



Ian Lebane LL.B., LL.M., TEP  
Chair of the STEP Tax Technical Committee  
STEP Canada  
45 Sheppard Avenue East, Suite 510  
Toronto ON M2N 5W9

*Our file Notre référence*  
2021-091380  
I. Schnitzer

October 14, 2022

Dear Mr. Lebane,

**Re: Lifetime Benefit Trust – Accumulations Period**

We are writing in response to your initial question posed at STEP 2021 and subsequent correspondence wherein you requested our comments on whether a trust established for a dependent mentally-infirm child (the “Dependent Beneficiary”) under a will in a jurisdiction of Canada where the rule against accumulations is in force can qualify as a lifetime benefit trust (“LBT”). In particular, you asked for our views on whether a trust established under a will that does not contain express language directing who is legally entitled to the trust income after the end of the accumulations period can qualify as an LBT.

You note that several jurisdictions in Canada, including Ontario, have a rule against accumulations which provides for a time limit on the period during which income can be accumulated in or added to the capital of a trust. Any income after that period (“surplus income”) has to go to the person(s) who would have been entitled to it had the accumulation not been directed.

You expressed that in order to address the rule against accumulations wills in Ontario contain standard language that either directs the surplus income to be paid to a designated beneficiary (“designated beneficiary clause”) or stipulates that the surplus income is to be paid to the person(s) entitled to receive that income (“accumulation clause”).

You note that in most cases the Dependent Beneficiary will not be the designated beneficiary due to mental infirmity and accordingly a trust established for a Dependent Beneficiary under a will that contains a designated beneficiary clause will generally not qualify as an LBT. You also note that although an accumulation clause in a will does not in and of itself cause a trust established for a Dependent Beneficiary to not qualify as an LBT (the effect of the accumulation clause is that the surplus income is paid to the person

.../cont'd

legally entitled thereto, the Dependent Beneficiary), due to the Dependent Beneficiary's mental infirmity the accumulations clause is generally amended or deleted to ensure that it does not apply to a trust that is meant to qualify as an LBT. You note that absent this standard language (i.e. absent the designated beneficiary clause or accumulation clause), the surplus income becomes part of the residue of the estate and is distributed in accordance with the residuary clause.

It is your view that if this standard language is not included in a will and the surplus income becomes part of the residue of the estate, the trust should qualify as an LBT, provided that all other conditions of the LBT definition are met. It is your view that where the terms of the trust or will do not specifically allow for anyone but the Dependent Beneficiary to receive during the Dependent Beneficiary's lifetime any income or capital, the person receiving the surplus income would receive the income pursuant to the operation of law and not under the trust or the will. Accordingly, you submit that the phrase "under which" in paragraph 60.011(1)(b) is met.

### **Our comments**

This technical interpretation provides general comments about the provisions of the Income Tax Act (the "Act")<sup>1</sup> and related legislation (where referenced). It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular IC 70-6R12, Advance Income Tax Rulings and Technical Interpretations.

Pursuant to subsection 60.011(1), for a trust to qualify as an LBT it must be a personal trust under which no person other than the Dependent Beneficiary may receive or otherwise obtain the use of, during the Dependent Beneficiary's lifetime, any income or capital of the trust.

It is our understanding that pursuant to the rule against accumulations, surplus income has to go to the person(s) legally entitled thereto. A will may contain language directing who is legally entitled to the surplus income and depending on the terms of the will this may be a person other than the Dependant Beneficiary.

Accordingly, it is our view that unless the Dependent Beneficiary is the person legally entitled to the surplus income a trust will not qualify as an LBT as there is the possibility that a person other than the Dependent Beneficiary can receive or obtain, during the Dependent Beneficiary's lifetime, the use of the income of the trust. Whether the surplus income is paid to a person as a result of the operation of law as opposed to the terms of the trust or will does not alter our position.

---

<sup>1</sup> Unless otherwise stated, all statutory references herein are to the Act.

In our view the mere possibility that pursuant to the terms of the trust or will, or by operation of law, a person other than the Dependent Beneficiary can receive the surplus income will cause the trust not to comply with the conditions of subsection 60.011(1). Therefore, such a trust will not qualify as an LBT from the time that the trust is created.

We trust that these comments will be of assistance.

Yours truly,

2022-10-14

**X** Irina Schnitzer

---

Irina Schnitzer

A/Manager

Signed by: SCHNITZER IRINA

Irina Schnitzer  
A/Section Manager  
for Division Director  
Financial Industries and Trusts Division  
Income Tax Rulings Directorate  
Legislative Policy and Regulatory Affairs Branch