

## Testamentary Trusts

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### What they are and how they are about to change

#### The basics

A trust is a legal arrangement between a person who sets up and contributes to the trust, known as the settlor, and a trustee. The trustee is responsible for managing the trust according to the settlor's instructions. The power of a trust is in these instructions.

#### Arrangements tailored to circumstances

Testamentary trusts are a type of personal trust. People set them up to ensure that after they die, their instructions for managing and distributing assets to beneficiaries are fulfilled. This gives peace of mind, especially if there are concerns about the best interests of beneficiaries. For instance, when trust beneficiaries are children, arrangements can be made for the administration of assets until they come of age. If beneficiaries are financially irresponsible, a trust can stipulate that assets are distributed in specific, scheduled amounts; and, assets can even be treated as rewards or incentives – only to be distributed when beneficiaries achieve specific goals, like completing a school program.

#### Tax-motivated arrangements

The income testamentary trusts earn is currently taxed at graduated rates. This is considerably more favourable than the rates applied to income from other types of trusts.

This tax advantage and the opportunity to dictate how assets will be managed and distributed are appealing not only to settlors focused on the future well-being of beneficiaries. Those wanting to reduce their tax bill on trust income also appreciate what testamentary trusts offer. It is true that some trusts are solely or primarily tax motivated.

#### Addressing concerns about tax fairness

Concerned about issues related to certain types of trusts, including the fairness of the tax advantages of testamentary trusts over other trusts, the Government of Canada proposed changes to the *Income Tax Act* in the 2014 Federal Budget. Three notable changes that will take effect on January 1, 2016 include:

- ✓ A testamentary trust will be taxed at graduated rates for a thirty six month period following the settlor's death. After that period, the top marginal tax rate will apply. There is one exception to this:
  - \* Graduated tax rates will still apply to a testamentary trust if the beneficiary is eligible for the federal [disability tax credit](#).
- ✓ Testamentary trusts no longer offer settlors the option to select the taxation year-end. December 31 will be the year-end date for all testamentary trusts.
- ✓ The provision allowing settlors to choose when to file tax instalments has also been eliminated. Going forward, tax instalments on testamentary trust income must be filed on a quarterly basis.

### Testamentary trusts and you

The changes to Canada's tax law affect all testamentary trusts, regardless of settlors' motivations.

If you have already set up a testamentary trust, you should speak with your financial advisor and lawyer to learn more about these and other changes. You might well be advised to adjust your financial plans.

If you have been considering setting up a testamentary trust, you should also find out more. Testamentary trusts might still be a sound option in some circumstances, even with the impending changes.

#### ***This and That***

On October 24th, Logan Katz is proud to participate again in the *JDRF Ride for Diabetes Research*.

We invite you to support our teams by writing a cheque payable to JDRF & mail it to us **or** pledge us online.

**To make a donation please click: [here](#).**

Thank you in advance for your support, consideration & generosity.

#### **New and Returning Faces at LK**

We would like to welcome back Chantal Bergeron, staff accountant, and we are pleased to welcome Lisa Houle, administrative professional to our dynamic team!

We would also like to congratulate LK's Ashley Lemieux and her husband Sylvain in welcoming their first child - baby girl Naomi Laurence Lemieux!