

Intervivos Trusts: The Ultimate Estate Planning Strategy

Objective of Estate Planning:

“I want to control my property while I am alive, take care of myself and my loved ones if I become disabled, give what I want, to whom I want, the way I want, when I want and, if I can, save every last tax dollar, professional fee, and court cost possible.”

Trust strategies can go a long way to assisting taxpayers to achieve their estate planning objectives.

Intervivos or Living Trusts as an Estate Planning Tool:

a) Revocable Protective Trusts

➤ Advantage of a Revocable Protective Trust (RPT)

- It is a simple, integrated trust created while alive.
- It eliminates many possible challenges and most of the problems associated with Wills, such as lack of confidentiality.
- The RPT can deal with death, incapacity and succession right in the confidential trust document.
- The RPT avoids the cost, delay, expense and other problems associated with probate and excessive government reporting.
- An Alter Ego Trust, for those over age 64, is an example of an RPT.

➤ Taxation Issues of an RPT

- If properly structured an RPT may not have any adverse income tax consequences. On creation, section 54 (e) of the tax act allows for the tax free transfer of assets to the Trust, Trust income is taxed in the same way as it would be personally, trust assets can roll out tax free to the beneficiary while alive under sections 107(2), 107(4.1)(b)(i) of the tax act.

b) Irrevocable Family Trusts

➤ Advantages of Irrevocable Discretionary Family Trusts (IDFT)

- An IDFT allows flexibility in conferring benefits while retaining a degree of control of the assets with the lead trustee. There is flexibility in the selection of investments and allocation of benefits to various beneficiaries.



- There is minimal legislation restricting an IDFT and the additional features of confidentiality, creditor proofing, caring for minor children or disabled beneficiaries, income sprinkling and discretion as to capital distribution and growth are helpful in planning an estate.

➤ **Taxation Issues of IDFT**

- Taxation of undistributed trust income in an IDFT is at the top marginal tax rate. Every 21 years there is a deemed disposition of the capital property of the trust. The trust either distributes property to the beneficiaries with tax-free elections, or if the trust survives the 21-year rule, it suffers a deemed disposition and pays any capital gains tax owing then continues with the assets for another 21-year period.

c) Planning Opportunities for Trusts

1. Whenever an owner of a private corporation is desirous of benefiting minor children by flowing cash to the children on a tax advantageous basis, (no attribution on capital gains) while retaining control over the money.
2. Potential creditor proofing or protecting of assets in a trust, if properly structured and indicated.
3. Where the \$500,000 capital gains exemption can be multiplied and sprinkled.
4. To implement a flexible freeze strategy for ownership of future growth on assets.
5. Use of tax sheltered universal life in a trust to pass accumulated wealth tax-free to beneficiaries, while avoiding tax on accumulations. The 21-year rule does not apply to insurance assets owned by a trust.

