RECEIVING TAX BENEFITS THROUGH YOUR WILL

Notice how the title reads "tax benefits" and not "tax avoidance"? The latter, unfortunately, is next to impossible. Lest you fret, know that there are means by which you can reduce taxation of your estate following your death, one of which is the creation of a testamentary trust in your will. Testamentary trusts have many useful applications in estate planning situations as a practical means of bequeathing to heirs and reducing taxes.

As the name suggests, a testamentary trust is simply any trust that is established through a will and passes on the death of the testator (the person making the will). It ensures that loved ones are taken care of. Multiple ones can be set up in one will.

Should you wish, the terms of a testamentary trust can provide for the payment of income or capital or both to the beneficiaries and can be general or specific. For instance, trusts can provide for the maintenance and education of specified beneficiaries. The income of the trust (say a $25,000 trust) payable to a child beneficiary could be applied to the child's university tuition. Other trusts can be more generally worded to allow the trust to invest and allocate the income and/or capital in the trust to ensure the beneficiary is taken care of, whether it is for education, health care or general welfare.

Testamentary trusts provide significant tax benefits because of the preferential treatment such trusts receive under the *Income Tax Act* (Act). The preferential treatment that testamentary trusts receive under the Act sets such trusts part from other types. The tax advantages of testamentary trusts arise largely from the fact that such trusts are considered "persons" for tax purposes and as such the income earned therein is taxed at the graduated rate pursuant to the Act and not the considerably higher rate that would apply if the gain were added to the beneficiaries' taxable income. Going back to the example of the university trust, although the child would be taxed on the income, presumably the child's tax rate would be lower than that of the parent, resulting in savings of tax. It's a marvel! If the child were 18 years of age or older, the trust could be funded by the parent without triggering the income attribution under the Act.

When planning your estate and your will, consider the many tax and non-tax advantages of testamentary trusts. And trust me, there are several! But remember that while there are several tools available to help reduce taxation of your estate through your will, those tools are lost if you have no will. Without a valid will, expect a long, complicated and expensive road to administering your estate. Honestly, to will or not to will, it's a really good question.

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