Wealth Management

the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC FAMILY OFFICE SERVICES

Aaron Fennell, MBA, CFA
Portfolio Manager & Investment Advisor
Tel: 416-313-6397
aaron.fennell@rbc.com

RBC Dominion Securities
181 Bay Street, Suite 2350
Toronto, ON M5J 2T3
www.aaronwfennell.com

# RBC DS Trust Agreement

## Considerations before establishing this trust

As part of your financial and estate plans, you may consider establishing a trust for the benefit of a family member, such as your minor child or grandchild. A trust may be used as a means of providing financial benefits for your intended beneficiary. It may also be used as part of an income splitting and tax savings strategy.

At RBC Dominion Securities (DS), there's an option to open an account using our off-the-shelf RBC DS Trust Agreement (the DS Trust Agreement). This account is often referred to as the "DS Formal Trust". When you and your appointed trustee(s) sign the DS Trust Agreement, you create an irrevocable formal trust. It's therefore important that you review the DS Trust Agreement with a qualified tax and legal advisor before signing it. Doing so will ensure you understand the terms of the trust, as well as the tax reporting and legal obligations that may arise as a result of entering into this arrangement.

This article highlights key information about a trust established using the DS Trust Agreement, as well as the suitability and taxation of this trust. Depending on your current and future financial and estate plans, there may be other options, including a trust agreement drafted by a qualified lawyer, that are more suitable for accomplishing your objectives.

### What is a trust?

A trust is not a separate legal entity like a corporation, although it is treated as a separate taxpayer for tax purposes. A trust is a legal arrangement or relationship. An individual, known as the "settlor," creates a trust by entrusting some or all of their property to a trustee of their choosing. The trustee holds legal title to the trust property for the benefit of one or more individuals (the beneficiary), specified by the settlor. The trustee owes a fiduciary duty to the beneficiary. This means they are required to act in the best interest of the beneficiary, who is the beneficial owner of the

trust property. The trustee must administer the trust in accordance with the terms of the trust agreement and the laws that govern the trust.

A trust can be created during the lifetime of the settlor (known as an inter vivos or living trust) or on their death (known as a testamentary trust). In general, a trust will come into existence with the transfer of at least one asset to the trustee.

For a trust to be valid, three certainties must be met:

1. Certainty of intention – there should be a clear intention to create a trust by the settlor;
2. Certainty of property – there must be certainty as to what property is being held upon trust and the beneficial interests in the trust property must also be certain; and
3. Certainty of beneficiary – the beneficiary of the trust must be clearly identifiable by name or class.

Under the Civil Code of Quebec, a trust is created by the transfer of property from the settlor of the trust to the trustee. The trust constitutes a distinct patrimony.

Although a trust can be created informally (in common law jurisdictions), as demonstrated by the actions of the parties to the trust, it's generally preferable to formally establish a trust by signing a legal document referred to as a trust agreement. A trust agreement helps ensure the parties to and terms of the trust are known. The trust agreement indicates the settlor, trustee, beneficiary or beneficiaries, the powers and restrictions placed on the trustee, and how and when income and capital are to be distributed to a beneficiary and to which beneficiary. By formally documenting the parties to and terms of the trust, the potential for mismanagement of the trust assets or misinterpretation of the trust terms is reduced.

## Parties to a trust

### Settlor

A settlor is the person who creates the trust by transferring property to a trustee to be held and administered for the benefit of the beneficiary.

### Contributor

A contributor is a person who transfers property to a trust for the benefit of the beneficiary. Often, the settlor is a contributor to the trust; however, a third party can also be a contributor.

### Trustee

A trustee is a person or trust company appointed to administer property entrusted to them for the benefit of the beneficiary. A trustee's responsibilities are governed by the terms of the trust agreement and laws of the jurisdiction that govern the trust. Typical obligations include:

- Carrying out the express terms of the trust arrangement;
- Prudently investing the trust assets;
- Remaining impartial among beneficiaries;
- Accounting for their actions and keeping the beneficiaries informed about the trust; and
- Administering the trust in the best interest of the beneficiaries.

A trust can be created during the lifetime of the settlor (known as an inter vivos or living trust) or on their death (known as a testamentary trust). In general, a trust will come into existence with the transfer of at least one asset to the trustee.

### Beneficiary

A beneficiary is a person entitled to the use and enjoyment of the trust property. A beneficiary might be entitled to the income of the trust, capital of the trust, or both.

### Overlapping roles

While the roles of the settlor, contributor, trustee and beneficiary are all different, the people acting in these capacities can overlap. For example, in general, the settlor of the trust can also be a trustee and/or a beneficiary of a trust. Note that in Quebec, a settlor or beneficiary cannot be a sole trustee.

Some combinations of overlapping roles can have tax or legal implications. For example, the super attribution rules, discussed later, may apply where the settlor or contributor is the sole trustee of the trust, one of two trustees or a capital beneficiary of the trust. Also, while a trustee can be a beneficiary of a trust, they may want to take extra care to ensure they are fulfilling their fiduciary duties and acting in the best interest of all beneficiaries of the trust.

When establishing a trust, including one established using the DS Trust Agreement, you need to carefully consider who will fulfill each role. This will help ensure the trust is structured in a manner that will achieve your objectives.

## A trust established using the DS Trust Agreement

When you, the settlor, and your appointed trustee(s), sign the DS Trust Agreement and you transfer assets to the trust, you are creating an inter vivos trust. It's important to note that the trust and all transfers made to it are

irrevocable. This means the gifts or transfers of assets to the trust cannot be recovered by you, the settlor, or any other contributor/donor (if different than you).

As settlor, you can appoint up to three trustees to administer the trust. In general, the appointed trustees must act jointly. If three trustees are appointed to administer the trust, the DS Trust Agreement provides for a majority of the trustees to be able to act in order to avoid a stalemate. When determining how many trustees to appoint, you should consider whether your intended trustees will work well together, as well as their availability and the practicality of them making decisions and providing instructions together. Although you may wish to maintain control of the assets transferred to the trust, you should consider the tax implications that may result if you, the settlor, are the sole or one of two trustees of the trust. As well, if you reside in Quebec, a sole trustee cannot be a settlor or beneficiary of the trust.

The terms of the DS Trust Agreement address the resignation and appointment of a trustee in the event a trustee dies, becomes incapable or is unable to act. These provisions should be reviewed with a qualified legal advisor.

You can name up to six individuals as the beneficiaries on the DS Trust Agreement. There is no restriction as to the age of the beneficiary. You can name both minor and adult beneficiaries. If your named beneficiary is a minor, distributions from the trust cannot be made directly to them (as a minor beneficiary cannot provide a valid discharge to a trustee to help relieve them of personal liability). You should review the DS Trust Agreement with a qualified legal advisor to fully understand any conditions with respect to distributions out of the trust for the benefit of a minor beneficiary.

If your named beneficiary is an adult, you should also review the terms of the trust with a qualified legal advisor to determine whether they have the ability to make a claim to the trust funds and terminate the trust earlier than you may have intended.

A trust established using the DS Trust Agreement is a discretionary trust. This means the trustee(s) has the absolute discretion to pay out any or all of the income or capital of the trust to any one of your named beneficiaries, to the exclusion of all of the others. If you wish to provide specific conditions and circumstances as to when the trust funds should be used for the benefit of your intended beneficiary, the DS Trust Agreement should not be used to create the trust. Rather, a trust agreement that meets your specific wishes should be drafted by a qualified lawyer.

As settlor, you can appoint up to three trustees to administer the trust. In general, the appointed trustees must act jointly. If three trustees are appointed to administer the trust, the DS Trust Agreement provides for a majority of the trustees to be able to act in order to avoid a stalemate.

## Suitability of a trust established using the DS Trust Agreement

The DS Trust Agreement is a simple form of a trust agreement. It generally is most appropriate to use where you wish to gift some money for the benefit of a minor beneficiary and invest the funds on their behalf.

The DS Trust Agreement is not suitable where sizeable amounts will be contributed to the trust, as it does not deal with all of the usual contingencies and does not contain all of the powers found in a more explicit trust document drafted by a lawyer. For example, it does not provide for a contingent beneficiary if a beneficiary passes away while the trust is still in existence.

It's generally recommended that the DS Trust Agreement only be utilized where all the parties to the trust, including the settlor, trustee and beneficiary are residents of Canada. The DS Trust Agreement specifically provides that a non-resident of Canada shall not be permitted to be a trustee and will cease to be a trustee if they become a non-resident of Canada. If, after settling the trust, any person involved with the trust becomes a non-resident of Canada, it's up to those involved to seek advice from a qualified professional about any income tax and legal implications that may arise for them and the trust both in Canada and in the person's new jurisdiction of residence.

As well, it's generally recommended that the DS Trust Agreement not be used where any person involved is a U.S. person living in Canada (i.e. U.S. citizen or green card holder). If anyone involved in the trust is a U.S. person living in Canada, they should seek qualified cross-border tax advice before establishing this trust.

The DS Trust Agreement should not be used where the funds or assets to be contributed to the trust are owned by a minor (for example, the source of the funds is employment income earned by a minor or an inheritance or gift received by a minor). In general, a minor does not have the legal capacity to make a gift of the assets they own to a trustee to be held for their benefit. If you are managing a minor child's funds on their behalf as a guardian of property or tutor (in Quebec), those funds

should also not be contributed to a trust established using the DS Trust Agreement. Rather, a guardianship or tutorship account should be opened.

If you're looking to set aside funds in a trust for a disabled beneficiary, a trust established using the DS Trust Agreement may also not be appropriate. Any funds held in this trust may impact the beneficiary's provincial or territorial government disability benefits. You may wish to consult with a qualified legal advisor about drafting a trust agreement in a manner that preserves your beneficiary's eligibility for government disability support.

As mentioned, the DS Trust Agreement is a simple trust agreement, the terms of which cannot be modified. If you would like to include more robust or comprehensive provisions in your trust agreement, you will need to have one drafted by a qualified legal advisor.

If you're looking to save funds for your child's or grandchild's future needs, there may be other saving vehicles that can be used that do not involve the same tax and legal complexities associated with creating and administering a trust. For example, if you're interested in saving for your child's or grandchild's post-secondary education, you could consider contributing funds to a registered education savings plan (RESP). Income earned in an RESP is not subject to tax until it's withdrawn. The government also helps contribute to your savings by providing grants when you contribute to an RESP. When your child or grandchild attends a qualifying post-secondary school and withdraws the income and grant from the RESP, it's taxed in their hands at their marginal tax rate (which oftentimes is quite low). It's important to note that there is a $50,000 lifetime contribution limit per RESP beneficiary.

Alternatively, you could also choose to set aside funds in a separate account owned by you and earmark them for your intended beneficiary. You would continue to report all of the income and capital gains earned in this account for tax purposes. Your Will would also need to address how this account is to be distributed on your death, to ensure the funds are given to or used for your intended beneficiary.

## Taxation of a trust established using the DS Trust Agreement

### Trust reporting requirements

For Canadian income tax purposes, a trust is treated as a separate taxpayer, distinct from the settlor and beneficiary. Under the Income Tax Act (ITA), as well as the Canada Revenue Agency's (CRA's) current administrative position, a trust needs to file a tax return (known as a T3 return) in certain circumstances. For example, a trust will be required to file a T3 return in a tax year if the trust has tax payable, has a taxable capital gain, is requested to file, or holds property that's subject to the super attribution rules (discussed later).

If you're looking to save funds for your child's or grandchild's future needs, there may be other saving vehicles that can be used that do not involve the same tax and legal complexities associated with creating and administering a trust.

In recent years, the government introduced enhanced income tax reporting requirements for certain trusts. Under the new rules, an "express trust" that is resident in Canada for a taxation year that ends after December 30, 2023, is required to file a tax return, unless it meets certain exceptions. An express trust is generally understood to be a trust that's deliberately created by a settlor. A non-express trust is a trust that's imposed or created by courts, such as a resulting trust or a constructive trust.

These new reporting requirements have expanded the number of trusts required to file a T3 return. They have also increased the amount of information that needs to be included when a trust tax return is filed. The new reporting requirements have placed a heavier burden on a trustee to gather and report information. These potentially onerous reporting requirements should be taken into consideration when deciding whether it's worthwhile to create a trust, including one established using the DS Trust Agreement. For more information on the trust reporting requirements, ask your RBC advisor for a separate article on that topic.

### Assets transferred to the trust

When you, the settlor, transfer non-cash assets to an account opened using the DS Trust Agreement, you may trigger immediate tax consequences. In general, the assets are treated as if they have been sold at fair market value (FMV). Any unrealized capital gain or loss is deemed to be realized and should be declared on your personal tax return. If you realize a capital loss, you may not be able to claim the loss in certain circumstances due to the superficial loss rules. Ask your RBC advisor for an article on the superficial loss rules for more information.

### Taxation of income and capital gains earned in a trust established using the DS Trust Agreement, where the super attribution rules apply

The ITA contains a set of super attribution rules that apply to trusts. These rules may apply where the person who transfers property to the trust (e.g. the settlor or contributor) retains control over the property or where

the property can revert back to the settlor or contributor. An example of a situation where this may occur is where the settlor or contributor is the sole trustee or one of two trustees of the trust, or is a capital beneficiary of the trust. If the super attribution rules apply, all income/losses and capital gains/losses earned on the transferred property will be attributed back to the settlor or contributor and taxed in their hands at their marginal tax rate. It's the CRA's administrative position, however, that a T3 return still must be filed.

If the intention of setting up the trust is to achieve income splitting, the application of the super attribution rules has the result of defeating any income splitting opportunity. It's therefore important that you seek advice from a qualified tax advisor prior to establishing a trust using the DS Trust Agreement to ensure it's structured properly to achieve your objectives.

### Taxation of income and capital gains earned in a trust established using the DS Trust Agreement, where the super attribution rules do not apply

#### Income and capital gains earned but not paid or made payable to the beneficiaries

In general, all income and capital gains earned on the trust's capital for the year are taxable in the trust. A trust can claim a deduction for any income or capital gains that have been paid or made payable to a beneficiary of the trust during the year. Any income or capital gains earned in the trust and not paid or made payable to a beneficiary are taxed in the trust at the top individual marginal tax rate for the trust's province or territory of residence. The trust is not entitled to claim a personal tax credit.

As trustee, you should seek advice from a qualified tax and legal advisor as to your ability to make income and capital gains paid or payable to a beneficiary of the trust, as well as the steps you need to take to do so, in accordance with the trust terms.

#### Income or capital gains paid or made payable to a beneficiary

Subject to the attribution rules, income or capital gains paid or made payable to or used for the support or benefit of a Canadian resident beneficiary are included in the beneficiary's tax return and subject to tax at the beneficiary's marginal tax rate in their province or territory of residence.

#### The attribution rules

You can only make irrevocable gifts to a trust established using the DS Trust Agreement. The attribution rules apply where you, the contributor, make a gift to a trust, and income and capital gains earned on that property is allocated to your spouse, as beneficiary. In such a case, the income and capital gains will be attributed back to you and taxed in your hands at your marginal tax rate.

In general, all income and capital gains earned on the trust's capital for the year are taxable in the trust. A trust can claim a deduction for any income or capital gains that have been paid or made payable to a beneficiary of the trust during the year.

The attribution rules also apply where you, the contributor, make a gift to a trust, and income is allocated to a non-arm's length minor beneficiary, such as a child, grandchild, niece or nephew. In such a case, the income will be attributed back to you and taxed in your hands at your marginal tax rate. Any capital gains that are allocated to the non-arm's length minor beneficiary, however, can be taxed in their hands.

As a result of the attribution rules, the income splitting benefits of a trust established using the DS Trust Agreement may be limited where it is set up for the benefit of a spouse or a non-arm's length minor beneficiary.

## Winding up a trust established using the DS Trust Agreement

You will want to review the terms of the DS Trust Agreement with a qualified legal advisor to determine when and how the trust can be wound up. As previously mentioned, distributions from the trust cannot be made directly to a minor beneficiary.

From an income tax perspective, distributions of income will be taxable in the beneficiary's hands, subject to the attribution and super attribution rules. If the trustee makes a distribution of capital to a beneficiary, the assets can be received by the beneficiary tax-free. The trustee of the trust can choose to make the capital distribution in cash or in-kind. From an income tax perspective, if the trustee makes the distribution in-kind to a Canadian resident beneficiary, this can generally be done on a tax-deferred basis, unless the super attribution rules applied to the trust at any time. If the super attribution rules apply, the capital will generally need to be distributed to a beneficiary at FMV, unless the beneficiary is the contributor to the trust or the contributor's spouse, or if the contributor has passed away. Capital distributions to a non-resident beneficiary must also be done at FMV, triggering a taxable disposition in the trust.

## Evaluating the merits of a trust established using the DS Trust Agreement

There are many reasons you may wish to establish a trust. Regardless of the reasons, it's essential that the trust be properly structured to achieve your goals. Because of the complexity that comes along with trust law and taxation, it's important to consult with a qualified legal and tax advisor to determine whether establishing a trust using the DS Trust Agreement makes sense in your particular circumstance or whether another vehicle may be more suitable.

*This article may contain strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal and/or insurance advisor before acting on any of the information in this article.*




Wealth Management

This document has been prepared for use by the RBC Wealth Management member companies, RBC Dominion Securities Inc. (RBC DS)*, RBC Phillips, Hager & North Investment Counsel Inc. (RBC PH&N IC), RBC Wealth Management Financial Services Inc. (RBC WMFS), Royal Trust Corporation of Canada and The Royal Trust Company (collectively, the "Companies") and their affiliates, RBC Direct Investing Inc. (RBC DI)* and Royal Mutual Funds Inc. (RMFI). *Member – Canadian Investor Protection Fund. Each of the Companies, their affiliates and the Royal Bank of Canada are separate corporate entities which are affiliated. "RBC advisor" refers to Private Bankers who are employees of Royal Bank of Canada and mutual fund representatives of RMFI, Investment Counsellors who are employees of RBC PH&N IC, Senior Trust Advisors and Trust Officers who are employees of The Royal Trust Company or Royal Trust Corporation of Canada, or Investment Advisors who are employees of RBC DS. In Quebec, financial planning services are provided by RMFI or RBC WMFS and each is licensed as a financial services firm in that province. In the rest of Canada, financial planning services are available through RMFI or RBC DS. Estate and trust services are provided by Royal Trust Corporation of Canada and The Royal Trust Company. If specific products or services are not offered by one of the Companies, RBC DI or RMFI, clients may request a referral to another RBC partner. Insurance products are offered through RBC Wealth Management Financial Services Inc., a subsidiary of RBC Dominion Securities Inc. When providing life insurance products in all provinces except Quebec, Investment Advisors are acting as Insurance Representatives of RBC Wealth Management Financial Services Inc. In Quebec, Investment Advisors are acting as Financial Security Advisors of RBC Wealth Management Financial Services Inc. RBC Wealth Management Financial Services Inc. is licensed as a financial services firm in the province of Quebec. The strategies, advice and technical content in this publication are provided for the general guidance and benefit of our clients, based on information believed to be accurate and complete, but we cannot guarantee its accuracy or completeness. This publication is not intended as nor does it constitute tax or legal advice. Readers should consult a qualified legal, tax or other professional advisor when planning to implement a strategy. This will ensure that their individual circumstances have been considered properly and that action is taken on the latest available information. Interest rates, market conditions, tax rules, and other investment factors are subject to change. This information is not investment advice and should only be used in conjunction with a discussion with your RBC advisor. None of the Companies, RMFI, RBC WMFS, RBC DI, Royal Bank of Canada or any of its affiliates or any other person accepts any liability whatsoever for any direct or consequential loss arising from any use of this report or the information contained herein. In certain branch locations, one or more of the Companies may carry on business from premises shared with other Royal Bank of Canada affiliates. Notwithstanding this fact, each of the Companies is a separate business and personal information and confidential information relating to client accounts can only be disclosed to other RBC affiliates if required to service your needs, by law or with your consent. Under the RBC Code of Conduct, RBC Privacy Principles and RBC Conflict of Interest Policy confidential information may not be shared between RBC affiliates without a valid reason. ®/™ Trademark(s) of Royal Bank of Canada. Used under licence. © Royal Bank of Canada 2025. All rights reserved.

NAV0287 (12/2025)