



The Alberta Resident Trust

An intervivos trust is taxed at the highest combined federal-provincial rate applicable to an individual. An Alberta-resident trust may be used to reduce the tax otherwise payable on non-Alberta source income, from investment assets on business interests, by an individual who resides outside of Alberta and is taxed at the top rate.

The top rates in Alberta and Manitoba in 2004 are shown below. The tax savings attributable to shifting income to an Alberta-resident trust ranges from 7.4 percent to 11.0 percent, depending on the type of income.

	<u>Interest/Income</u>	<u>Dividends</u>	<u>Capital Gains</u>
Alberta	39.0%	24.08%	19.5%
Manitoba	46.4%	35.08%	23.2%

There is no statutory rule determining the residence of a trust. The leading court case on the point is Thibodeau (FCTD 1978), which held that the residence of a trust is the place where the trust carries on its business and its central management and control is located. For a trust to be considered resident in Alberta, the majority of trustees should reside and carry on the activities of the trust in that Province.

The following examples show how the income tax benefits of an Alberta trust vary depending on the type of investment income.

Example 1: Interest

Assume Mr. X contributes \$2,500,000 to a family trust resident in Alberta. The income and capital beneficiaries of the family trust are Mr. X's adult children. They reside in Manitoba and are in the top tax bracket for 2003. Assuming an 8 percent rate of return on investment, annual interest income is \$200,000.

Estimated Manitoba Tax:	
\$200,000 @ 46.40%	\$92,800
Estimated Alberta Tax:	
\$200,000 @ 39.00%	<u>\$78,000</u>
Annual tax savings	<u>\$14,800</u>





Example 2: Dividends

Assume Mr. X owns 100 percent of Opco, a small business corporation. Mr. and Mrs. X are in the top tax bracket. Mr. X exchanges his common shares for preferred shares in the course of an estate freeze. A discretionary family trust resident in Alberta subscribes for a new class of common shares of Opco. The income and capital beneficiaries of the family trust are Mr. X, Mrs. X, and their minor children, all of whom are residents of Manitoba. Opco pays annual dividends of \$100,000 to the family trust in 2003.

	Manitoba <u>Resident</u>	Alberta <u>Trust</u>
Annual dividend	\$100,000	\$100,000
Provincial tax rate (net of dividend tax credit)	<u>x 35.08%</u>	<u>x 24.08%</u>
Estimated tax	<u>\$ 35,080</u>	<u>\$ 24,080</u>
Annual tax savings		\$ 11,000

Example 3: Capital gains

Assume Mr. X owns capital property (Opco) shares with a \$5,000,000 unrealized gain. Mr. and Mrs. X reside in Manitoba and are in the top tax bracket. Mr. X transfers his Opco shares to a spousal trust resident in Alberta at his cost under subsection 73(1). The spousal trust subsequently disposes of the shares. The trustee elects to pay tax on the capital gain in the trust pursuant to subsection 104(13.2).

	Manitoba <u>Resident</u>	Alberta <u>Trust</u>
Capital gain	\$5,000,000	\$5,000,000
Taxable portion	<u>x 50%</u>	<u>x 50%</u>
Taxable capital gain	\$2,500,000	\$2,500,000
Provincial tax rate	<u>x 46.40%</u>	<u>x 39.00%</u>
Estimated tax	<u>\$1,160,000</u>	<u>\$ 975,000</u>
Tax savings		\$ 185,000

There are many other ways to use an Alberta trust. Careful planners will be mindful of the possible application of the income attribution rules in sections 74.1 to 74.5 and subsection 75(2). Consider too the possible application of any applicable provincial anti-avoidance rules. The recent Alberta amendments that may affect tax-deferred transfers are discussed in the article titled "Recent Amendments to the Alberta Corporate Tax Act." With proper planning an Alberta trust can be a very useful tool for reducing income tax.

