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## CONSIDERATIONS FOR CHARITABLE GIVING UNDER ALTER EGO TRUSTS AND JOINT PARTNER TRUSTS

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Alter Ego Trusts (AET) and Joint Partner Trusts (JPT) are estate planning tools (also known as “will-substitutes”) that are available for Canadian residents who are 65 years of age or older. While there are advantages associated with the use of AET/JPTs, there may also be issues that clients should consider when engaging in the planning process. For example, if a client intends to make charitable donations upon their death, they should consider the following with their legal, tax, and other professional advisors:

### How Charitable Donations on Death Can Reduce Taxes

Generally speaking, an individual or an estate that makes a donation to a registered charity that is a “qualified donee” (as defined in the *Income Tax Act* (the “ITA”)) may be eligible to receive a donation tax credit. Your total donations limit will normally be 75% of your net income for the year. On death, the limit may increase up to 100% of your net income for your terminal return. Without accounting for other rules that may apply (e.g., Graduated Rate Estate or “GRE” rules), the tax credit can be applied during the first year of death or for the previous tax year.

### What Happens Under a Will for Charitable Donations

If you make a will that directs a gift of specific property (such as a fixed dollar amount or percentage of the residue of your estate) to be made to a qualified donee, then your estate may receive a corresponding donation tax credit for that gift. The bequest must be clearly stated to reflect your “donative intent”.

### Making Charitable Donations Through AETs and JPTs

However, if an AET or JPT is used, a charitable donation must be carefully planned, as your “donative intent” is not always clear.

The CRA has previously stated that if the settlor (creator) of the AET dies (or the last remaining settlor in the case of JPTs), and the trust directs that the trustee must (i.e., mandatory) distribute a fixed dollar amount or percentage of the balance of the trust’s assets, this may not qualify for a donation tax credit. That is because for there to be “donative intent”, the gift must be a voluntary transfer of property by a donor, and





no benefit or consideration must flow back to the donor.

Instead, in order to qualify for a donation tax credit, the AET/JPT should give the trustee discretionary power to make the charitable gift. For example, the trust may give the trustee the power to select *which charity or charities* will receive parts of the trust's assets, or the power to determine *how much to give*.

As the settlor of the trust, you must therefore depend on and have confidence in your trustee after your death to honour your wishes through the exercise of their discretion after your death.

### **Timing of Donations Under AETs and JPTs**

Another consideration is when donations are made after death.

For example, in order to qualify for a tax receipt for that particular tax year, a gift to charity must be made within 90 days following the end of the calendar year in which the settlor dies (see section 118.1(1)(c)(ii)(C) of the ITA).

Furthermore, although an AET/JPT may carry forward charitable tax credits for up to 5 years, they cannot be carried back (meaning the trust cannot apply those credits to previous taxation years).

### **Conclusion**

If implemented correctly, charitable giving may be an effective strategy to increase tax efficiency.

To learn more about this, contact Navneet Aujla or any other member of our Estate & Wealth Advisory Group.

