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THE EFFECTIVE USE OF TRUSTS IN CONNECTION WITH INCOME SPLITTING (PART II OF IV)

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Special thanks to Ryan Chua of Minden Gross LLP for his comments on earlier drafts of this series of articles. All errors and omissions are the author's.

Part I of this series of articles reviewed some of the basic tax requirements for using trusts to split income. In the second instalment of the series we will review some common income splitting opportunities that are accessible through the use of trusts. In particular, capital gains exemption ("CGE") multiplication planning, preferred beneficiary and age 40 trust planning, prescribed rate loan planning, and Ontario surtax planning will each be reviewed in turn.

CGE Multiplication Using Trusts

Although it is possible to multiply the CGE among family members by issuing shares directly to the family members, doing so can result in the current shareholder suffering a loss of both control over the shares and flexibility in arranging his or her future planning. For example, unborn persons at the time the planning is put in place would not be eligible to share in the CGE multiplication. Also, for various personal, creditor or other reasons, the benefit of hindsight might have lead the current shareholder to determine that it would have been better not to give shares to a particular person. Unfortunately, once property, such as shares, has been given away it is often very difficult to get it back.

Provided that one is dealing with a typical discretionary family trust deed, multiplication of the exemption should be possible by relying on the rules in subsections 104(21) and (21.2) of the *Income Tax Act* (Canada) (the "Act").[1] In addition, it should generally be possible to avoid many of the drawbacks associated with direct share ownership since, subject to the trustees complying with their fiduciary duties, they will generally be free to choose to allocate the exempt capital gains (i.e., CGEs) among some or all of the trust beneficiaries, including beneficiaries who were born following the creation of the trust.

Preferred Beneficiary Election and Age 40 Trusts

In addition to the general rules that permit income splitting, there are some special rules that permit income splitting and CGE multiplication without making amounts payable to beneficiaries.

[1] Unless otherwise noted all statutory references are to the Act. These rules were discussed in Part I of this series of articles under the heading "Character of Income".

For example, when a "preferred beneficiary election" can be in compliance with the tests set out in subsection 104(14) it will be possible to cause income of a trust to be taxable in a qualifying beneficiary's hands even though no amount is made payable to the beneficiary. However, since 1995 the ability to use the preferred beneficiary election has generally been limited to situations involving disabled beneficiaries. Prior to that time, the preferred beneficiary election was much more widely used.

Another special situation that can enable income splitting without making amounts payable is where the so-called "age 40 trust" rules in subsection 104(18) are complied with.[2]

In order to qualify as an age 40 trust, amounts that would otherwise been income of a trust in a particular taxation year must meet a number of conditions. In particular, the amounts cannot have become payable in the year and they must be held in trust for an individual who has not turned 21 in the year. In addition, the individual beneficiary's rights must have vested and they must not be subject to the exercise or failure to exercise any discretionary power. Finally, the individual beneficiary's rights must not be subject to any conditions to receive the income other than that the individual survive to an age not exceeding 40 years. It is for this reason that these trusts are often referred to as age 40 trusts.

Prescribed Rate Loan Planning

The Loan for Value Exception

In general, low interest rate loans that are made directly or indirectly through a trust to spouses (including common-law partners), non-arm's length minors, and other non-arm's length persons that allow such persons to earn income from property will be caught by the personal attribution rules in the Act,[3] which will result in all of the income and losses (and for spouses all of the capital gains and capital losses) being attributable back to the lender. Fortunately these rules will not apply in any situation involving "loans for value".[4]

Planning that uses the loans for value exemption to the attribution rules is commonly referred to as prescribed rate loan planning. In order to qualify for the loan for value exception to the personal attribution rules, a loan will need to meet a number of conditions.[5]

First, the loan must bear interest at the lesser of the prescribed rate of interest in place at the time the loan is made and an arm's length interest rate at that time. In general, the prescribed rate will be the lower of these rates, and currently that rate is 1%. In addition to bearing interest at the appropriate rate, interest on the loan must actually be paid to the lender no later than 30 days after the end of the particular year. This latter condition is extremely important since a failure to pay interest by the time limit in any particular year will cause the prescribed rate exception to cease to apply to that loan forever.

Benefits of Prescribed Rate Loan Planning

Although loans for value could be and often are directly made to individuals, the flexibility and control provided by making these loans to trusts often makes trusts the ideal vehicle of choice for making such loans.

Almost continuously since the middle of 2009, it has been possible to lock in a prescribed rate loan at a 1% interest rate. The result of the rate being so low is that a borrower who has received such a loan does not need to generate very much net income from the loan in order to cover the debt payments and, assuming that the borrower is taxed at a lower rate than the lender, income splitting will have been achieved. Of course, if actual returns earned by the borrower are also low, the benefits of the income splitting may be quite limited, especially when costs and aggravation

[2] Rules in subsections 104(13.1) and (13.2) might also be used to designate amounts paid by a trust to a beneficiary as being taxable only in the trust, which can give rise to a number of income splitting benefits. For example, for testamentary trusts these rules would allow designated amounts paid out to beneficiaries to still enjoy the testamentary trust's graduated tax rates. Even where non-testamentary trusts are used, these rules may provide certain inter-provincial tax planning benefits. However, due to the December 16, 2014, enactment of Bill C-43, *Economic Action Plan 2014 Act, No. 2* (discussed further in Part III of this series of articles), effective for the 2016 and subsequent taxation years, the ability to utilize the designations provided under these provisions will be significantly restricted.

[3] See, in particular, subsection 56(4.1) (low interest loans made for the benefit of non-arm's length persons where certain reasonability tests are met), sections 74.1 (income or losses from the transfer or loan of property made for the benefit of spouses or minors), section 74.2 (capital gains or capital losses from the transfer or loan of property made for the benefit of spouses), and section 74.3 (extends the rules in sections 74.1 and 74.2 to loans made to certain trusts).

[4] The rules in section 120.4 (Kiddie Tax rules), while not attribution rules, must also be kept in mind when prescribed rate planning involves minors.

[5] The loan for values in respect of subsection 56(4.1) are found in subsection 56(4.2) and nearly identical rules in respect of sections 74.1, 74.2, and 74.3 are found in subsection 74.5(2) (there are also exclusions for transfers made for fair market value consideration in subsection 74.5(1) but these are not relevant to this discussion).

of the planning are factored in.[6] Also, since interest must actually be paid each year it will be desirable that the investments generate annual cash returns to facilitate payment.

Although equity markets have been generally performing extremely well as of late, interest sensitive markets have continued to lag, which might make prescribed rate loan planning less beneficial for some fixed income investors. However, over time it is anticipated that even the returns in these markets will return to historical norms and since, subject to future legislative changes, the current 1% prescribed rate can be locked in forever, putting this planning in place while rates are low may yield long-term family benefits.

Modifications to Higher Rate Pre-Existing Prescribed Rate Loans

Because prescribed rate loans are forever, some clients may still have older prescribed rate loans in place at rates in excess of the current 1% prescribed rate. If you run into one of these older loans and want to impress your client by helping them to refinance the loan to take advantage of the current 1% prescribed rate, you will want to make sure you do it correctly.

Simply amending the rate on the loan does not work. Neither does refinancing the loan with proceeds of a new loan.

In fact, it appears that the only way to refinance an existing prescribed rate loan with a lower prescribed rate loan is for the borrower to actually dispose of its income earning properties and to use the proceeds to repay the original loan.[7] In some cases this may result in the realization of taxable income on the disposition and, as a result, it may turn out that leaving the high rate loan in place will continue to be preferable to refinancing the loan.

Ontario Provincial Surtax Planning

In general, if the Kiddie Tax rules in section120.4 are applicable to income earned by a child, the child will pay tax on that income at the child's top marginal tax rate. While this is generally true, in Ontario there may still be some advantage to income splitting with minor children provided that the child has little, if any, other income.

The reason for this benefit is that Ontario provincial surtaxes will not become payable until the child's income exceeds the Ontario provincial surtax thresholds. Savings from this type of planning are generally quite modest. For example, for each minor receiving $42,000 of ordinary investment income, split income savings in 2014 will be a bit less than $2,900. Actual savings will differ depending on the type of income earned and may be more or less than this amount. There will also be some additional compliance costs to this planning so actual savings will be somewhat lower than this amount, but for some, even with these costs and depending on the number of minor children a person has, this planning will still be worth pursuing.

[Please note: At the time of publication, the 2015 Ontario Budget had not yet been presented.]

AN ASSIGNMENT IS NOT A DISCLAIMER; A CONSENT ORDER IS NOT A RECTIFICATION ORDER

In *Murphy Estate v. The Queen*, 2015 DTC 1060 (TCC), the issue was whether the Appellant had to include the proceeds of an RRSP, in the amount of $237,026, in the deceased's income for the year of death.

The Minister disallowed the taxpayer estate's request to amend its 2009 tax return to remove $237,026 as income from an RRSP. Counsel for the estate argued that upon the death of M, the proceeds of his RRSP rolled over to his spouse, D, on a tax-free basis under subsection 70(6) of the *Income Tax Act*. The RRSP documents designated M's adult children as beneficiaries.

On this appeal, it was the Crown's position that when M died, he was deemed to have received the proceeds of the subject RRSP immediately before his death as a benefit in accordance with subsection 146(8.8). The benefit had to be included in his income in 2009 pursuant to subsection 146(8) and paragraph 56(1)(*h*). The benefit was taxable to M.

The deceased died suddenly and without a will. D and the children (who were from a previous marriage) entered into negotiations as to who would get what. Because the designated beneficiaries of the RRSP were the deceased's three independent adult children, there was no question that the RRSP proceeds could be rolled over to them. Accordingly, it made sense for D to take the RRSP even though the children were the designated beneficiaries. For this reason, the children signed a Consent Order which, it was argued, had the effect of indefeasibly vesting the subject RRSP in D at the time of M's death. As such, the deceased was not liable for the taxes on these proceeds and the taxes would be

[6] Consequently, unless the amount of a prescribed rate loan is substantial, it will generally not be worth implementing this strategy.

[7] See CRA Document No. 2002-0143985, dated October 18, 2002 and CRA Document No. 9336625, dated April 29, 1994.

deferred until such time as D withdrew the money from her RRSP. (Counsel for the estate cited the *Hillis* decision, 83 DTC 5365 (FCA), to support the position that provincial legislation can be relied on to ascertain the rights of individuals to property and to ascertain when property vests in an individual).

The Court did not agree. It noted that the Consent Order did not purport to change the beneficiaries to the RRSP in question. Further, the Consent Order was not a rectification order nor was it intended to be a rectification order. It was an order in which the parties agreed to settle M's estate. The wording of the order made it clear that D released all claims which she had to real and personal property held by the estate. In exchange, the children released, conveyed, and transferred their interests in the subject RRSP to D.

The court reviewed the difference between a disclaimer and an assignment. A disclaimer is a refusal to accept an interest which has been bequeathed to a disclaiming party. The effect is to void the gift as if the disclaiming party never received it. The gift becomes part of the estate of the deceased and the disclaiming party has no right to direct who is to receive the gift. In this respect, the Consent Order cannot be a disclaimer as the children directed that the RRSP in question was to be transferred to D.

Finally, the disclaimer/assignment distinction meant the *Hillis* case did not aid the Appellant. Unlike the situation in *Hillis*, the designated beneficiaries in the present case did not disclaim their rights to the RRSP in question. The Consent Order stated that the children "agree to sign all required documents to release, convey, and transfer to and in favor of the Applicant any and all interests that they may have in registered retirement savings plans of their father . . .". This wording suggested that the children assigned their interests in the RRSP, which in turn meant that they accepted the gift of the proceeds of the RRSP and then, after negotiation and settlement, they consented to transfer all of their interests to D. As such the Consent Order was not a disclaimer but an assignment.

For these reasons, the appeal was dismissed.

ONTARIO SUPERIOR COURT GRANTS RECTIFICATION TO PRESERVE CCPC STATUS

This article is an excerpt from a February Tax Topics feature article coordinated by John C. Yuan and Christopher L.T. Falk of McCarthy Tétrault LLP. This excerpt was written by Mark Firman.

***Kaleidescape Inc. v. Computershare Trust Company of Canada*, 2015 DTC 5001 (Ontario Superior Court of Justice)**

Kaleidescape involved an application to the Ontario Superior Court of Justice for an order rectifying a trust agreement, the wording of which inadvertently may have granted *de jure* control of Kaleidescape Canada Inc. (the "taxpayer") to a US resident. The taxpayer was intended at all times to qualify as a Canadian-controlled private corporation ("CCPC"). The Minister contested the application.

The taxpayer was at the relevant times a research and development company intended to be a CCPC in order to be eligible to claim the highest level of scientific research and experimental development income tax credits under the *Income Tax Act* and Ontario innovation tax credits under the *Ontario Corporations Tax Act*.

Prior to 2006, the taxpayer's voting shares were held equally between a Canadian-resident individual and a US-resident corporation, Kaleidescape Inc. ("K-US"). As such, the taxpayer was, and was intended to be, a "deadlock corporation", with the result that K-US did not have the *de jure* right to appoint a majority of the taxpayer's board of directors.

Pursuant to a reorganization in 2006:

- The original Canadian-resident shareholder left the taxpayer, and the taxpayer purchased the departing shareholder's shares.
- The taxpayer issued a corresponding number of new voting shares to the Kaleidescape Canada Employer Trust (the "Trust"), a Canadian-resident trust. The settlors and initial trustees of the Trust were the taxpayer's two directors: a Canadian resident ("Watson") and a US resident ("Malcolm").
- Pursuant to a unanimous shareholders' agreement, the two directors were relieved of their powers. The agreement conferred those powers directly on the taxpayer's shareholders (the Trust and K-US). The agreement contemplated deadlocks and intentionally provided no means to resolve them (so as to avoid K-US having control of the taxpayer).

On October 1, 2007, the respondent, Computershare Trust Company of Canada (the "Trustee"), became the third trustee of the Trust. In 2008, Watson and Malcolm ceased to be trustees, which left the Trustee as the sole trustee of the Trust. In connection with this event, the taxpayer and the Trustee entered into a Restated and Amended Deed of Trust (the "Trust Agreement") based on the Trustee's standard form, which provided that "[u]pon the direction of the

Settlor, the Trustee shall . . . exercise any voting rights . . .” and elsewhere that “[w]here this [Trust Agreement] requires or authorizes the Settlor to give directions to the Trustee, the Trustee shall accept only a direction in writing from the CEO or President of the Settlor.”

The Canada Revenue Agency (“CRA”) concluded that the combined effect of the foregoing wording in the Trust Agreement was to give Malcolm authority to direct the Trustee how to vote the Trust’s shares (although not clear from the decision, it appears that Malcolm was the CEO and/or President of the taxpayer). Accordingly, the CRA notified the taxpayer that it did not qualify as a CCPC for its 2008 and 2009 taxation years, which would have resulted in a loss of the research credits that the taxpayer had claimed.

Upon learning of the CRA’s position, the taxpayer and the Trustee entered into a Deed of Rectification providing that the taxpayer’s board of directors (rather than the CEO or President) would instruct the Trustee as to how to vote. The Deed of Rectification was prospective in nature.

The taxpayer applied to the Superior Court (per Justice Brown) for an order rectifying the original Trust Agreement retroactively to 2008 to reflect the parties’ original intention that the taxpayer be at all times a deadlock corporation with no scope for a foreign resident to have *de jure* control. The taxpayer argued that it had no intention of eliminating its CCPC status. It further argued that its original intention was always that the CEO or President would simply convey the board of directors’ instructions to the Trustee and would not instruct the Trustee independently.

The Minister contested the application (given that any court order for rectification would be binding on the Minister). The Minister made three principal arguments. First, in order to achieve rectification, the applicant must demonstrate that a mistake was made. Here, however, the taxpayer did not admit to a mistake and simply suggested that the Minister was not reading the Trust Agreement’s reference to “CEO or President” correctly. That is, the taxpayer was more disputing the Minister’s interpretation of the wording used than admitting that the wording resulted from a genuine mistake. Second, the taxpayer led insufficient evidence that the parties to the Trust Agreement intended at all times that the taxpayer remain a CCPC. Third, even if the Trust Agreement were retroactively rectified, the rectified text would not fix the issue, since it would give power to instruct the Trustee to the taxpayer’s board of directors, but, pursuant to the unanimous shareholders’ agreement in place, the shareholders (the Trust and K-US) were empowered to exercise all of the directors’ powers. K-US, therefore, would retain the power to direct the Trustee and thereby control the taxpayer (since the Trust as shareholder could not instruct itself).

The Court granted the taxpayer’s application. Brown J found that the three criteria for rectification articulated by the Supreme Court of Canada in *Performance Industries v. Sylvan Lake Golf and Tennis Club* (2002 SCC 19) were met, namely:

(1) there was a prior agreement between the parties;

(2) there was an error in the written instrument such that the instrument was inconsistent with the prior agreement; and

(3) the parties offered a proposed correction that would enable the written instrument to reflect the prior agreement.

She reiterated the principle that “rectification can be applied where parties had an agreement to achieve a specific tax outcome but failed to implement their plan properly”.

The Court accepted that there was always a common intention that the taxpayer remain a CCPC in order to qualify for the highest available research tax credits. Moreover, the Court disagreed with the Minister that the Deed of Rectification did not fix the problem. She found that the new stated requirement that the Trustee receive instructions from the taxpayer’s board of directors clearly meant that the Trustee was to accept a direction only in the form of a certified copy of a resolution of the board. The reasons did not, however, squarely address the Minister’s position that the board’s powers had been essentially usurped by the unanimous shareholders’ agreement.

The facts of this case differ from other cases arguably involving retroactive tax planning or explicit mistakes made by tax planners in carrying out taxpayers’ stated instructions. Here, it appears that the “mistake” was a failure to modify the Trustee’s standard terms of trust in a way that sufficiently avoided giving indirect control of the taxpayer to the US-resident shareholder. Certainly, the decision emphasizes (as do earlier rectification decisions) that an award of rectification will not be available to fix regrets over past decisions like the “undo” function in word processing software. Rather, it is available only when taxpayers can adequately demonstrate an original intention all along, which the documentation erroneously does not reflect.

RECTIFICATION ORDER APPROPRIATE TO PROPERLY REFLECT INTENT OF PARTIES — CRA PROPERLY ADDED AS PARTY TO PROCEEDINGS

***Lau v. The Queen*, 2015 DTC 5020 (Supreme Court of British Columbia)**

The taxpayers were seeking rectification of articles of incorporation as well as appealing the decision of the Master to add the CRA as a party to the rectification proceedings. In 2006, G hired P, a solicitor, to prepare documentation for a corporate reorganization that involved settling a trust and setting up a corporation. Various classes of shares were set up and provisions were made for Class E shares, which were to be issued either as stock dividends or as consideration for corporate acquisition of property. The directors were to determine the redemption amounts in both instances, but the articles of incorporation (the "Articles") only gave the directors the power to do so when property was acquired. In December 2008, stock dividends were declared and redemption amounts determined. Other transfers and transactions took place with respect to the stock dividends. As a result of the transactions, G was reassessed under the shareholder benefit provisions to have over $17 million included in his income. He filed notices of objection in June 2012 and July 2013. In May 2013, a petition was brought and granted to correct clerical errors in the 2008 documentation, which had referred to Class D rather than Class E shares. In October 2013, the CRA argued that the issuance of stock dividends in 2008 was legally ineffective, as the articles failed to give the directors the power to set redemption values. A second petition was brought in December 2013 to correct further clerical errors and to amend the articles. The CRA had been a party to the two petition applications. Upon a change of counsel, the second petition dropped the amendment request and dealt only with the clerical errors, which were corrected. In May 2014, the taxpayers brought a third petition asking for rectification of the articles to reflect the intent of the parties at the time of incorporation in 2006. In July 2014, an order of a Master granted the application of the CRA to be added as a party to the rectification proceedings. The respondent opposed the rectification application on the basis of issue estoppel as the taxpayers had already raised the issue and also argued that the Tax Court should deal with the matter.

The taxpayers' application for rectification of the articles of incorporation was granted. The Master acted within his discretion in adding the CRA as a party. The Tax Court has exclusive jurisdiction with respect to the tax assessment but cannot grant the equitable remedy of rectification or grant relief under the *Business Corporations Act* dealing with mistakes. Rectification allows for retroactive correction of written documents that do not reflect the intention of the parties. In the earlier proceedings, clerical errors were being dealt with and not the error in the articles. Rectification of the articles has a broad impact, as it would affect any past and future transactions. The taxpayers are not precluded from raising the issue of rectification. They dropped the matter in their earlier petition, but no one would be prejudiced if they were to raise it again. The taxpayers provided affidavit evidence that the intent was to have the directors set redemption values when Class E shares were issued either as stock dividends or as consideration for property. P corroborated that understanding. His reporting letter after the incorporation set out that the redemption value was to be set by the directors whenever Class E shares were issued. It was clear on a reading of the articles that there was a drafting error and that the articles did not reflect the intent of the parties. The CRA argued that what was at issue was the interpretation of the articles, which could be dealt with by the Tax Court. While the interpretation of the articles was a matter to be considered by the Tax Court, the Tax Court cannot properly interpret the articles unless they are correct and properly reflect the intent of the parties. Rectification would not cause prejudice to any party. Rectification would have a positive effect on the directors as a proper redemption amount would be established. There is no consistency or consensus as to whether the CRA should be added as a party to rectification applications. Parties may be added to remedy defects in the proceedings, which is an issue of jurisdiction, or they may be added if it is just and convenient to do so. Although the participation of the CRA in the rectification proceedings was not essential, there was a connection between the tax assessment and the rectification. Its submissions would be helpful in the rectification proceedings, but adding it as an intervenor would not give it the right to appeal.

NON-RESIDENT ESTATE

The CRA was asked to provide its views on several tax issues in respect of an estate.

Prior to his death, a taxpayer was a Canadian resident. The sole executor of the estate was not a resident of Canada. The estate holds shares of Canco, a corporation that is now being wound-up.

In its analysis, the CRA assumed the corporation was resident in Canada, and that, upon the winding up of the corporation, the estate will be deemed to have received a dividend pursuant to s. 84(2) of the *Income Tax Act* (the "Act").

An estate is a trust for the purposes of the Act (see definitions in s. 248(1) and 104(1) of the Act). A trust may be a resident of Canada if the mind, management, and control of the trust is exercised in Canada (see *Fundy Settlement v. Canada*, 2012 SCC 14), or if the trust is a deemed resident of Canada under s. 94 of the Act (i.e., if the trust had a "resident contributor" or a "resident beneficiary"). The CRA stated that, in the present case, it would be a question of fact whether the estate (i.e., the trust) was a deemed resident of Canada.

Under s. 94(3)(*a*)(viii) of the Act, a trust deemed to be resident of Canada under s. 94 of the Act is exempt from Part XIII withholding tax on amounts paid or credited to it. Under s. 94(3)(*a*)(ix) of the Act, the trust is also exempt from Part XIII withholding tax on certain Canadian-source income earned by it that becomes payable by the trust in the year to non-resident persons. Under s. 94(4)(*c*) of the Act, a deemed resident trust is not considered to be resident in Canada for the purposes of determining the liability of a person (other than the trust) to withhold and remit under s. 215 of the Act.

The CRA stated that, in the present case, Canco must withhold Part XIII tax on the deemed dividend that arises on the winding-up. To the extent the estate includes the amount of the deemed dividend in its income, the withheld Part XIII tax is deemed to have been paid on account of the estate's Part I tax liability (see s. 94(3)(*g*) of the Act).

Under s. 116 of the Act, a non-resident person who proposes to dispose of "taxable Canadian property" may, at any time before the disposition, notify the CRA of the disposition in Form T2062 and providing certain required information (i.e., the description of the property, the proceeds of disposition, the adjusted cost base of property). Generally, "taxable Canadian property" (TCP) includes real property situated in Canada and shares of companies (or partnership interests or trust units) that derive more than 50% of their value from Canada real property.

The CRA noted that, if the estate is factually resident in Canada at the time of the disposition of the property, s. 116 would not apply. For a deemed resident trust, s. 94(3)(*a*) of the Act does not deem the trust to be a resident of Canada for the purposes of s. 116. Accordingly, if the estate is not factually resident in Canada, and has disposed of TCP, s. 116 will apply the estate must file a Form T2062.

CRA Document No. 2013-04855651E5, July 2, 2014

LOSS RESTRICTION EVENTS AND FAMILY TRUSTS

The following is an excerpt from a recent Department of Finance Comfort Letter (dated December 23, 2014).

Loss restriction events without changes in a trust's beneficiaries

The trust loss restriction event rules define a majority-interest beneficiary of a trust by reference to the definition of that expression contained in section 251.1 of the *Income Tax Act* (the Act). The CRA recently confirmed that a person who does not have an interest in the income or capital of a trust is nonetheless a majority-interest beneficiary of the trust (and therefore affiliated with the trust) if the person is affiliated with another person who is a majority-interest beneficiary of the trust. (See CRA document 2014-05384C6-F).

We agree with the CRA's interpretation of the definition. However, although this interpretation is not inconsistent with the objectives of the definition as it applies in other contexts, it does not fully conform to the policy objectives of the trust loss restriction event rules. Recognizing this, we are prepared to recommend to the Minister of Finance an amendment to the trust loss restriction event rules to provide that for purposes of those rules a majority-interest beneficiary, of a trust at any time, means a person or partnership that is at that time both a beneficiary (as currently defined under the trust loss restriction event rules) under the trust and a majority-interest beneficiary (as defined in subsection 251.1(3)) of the trust.

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