CONCENTRA TRUST BULLETIN | OCTOBER 6, 2017

Age 65 or older? There may be a trust for you

Trusts have been around for hundreds of years, so a type that's only been around for 17 years is still considered "new" in the trust world. Two types of living trusts (those that you establish during your lifetime) – the alter-ego trust and joint spousal trust – have been available to Canadians only since 2000. These "newer" trusts are worth a quick review, because they can be beneficial in many estate situations.

Trusts with a twist

Like other types of living trust, you create an alter ego or joint spousal trust by transferring ownership of assets to a trustee (either an individual or a trust company), which then manages and administers those assets for the trust's beneficiary. But that's where the similarities end. There are three key differences with an alter-ego trust:

1. Unlike other living trusts, there is no deemed sale of your assets at the time of transfer. So, you can roll over assets into the trust without triggering any immediate capital gains tax liability;
2. You must be at least 65 years old to settle an alter-ego or joint spousal trust; and
3. You must be the sole beneficiary (or you and your spouse in the case of a joint spousal trust), with an entitlement to income and capital during your lifetime. As with any living trust, income retained in the trust is taxed in the trust's hands at the highest marginal tax rate.

Why consider an alter ego or joint spousal trust? There are a few reasons:

- Bye-bye probate fees: The trust assets do not form part of your estate and are not subject to any probate fees or taxes which may apply. For example, in Ontario – which has the country's [second] highest estate administration tax – a $1.5 million estate would be liable for $22,000 in taxes. By placing some or all of the estate assets in an alter ego or joint spousal trust, the estate would benefit from significant tax savings. And if you transfer your principal residence into the trust, the trust maintains the benefit of the principal residence exemption.
- Privacy and protection: Both forms of trust avoid the public disclosure of your named beneficiary and of the assets in the trust, both of which are part of the probate process. They can also offer creditor protection, because ownership of the asset is transferred to the trustee. However, if the purpose of the trust is found to have been set up to avoid or defeat creditors, then those assets can be clawed back and you won't be able to protect them against creditors.
- Convenience: The trusts also offer protection in the event of incapacity. If you – or both you and your spouse – become incapacitated, the protection of the trust is already in place and the assets continue to be administered by the trustee for your continuing benefit. These trusts can also prevent litigation because it can more difficult to challenge the validity of a living trust than a will.

Of course, you need to balance these benefits with some of the disadvantages. You no longer have access to the capital in the trust, you're not able to write off any capital losses against capital gains upon death, and there are legal and other costs to setting up the trust, along with ongoing administration expenses, such as trustee fees and the cost of annual tax returns.

AUTHOR | IAN HULL

Special thanks to Hull & Hull LLP of Toronto for allowing Concentra to reprint this blog. The article, in part or entirety, may not be reprinted without the prior written permission of Hull & Hull LLP and Concentra.

This publication is provided as an information service and may include items reported from other sources. We do not warrant its accuracy. This information is not meant as legal opinion or advice.

Interested in past bulletins?

To browse prior bulletins by date or topic, visit **Trust Bulletins.** Please note the direct link will prompt you for a username and password. Simply use the same information you would if signing into our website via the login button on our home page.

Contact us

P 1.800.788.6311 #1888
E executorease@concentra.ca

Build a relationship with Concentra Trust and build greater loyalty with your clients. With over 65 years' experience, we are your estate and trust administration experts.

concentra.ca

801-110 (10/17) © Concentra Bank, 2017