

## Tax Tip

### *“Death of Testamentary Trusts?”*

The use of a testamentary trust has long been an effective tool in dealing with an estate’s assets and income on a tax efficient basis. Typically, a testamentary trust would be set up for a beneficiary or beneficiaries upon an individual’s death and the terms outlined in his or her Will.

If structured properly, the testamentary trust would pay tax at a graduated tax rate similar to individuals but ignoring the basic personal amount. Conversely, an inter vivos trust (i.e., a trust that is set up while an individual is alive) is not eligible for the graduated tax rates but instead is subject to the top marginal rates.

These differences in rates can provide a tax savings in excess of \$20,000 on an annual basis depending on the province of residency.

The Department of Finance is launching a consultation paper that will likely lead to the elimination of the graduated income tax rates for testamentary trusts and likely the application of a top marginal rate of tax similar to an inter vivos trust. The proposed measures would come into place starting in 2016 and would effectively abolish a common estate planning technique often used to reduce income tax on investment income earned by beneficiaries of estates.

Taxpayers seeking to take advantage of the use of testamentary trusts should be aware of this short window of opportunity that remains. Alternatively, taxpayers may want to consider distributing income to beneficiaries in lower income tax brackets on a go forward basis.

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*TAX TIP deals with a wide variety of issues and the information is general in nature. As each person’s circumstances are unique, readers are urged to consult W&P prior to acting on the basis of material in this Tax Tip.*

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