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THE CUSTODIAN

ESTATE PLANNING AND WEALTH SUCCESSION NEWSLETTER

Chairman's message

By Lee Chiwi
AEPP®
Chairman
Estate Planning Practitioners Limited (EPPL)

Early this year, the announcement that held the nation's attention was Singapore's plan to 'build a fairer and more resilient tax system'. It inevitably means more taxes. The highest individual income tax rate was increased from 22% to 24% for Year of Assessment 2024. This is 7% higher than the corporate tax rate of 17%. This may be the impetus to shift the individual ownership of income earning assets into corporate ownership.

Other significant changes include increase of property taxes, particularly for those owning higher value residential properties. For owner-occupied properties, from 1 Jan 2024 the highest rate will be 32% and for non owner-occupied properties, the tax rate could be as high as 36%. With the existing ABSD (Additional Buyers Stamp Duties) and SSD (Sellers Stamp Duties) regimes, wealth succession for High Net Worth families who possess multiple properties could mean a re-think of their estate plans, evaluating if it is worthwhile to retain or sell their properties on demise. Will their beneficiaries continue to hold on to the inherited properties for the long term when the economic costs of living in them or maintaining them become much higher?

A series of seminars centering around the theme 'Global Real Estate Succession' will be organized in 2022 to update Estate and Succession Practitioners (ESPs) on changes to property succession not only in Singapore but elsewhere. Such changes will pose new issues for clients' estate plans, particularly where they own cross-border properties.

EPPL Digital's maiden trust solution, ProviTrust, was also launched at the PreceptsGroup Kickstart 2022 luncheon on 8 February 2022. At the event, we also recognised the team effort that went behind making the first digital trust service to hold CPF moneys in Singapore a reality. This is our first foray in leveraging technology to provide yet more solutions seamlessly. There are yet more digital solutions that we are working on and we welcome all business collaborations to drive this forward.

With the recent announcement of significantly relaxing Covid-19 safety measures in Singapore, we are looking forward to more in-person regional business travel and meetings, training and more inflow of opportunities. As usual, we welcome any feedback or suggestions and wish everyone well. Stay safe and connected with us!

The Risks Of Delaying
The Writing Of Your Will

Ooi Li Sun
AEPP®
Head of Department, Precepts Legacy
Wills and Estate Administration

When people tell you that they will do their Wills later, or they prefer to write their Wills themselves, it can create headaches and incur extra costs for intended beneficiaries, says Precepts Legacy's Ooi Li Sun.

In our job, one of the most common things we hear from people is "I can do my Will later." Indeed, it is an individual's choice as to when to write a Will, and no one can force that. However, a key question that has to be asked is whether this is the way to protect loved ones after death. Another question is how to prevent assets from being distributed to unintended persons.

Here is an example on how things can go wrong if you don't write a Will. A few years ago, we dealt with a case involving a married elderly couple with no children. The husband was diagnosed with stage 3 cancer. Upon his diagnosis, he immediately wrote his Will, bequeathing all his assets to his wife. If his wife did not survive him, his assets were to be distributed equally to his biological siblings. Meanwhile, his wife was reluctant to write her Will. There seemed to be no urgency as she was healthy at the time and her situation was different from her husband's.

The couple stayed in a landed property together with the biological siblings of the wife. The property had been bought in the wife's name and her siblings contributed financially to the purchase. The sad news was that the wife later died intestate before her cancer-suffering husband due to an acute illness. According to intestacy laws in Singapore, the husband was the sole beneficiary of his wife's estate.

We came into the picture after the husband died as he named us as the Executor in his Last Will and Testament. There were no changes to his Will even after the demise of his wife. The most problematic issue that we had to deal with after the husband's death, centred on the estate's most substantial asset, namely the landed property.

The biological siblings of the husband wanted us to convert the property into cash and were willing to pay for rental accommodation for the wife's biological siblings who lived in the property. As expected, no one was willing to move out of the property. We had to engage our lawyer to apply for vacant possession and an eviction order. All these problems could have been avoided if the wife had written a Will herself.

Lifetime Transfers Can Hit Snags

Some may argue that these problems could have been avoided if the wife had transferred the property to her biological siblings during her lifetime. Is lifetime transfer a good approach? As an example, we note the experience of an elderly mother who transferred her property to her only son. The son died prematurely in a car accident and his wife – the daughter-in-law of the elderly woman – was the sole beneficiary of her husband's Last Will and Testament. She promptly evicted her mother-in-law from the property.

When the old lady approached us to seek a remedy, it was too late. Her property had been legally taken out of her hands. We could only recommend that she approach a lawyer to seek remedy or resolution or reinstate her rights via litigation. This is not the only such case that we have handled.

We would always encourage people to write their Wills instead of doing such lifetime transfers. By writing a Will, you can have control over your assets, and particularly your property assets that would otherwise be fiercely contested.

DIY Wills not a good idea

We also want to highlight people who take matters into their own hands by writing their own Wills just to save on Will-writing fees. Even after they have written their Wills, can they be sure that they clearly reflect their actual intentions? Wills have to be worded meticulously. Any ambiguity or contradiction regarding distribution or instructions in the Will may cause unnecessary delays in administering the estate. Higher costs may also be incurred if a court's direction or other guidance has to be sought.

As an example, we were the administrator for one Will that was badly drafted by the testator. It was a disaster – there was no indication of the date of the Will, the executor appointment clause was omitted, and the instructions for the distribution of assets was contradictory. We ended up spending more time than usual to get a Grant of Representation extracted from the Court.

After that, we also had to seek the court's direction before distributing the assets in the estate to the beneficiaries named in the Will. All the incurred costs ended up being three times more than the cost of an usual application. This demonstrates that it is not worth saving on Will writing fees when the estate ends up having to spend a substantial amount of money in estate administration costs.

Writing a Will is one way of protecting your loved ones after you are gone. People should not delay this as no one can predict what is going to happen at the very next moment. While there is nothing in the Wills Act 1838 that restricts an individual from writing his or her own Will and therefore not compulsory to engage professionals to assist in his or her Will making, real-world experiences suggest that this is not the wisest move.

Kickstart 2022

PreceptsGroup International (PGI) held its annual Kickstart event at Amara Hotel on 8 February 2022. Due to prevailing safe distance measures, PGI's luncheon to mark the event was limited to 50 people.

PGI's CEO, Mr. Lee Chiwi, who is also the Chairman of Estate Planning Practitioners Limited (EPPL), reflected on the performances of PreceptsGroup in 2021. He congratulated the Estate & Succession Practitioners (ESPs) with outstanding performance in 2021 and also announced exciting plans for 2022. PGI and EPPL also officially launched ProviTrust, an initiative under EPPL Digital that is centred on a purposeful way to give your CPF savings in a digital trust for protection of loved ones, particularly if they receive it at a time when they are vulnerable.

The highlight of the event was the annual awards ceremony for ESPs. Mr Lee said that he was very heartened that there was an emerging group of ESPs who has succeeded in taking

Lee Chiwi giving his opening speech

Estate Planning up to a new level. PGI congratulates the top ESPs who continually strive to reach out to more clients to do their Estate Planning as well as improve the quality of Estate Planning in Singapore.

Digital Trust Option for Malaysians with CPF Savings in Singapore

Ooi Sen Tee
AEPP®
Relationship Manager
Precepts Trustee Ltd (PTL)/
Estate Planning Practitioners Limited (EPPL)

Malaysians who leave Singapore for good but choose to keep their CPF savings in the city-state can look beyond CPF nominations to distribute their savings after they are gone, says EPPL's Ooi Sen Tee.

Despite continuing pandemic-induced travel restrictions, Malaysians can now set up a Trust in Singapore without going through the hassle of cross-border travel. EPPL Digital has enabled the advent of digital Trusts for Malaysians. Those who maintain a CPF account in Singapore can consider setting up a digital Trust for their CPF savings.

Many Malaysians and Singapore Permanent Residents have built their careers in Singapore over many years. Many have contributed into their CPF accounts for a long time and grown a valuable Singapore dollar-denominated nest egg. When they decide to return to Malaysia for good, they will typically have to make a decision about what to do with their CPF savings.

According to CPF Board rules, when people renounce citizenship or permanent residency in Singapore, they are entitled to withdraw all the money in their CPF accounts. However, the CPF Board implements specific conditions on CPF savings withdrawal for Malaysians leaving Singapore to reside in West Malaysia, East Malaysia and other countries. (See **CPFB | Account closure by Malaysians in West Malaysia** for detailed information.)

Keeping CPF funds in Singapore

Now, there are those who may wish to maintain their CPF savings as status quo and may not opt to withdraw their CPF savings after renouncing their citizenship or permanent residence status. This makes financial sense, especially amid the current global economic uncertainties, persistently low interest rates, and volatility in foreign exchange markets.

The Monetary Authority of Singapore, however, is committed to keeping the Singapore dollar stable, which helps to make CPF savings a safe-haven asset. Another plus for CPF savings is that they can earn account holders higher interest than they would receive from bank deposits, while returns are relatively risk free. Hence, CPF savings can be considered a growing portfolio with compounding effects, and without taking unnecessary risks.

Rationale for establishing a Trust for CPF savings

When a person is leaving Singapore for good, it is important to plan for eventualities. Part of the person's estate, namely his CPF savings, will now be in a foreign country. If the person has drawn up a Will, it cannot cover CPF savings as CPF nominations are the only way to ensure that CPF savings are distributed efficiently to intended beneficiaries.

With a Trust, the distribution options are expanded. CPF account holders can put in instructions via a Trust to pay out their CPF savings over a period of time, at a frequency that suits the beneficiaries' circumstances, or at a later vesting age. This can largely address concerns that arise from potential squandering, poor money management, and other inheritance pitfalls. The trustee, whoever is appointed, can hold the CPF savings in trust or as a means of asset diversification. At any time, the money could be transferred from Singapore to a Malaysian account.

These are some of the benefits of a digital Trust that a Malaysian can set up in Singapore remotely. The two-year pandemic has accelerated many digital initiatives across industries, and digital Trust is just one of these initiatives. With ProviTrust and online nominations, Malaysians who wish to maintain their CPF accounts in Singapore can now better plan the distribution of their CPF savings to their loved ones.

Find out more about digital Trusts at ***digital.epplasia.com*** *or contact us at* ***info@epplasia.com***

The Singapore Landed Residential

PROPERTY REPORT

Researched and written by Nicholas Mak & team
Research & Consultancy Department, ERA (for publication in The Custodian Issue 21)

Nicholas Mak
Head of Research & Consultancy Dept.
ERA Realty Network Pte Ltd.

Key Takeaways

- As the Singapore economy gradually recovered amid the Covid-19 pandemic, the residential real estate market rebounded strongly in 2021.
- Private residential property prices increased by 10.6% year-on-year in full-year 2021.
- This price expansion was led by the capital values of landed residential properties.

Landed housing price gained pace in 2021

Landed residential properties are among the most expensive housing in Singapore. Prices can range from $1.5 million for an older terrace house to tens of millions of dollars for a Good Class Bungalow. In 2021, landed residential property prices in Singapore appreciated at the fastest pace in the past 10 years. They surged by 13.3% year-on-year in 2021, compared to a lacklustre 1.2% expansion in 2020.

When the Covid-19 pandemic slowed the Singapore economy in 2020, capital values of landed housing -- like other real estate values in Singapore -- were adversely affected and resulted in a much slower annual growth rate that year. However, real estate market sentiment started to improve from the second half of 2020 onwards. It received a further shot in the arm when the Covid-19 vaccination programme was implemented in 2021. This contributed to the subsequent faster rate of property price growth.

Interestingly, the capital values of landed housing increased at a faster pace in the first two years of the pandemic compared to the two years before Covid-19 became a household word in early 2020. Landed residential property prices increased at an average annual rate of 6% in 2018 and 2019. However, prices expanded 7.1% annually on average in 2020 and 2021.

Prices of landed housing also grew faster than prices of non-landed properties, such as condominium units, from 2018 to 2021. During this four-year period, capital values of landed residential properties increased by 28.8%, while capital values of non-landed housing grew by 24.2%.

Table 1: Residential property price growth

Year	Annual growth of landed housing price index	Annual growth of non-landed housing price index
2018	6.3%	8.3%
2019	5.7%	1.9%
2020	1.2%	2.5%
2021	13.3%	9.8%

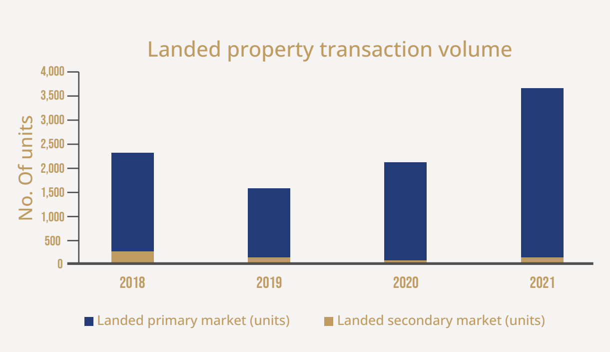
Source: URA, ERA Research & Consultancy

More landed homes sold in 2021

The Covid-19 pandemic prompted more white-collar workers across the globe to work from home. This sparked a demand for more space at home, and the growing wealth and income of the upper-middle class led to more demand for bigger condominium units and houses.

Some 2,113 landed homes were reportedly sold in 2020, compared to 1,545 units transacted in 2019, a 36.8% jump. In 2021, landed property transaction volumes jumped a further 73.1% to 3,658 units, in line with the overall recovery in the residential property market.

Figure 1: Landed property transaction volume



Source: URA, ERA Research & Consultancy

Due to the limited supply of landed housing in the primary market, the sales of more than 90% of landed homes were transacted in the secondary market. Still, both primary and secondary markets saw increases in the number of units sold in 2021 -- primary sales volumes rose by 142% year-on-year while secondary sales volumes increased by 71.1% year-on-year.

Among the three market segments in Singapore, the Core Central Region saw the highest increase in landed home transaction volumes in 2021, followed by the Rest of Central Region and Outside Central Region, respectively. The growing transactions in the prime areas underpinned the growing appetite among landed housing buyers who can afford more expensive homes in prime locations.

Table 2: Landed property transaction volume by market segments

Year	Core Central Region	Rest of Central Region	Outside Central Region
2020	291	346	1,476
2021	574	664	2,420
Increase year-on-year	97.3%	91.9%	64.0%

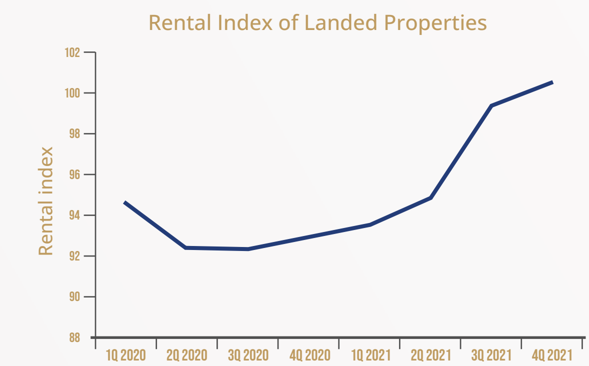
Source: URA, ERA Research & Consultancy

Rental demand remained strong

Meanwhile, movements in landed property rental rates in Singapore were more closely correlated to the economic climate and the job market. The landed rental index contracted from 1Q 2020 to 3Q 2020 when border restrictions were tightened and expatriate tenants left Singapore.

When the vaccination programme was announced towards the end of 2020, market sentiment improved as people expected the economy to recover and the borders to reopen in the near future. As a result, the landed housing rental index started to rise from 4Q 2020 and into 2021. By the end of 2021, rental rates of landed homes had increased by 8.2% year-on-year, compared to the 2.7% contraction in 2020.

Figure 2: Landed property rental index



Source: URA, ERA Research & Consultancy

Residential leasing demand from local residents also contributed to the rise in landed housing rental rates. With the completion of new residential developments being delayed due to supply-chain bottlenecks, some homebuyers had to temporarily rent their accommodation while waiting for their new homes to be completed. The demand for rental landed homes was also boosted by the demand for more space due to the widespread work-from-home practice.

Looking ahead: Impact of cooling measures

In the wake of the strong price gains and exuberance in the residential property market, the Singapore government introduced a new round of property market cooling measures on 15 December 2021. The new market curbs include raising the Additional Buyers' Stamp Duty (ABSD) rates and tightening the Total Debt Servicing Ratio (TDSR) threshold from 60% to 55%.

Figure 3: New market curbs from 16 December 2021

1. Higer Additional Buyers' Stamp Duty (ABSD) rates

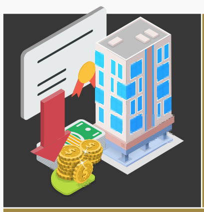
ABSD rates for first property purchase by Singapore Citizens and Permanent Residents will remain unchanged at 0% and 5% respectively.

Type of buyers		Rates from 6 July 2018 to 15 Dec 2021	Rates on or after 16 Dec 2021
Singapore Citizens	Buying first residential property	**0%**	**0%** (No Change)
	Buying second residential property	**12%**	**17%** (Revised↑)
	Buying third and subsequent residential property	**15%**	**25%** (Revised↑)
Permanent Residents	Buying first residential property	**5%**	**5%** (No Change)
	Buying second residential property	**15%**	**25%** (Revised↑)
	Buying third and subsequent residential property	**15%**	**30%** (Revised↑)
Foreigners	Buying any residential property	**20%**	**30%** (Revised↑)
Entities	Buying any residential property	**25%**[1] (Plus additional 5% for Housing Developers[2]) (Non-remittable[3])	**35%**[1] (Revised↑) (Plus additional 5% for Housing Developers[2]) (Non-remittable[3])

2. Tightened Total Debt Servicing Ratio (TDSR) threshold from 60% to 55%

New mortgages cannot cause borrowers' total monthly loan repayments to exceed 55% of monthly income.

TDSR threshold for refinancing existing property loans granted before 16 Dec 2021 remains at 60%



3. Reduced Loan-to-Value (LTV) limit for HDB-granted loans from 90% to 85%

Reduces the maximum amount potential homebuyers can borrow from HDB.

LTV limit for loans obtained from financial institutions to purchase HDB flats remains unchanged at 75%.

Source: Ministry of National Development

Property sales could face a slowdown in the near term as both buyers and sellers adopt a wait-and-see approach. However, as the majority of the buyers of landed homes are Singaporeans, who are exempted from paying ABSD if they are buying their sole residential property, the landed housing market could be less affected by the government's new measures in the longer term.

Higher property taxes

Furthermore, in Singapore Budget 2022, the government said that it will increase the property tax rate for owner-occupied residential properties in two stages - from 4% to 16% currently, to 6% to 32% by 2024. The property tax rate for non-owner-occupied residential properties will be raised from the current 10% to 20%, to 12% to 36% in 2024.

Although the increase in the tax rate appears to be rather large in absolute terms, it is not expected to have a significant negative impact on demand for landed homes. This is because landed homes in Singapore are typically owned by wealthy individuals who could likely afford to absorb the increase in property taxes. Moreover, the incremental amount of property tax may not be particularly significant if capital values of landed property continue to expand in the long term.

JOINT OWNERSHIP and ACCOMPANYING WOES

Persis Hoo
LLB
Estate and Succession Practitioner representing
Precepts Legacy Pte Ltd

The distribution of assets held in joint ownership following death is not always so straightforward and can be challenged, explains Persis Hoo.

People often assume that there is no need to provide for joint bank accounts or joint properties in their Wills due to the assumption that the asset will automatically fall into the hands of the other joint owner when one of them passes on.

While the law of survivorship holds true in most circumstances, it does not mean that the surviving ownership of the asset is insulated from challenge. This is perfectly illustrated in the seminal High Court case of the ***Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin [2019] SGHC 152***:

Madam Sun, the deceased wife, and her deceased husband, Mr Yang, had been married for more than 50 years. Mr Yang passed away in 2012 while Mdm Sun passed away in 2016. Proceedings were brought by the Estate of Mdm Sun (her nephew) against the sole executor and representative of Mr Yang's estate (his nephew).

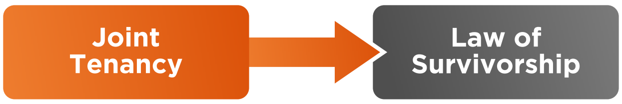
The couple held multiple bank accounts in joint names. While Mr Yang wrote a Will, he omitted any reference to the joint accounts. The crux of the dispute turned on whether the monies in the joint accounts belonged to Mdm Sun after Mr Yang's passing. In the course of administrating Mr Yang's estate, the Defendant had allegedly used the monies that belonged to the Estate of Mdm Sun. Therefore, if the court ruled in favour of the Plaintiff, the Defendant had to return a sum of about half a million dollars to the Plaintiff.

The question then is who was the beneficial owner of the monies in the joint account after Mr Yang's death? Was it the Defendant, who asserted that as Mr Yang was the main contributor to the monies, Mdm Sun held the monies in the joint accounts on trust for his estate? Or was it the Plaintiff, who argued that Mdm Sun was the beneficial owner of the monies by way of the law of survivorship?

The relevant legal principles

1) The law of survivorship: Joint tenancy

Joint tenancy refers to a form of co-ownership where parties own the entire interest in a particular property. Upon the death of a joint tenant, the surviving joint tenant will automatically take the entire interest in the property. This is also known as the law of survivorship.



2) Resulting trust

Notwithstanding the above, the law of survivorship can be displaced by resulting trust. A resulting trust arises where there has been a transfer of property in circumstances where the deceased did not intend to benefit the survivor. In this case, there was no clear intention by Mr Yang to retain beneficial ownership of the bank accounts. This brings us to the presumption of resulting trust.

3) Presumption of resulting trust

The presumption of resulting trust kicks in where there has been a transfer of property to the surviving owner, for which the survivor has not provided the whole of the consideration (or value of the property) and there is no evidence that shows the true intention of the transferor. Therefore, an inference is made that the deceased did not intend to benefit the survivor. If this presumption arises and is not displaced, the survivor is deemed to hold the property on trust for the deceased's estate.

However, all is not lost. If the presumption of resulting trust arises, the presumption of advancement can be argued to displace the former.

4) Presumption of advancement

Certain types of relationships attract this presumption, for example transfer of property from husband to wife or father to child. Within these established categories of relationships, transfers of property are intended to be gifts in favour of the recipient.

Application of the law to the facts

In this case, the High Court found that the presumption of resulting trust arose on the facts with respect to the joint accounts since Mr Yang contributed more monies to them. However, the presumption of advancement also arose because Mr Yang and Mdm Sun were married.

For a good part of their 50-year marriage, Mr Yang was the sole breadwinner of the family and Mdm Sun remained financially dependent on him. The evidence also pointed to the couple having a loving and close marriage. Accordingly, together with other facts, the court held that the presumption of advancement applied and on the basis of the law of survivorship, the monies in the joint accounts were beneficially owned by (gifted to) Mdm Sun. Hence, Yang Chia-Yin was ordered by the court to return the $500,000 of monies to the Estate of Mdm Sun.

Another case in point is ***Chye Seng Kait v Chye Seng Fong (executor and trustee of the estate of Chye You, deceased) [2021] SGHC 83***. The plaintiff and the defendant in this recent estate dispute are brothers. Chye Seng Kait (Plaintiff) disputes that Chye Seng Fong did not perform his duty as Executor of their father's Will in accounting the joint bank accounts as part of the estate of their father - namely whether the joint accounts between the deceased and his daughter should go to the daughter by way of the law of survivorship, or whether it should fall to the estate of the deceased. The Plaintiff submitted that the latter should prevail based on the principle of resulting trust (that is the daughter is only holding the monies in the joint account in trust for their father).

Interestingly, the court held that the daughter did hold the joint accounts on resulting trust for the father's estate. However, the Plaintiff's claim was ultimately rejected as the deceased had explicitly dealt with his joint assets in his Will. Clause 2 of his Will read as follows:

> *"I hereby declare that any immovable property held by me jointly with the co-owner as joint tenants shall belong to the surviving joint tenant absolutely by virtue of the right of survivorship. I further declare that any account held by me with any other person(s) jointly in any financial institution shall also belong to such joint account holder(s) absolutely by virtue of the right of survivorship."*

The court held that in construing a Will, the court will ascertain and give effect to the testator's intention as expressed in his Will, read as a whole in light of any admissible external evidence.

Therefore, despite the plaintiff's desperate attempt to lay claim to the joint accounts, the court ruled in favour of the deceased's plain and ordinary intent to gift the joint accounts to his daughter, the co-owner of the accounts.

What does this mean for me?

As shown in these two cases, just because assets are held in joint bank accounts does not mean that the beneficial ownership of the asset is insulated from challenge. In Singapore, the presumption of advancement is only limited to certain categories of relationships. Further, the presumption of resulting trust may arise in certain situations where one party is the main financial contributor to the asset.

To ensure peace of mind and to prevent any disputes or uncertainty, it is advisable to clearly lay out your intentions in your Will or Trust. Even if your assets are held in joint bank accounts, usually for the sake of convenience, it is best to clearly spell out your intention for distribution in your Will.

Update on Malaysia 2022 Budget Proposals:

Significant Changes to Proposed Taxation of Foreign Source Income

Mike Grover
Former Head of Tax at
International Accounting Firm

The Malaysian 2022 Budget announced on 29 October 2021 was passed into law as the Finance Act 2021 on December 31, 2021. There were few major changes to the original budget proposals. A significant exception related to the budget proposal to tax Foreign Source Income.

In what may be regarded as a last-minute "stay of execution", the Ministry of Finance (MOF) issued a press release suspending the full impact of taxing Foreign Source Income received in Malaysia by Malaysian residents.

MOF responds to concerns

The late change of heart was in response to concerns raised inter alia by economists, the wealth planning industry, corporate and individual taxpayers on the potentially detrimental and far-reaching effects on the economy of taxing Foreign Source Income receipts.

One of the most worrying effects, even ignoring the difficulties involved in collecting the tax, would be to slow down foreign monies flowing into the economy at a much-needed time.

It is clear the budget proposal had not been fully thought through and the press release was greeted with a collective sigh of relief by Malaysian residents and quite possibly the international community which, when pushing for the change, may not have expected such a clumsy approach.

The MOF listened and introduced changes representing a significant watering-down from the original proposal:

Taxpayer Type	Exempted Foreign Source Income received in Malaysia	Effective Dates
Tax Resident Individuals not carrying on a business through a partnership	All categories of Foreign Source Income	From 1 January 2022 to 31 December 2026
Tax Resident Individuals carrying on a business through a partnership	Unclear	Unclear
Tax Resident Companies	Foreign Source Dividend Income only All other types of Foreign Source Income remain taxable	From 1 January 2022 to 31 December 2026
Tax Resident Limited Liability Partnerships	Foreign Source Dividend Income All other types of Foreign Source Income remain taxable	From 1 January 2022 to 31 December 2026

Exceptions to the rules

For clarity, the new rules do not apply to:

- Resident companies carrying on the business of Banking, Insurance, Air and Sea Transportation. Such companies will continue to be taxed on Foreign Source Income whether received or not.
- Non-residents of Malaysia will also continue to be exempt from tax on Foreign Source Income received in Malaysia.

There remain areas for clarification and the MOF will announce the conditions to be complied with to enjoy the exemptions. But deferring the budget proposal to 2026 allows the MOF time to formulate a more cogent and considered response to meeting its international commitments.

Notes of caution

Tax Resident Companies and Limited Liability Companies may explore the feasibility of recharacterising non-dividend income into dividend income by interposing a foreign subsidiary in a low-tax financial centre. But it will come as no surprise if the conditions require a headline tax of 15% in the location of the company paying the dividend.

A further note of caution to resident individuals is to expect claims to exempt Foreign Source Income will be heavily scrutinised. So, keep excellent records. As the saying goes "the sun may be shining but don't forget to take your umbrella."

Estate Planning In Indonesia
Faces Pandemic-Driven Challenges

Henra Sensei,
CFP®, AEPP®

Tri Djoko Santoso,
CFP®, AEPP®
Founder, LN Consulting

The restrictive Covid-19 pandemic policies have created bottlenecks in administration processes that facilitate the distribution of assets to loved ones, say Henra Sensei and Tri Djoko Santoso of LN Consulting

The impact of the Covid-19 pandemic has been significant on the estate planning landscape in Indonesia. With 5,539,394 Indonesians infected, resulting in the deaths of 148,073 people (source: worldodometers February 28, 2022) and the numbers still rising, there have been numerous cases in Indonesia of parents dying and leaving their minor children behind, children dying and leaving their parents behind, as well as whole families dying.

Estate planners have had their work cut out for them as many Indonesians are typically negligent about writing their Wills. This means their loved ones cannot easily track their assets when they die. It is often the case that a bereaved family does not even know that the deceased parent had a life insurance policy or a Will, or where these Wills and life insurance policies are kept.

Matters are complicated for some Indonesian families who have assets or life insurance policies outside Indonesia. Loved ones of the deceased have to find the supporting documents, and if they are minors, there may not be any guardianship plan in place to get the ball rolling.

Bottlenecks in administrative processes

The lockdown policies and other pandemic restrictions across the country that were implemented during the pandemic have had a serious impact on public services, organized by both government offices and private entities in Indonesia. They cannot operate as per normal, causing delays in the issuance of death certificates and other administrative documents such as certificates of heirs.

Most of the time this process requires a district court or an Islamic religious court to be involved. However, trial schedules are frequently seeing postponements, which results in court decisions potentially taking longer. This includes courts' involvement in determining who are the guardians of minors, or who are adults with legal disabilities.

This process is key as it generates legal documents and court decisions that are the main gateway to carrying out the next stages of the administration process when someone dies. A common occurrence is insurance beneficiaries who are minors failing to complete supporting documents that expedite insurance claims because there are delays in the appointment of a guardian.

Meanwhile, the claims process can also be delayed as the pandemic restrictions have forced some insurers to reduce their employee numbers and service hours to provide insurance claim services. In addition, the pandemic restrictions and uncertainties on individuals state of health have also affected the communication channels between notaries, financial planners and life insurance agents, and clients.

What lessons can we take from the pandemic?

The delays in the administration of important documents that expedite the distribution of assets to a deceased person's loved ones have serious implications. This is typically exacerbated when heirs are unable to present written evidence, which is the main requirement. In such cases, it is difficult to estimate the duration of the process.

Against this backdrop, a comprehensive estate plan and a proper life insurance policy should be able to reduce the impact of administrative delays and help the distribution of assets to bereaved families. Liquidity planning is a must using various forms of liquid instruments, such as cash or near cash. Indonesian families must strive to have detailed records of their assets and debts that must be maintained for validity and accuracy.

We recommend that individuals write their Wills clearly stating who the Executors will be, who should be the guardian of minors or those with special needs, including adults with dementia. The best option is to contact a notary in Indonesia. Or if your situation is not complicated, you may make your own Will (Olographis testamen). However, it must be submitted to a notary for legal storage purposes.

People also need to ensure that they keep up-to-date records about the professionals involved whom your loved ones can contact in the event of your death -- for example, notaries and lawyers, tax consultants, financial planners, insurance agents both in Indonesia and overseas, wherever the assets are domiciled.

Many Indonesians have made efforts to diversify and allocate their global wealth for financial and family security. If they already have life insurance coverage somewhere overseas, they should also ensure that they have life insurance coverage in Indonesia. After a person dies, this will help loved ones to have easy access to liquidity, both in Indonesia and abroad. There should always be a Plan A or Plan B, as well as an entry and exit strategy in this risky life.

If you are a financial practitioner in Indonesia, we recommend you take the AEPP® course in Indonesia. Gaining the global knowledge will help you in totally serving your clients in Indonesia. Henra Sensei, CFP®, AEPP® and Tri Djoko Santoso, CFP®, AEPP® are financial educators and are both facilitators of AEPP® courses in Indonesia.

Foreign Grantor Trust

– Effective tool when used correctly

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Foreign Grantor Trusts (FGTs) are one of the most popular and advantageous vehicles for foreign parents to plan for their U.S. resident children. A FGT allows the foreign grantor to move assets out of their name and into a trust for the benefit of U.S. beneficiaries, and at the same time, avoid paying any taxes on the non-U.S. trust assets held in the FGT.

However, since FGTs present so many benefits, the Internal Revenue Service will also be aware that there can be abuse. The U.S. government wrote the Internal Revenue Code sections 671-678 to properly characterise certain trusts as grantor trusts by making sure certain criteria are met. Basically, if the grantor of the trust holds certain interests or power, they are considered the owner of the trust assets, even though the assets are in the trust's name and possession. This rule helps avoid the abuse of FGTs to avoid U.S. tax.

Even with these restrictions, FGTs are beneficial when the grantor is not a U.S. person, and they are deemed as the owner of the trust assets. Under U.S. taxation rules, income from trust assets is taxed as if owned by the non-resident alien grantor -- thus, unless the income is U.S. sourced, it is not taxable in the U.S. Furthermore, any distribution to U.S. beneficiaries will not be taxed as income. However, the U.S. beneficiaries are obligated to report the distribution as foreign gifts received. Foreign gifts of non-U.S. assets received by U.S. beneficiaries are reportable transactions, but not taxed.

Care needed with distributions

It should be noted though that distributions from the trust could create other income and reporting for the beneficiaries by piercing the structure of the FGT. In general, distributions to beneficiaries or interactions/control between beneficiaries and trust assets need to be handled very carefully. If beneficiaries have certain powers or control of the trust, this may trigger rules that deem the beneficiaries as owners of trust assets.

When this happens, the beneficiaries' deemed shares of the trust assets or income will be subject to U.S. taxation. In addition, the trust must also provide enough powers to the foreign grantor to satisfy the grantor trust rules. If the powers are not enough to satisfy the grantor trust rules, the trust could be considered a foreign non-grantor trust, which carries a substantially different tax outcome. In most circumstances, a foreign non-grantor trust with a U.S. beneficiary is not beneficial in U.S. taxation.

Although the FGT is a very advantageous tool, one must also make sure the terms of the trust do not create other issues. For example, it is important to make sure the foreign grantor of the trust will stay foreign. If the foreign grantor plans to immigrate to the U.S. in the future, a FGT may not be a good idea. All the trust assets and income will be taxable to the U.S. when the grantor becomes a U.S. resident.

The FGT generally only lasts for the lifetime of the grantor. When the grantor passes away, the FGT becomes a foreign non-grantor trust. The U.S. beneficiaries will be deemed as the owners of the trust assets for foreign financial reporting purposes, which completely changes everything. In sum, FGTs can be an excellent planning tool, but they must be used for the right reasons and with proper planning.

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