

Investor Insight

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Understanding Trusts

When developing an estate plan, the inclusion of a trust, or multiple trusts, may help you to achieve your personal objectives and enhance benefits to be received by future generations.

What is a Trust?

A trust is a relationship where a person (the settlor) transfers property to another person or company (the trustee) who holds that property for the benefit of another person (the beneficiary). In general, it is possible to have more than one settlor, trustee, and/or beneficiary of a trust.

Types of Trusts

There are two categories of trusts: i) inter vivos, a trust created during the settlor's lifetime; and, ii) testamentary, a trust created as a consequence of an individual's death by way of their will.

Taxation of Trusts

Since a trust is a relationship and is not generally recognized as a legal entity, trusts are regarded as individuals for income tax purposes.

In an inter vivos trust, all of the trust's income is generally subject to tax at the highest marginal rate for individuals. In a testamentary trust, the trust's income is subject to tax at the graduated rates in the same manner as an individual for the first 36 months of an estate. After such time, a testamentary trust is subject to tax at the highest marginal rate for individuals.

While trusts are treated as individuals for tax purposes, they do not receive the benefit of being able to claim personal tax credits.

Dekker Hewett Group
Canaccord Genuity Wealth Management
609 Granville St., Vancouver, BC, V7Y1H2
T: 604.699.0852
E: dhginfo@canaccord.com
www.dekkerhewettgroup.com

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All, or a portion, of the income earned by a trust in a taxation year can be paid or made payable to all, or some, of the beneficiaries of the trust. This income will retain its character (e.g., eligible dividends, capital gains, etc. earned by the trust and distributed to beneficiaries will be considered to be eligible dividends, capital gains, etc. of the beneficiaries) and will be subject to tax in the recipient beneficiaries' hands. Any income that is not distributed to the beneficiary(ies) in a taxation year will be subject to tax within the trust.

Potential Uses and Benefits

A trust may be used as part of an estate plan to provide some of the following benefits:

Income Splitting —Tax savings may be achieved by distributing all, or a portion, of the income earned by the trust to beneficiaries who are subject to tax at a lower marginal rate than the trust, or who have unused loss carryforward balances or personal tax credits, since the income will be taxed in the beneficiaries' hands.

Since the income distributed to beneficiaries retains its character when taxed in their hands, it may be possible to use a trust to multiply the capital gains exemption by distributing the qualifying capital gains realized by the trust to each of the trust's beneficiaries.

In the case of an inter vivos trust, careful planning is required to ensure that the income attribution rules do not apply in any potential income splitting strategy.

Asset Protection — If structured properly, trusts may help to protect assets from your/your beneficiaries' creditors, the potential breakdown of your/your beneficiaries' marriage, and from the beneficiaries themselves (in the event they are minors, disabled, or not currently at a stage in life where they should own certain assets outright).

Further, for individuals residing in certain provinces, the trust may protect the assets held within it from estate administration (i.e., probate) fees.

If you would like to further explore the potential benefits of setting up a trust, or need assistance with other aspects of the estate planning process, please contact us.