several times since then) and were intended to apply to taxation years that begin after 2002. The outstanding FIE rules would apply if the following conditions are met:

1. the taxpayer is not an exempt taxpayer for the particular taxation year;

2. the participating interest is held by the taxpayer at the end of the taxation year of the non-resident entity that ends in the taxpayer's taxation year;

3. at the end of the taxation year of the non-resident, the non-resident is a foreign investment entity; and

4. at the end of the taxation year of the non-resident, the taxpayer's participating interest is not an exempt interest.

In many situations a Canadian beneficiary of a trust that was not subject to the NRT rules was considered to hold a FIE interest; unless, the entitlement of the beneficiary were exclusively based on the discretion of the trustees.

2010 Federal Budget

Pursuant to the 2010 Federal Budget everything proposed since 1999 with respect to the FIE Rules has been eliminated and the pre-1999 FIE rules will apply with minor modifications.

The minor modifications to the existing FIE rules are as follows:

1. The prescribed rate for the purposes of determining the monthly income inclusion pursuant to section 94.1 of the Act will be increased to the three-month average Treasury bill rate plus two percentage points.

2. In determining if the 10% threshold in section 94.1 of the Act has been met, the interests of all non-arm's length persons will be aggregated. The test will be met if a beneficiary owns 10% or more of any class of interests in the non-resident trust, determined by fair market value. These rules will also apply to a resident who has contributed "restricted property".

3. The reassessment period in respect of interests in "offshore investment fund property" and interests in trusts described in this paragraph will be extended by three years and existing reporting requirements will be expanded.

Application of Revised FIE Measures

It is proposed that the revised FIE measures will apply to taxation years ending after March 4, 2010.

ESTATE PLANNING - NRTs & FIEs

The proposed revisions to the NRT and FIE rules, as set out in the 2010 Federal Budget, address some of the negative implications of these rules, as they relate to legitimate estate planning transactions. The following examples describe how the NRT and FIE rules, as they are proposed after the 2010 Federal Budget will apply to some common situations.

Example – US Testamentary Trust – US & Canadian Beneficiary:

Mr. X and Mrs. X are residents of Canada and have always resided in Canada. They have two adult children, one is resident in Canada and the other is resident in the United States. Pursuant to the parents' Wills, on the death of the survivor, one testamentary trust is established for the two children, the trustees of the trust are resident in the US and exercise management and control over the trust assets. The testamentary trust is established to minimize US estate tax on the death of the US child.

Application of sections 94 and 94.1 of the Act

As mentioned previously, proposed section 94 of the Act applies if the trust is a NRT and there is a "resident beneficiary" (a beneficiary resident in Canada and a "connected contributor") or a "resident contributor". Since the trustees reside in the US and exercise management and control over the trust assets the trust is considered a NRT. A deceased parent will not be a "resident contributor;" however the deceased parent will be a "connected contributor" to the NRT if he or she has been resident in Canada for more than 60 months before his or her death. In addition, because the US trust has a Canadian resident beneficiary the requirement of "resident beneficiary" is met, with the result that the US trust will be subject to Canadian income tax on its worldwide income.

Example – US Testamentary Trust- US Beneficiary:

Mr. X and Mrs. X are residents of Canada and have always resided in Canada. They have two adult children, one is resident in Canada and the other is resident in the United States. Pursuant to the parents' Wills, on the death of the survivor, two testamentary trusts are established for each child, one of the trust is a resident Canadian trust and the other trust is a resident US trust. The testamentary trust established for the child that is a US resident is established to minimize US estate tax on the death of the US child.

Application of sections 94 and 94.1 of the Act

The deceased parent will not be a "resident contributor;" however the deceased parent will be a "connected contributor" to the NRT because he or she has been resident in Canada for more than 60 months before his or her death. However, the "resident beneficiary" requirement is not met, since the only beneficiary of the US trust is the beneficiary resident in the US. Hence, section 94 of the Act does not apply. It would appear that section 94.1 of the Act would also not apply since the purpose test in section 94.1 of the Act would not apply.

Example – Inter Vivos Trust – Resident Contributor:

Mr. X and Mrs. X are residents of Canada and have always resided in Canada. They have two adult children, both of which are resident in the United States. Mr. X and Mrs. X have decided to set up a trust for the benefit of their two adult children. The trustees of the trust reside in the US and exercise the management and control of the trust assets. Mr. X transfers assets to the NRT.

Application of sections 94 and 94.1 of the Act

The trust is a NRT because the trustees reside in the US. Although in this example there are no Canadian resident beneficiaries, both adult children reside in the US, the NRT is subject to outstanding section 94 of the Act because Mr. X, the dad, is considered a resident contributor.

Example – Inter Vivos Trust – Resident Beneficiaries

Mr. X and Mrs. X are non-residents of Canada and have never resided in Canada. Mr. X and Mrs. X have decided to set up a trust for the benefit of their two nephews who both reside in Canada. The trustees of the trust are resident in Barbados.

Application of sections 94 and 94.1 of the Act

Although the trust is a NRT (the trustees reside in Barbados), section 94 of the Act does not apply because there is no resident contributor or resident beneficiary. The resident beneficiary requirement is not met because although there are beneficiaries that are Canadian residents, there is no connected contributor. It would appear that section 94.1 of the Act will not apply because the purpose test will likely not be satisfied.