

# Estate Planning Using Trusts – Alter Ego and Joint Partner Trusts

## What is a Trust?

A trust is a relationship established by a person (the “settlor”) who gifts or transfers property to an individual(s) or a trust company (the “trustee”) to hold the property for the benefit of others (the “beneficiaries”). The terms of the trust and any other rules required for the operation of the trust are established by the settlor and are set out in the trust deed. It is the trustee’s job to ensure the trust deed is followed.

Trusts generally exist in two forms: Testamentary, which are established through a Will, and Inter-Vivos. Inter-Vivos trusts are sometimes referred to as living trusts as they are set up by the settlor while he or she is alive. Inter-Vivos trusts often play an important role in estate planning. Once established, an Inter-Vivos trust may serve a number of functions, including the ability to transfer assets outside an individual’s estate without limiting that individual’s right to enjoy the assets during his or her lifetime.

## What are Alter Ego & Joint Partner Trusts?

An Alter Ego Trust is an Inter-Vivos trust established for the settlor’s own benefit, while a Joint Partner Trust is an Inter-Vivos trust established for the benefit of the settlor and their spouse. In both instances, Canada Revenue Agency (CRA) has recognized these distinct entities as eligible for special tax treatment; however certain criteria must be met in order to qualify.

The settlor (and their spouse) must be at least 65 years of age at the time of the creation of the trust and a resident of Canada. The terms of the trust must set out that the settlor (and their spouse) be entitled to receive all the income of the trust prior to the death of the settlor (and surviving spouse). As well, the settlor (and their spouse) must be the only persons entitled to the income and capital of the trust prior to the death of the survivor.

As a general rule, when a settlor transfers assets into an Inter-Vivos trust, there is a deemed disposition of any capital assets, and a resulting capital gain, or loss, which is to be declared in the year of transfer. The settlement of an Alter Ego or Joint Partner Trust, however, does not necessarily trigger taxation on the transfer of capital assets; instead the settlor can elect to have assets rolled-over to the trust at the adjusted cost base (ACB) without incurring capital gains or losses. Capital gains or losses can then be deferred until the settlor (and surviving spouse) passes away.

During the life of an Alter Ego or Joint Partner Trust all the income and capital gains are attributable to the settlor. The settlor must file a personal tax return (T1) declaring the income earned on these assets. As well, the trustee must file a trust tax return (T3).

There are few restrictions on the types of property that can be transferred into a trust. Registered assets (RRSPs/ RRIFs) and life insurance cannot be transferred into a trust, but the settlor can designate the trust as beneficiary of those plans.



## Why are they used?

There are many reasons why an individual may wish to establish an Alter Ego or Joint Partner Trust.

1. **Savings on Wealth Transfer** - Assets held in a trust do not form part of an individual's estate, therefore on death they will not be subject to Provincial Probate fees. Fees vary in every province.
2. **Protection from Challenges to a Will** – A trust minimizes the risk of challenges to your will by removing assets from the deceased's estate, minimizing the actual value vulnerable to challenge. For example, under British Columbia's *Wills Variation Act*, a spouse and/or child of a deceased can apply to the court to vary the terms of a deceased's Will if they feel they were not adequately provided for. A trust can alleviate this problem.
3. **Incapacity Planning** – A trust can be used to ensure that the settlor's finances are managed properly if he or she becomes mentally incapable. A successor trustee, named in the trust deed, can ensure the continuous management of assets until the point at which the trust is ultimately wound up and distributed.
4. **Privacy** – The trust instrument and any assets that are owned by the trust can usually be kept confidential both before and after the death of the settlor (and their spouse). In contrast, the particulars of a Will, and the assets passing through the estate, generally become public record once probated.
5. **Simplify Administration of Estate** – As the assets held in a trust are not included amongst the assets to be distributed in the deceased's estate, the trustee can usually distribute assets to the beneficiaries according to the terms of the trust document without the delays inherent in the probate process.
6. **Tax deferral** - Alter Ego and Joint Partner Trusts, unlike other trusts, are not subject to a deemed disposition of capital assets after 21 years. The taxation of capital gains within the trust will be deferred until the death of the individual (and their spouse), even if death occurs more than 21 years after the trust is established.

Individuals aged 65 years or older may want to consider establishing either an Alter Ego or a Joint Partner Trust during their lifetime. These trusts may be suitable for those individuals who wish to avoid or minimize estate administration taxes, who are seeking privacy in the administration of their estate, who have substantial assets, or who are seeking ways to avoid a challenge to their estate plans.

The decision to settle an Alter Ego or a Joint Partner Trust should only be made in close consultation with a legal advisor. There are legal fees associated with the drafting of a trust and assets such as real estate may incur fees for the registration of the change in ownership. In addition, the establishment of a trust should not exclude the consideration of other estate planning documents such as a Will and Power of Attorney.

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