

Taxation of Trusts Update

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The Six-Minute Estates Lawyer 2019



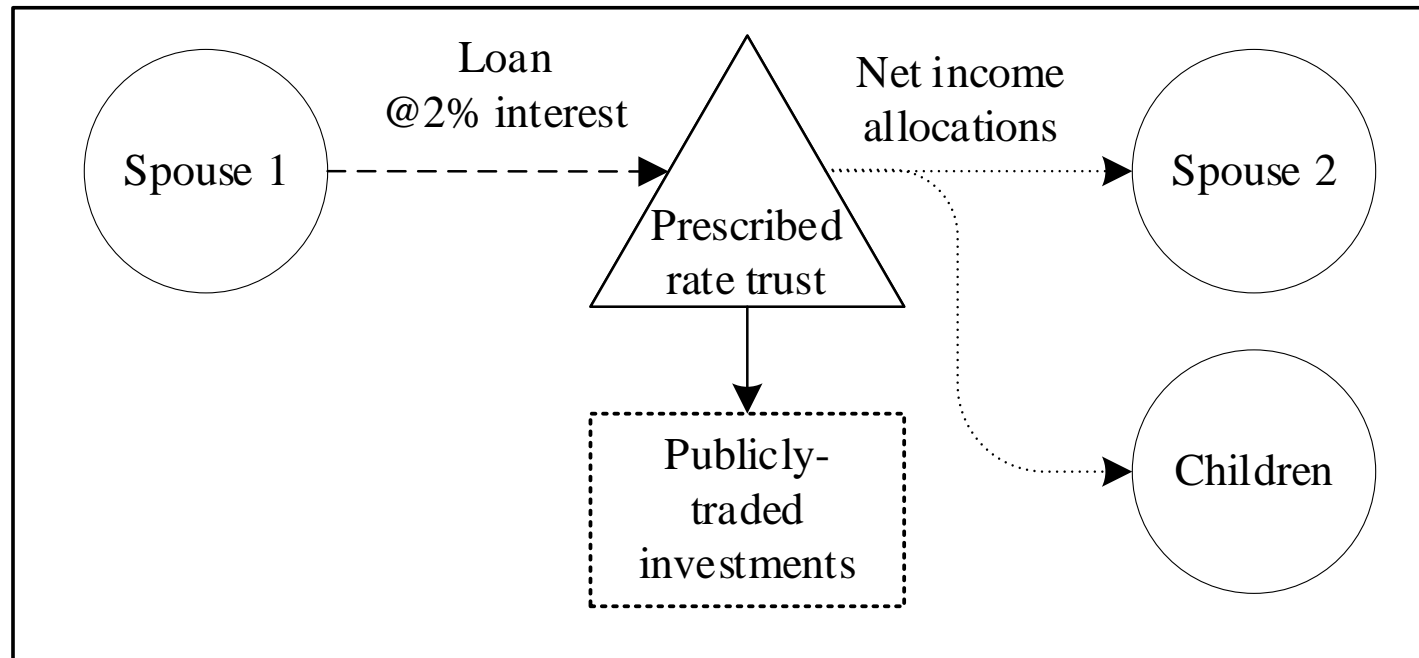
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Tax on Split Income (“TOSI”)

- Certain types of income from private business (dividends and capital gains on shares most common) subject to top marginal tax rate (53.53% in Ontario) where they exceed “reasonable amount”
- Effective January 1, 2018
- TOSI rules complicated to apply
- Several exclusions relevant for estate planning
 - Exclusions and pass-on qualities for inherited property
 - Capital gain realized on death excluded

Prescribed Rate Trusts Planning

- Planning utilizes exclusions from attribution rules and TOSI rules
 - Allows some income splitting with minors and adult family members

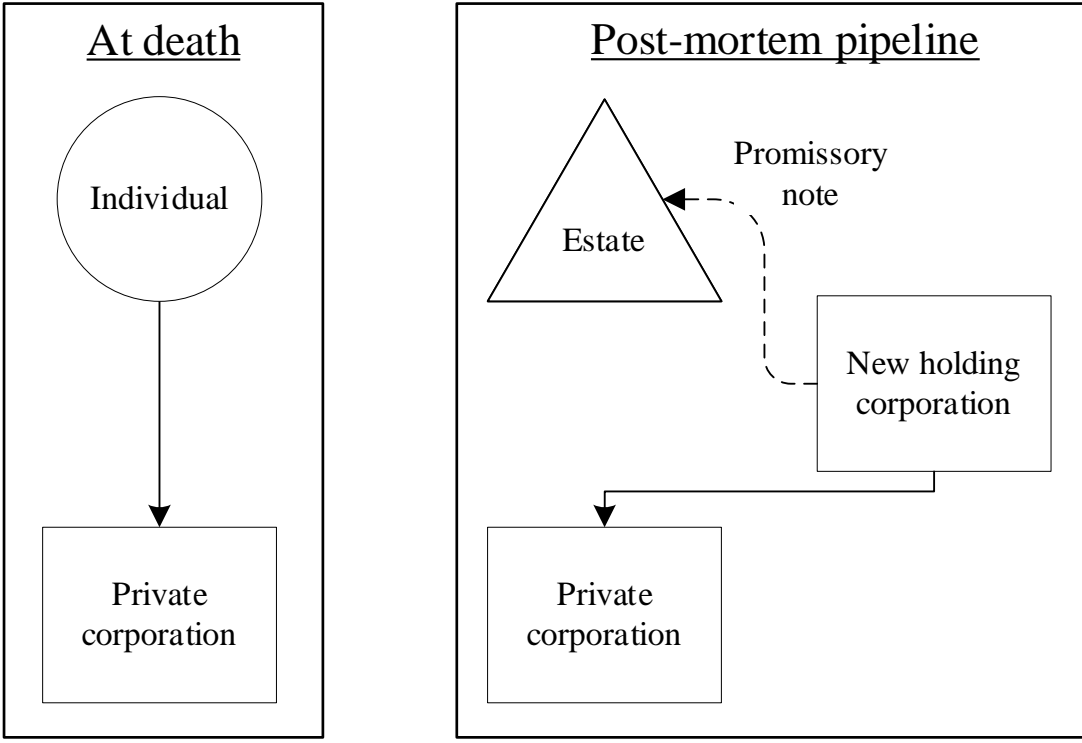


Trust Reporting Requirements

- Will apply in respect of 2021 and subsequent taxation years
- Applies (generally) to trusts that are:
 - “Express trusts” resident in Canada; or
 - Non-resident trusts that are required to file a T3
- Graduated rate estates and trusts with certain *de minimis* property excluded
- Such trusts will report identity of all trustees, beneficiaries, settlors and persons with the ability to exercise control over trustee distributions

Post-mortem Pipeline

- Common transaction to efficiently deal with inherent “double taxation” when individual dies holding shares of a private corporation



Post-mortem Pipeline (con't)

- Proposed legislation in 2017 Private Corporations Paper cast doubt on this planning – proposal was withdrawn after criticism
- CRA continues to issue positive rulings
- Beware: 2018 amendments to section 212.1 cause issues if beneficiaries include a non-resident
 - Careful planning required to avoid double tax