Estate Planning Tools for People With Disabilities

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By: Joe the Investor

Everyone should consider how their finances will be taken care once they pass on from this planet. For people with disabilities, care should be taken as to how they will be attended to as well as maximizing government credits and minimizing taxation of their assets. Since they have disabilities, there are different financial planning tools that are available. For cases where an attendant, guardian or caregiver is required, assets should be managed for the present and future periods on behalf of someone with disabilities.

There are various tax credits and government programs which exist to supplement people with disabilities. The tax credits will be listed here, but will not be explored in depth as this article focuses more on the long term financial planning and estate aspects. The tax credits available for people in Ontario, Canada are the disability tax credit, children's fitness amount and Working Income Tax Benefit (expanded for children with disabilities), medical expenses, attendant care, the caregiver amount, travel expenses and home renovation tax credits. (5) For any tax situation, the relevant tax code and regulations for that jurisdiction should be consulted.

There are two main options to consider when considering financial and estate planning. Will someone be taking care of the person with disabilities? In this case, this person would be providing the financial assistance, and they may require a financial plan for their assets as well as those of the relative with disabilities. The second option is whether outside assistance is required. If yes, will the assistance come from government programs, a future sum of money such as a trust or both? If government programs are sought after, care should be taken that they do not interfere with money held in a trust to maximize the benefit of all of the available assets. There are three main tools that will be discussed: the Ontario Disability Support Program (ODSP), the Registered Disability Savings Program (RDSP) and the Henson Trust.

Ontario Disability Support Program (ODSP)

If the family is not able to provide assistance to someone with disabilities, the ODSP is an option for you. This is not the same as Ontario Works, which is geared towards people with low incomes who need assistance with basic needs and finding work. The ODSP does not require people to find work, and tends to pay out more benefits than Ontario Works.

In order to get ODSP benefits, the person who needs them must get approval to receive them. The definition of a disability is a physical or mental impairment that is continuous and recurrent, and is expected to last more than one year. This definition also takes into account restrictions to one or more aspects of daily living. The documents to be completed are the Health Status Report and the Activities of Daily Living Index by a licensed health professional in Ontario. The needs test is the next step. Needs refer to what is required to pay the bills each month. Combined with this calculation is whether the person's monthly income is higher than their budgetary entitlement. If it is, the person would not qualify for ODSP. The ODSP may also be reduced if the person is working or receives money from other sources, like pension payments.

If a person with disabilities receives more than $6000 in one year, ODSP payments are reduced. If such an amount is provided, the amount over $6000 can be spent on disability related goods and services. (6)(7) Exemptions can also be made for running a business, earning income from employment or education expenses. Some of the exemptions are limited to a certain amount before the ODSP is scaled back. If they receive more than $6000 in one year, they would have to spend it immediately in order to continue receiving ODSP benefits.

Assets are also taken into account when approving ODSP benefits. A person with disabilities should not have assets, except for non-exempt items, such as a principle residence, a second property if approved for their health and well-being, a motor vehicle of any value and a second motor vehicle valued under $15,000 for work purposes. Other non-exempt items are the trusts described below, funds used for disability-related items, interest earned on cashable assets, a compensation award of up to $100,000 for pain and suffering, business assets of up to $20,000 if they are self-employed, a prepaid funeral and approved loans for business expenses and training.

Registered Disability Savings Program (RDSP)

The RDSP is a savings plan that was introduced by the Government of Canada in 2008. It is similar to the Registered Education Savings Plan (RESP) which means that the contribution of money into the RDSP does not create a tax deduction to the contributor. Earnings within the RDSP accumulate on a tax deferred basis so there are no taxes paid on the growth within the plan until funds are withdrawn. Payments coming from the plan can be used for any purpose and must begin no later than when the person with disabilities turns 60 years old. In order to qualify for the RDSP, the person with the disability must qualify continuously for the Disability Tax Credit.

An RDSP contains three components, which are the private contributions, Canadian Disability Savings Grants and Canadian Disability Savings Bonds.

Private Contributions

Once an RDSP has been established, anyone can contribute to the plan provided the plan holder has given written authorization. The beneficiary's parents, family members, non-related people or the person with the disability themselves can make deposits into the plan. The contributions are limited to a lifetime maximum of $200,000 but any amount under this limit can be contributed annually. Spreading of large deposits over a number of years should be considered because of the rules regarding the Canadian Disability Savings Grants and Bonds.

Canadian Disability Savings Grants

This can be a significant component of the RDSP. The Government of Canada will make contributions to an existing RDSP as Canadian Disability Savings Grants when private contributions are made until a lifetime maximum of $70,000 is reached or until the end of the year in which the RDSP beneficiary turns 49 years old. The amount of the grant in a specific year is based on the net income of the parents if the RDSP beneficiary is under 18 years old or on the individual's income if they are over age 18 years old.

Canadian Disability Savings Bonds

In addition to the Canadian Disability Savings Grants, there is also the Canadian Disability Savings Bonds. The CDSB are available to lower income families up to a lifetime maximum of $20,000. These funds are available up to $1,000 per year until the $20,000 maximum is reached or until the year in which the RDSP beneficiary reaches age 49 years old.

RDSP Payments

There are two types of payments that can be taken from an RDSP. The first type of payment is called the Disability Assistance Payment. The DAP is a periodic withdrawal from the RDSP at different points of time throughout the life of the plan. These withdrawals can only be made if the private contributions made into the plan are greater than the government contributions to the plan. If you only make the minimum contribution to the plan to achieve the maximum government grants and bonds, this payment from the RDSP will not be available. If you do make this payment, the grant and bond contributions for the prior ten years must be repaid to the government. This is called the holdback amount and could be up to $45,000 in repayments at the most. There is also a limitation that the holdback amount must remain in the plan as a guarantee of payment.

The second type of payment from the plan is called the Lifetime Disability Assistance Payment. This payment must begin no later than when the beneficiary is 60 years old. Once these payments begin, they must be continued. The size of the payment is determined by a formula based on the life expectancy of the RDSP beneficiary. The standard life expectancy has been set at 80 years old plus 3 additional years. If a doctor verifies that a person's life expectancy is less than 80 years old then the formula would be adjusted.

Taxation of RDSP Payments

Each payment that is made from an RDSP is considered to be made up of three components. The first component is private contributions which are not taxed. The second component is the Canadian Disability Savings Grants and Canadian Disability Savings Bonds. Both of these components are taxable in the hands of the beneficiary of the RDSP. The final component is the income that has been earned on the private contributions, CDSG and CDSB contributions, and these would be taxed as well.

Henson Trust

A Henson Trust is a pool of money set up apart from the person receiving it. The money is controlled exclusively by the trustee and not the beneficiary, so the beneficiary cannot use the assets of the trust without the trustee allowing it. It is for this reason that the trust is not considered assets of the beneficiary, and this allows money to flow to the beneficiary from other sources, like ODSP. The beneficiary can spend up to $6000 from the Henson Trust without affecting benefits. This trust can have assets of any amount. It can be set up in the settlor's will, or while the settlor is still alive. The settlor is the person who sets up the trust. Henson Trusts can be used to pay proceeds to someone with disabilities as well as other beneficiaries as part of an estate.

When Should You Use a Trust?

The key questions to ask are: Can the support provided from a trust be better than that from ODSP? Do the relatives have enough assets to support the trust, and are they willing to provide them? Are other beneficiaries self-sufficient or will they have to share in the assets of the trust? If they do, to what extent and how would that impact the person with disabilities? Is it possible that the person with disabilities would not qualify for ODSP because they can find work, run a business or earn income in some other way? The key theme is what methods would offer the best quality of life for the person who needs it? If ODSP is the main income source, then a trust would not be necessary. If there are assets available that would conflict with ODSP benefits, a Henson Trust is a good way to compliment these benefits. If there is an RDSP, this can work together with the Henson Trust to provide income in later years - 60 years old or more.

The Trustee Is the Key

Since the Trustee has absolute say in what happens with the Trust, it is wise to choose a group of people to oversee the trust, with a possibility of checks and balances between them to ensure the trust is doing what it is intended to do. This group would bring different skills to the table to minimize bias and conflict of interest. The trustees should be trustworthy, have good business sense, be organized and must have the needs of the beneficiary in mind first and foremost. The trustees are in fact being trusted with the livelihood of another person who cannot do it themselves.

There are many tools available to plan for someone with disabilities. Each of these tools should be measured against the situation at hand to see which one will do the best job of providing benefits. The timing of the benefits should also be examined to see when each instrument would be most beneficial.

Contact me, Joe Barbieri by email at joetheinvestor.today@gmail.com, or by telephone at 647-286-8020 for an independent consultation on what your options are. **Note: This site is intended for people who want to learn about the world of investments and how to research for themselves. If you would like to buy or sell investment products, or specific advice on investment products, tax or legal issues, please consult your investment advisor, accountant or legal counsel.**

Sources:

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