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Changing a Trustee? Five Canadian Tax Issues to Consider

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A change of trustee is often treated as a routine administrative change rather than a taxable event. However, it can create important tax consequences, particularly where the trust owns corporate shares, the replacement trustee has contributed property to the trust, or trustee residency affects the trust's tax residence.

Before implementing any trustee change, advisors should review the trust deed, trustee relationships, corporate ownership, contribution history, and residency objectives.

Five Key Considerations

1. No Disposition if Beneficial Ownership is Unchanged

A change of trustee should generally not trigger a taxable disposition of trust property where the beneficiaries remain the same and there is no change in beneficial ownership. This result is supported by the definition of "disposition" in subsection 248(1) of the *Income Tax Act* (ITA) and by Canada Revenue Agency (CRA) administrative views.

The trust deed should expressly permit trustee appointment and replacement.

2. Acquisition of Control Must be Checked Where the Trust Controls a Corporation

If the trust holds voting control of a corporation, a change of trustee may potentially result in an acquisition of control, with consequences such as a deemed year end and restrictions on the use of losses.

Relief may be available under paragraph 256(7)(a) of the ITA where the replacement trustee is related to the former trustee or to the corporation. Where relief is unavailable, timing the trustee change immediately after the corporation's year end may reduce filing disruption.

3. Associated Corporation Consequences May Arise

A replacement trustee's corporate interests should be reviewed to determine whether the trust-owned corporation could become associated with another corporation. This matters because associated corporations share limits for the small business deduction and certain credits, including scientific research and experimental development (SR&ED) investment tax credits.

The analysis is more nuanced where there are multiple trustees, as control may be assessed by reference to the group of trustees rather than an individual trustee.

4. Subsection 75(2) Attribution May Affect Tax Deferred Rollover Planning

If the replacement trustee has directly or indirectly contributed property to the trust, subsection 75(2) of the ITA may apply in certain circumstances. These include situations where that trustee can determine who may benefit from the property or where the property cannot be disposed of without that trustee's consent.

This can impair the ability to distribute trust property to beneficiaries on a tax deferred rollover basis under subsection 107(2) of the ITA. Advisors should therefore confirm the replacement trustee's contribution history before appointment.

5. Trustee Residency Can Affect Trust Residency

Trust residency is determined at common law by the location of central management and control, following *Garron Family Trust (Trustee of) v. The Queen,* 2012 DTC 5063 (SCC), and may also be affected by the deemed-resident trust rules in section 94 of the ITA.

If the planning requires Canadian-resident status, the deed should restrict appointments that would result in an equal number or majority of non-resident trustees and should address deemed resignation if a trustee becomes non-resident.

Disclosure Reminder

The Canadian trust reporting rules make trustee identity and residency more significant in practice. For trusts with taxation years ending after December 30, 2023, many Canadian resident trusts must file a T3 return and disclose prescribed information for trustees, settlors, beneficiaries, and certain persons able to influence trustee decisions.

Practical Takeaway

Treat a trustee change as more than a routine administrative step. Before documenting the change, advisors should confirm whether:

- the trust owns private company shares;

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- any relieving provisions apply;
- the replacement trustee has contributed property to the trust;
- the associated corporation rules could be triggered; and
- the appointment is consistent with the trust’s intended tax residency.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.