

DISABILITY TAX & ESTATE PLANNING

Does your estate plan include assisting or protecting an individual with mental and/or physical disabilities? Many disabled individuals receive social benefits that are subject to income and/or asset tests. The following is an overview to tax and estate planning for those providing for disabled individuals. Careful planning will allow you to leave a financial gift in a manner that can most effectively add to your heir's security and quality of life.

CREATING A SECURE FUTURE

The plans you make can have a major impact on the financial future of your disabled heir. Financial planning during your lifetime and a careful estate plan to deal with your assets when you die are two important areas that you and your advisor should discuss. Preparing a plan now can ensure that later on your assets are distributed the way you want. For example, you may minimize income tax and any probate tax on your estate, and where appropriate, ensure your disabled heir benefits from your gift while continuing to be eligible for social assistance.

GOVERNMENT AND PRIVATE PENSION BENEFITS

Disabled individuals may receive a number of federal, provincial and/or private benefits, provided they satisfy the qualifications. Canada Pension Plan disability benefits, for example, are available to people who meet the plan's disability and contribution requirements. Private disability plans are purchased privately or through an employer; they also provide benefits to people who become too disabled to continue working. There are also provincial worker's compensation schemes that may provide benefits in the case of disabling or partially disabling workplace injuries. These plans are not income-tested, and generally would not be affected by an increase in assets from an inheritance.

Public disability benefits are generally taxable, such as CPP and Employment Insurance disability benefits. However, benefits received under Workers' Compensation are not taxable. Private or group disability benefits are generally not taxable if the premium was paid by the employee or considered a taxable benefit to the employee.

PROVINCIAL SUPPORT PROGRAMS

In addition to allowances and tax credits available from the federal government, every province has guidelines for claiming social benefits. Eligibility is usually based on the level of assets and income the individual owns or receives, as measured by a means test. For example, Ontario's Disability Support Program is a provincially sponsored program that qualifies recipients based on assets owned and income earned. Some provinces will include an interest in a trust as part of the asset calculation, while other provinces do not.

NON-REFUNDABLE GOVERNMENT TAX CREDITS AND DEDUCTIONS

Non-refundable tax credits can reduce the amount of income tax payable by a disabled individual. The value of these credits decreases when income (from pensions, investments, employment, etc.) reaches a specified level. Specific benefits are the Disability Tax Credit, the Medical Expense Deduction, the Caregiver's Credit and the Attendant Care Expense Deduction. In addition to income limits, qualifications related to dependency and age (a minor, an adult, or someone over 65) will influence what can be claimed. In some cases, claiming one credit will result in the individual being unable to claim another credit. For example, if an individual claims attendant care fees in excess of \$10,000 under the medical expense tax credit. Then the disability credit cannot generally be claimed.

If there are more tax credits than tax liabilities, some of the excess credits may be used by the person supporting the disabled individual. As a result, income generated from inherited assets may impact the tax credits allowed to your heir, and must be planned for carefully.

WHAT HAPPENS IF THE PRIMARY CAREGIVER DIES?

Your will should record your wishes for all of your heirs, but it is especially important, if you are the primary caregiver, to anticipate and plan for a disabled individual's long term requirements, which include:

- Where and with whom he or she will live
- What financial support will be required for living accommodations
- Who will manage his or her property if he or she is mentally incapable of doing so
- Who can or will act as substitute decision-maker if one is required

Give careful consideration to whom you name as your personal representative (estate trustee / liquidator / executor), because this individual is critical to ensuring that your wishes are carried out.