



# ALTER EGO AND JOINT PARTNER TRUSTS

Alter Ego Trusts and Joint Partner Trusts are different from other trusts. They allow the settlor, a person 65 or older, to transfer assets into a trust without triggering a taxable gain on the transferred assets. These types of trusts are not subject to the 21-year deemed disposition rule that requires other trusts to dispose of all these assets every 21 years, resulting in a taxable event.

While alive, only the settlor can be a beneficiary of an Alter Ego Trust. In the case of a Joint Partner Trust, only the settlor and his/her spouse can be a beneficiary while one or both of them is alive. Upon the death of the Settlor, or Settlor and spouse, other named

individuals become the beneficiaries of the after-tax value in the trust. The settlor will continue to be taxed, personally, on income in the trust on an annual basis. When the settlor dies, and the spouse in the case of a Joint Partner Trust, there will be a deemed disposition of all assets for tax purposes, with the trust being the tax-payer.

Capital property such as real estate and non-registered investments can be transferred into these trusts. Registered investments such as RRSPs and TFSAs are not transferable into these trusts.

## ADVANTAGES

- **Probate Fee Savings:** Assets in a trust do not form part of the estate. Therefore, these assets will not be included in the calculation of probate fees. Depending on the estate's value and the provincial jurisdiction, these probate savings can be significant.
- **Ease of Administration of Estate:** The probate process can disrupt the continuous and effective management of such assets. With assets held in a trust, this process is avoided, and administration costs can be reduced.
- **Protection from Estate Litigation:** Several Canadian provinces have legislation that allows children and spouses to challenge a will. Having the assets pass through a trust will avoid this issue in many cases.
- **Privacy and Confidentiality:** Unlike a probated will that becomes a public document and discloses estate intentions and asset values, a trust is a private document.
- **Incapacity Planning:** A backup trustee, rather than a power of attorney, can be more effective for the management of assets in the event of incapacity.

## DISADVANTAGES

- **Costs:** There are fees to set up and maintain the trust.
- **Charitable Donation:** There must be some discretion provided to the trustees in relation to the charitable gift for the trust to receive a charitable tax receipt.
- **Small Business Capital Gains Exemption (SBCGE):** Cannot utilize SBCGE on shares in a trust. A solution can be to trigger a gain and take advantage of the SBCGE deduction when transferring shares into the trust.

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**For someone with the right circumstances, Alter Ego and Joint Partner Trusts can provide significant planning advantages.**

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