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Things You Should Know About Using RDSPs as Part of Your Disabled Child's or Grandchild's Financial Future

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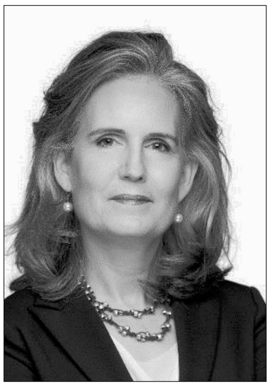

Many families are already using the Registered Disability Savings Plan ("RDSP") as a great way to build savings for a child or grandchild who is disabled and qualifies for the disability tax credit. There are many advantages to investing in RDSPs, including the potential to receive free government money in the form of grants and/or bonds, and payments received by the beneficiary from their RDSP do not count towards their Ontario Disability Support Program ("ODSP") eligibility requirements. Whether you have been thinking about setting up an RDSP, or already have, you might not be aware of some of these interesting facts, as they may impact on the estate planning of the RDSP beneficiary, or their family members:

Did You Know…?

1. An RDSP beneficiary may be eligible to receive up to $3,500 per year in matching grants from the federal government, up to a lifetime maximum of $70,000; and up to $1,000 per year in bonds, up to a lifetime maximum of $20,000.
2. If you obtained the RDSP after 2008 you can claim the grants and bonds for prior years going back as far as 2008, up to a maximum of 10 years.
3. If a parent opens an RDSP account for a minor beneficiary and if the beneficiary, after having turned 18 is, in the opinion of the RDSP issuer (*i.e.*, the bank) contractually competent, the beneficiary will replace the parent as the plan holder to manage the account themselves. The contractually competent beneficiary could (but need not) agree to keep the parent on the account as a joint holder with the beneficiary, for ease of administration.
4. The funds in an RDSP belong to the beneficiary, and not to the holder or contributor. (Though in some cases the beneficiary may be one and the same person as the holder).
5. If a parent opens an RDSP account for a minor beneficiary and if the beneficiary, after having turned 18 years of age, has someone other than the parent (a sibling perhaps) appointed by a court as the child's legal guardian for property, then the guardian replaces the parent, as the account holder.
6. Where the beneficiary of the RDSP is not contractually competent and both parents are the joint holders of the RDSP, when one parent dies, the surviving parent will continue holding the account as the sole holder. For this reason, it is generally advisable to have both parents, rather than just one, to be the holders of the RDSP account.
7. Retirement savings can be rolled into an RDSP for a deceased person's financially dependent child or grandchild, on a tax-deferred basis. The maximum rollover is $200,000 (subject to the contributions and other rollovers already received in the RDSP). Note that the amount rolled over

will not be eligible for the government grants. Note also that this portion will be taxable in the hands of the beneficiary when it is later withdrawn.

8. It is also possible to roll a Registered Education Savings Plan (RESP) into an RDSP on a tax-deferred basis, if the RDSP beneficiary is also the beneficiary of the RESP, and provided certain other requirements are met.
9. When the RDSP beneficiary dies, the remaining amounts in the plan after the grants and bonds are repaid to the government, are not returned to the contributors. Rather, they are paid to the beneficiary's estate.
10. If the RDSP beneficiary has not made a Will (not everyone has the legal capacity to make a Will), then the remaining amounts in the plan, as with the other assets of the beneficiary's estate, are payable to the beneficiary's heirs in law. First priority goes to the deceased beneficiary's spouse and children or further descendants, if they have any. If the beneficiary is not married and has no child or further descendants, then the remaining amounts of the RDSP will be divided equally between the beneficiary's parents (even if only one parent was the sole contributor to the RDSP), or if both parents have predeceased, the remaining amounts will be divided among the beneficiary's siblings.
11. Where the RDSP holder dies, the plan continues. The funds do not form part of the deceased holder's estate. Who will replace the holder, depends on the circumstances at that time: If the beneficiary of the plan is contractually competent, then he/she becomes the holder. If the beneficiary is not contractually competent, but has a court appointed guardian for property, then the guardian becomes the holder. Note that if only one parent was the holder, and then dies, the surviving parent does not automatically become the holder.
12. In the case of an adult who might not be contractually competent to enter into an RDSP themselves, the federal government has temporarily allowed certain qualifying family members to become the plan holder to replace the deceased parent holder. This temporary measure will expire on December 31, 2023. Thereafter, it will be necessary for a guardian for property to be appointed by a court for an adult beneficiary who has no holder, and who does not have a power of attorney for property or other legal substitute decision-maker to replace the deceased holder. If you have been thinking about setting up an RDSP for your disabled adult child who might not be contractually competent, you should make those arrangements while you still can.

[**Lisa Sticht-Maksymec** is a senior member of Pallett Valo's Wills and Estates Practice. With over 15 years of experience in estate planning, estate administration and estate litigation, Lisa identifies practical solutions to clients' estate planning needs, and consults on complex estate administration to advise about the best ways to plan for the efficient administration of estates.

Her approach explores both legal and practical solutions to matters that are inevitably personal, sensitive and emotional. Lisa works with high net-worth individuals, families, spouses in blended families, and successful business owners and entrepreneurs who are looking for efficient ways to transfer their wealth to the next generation. She also works closely with families who have children with disabilities to protect ODSP eligibility.]