
# Tax planning for foreign payments, loans, gifts and inheritance – are your Australian beneficiaries prepared?

Over time, as family wealth grows and the lives of family members evolve, so too does the complexity of their affairs. When family members are based in different parts of the world and seek to make cross-border wealth transfers into Australia, this complexity deepens. Wealth transfers can include foreign payments, loans, gifts and inheritance. Prior planning is critical to protect the family's financial prosperity.

At Mutual Trust, we define financial prosperity as the ability to grow financial capital sustainably, to provide for the needs of the current and future generations of a family, as outlined in our publication Why the Modern Family Office Matters. As part of this approach, we help families navigate Australia's broad foreign trust rules, leveraging a holistic view of their wealth to uncover bespoke solutions. In doing so, our goal is to help families avoid unnecessary financial penalties and protect their wealth for the benefit of future generations.

## When do families make wealth transfers to Australia?

Throughout life, there are many instances where families may seek to transfer wealth to Australia from overseas. For example:

- Family members moving from overseas to Australia, with pre-migration wealth;
- Beneficiaries receiving money from an overseas trust or company as a distribution or a loan;
- A gift from a foreign person to an Australian relative;
- An inheritance from a foreign person's estate or testamentary trust; or
- Transfers from foreign superannuation funds.

## Planning is key

When wealth transfers to Australia occur without any preparation, there can be devastating repercussions. These can come in the form of up to 47% tax on the transferred amounts and "throwback penalty interest" charges going back decades. This may even apply to foreign income derived when the person was a foreign resident.

It's critical to plan for how to best manage the applicable tax considerations, as there can potentially be exclusions from these rules. A tax advisory specialist can offer great value here, helping families navigate these complex rules and uncovering bespoke solutions that avoid unnecessary financial penalties being imposed.

**Mutual Trust Case Study**

Ian Tremble*, patriarch and first generation wealth creator, established a foreign trust in New Zealand over 40 years ago to hold the Tremble family wealth for the benefit of all his family.

In 2009, Ian's daughter Rebecca migrated to Australia. She has since met her partner and now has two children of her own. Ian would like to make a financial gift of AUD$5m to Rebecca to support his grandchildren's educational expenses and to help them buy a home.

However, any direct or indirect payments (including loans) made from the foreign trust to Rebecca could be taxable to her at a rate of up to 47% without the benefit of any concessions and with non-deductible 'throw-back' interest charges.

Fortunately, prior to the transfer, Mutual Trust's Tax Advisory team worked with Rebecca and the trustee of the New Zealand trust to obtain a ruling from the Australian Taxation Office that the payments fell within the limited exclusions to the rules and were tax-free to Rebecca.

*Family name changed to protect privacy

## The ATO has issued guidance on managing overseas trusts, gifts, deceased estates and Family Offices

Recently, the ATO issued a draft tax determination which aims to address several unanswered questions regarding wealth transfers from foreign trusts and estates. However, many questions and uncertainties remain which give rise to unintended tax consequences.

The ATO also issued draft practical guidance, which provides some comfort regarding foreign deceased estates, loans and guidance on the evidentiary requirements of the rules.

Regardless, when it comes to relocating or transferring wealth to Australia, planning is everything.

## Helping to shape the tax issues which impact our clients and communities

Mutual Trust's Tax Advisory team is committed to sharing thought leadership and helping to shape tax issues which impact our clients and communities. Over the last year, our team have published a series of insightful articles on this topic for The Tax Institute, Thomson Reuters and STEP.

As we work with overseas Family Offices and global families, clarifying these rules and legislative amendments remains our priority, to help families avoid being inadvertently penalised.

**When it comes to cross-border wealth transfers, it can be challenging to work out the right approach. Mutual Trust helps families by first seeking to understand their wealth from a holistic perspective, and then identifying solutions to avoid unnecessary financial penalties. The solution will vary, based on each family's unique circumstances. If you would like to discuss your cross-border wealth transfer requirements, please reach out to your Relationship Manager.**

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