Mackenzie
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WEALTH PLANNING FOR THE DISABLED

RDSP, Henson Trust or TFSA?

Registered Disability Savings Plans (RDSPs) were launched in 2008 to help build long-term financial security for qualifying disabled persons. The RDSP is a new opportunity to accumulate wealth by providing Government assisted savings and tax-deferred investment growth. Individuals qualify for an RDSP if they are eligible for the Disability Tax Credit, are resident of Canada, less than age 60 and have a valid Social Insurance Number.

With this in mind, would it make more sense to set up an RDSP or look at other savings vehicles such as a Henson Trust, or a Tax Free Savings Account (TFSA)? As with many things tax related the answer is, “it depends”.

In determining the method that would best suit an individual’s needs it is important to look at several factors, including government benefits they may lose or have clawed back as well as the ancillary health benefits that will be affected. These factors can potentially have a large impact, especially as the health benefits include medication, eyeglasses, dentistry, medical appliances and other items that, if paid personally, can make finances challenging.

Exploring the Choices

1. RDSP

a. Contributions and withdrawals

An RDSP has no maximum annual contribution limit, but there is a lifetime maximum of $200,000. In addition to individual contributions, the Federal Government offers the Canada Disability Savings Grant (CDSG) and the Canada Disability Savings Bond (CDSB). The CDSG is a matching grant with a lifetime maximum of $70,000. The CDSB is an amount paid to qualified low-income beneficiaries with a lifetime maximum of $20,000. Up to $1,000 can be paid annually to the RDSP of a low income beneficiary even if no contributions are made into the RDSP (income limits are discussed in d.). There are carry-forward provisions for unclaimed grants and bonds.

An important aspect of the RDSP is that payments do not impact income-tested Federal Government programs, including Old Age Security (OAS), Guaranteed Income Supplement (GIS), Canada Pension Plan (CPP), The Goods and Services Tax Benefit (GST Benefit) and Social Assistance Benefits.

With respect to provincial programs, the majority of provinces allow a full exemption of income and assets when calculating provincial benefits. For Quebec, New Brunswick and Prince Edward Island the assets are exempt, but there is a limit to how much can be withdrawn from the plan without affecting provincial benefits. In Quebec, the maximum is $300 per month for an adult and $340 per month for a couple. New Brunswick allows monthly income of $800, which will be adjusted due to fluctuations in the Low Income Cut-Off (LICO). In Prince Edward Island an individual's income will only be exempt as long as it does not exceed the low-income level defined by the National Council of Welfare.

b. Restrictions on Withdrawals

It is important to be aware that when withdrawing any amount from an RDSP, any CDSGs and CDSBs received in the 10-year period prior to a payment must be repaid to the government. This repayment is known as the Assistance Holdback Amount (AHA), and is a timing factor imposed by the Government to ensure long-term savings. A financial advisor can help track timing to minimize repayments.

c. Intergenerational Transfers

As of July 1, 2011 a tax-deferred transfer is permitted from a Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF) or Registered Pension Plan (RPP) to an RDSP. Transfer is limited to the maximum of the RDSP contribution limit available at the time of transfer. The transfer must be from an RRSP, RRIF or RPP of a deceased parent or grandparent if the beneficiary of the RDSP is financially dependent on that individual.

Note: Intergenerational transfers will not attract any CDSG/CDSB monies. As such, withdrawals could begin immediately following the transfer. Withdrawals of these monies will be fully taxable to the beneficiary, but not included in income-tested benefits as outlined previously.

d. Target Market

Whether or not social benefit protection is an issue, the RDSP is an option to consider for any disabled Canadian. As mentioned previously, an RDSP is eligible for CDSGs, which are tied to contributions and family income. If family income is less than $83,088, a 300% match is paid on the first $500 and a 200% match on the next $1,000, for a maximum annual CDSG of $3,500. If the family income is over $83,088 a 100% match is received on the first $1,000. In addition, if the beneficiary's family net income is below $24,183 an RDSP will receive $1,000 CDSB whether or not a contribution to the RDSP is made. If the family's net income is between $24,183 and $41,544 the $1,000 is reduced on a prorated basis in accordance with the formula in the Canada Disability Savings Act. As a result, regardless if an individual receives Social Assistance Benefits, setting up an RDSP will likely be beneficial. This, together with tax-deferred growth can be an attractive option.

A final advantage of the RDSP is that RDSP beneficiaries are able to control their own investments. This is not the case with a Henson Trust, as discussed below.

2. Fully-discretionary trust (Henson Trust)

Previous to RDSPs, most disability planning used trusts, commonly a fully-discretionary trust (often referred to as a "Henson Trust" based on the court case that formalized this strategy). A Henson Trust is used to protect assets (including inheritances) for disabled beneficiaries. The trustee has full discretion regarding use of the trust funds – and the beneficiary has no entitlement. In most provinces this discretionary aspect is key in protecting asset-tested Government benefits.

a. Contributions and Withdrawals

A Henson Trust can be set up for any disabled individual. There generally is no maximum contribution limit. If an individual is receiving Social Assistance Benefits, the assets in the trust do not impact their Social Assistance Benefits; however, when withdrawals are made non-disability expenses (such as food, clothing, shelter, etc.) are classified as income and may affect income tested benefits.

A Henson Trust is recognized in all provinces except Alberta, the Northwest Territories and Nunavut. A Henson Trust is currently available in Saskatchewan, but it may be challenged by the government on the grounds of dependent relief legislation, although there have been no cases as of yet.

Newfoundland and Labrador recognize a Henson Trust, but limit assets to $100,000 before the beneficiary's provincial Social Assistance Benefits will be affected.

Another reason an individual may want to set up a Henson Trust is to facilitate short term withdrawals. As mentioned previously, if withdrawals are made from an RDSP within 10 years of Government funding, it would require the payback of CDSGs and CDSBs. The Henson Trust does not have this requirement and as a result might be a better option for short term withdrawals. With that said, it is important to keep in mind that any withdrawals from the Henson Trust will affect an individual's income-tested benefits.

One further reason to use a Henson Trust is to control access to funds. This would be desirable in the case of a beneficiary who is not financially capable (e.g. spendthrift).

b. Intergenerational Transfers

A Henson Trust may make sense if a dependent child inherits more than $200,000 from a deceased parent's RRIF. A maximum of $200,000 can be rolled over to an RDSP so the remaining inheritance must be invested elsewhere, which may affect Social Assistance Benefits. The remaining amount can be transferred to the trust, allowing the beneficiary to invest all of the inheritance without affecting his or her social benefits.

c. Estate Planning

A Henson Trust provides the opportunity to name residual beneficiaries to receive the assets in the trust following the death of the disabled individual. This is not the case with an RDSP – the assets must form part of the beneficiary's estate, either under a will or by way of provincial laws of intestacy (which deal with the estates of individuals who die with no will).

3. TFSA

a. Contributions and Withdrawals

Another option available for tax-reduced investing is a Tax Free Savings Account (TFSA). TFSAs were introduced in 2009 and allow anyone over the age of 18 to contribute. Currently, the annual contribution amount is $5,000, which is cumulative if not used in a particular year. Income and capital gains are not taxed in the plan or when they are withdrawn from the plan. If a withdrawal is made from a TFSA, the amount withdrawn is added to the account holder's contribution room the following January. As an example, assume John redeemed $3,000 from his TFSA in April 2010. On January 1, 2011 he is credited $3,000 of contribution room for 2010 in addition to his annual contribution room of $5,000. As a result he has $8,000 of contribution room in 2011.

TFSA accountholders currently receiving Social Assistance Benefits must be careful, because assets in a TFSA will impact their Social Assistance Benefits. If, however, an accountholder is not receiving Social Assistance Benefits, a TFSA can be a great compliment to an RDSP or a Henson Trust. An individual can make withdrawals from a TFSA at any time and not be penalized for those withdrawals. As mentioned, withdrawals from an RDSP with an Assistance Holdback Amount applicable would lose 10 years worth of CDSGs and CDSBs, which would likely have a huge effect on the value of the account. As a result, it might make sense to set up a TFSA in addition to the RDSP so that the individual may withdraw the funds from the TFSA without penalties or tax.

Below is a comparison of the RDSP, Henson Trust and TFSA.

	RDSP	Henson Trust	TFSA
Contribution limit	• No annual limit • Lifetime limit of $200,000	• Generally there is no maximum amount that can be contributed to a Henson Trust	• $5,000*(2011) plus carry forward of unused room (previous years) plus withdrawals from previous year
Unused contribution room	• Only applicable to CDSG and CDSB where unused contribution room carries forward to future years for a maximum of 10 years.	• Not applicable	• Carries forward to future years
Taxation	• Contributions are not tax deductible • Contributions withdrawn are non taxable. Growth, Canada Disability Savings Bonds (CDSBs) and Canada Disability Savings Grants (CDSGs) are taxable upon withdrawal. • Withdrawals from an RDSP do not impact other income-tested federal government programs	• Contributions are not tax deductible • When contributions are withdrawn they are not included in income. • Withdrawals of growth and income are considered as income when calculating Social Assistance Benefits	• Contributions are not tax deductible • Income tax free • Withdrawals tax free**

	RDSP	Henson Trust	TFSA
Re-contributions require new contribution room?	• Yes	• Not applicable	• No – however, it is important to note that re-contribution room is only updated annually
Age restriction	• Contributions can begin at any age • The RDSP is eligible for CDSBs & CDSGs until the year the beneficiary turns 49 • Contributions must cease by the end of the year in which the beneficiary reaches age 59	• No age restriction	• Available beyond age 17
Eligible investments	• Cash, stocks, bonds, GICs, mutual funds and a variety of other investments • Mackenzie has 16 funds available for the RDSP	• Cash, stocks, bonds, GICs, mutual funds and a variety of other investments	• Cash, stocks, bonds, GICs, mutual funds, and a variety of other investments

** Indexed to inflation annually*

*** refers to income tax*

Provincial Implications

One of the biggest issues for someone who is disabled is the effect that having income and assets has on their income sensitive benefits. Each province is different and below is a synopsis of each.

Alberta

Eligibility

Alberta has a program called Assured Income for Severely Handicapped (AISH). To be eligible:

- The individual's disability must be permanent and severely limit their ability to earn a living
- They must be 18 years of age or older
- They cannot be eligible to receive Old Age Security (OAS)

Income Test

- The first $400 of total monthly net employment and self-employment income is fully exempt
- If an individual has a cohabitating partner the combined exempt amount is $975 per month
- For each dollar above the exempt amount the AISH benefit is decreased by 50% for each additional dollar of income earned. AISH payments will be decreased until they reach only $1 when income is $2,137 per month and $2,925 for an individual and their cohabitating partner, respectively.

Asset Test

- The assets for an individual and their cohabitating partner cannot exceed $100,000 (this does not include principal residence, a vehicle, a second vehicle adapted for the disability, clothing and reasonable household items.)
- In order to be considered for the AISH program an individual must apply for all other income benefits they are eligible for, must be a resident of Alberta and must not reside in an institution.

British Columbia

Eligibility

BC has the Employment and Assistance for Persons with Disabilities. To be eligible:

- The individual must have a severe physical or mental impairment that is expected to continue for at least two years
- The impairment must significantly restrict their ability to perform daily living activities and require assistance from another person, an assistive device or an assistance animal
- They must be 18 years of age or older

Income Test

- Earnings of $500 per month are permitted

Asset Test

- A single person cannot have assets of more than $3,000 to ensure their Persons with Disabilities funding is not affected
- A couple or one or two parent families cannot have assets of more than $5,000

There are exceptions to these, as outlined in the table below:

Item	Maximum Amount
Maximum cash surrender value for an uncashed life insurance policy to be exempt	$1,500
Maximum for a motor vehicle to be exempt	$5,000
Maximum for a reserve account established to meet anticipated future business expenses to be exempt	$5,000
Lifetime maximum for a non-discretionary trust fund to be exempt	$100,000
Single person exemption	$1,500 (includes $150 cash maximum for applicants)
Couples or one or two parent families exemption	$2,500 (includes $250 cash maximum for applicants)

Manitoba

Eligibility

Manitoba has the Employment and Income Assistance Program (EIA). To be eligible:

- The individual must have a mental or physical disability that is likely to last more than 90 days and keeps the individual from earning enough money to pay for their family's basic needs
- They must live in Manitoba
- They must be 18 years of age or older

Income Test

- Income of up to $200 net is permitted per month without affecting benefits
- Ongoing cash contributions of up to $500 per month are permitted from family or friends

Asset Test

- Liquid assets of $4,000 per person to a maximum of $16,000 per family are permitted
- The following items are also exempt:

  – Primary residence
  – Automobiles
  – Other essential property
  – Children's trust funds up to $25,000
  – Registered Education Savings Plans (RESPs)
  – Approved Individual Development Accounts
  – EIA Disability Trust Funds
  – RDSPs

New Brunswick

Eligibility

- In order to be eligible for income assistance in New Brunswick an individual must have been certified as disabled by the Medical Advisory Board
- They must be in financial need, as determined by the Social Development Department's regular intake process
- They must be 18 years of age or older

Income Test

- A maximum of $800 per month associated with income from an RDSP or a trust fund is permitted

Asset Test

- Liquid assets of less than $3,000 for each person in the household who is disabled, and an additional $1,000 for each person in the household who is not disabled are permitted
- Individuals are able to have documented trust funds and accumulated interest up to $200,000

Newfoundland and Labrador

Eligibility

Newfoundland and Labrador offer income support. To be eligible:

- The individual's assessed need for income support is determined to be greater than their income and assets
- They must be a resident of Newfoundland or Labrador

Income Test

Determining whether an individual is eligible for income support will depend on their needs versus their resources. The following items will be evaluated:

- The number of adults in the family
- The living accommodations
- Any other special needs that may exist

Asset Test

- To be eligible, persons with disabilities cannot have liquid assets greater than $3,000*
- The maximum amount that can be held in a Henson Trust is $100,000

Northwest Territories

Eligibility

- Northwest Territories offers the Disability Allowance for Persons with Disabilities on Income Support in the NWT. In order to qualify for the Disability Allowance an individual must be receiving Income Assistance.

Income Test

- An individual is not permitted to earn more than $200 per month if they are single or $400 per month if they have a family

Asset Test

- To be eligible, persons with disabilities cannot have liquid assets greater than $5,000*

Nova Scotia

Eligibility

Nova Scotia offers the Direct Family Support (DFS) program. To be eligible:

The individual must have one or more of the following:

– Intellectual disability
– Long- term mental illness
– Physical disability

- They must be a permanent resident of Nova Scotia and be 19 years of age or over
- The individual and family must have unmet needs as identified through the assessment process

Income Test

The following items will affect the amount of support an individual will receive:

- Child maintenance
- Pension plans including Canada Pension Plan; Employment Insurance
- An individual will continue to receive Income Assistance until the amount they earn pays for all their basic expenses

Asset Test

- To be eligible, persons with disabilities cannot have liquid assets greater than $500*

Nunavut

Nunavut has challenged Henson Trusts and may not permit these types of Trusts. There is no test case as of yet.

Eligibility

Nunavut has an income support program that consists of basic benefits and extended benefits.

- The basic benefits cover the cost of food, shelter, and utilities
- The extended benefits are available to persons with disabilities and provide allowances for clothing, furnishings, security deposits, emergencies and day care

Income Test

- An individual cannot have monthly earnings of more than $200 per month for a single person and $400 per month for a family

Asset Test

- To be eligible, persons with disabilities cannot have assets in excess of $5,000

Ontario

Eligibility

Ontario has the Ontario Disability Support Program (ODSP). To be eligible:

- The individual must have a substantial physical or mental health problem that is expected to last a year or more
- The health problem must substantially limit their ability to work, look after themselves, or carry out a normal daily activity at home or in the community

Income Test

- The individual cannot earn more than $6,000 annually

Asset Test

- The maximum assets someone can hold are $5,000, $7,500 for a couple and $500 for each dependant other than a spouse
- The following assets are exempt from this test:

  – Principal residence
  – A second property can be exempt if the Director determines that the property is necessary for the health or well-being of a member of the benefit unit

Prince Edward Island

Eligibility

Prince Edward Island has the Social Assistance Program. Social assistance is intended for persons who do not have the following resources: sufficient income to meet basic needs; family resources; short-term credit; sufficient assets; and sufficient employment or training opportunity.

Income Test

- For a single person the income exemption is 100% of the first $75 per month plus 10% of the balance of net earned income
- For families it is 100% of the first $125 plus 10% of the balance of net earned income

Asset Test

- A single person with a disability is permitted to have liquid assets of less than $900
- A person living with a spouse where one or both are persons have a disability are permitted to have combined liquid assets of less than $1,800

Quebec

Eligibility

Quebec offers the Financial Assistance for Domestic Help Services. This program is available to:

- Permanent or temporary residents of Quebec who are eligible for the program through the Health Insurance Act
- They must be 18 years of age or over

Income Test

- The maximum that can be withdrawn from an RDSP is $300 per month for an adult and $340 per month for a couple

Asset Test

- To be eligible, a single person with disabilities cannot have liquid assets greater than $1,500 and a family cannot have more than $2,500

Saskatchewan

Eligibility

Saskatchewan offers the Saskatchewan Assistance Program (SAP), which is a program of last resort for families and individuals who for various reasons, including disability, cannot meet basic living costs. Under this program financial need is determined by taking into account an individual's needs in comparison to resources available.

Income Test

- A single disabled earner is able to earn $200 + 25% of the next $500 for a maximum of $325 per month
- A childless couple is eligible to earn $250 + 25% of the next $700 to a maximum of $425, and families are able to earn $200 per month

Asset Test

- To be eligible, persons with disabilities cannot have liquid assets greater than $1,500*

Yukon

Eligibility

- The Yukon offers the Yukon Social Assistance program to individuals who have needs that are greater than their resources. This program is available to individuals with disabilities in addition to other individuals in the Yukon.
- The Yukon Supplementary Allowance is available to individuals who are 19 years of age or over, and who are found, through an assessment process, to be unemployable by reason of a severe and prolonged disability
- These individuals will receive an allowance of $250 per month which is not included as income

Income Test

- An individual can have income of $100 per month for a single person and $150 per month for families without having their benefits affected

Asset Test

- To be eligible, persons with disabilities cannot have liquid assets greater than $1,500*

Summary

Deciding whether to set up an RDSP, Henson Trust, TFSA or combination thereof is a difficult decision and it is necessary to consider the pros and cons of each. Speak with a financial advisor to help you navigate through the various options and help determine the best fit for you.

** These are 2009 liquid asset exemption levels.*

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This should not be construed to be legal or tax advice, as each client's situation is different. Please contact your own legal and tax advisor.

The Canada Disability Savings Grant (CDSG) and the Canada Disability Savings Bond (CDSB) are provided by the Government of Canada. Eligibility depends on family income levels. Please speak to a tax advisor about RDSP's special rules; any redemptions may require repayment of the CDSG and CDSB.

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