

# Newsletter



Robinson Sheppard Shapiro  
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## Testamentary Trusts: Proposed Amendments Could Upset the Applecart

*Trusts are commonly used in estate planning, both as guidelines for the management of the estate and as a tax-effective vehicle. Recently proposed amendments to the federal tax legislation could, however, lead to questionable results.*

### Current rules re Spousal Trusts

Assuming that your Will provides that all the income of your estate is vested in your spouse, as long as she or he may live. You also specify that when your spouse dies, the capital is to be divided among your children, be they of this or an earlier union. You probably have set up a spousal trust.

As a result, the tax on capital gains accrued up to the time of your death will be postponed and will only be payable upon the death of your spouse. Upon the death of your spouse, your trust will then transfer the capital to your children less the taxes on the accrued capital gains.

### Proposed rules

The federal government just muddied the water. Unobtrusively, and ignoring

comments from several experts, new rules were announced that could make the tax on these capital gains payable by your spouse's estate, starting January 1, 2016.

Here's an example of the impact of the changes.

George and Helen were married when George already had three daughters, and Helen had two sons.

Through a holding corporation, George has investments of \$2M. He has set up a spousal trust for Helen. On his death, the tax payable on accrued capital gains is, say, \$500,000. Helen has assets of \$600,000, but income tax on her death is minimal.

If George dies first, payment of the \$500,000 tax is deferred until Helen's death, because of the trust. When Helen passes away, George's three daugh-



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ters will receive the capital from the trust while Helen's two sons will get their mother's estate less the payment of taxes on the accrued gains in George's estate.

**Under current rules:**

- George's three daughters share \$1.5M (\$2M minus the \$500,000 tax): each gets \$500,000.
- Helen's two sons share the \$600,000 estate: each gets \$300,000.

Under the proposed rules, assuming George dies after January 1, 2016, the income tax will be payable by Helen's estate, with the following consequences:

- George's three daughters will split the \$2M estate: each will be getting \$666,666.
- Helen's estate will pay George's income tax of \$500,000, leaving assets of only \$100,000: each of her sons will be getting \$50,000.

In other words, Helen's sons will pay George's tax! Such result is absurd, given the compared importance of each

spouse's estate. It is probably also contrary to the spouses' intentions.

For the moment, the government has not responded to various criticisms from the tax community. If it goes ahead with this proposal, many estate planning scenarios will be shattered.

**As a result...**

- If your situation is similar to that of George and Helen, you should seek competent advice to make sure that your estates will be divided according to your intention
- Tax legislation is amended regularly. If your Will has been drafted a few years ago, and especially if your situation has changed significantly since then, you may have to change your estate planning to minimize tax and facilitate the liquidation of your estate.

**Do not hesitate to contact Martin Lord (514 393-4041 • [mlord@rsslex.com](mailto:mlord@rsslex.com)) to discuss this or other matters related to your estate planning.**

