

ALTER EGO TRUSTS

In this article, I would like to introduce you to a brief overview of an alter ego trust. In the first article I wrote for the Seniors' Advocate newspaper, I discussed the use and advantages of testamentary trusts in your will. This is similar only in the sense that there are also tax advantages, among other advantages, to a use of an alter ego trust. The similarity ends there. An alter ego trust is an *inter vivos* trust; a living trust that is passed on during your lifetime as opposed to a testamentary trust that passes through your will upon your death. A full discussion of the benefits and taxation of alter ego trusts is beyond the scope of this article. There are enough advantages to warrant a discussion nonetheless!

Alter ego trusts result from amendments made to the *Income Tax Act* (ITA), which were first announced in December 1999. The amendments received royal assent in 2001, but apply retroactively to transfers to trusts after 1999. A trust will be an alter ego trust when it has all of the following characteristics: the settlor (person who creates the trust) is 65 years or older and does not have a spouse or partner; the trust is created during the settlor's lifetime anytime after 1999; the settlor and the trust are both resident in Canada; the settlor is entitled to receive all of the income of the trust arising before his or her death; no person other than the settlor is entitled to use of any of the income or capital of the trust before his/her death; and the trust's assets must deem to be disposed of upon the death of the settlor (in other words, the trust must not elect out of section 104(4) of the *ITA*). After the settlor's death, however, any person may benefit from the trust. It provides the option of winding it up and distributing its property as it may have through a will, or it may continue and contain trust provisions for the benefit of the remainder beneficiaries.

The negative tax implications of such a trust are reduced due to the amendments to the *ITA*. In addition, there are several significant advantages to such a trust as an estate planning tool. An alter ego trust allows a settlor to: avoid probate fees and taxes; plan for incapacity and avoid the need for alternative legal documents such as a power of attorney; have privacy and secrecy regarding the size of their estate and its distribution; avoid the probate process; protect against claims of future creditors; and use it as a vehicle for charitable giving.

While considering whether an alter ego trust is beneficial to you as part of your estate plan, note that it has its disadvantages as well. The key is to discuss your estate with your financial advisor and your lawyer to determine whether your estate would better benefit from an alter ego trust or a joint partnership trust. The latter has its advantages and disadvantages, all of which are left for discussion in the next issue.

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