ESTATE FREEZES INVOLVING TRUSTS

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Trusts have a multitude of purposes and, in estate planning, can be used in conjunction with estate freezes to allow flexibility to the person initiating the freeze to allocate future growth on a discretionary basis to family members.

Where portfolio assets have grown in value and are expected to continue to do so, the use of a trust in an estate freeze must take into account a number of specific attribution rules throughout the Income Tax Act as well as the 21-year deemed disposition rule for trust property. Furthermore, where persons wishing to initiate a freeze own shares of a small business corporation the shares of which may qualify for the capital gains exemption, a number of opportunities exist not only to allow future growth to accrue to family members, but also to allow family members to access their capital gains exemption in the event that the shares of the operating company are sold.

This article reviews a number of provisions of the Income Tax Act specifically applicable to these types of estate planning. The article focuses on two typical freeze structures in order to reveal the practical applications of the various rules. One structure involves freezing shares of an operating company, ensuring that its shares remain qualified for the capital gains exemption and multiplying the exemption by allocating future growth to family members. The second structure focuses on a freeze involving a corporation with portfolio investments, which have grown and are expected to continue to grow in value. In each case, the emphasis will be on the use of trusts in the context of the estate freeze.

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