Considering RESPs as Part of Your Estate Plan

Registered Education Savings Plans ("RESPs") are popular vehicles chosen by parents, grandparents, and others to help set aside funds for a child's post-secondary education. However, an RESP is an asset too often overlooked by individuals when it comes to estate planning. This article provides an overview of important estate planning considerations for RESP subscribers.

RESPs are popular vehicles for saving for a child's education because, for each child named as a beneficiary of an RESP, there is no annual contribution limit and a lifetime contribution limit of $50,000. Together with the Canada Education Savings Grant ("CESG") and other government incentives, this creates a meaningful source of tax deferred income to finance a child's education. Additionally, RESPs can remain open for many years – contributions can be made for 31 years after the account is opened, and subscribers (the person, or persons, opening/contributing to the RESP) have until the end of the thirty-fifth year to use the funds. It is only after 35 years that, unless otherwise specified in the plan contract, the RESP will expire.

Since RESPs can be kept open for such a lengthy period, it is important that RESP subscribers consider their RESPs as part of their estate plan.

What happens if the subscriber dies before the RESP is fully distributed?

Most RESPs are established to assist beneficiaries with funding their education. If the RESP still exists after the subscriber's death, it is likely that their intention is for the RESP to continue to be available for that purpose.

It is important to remember that, unlike a Registered Retirement Savings Plan ("RRSP") or a Tax-Free Savings Account ("TFSA"), the proceeds of an RESP do not pass outside of the subscriber's estate and directly into the hands of a designated beneficiary. It is also important to note that an RESP is not a trust. Unlike a trust, the assets of an RESP are not automatically held in trust for the plan's beneficiaries upon the RESP subscriber's death.

Generally, if there is no surviving joint subscriber or alternative plan in place, an RESP contract becomes part of the estate of a deceased subscriber; its value belongs to the residuary beneficiaries of the deceased subscriber's estate. These residuary beneficiaries may not be the same as the beneficiaries of the RESP and, in many cases, their interests may be different. In those instances, after the RESP subscriber dies, the executor may be obliged to collapse the RESP to maximize the size of the net residuary estate and distribute the RESP contributions to the residuary estate beneficiaries. If certain conditions are met, those beneficiaries may also get the after-tax investment growth from the plan contributions and from CESGs.

An RESP is a contract between a subscriber and a promoter (usually a financial institution) and is governed by the terms of that specific contract. For this reason, before making planning decisions regarding the potential death of a subscriber, be sure to check the terms of the RESP contract itself.

Preserving intentions for an RESP as part of an estate plan

There are multiple ways that subscribers can ensure their intentions for an RESP are maintained in case of death, depending on whether the account is set up with a single subscriber or joint subscribers, such as:

- Including mirror RESP clauses in subscriber Wills for joint subscribers;
- Naming a successor subscriber in the Will for single subscribers; or
- Appointing a testamentary trust for individual or joint subscribers.

Joint subscribers: If there are joint subscribers (which are generally the parents of the beneficiary), the RESP becomes the property of the surviving subscriber upon the other subscriber's death. When the surviving subscriber dies, the RESP assets become subject to the terms of the last survivor's Will.[1]

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As a result, joint subscribers should consider including mirror RESP clauses in their Wills, directing how the RESP is to be dealt with upon the surviving subscriber's death. As with other assets jointly held, in the absence of a contract between the joint subscribers to create "mutual Wills," the RESP becomes the property of the surviving subscriber after the other's death. At this point, the surviving subscriber is free to change the RESP clause in his/her Will, and can choose to collapse the RESP.

Single subscribers: If there is only one subscriber, he/she can name a successor subscriber in their Will to maintain the RESP after their death and outline how contributions are to be funded.[2] If the maximum RESP contribution limit has not been reached, the succeeding subscriber can continue with RESP contributions after the primary subscriber's death.

Testamentary Trusts: Alternatively, single subscribers (or joint subscribers executing mirror or mutual wills) can appoint a testamentary trust as the successor subscriber. A testamentary trust is one created under the terms of a Will. In his or her Will, the subscriber(s) can direct the executor to use general estate funds to contribute to the RESP before it is transferred to the testamentary trust in order to reach the $50,000 contribution limit. The trustee of the testamentary trust can be the executor, or other individual who might otherwise have been appointed as successor trustee. But, unlike a successor subscriber, the trustee is obliged to follow the terms of the trust with regard to administration of the RESP for the beneficiaries.

Incorporating an RESP into your estate plan

As an RESP is the property of the subscriber and, upon his or her death, it becomes an asset of their estate and subject to the terms of his/her Will. The RESP does not pass outside of the subscriber's estate. As such, it is an asset that must be considered as part of the subscriber's estate planning goals.

If you are the subscriber of an RESP, ask yourself the following question, "Do you want the RESP to continue after your death?" If so, consider whether you prefer to:

- Appoint a successor subscriber;
- Set up a testamentary trust; or
- Have all the funds withdrawn and distributed directly to the intended beneficiary (or beneficiaries).

Alternatively, you can consider whether you want to have the funds returned to the estate for the benefit of all estate beneficiaries after your death.

There are multiple options available that can help RESP subscribers ensure that their intentions for the funds are preserved in the case of death. Before considering the options, begin by reviewing the terms of your RESP contract.

If you have any questions about RESPs, please contact your BMO financial professional.

[1]Quebec law does not recognize the concept of a right of survivorship. The interest of a deceased RESP joint subscriber who lives in Quebec will form part of the estate of that subscriber. In that case, the value of that interest will likely belong to the residuary beneficiaries of the estate unless the joint subscriber appoints a successor subscriber by Will. Joint subscribership should likely be avoided by Quebec residents unless each appoints the other as successor subscriber by Will.

[2]Please note that some RESP contracts permit the designation of a successor subscriber by form.

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