



# Advanced Planning with RDSPs

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A Registered Disability Savings Plan (RDSP) is an effective long-term savings vehicle that can be used to help provide for the financial security for eligible persons with disabilities.

A main feature of the plan is the availability of government funds deposited directly into the plan in the form of Canada Disability Savings Grants and, potentially, Canada Disability Savings Bonds.

## What is an RDSP?

An RDSP is a disability savings plan (DSP), an arrangement between the issuer (a trust company) and one or more other entities, registered with the Canada Revenue Agency (CRA), that permits contributions and government grants and bonds to be invested and used by the issuer to ultimately make payments to the beneficiary who is entitled to claim the disability tax credit (DTC).

## Disability Tax Credit (DTC) eligible individual

A DTC-eligible individual for a particular year is an individual who is entitled to claim the disability tax credit (DTC).

The DTC is a non-refundable tax credit that reduces the amount of tax that an individual with a severe and prolonged physical or mental disability would otherwise have to pay. In order to qualify for the DTC, a qualified practitioner (generally, a medical doctor, nurse practitioner or other medical specialist) must certify on form *T2201, Disability Tax Credit Certificate*, that the disabled person meets the appropriate criteria set out in the Income Tax Act. The CRA must ultimately approve the completed form.

An RDSP must generally be terminated by the end of the year following the year in which the beneficiary dies.

## Holder

The holder of an RDSP is the principal decision-maker when it comes to choosing the types of investments in the RDSP. If the plan permits, the holder can determine both the amount and timing of payments from the plan.

The holder can be the disabled person, a legal parent or guardian, tutor, curator or public department, agency or institution that is legally authorized to act on behalf of the beneficiary, as discussed below in the definition of "qualifying person." The beneficiary's age and mental capacity will determine which of these persons or entities may be the holder.

A legal parent can open a plan as the holder only if the beneficiary is their child and a minor. (Temporary rules in effect until the end of 2023 provide an exception where an adult beneficiary's contractual capacity is in doubt, as described at the end of this section.)

Other than where the disabled beneficiary's legal parent opened the RDSP when the beneficiary was a minor, the beneficiary becomes the holder of the RDSP once she reaches the age of majority. So, if a legal guardian (who is not the parent) of a minor child opens up an RDSP for a child, the guardian would no longer be the plan holder once that child reaches the age of majority. The beneficiary would become the holder. For a

mentally incapable adult beneficiary, whoever becomes their guardian could become the holder in place of the beneficiary.

Note that a legal parent who opened the plan when the beneficiary was a minor is specifically exempted from this condition so as to prevent a child from forcing a parent to give up control of the RDSP; however, upon reaching majority, the child has the right, but not the obligation, to become a holder to act with the parent or parents. If the child is not mentally capable, presumably the child could not exercise that right.

A disability savings plan can have several possible holders during its existence and can have more than one holder at a given time.

For example, the parents of a minor child with a disability can set up an RDSP for their child with both parents as holders of the plan. Once the beneficiary reaches the age of majority, the beneficiary could become a holder as well. In this case, the parents would be the holders initially and the child would become a third holder upon reaching the age of majority. The plan could stipulate whether decisions must be made jointly or severally.

Consider a second scenario of parents with an adult child who is mentally incapable. Let's say one parent had set up the RDSP for a minor child. Upon that parent's death, the surviving parent could become the successor holder of the RDSP as long as the beneficiary was still under the age of majority and the original parent had named the surviving parent as the person entitled to become the holder. If, however, the original holder had named the surviving parent to be the successor holder but died after the beneficiary came of age, then the surviving parent could take on the role of holder only if the surviving parent was in fact the guardian of property of the beneficiary.

In a third example, let's assume an RDSP was set up by a widowed mother for her minor child who was not mentally incapacitated. The mother passes away while the child is still a minor and the local Children's Aid Society (CAS) steps in and assumes legal custody of the child and becomes the holder of the RDSP. Once the child reaches the age of majority, the child must become the holder and thus the plan will have had three successive holders: the mother, the CAS and finally, the child herself.

RDSP holders may be jointly liable with the beneficiary (or the beneficiary's estate) for taxes that may arise from the de-registration of an RDSP that is non-compliant. This can also include taxes imposed due to various inappropriate transactions regarding the plan, such as holding non-qualifying investments.

If, in the opinion of an RDSP issuer, an adult beneficiary's ability to enter into a contract is in doubt, the spouse, common-law partner or parent of the beneficiary will be permitted to open an RDSP for the beneficiary (that is, be the plan holder). Should it later be determined that the beneficiary has the ability to enter into a contract, or should a legal representative be named for the beneficiary, the beneficiary or the legal representative can then assume the role of plan holder. As stated above, this rule applies to disability savings plans that are entered into before 2024.

## **Beneficiaries**

As mentioned above, the beneficiary must be DTC eligible when the RDSP is opened.

If the RDSP is the first plan opened for the beneficiary, practically speaking, the beneficiary must be a Canadian resident, since no contributions can be made to an RDSP of which the beneficiary is a non-resident; however, a plan could be opened where a beneficiary was a non-resident if another plan already existed and was being transferred to the new plan.

The designation of a beneficiary of an RDSP is irrevocable and the beneficiary can neither surrender nor assign his or her rights to receive payments from the plan.

## **Contributions to RDSPs**

There is no annual dollar limit for calculating contributions to an RDSP as there is with a Registered Retirement Savings Plan (RRSP) or Tax Free Savings Account (TFSA); however, the lifetime maximum amount that can

be contributed to an RDSP for a particular beneficiary is \$200,000, excluding grants and bonds paid into the plan under the Canada Disability Savings Act (discussed below).

Contributions to an RDSP may only be made until the end of the year in which the beneficiary turns 59. In addition, no contributions can be made during any time the beneficiary is not a resident of Canada, and no further contributions may be made after the death of the beneficiary.

Contributions to an RDSP are also prohibited in a year in which the beneficiary is no longer eligible for the DTC.

No one other than the holder of the RDSP can make a contribution to the RDSP without the written consent of a holder of the plan. This is important because it permits the RDSP holder to coordinate contributions into the plan strategically in order to access maximum grants and bonds while keeping within the lifetime maximum contribution limit.

## Government assistance

For many individuals and their families, the generous potential government assistance available to RDSPs from the Government of Canada may be the primary reason for setting up an RDSP in the first place. The assistance comes in two forms: an income-tested matching grant, known as the Canada Disability Savings Grant (CDSG), and an income-tested bond, which is independent of any contributions and is known as the Canada Disability Savings Bond (CDSB).

CDSGs and CDSBs can be paid into an RDSP in years during which the beneficiary is eligible for the DTC, up until the end of the year in which the beneficiary turns 49.

## Canada Disability Savings Grant (CDSG)

The amount of the CDSG depends on family income, the definition of which differs based on the age of the beneficiary.

While the RDSP beneficiary is a child (until the end of the year in which the beneficiary turns 18), the family income of the beneficiary's parents or legal guardian is used to determine whether the beneficiary would be eligible for the bond and matching grant amounts.<sup>1</sup>

If the child is in the care of an agency that receives an amount for the child under the Children's Special Allowances Act (Canada), then family income of the beneficiary is not considered and the beneficiary would be eligible for the maximum level of grants and bonds, as discussed below.

After reaching age 18, the beneficiary's own family income would be used, even if the individual with a disability continues to reside with his or her parents or legal guardian.

The family income used to calculate eligibility for the CDSGs and CDSBs for a particular year is actually the family income from the year two years prior to the current year. For example, eligibility for the 2021 CDSG and CDSB is based on the 2019 family income.

This makes it critically important to file tax returns for the previous two years. For example, to get the 2021 CDSGs and CDSBs, discussed below, both the 2018 and 2019 tax returns must have been filed to establish an income basis. Failure to file these returns will prevent Employment and Social Development Canada (ESDC) from having the income information necessary to allow the beneficiary to get maximum CDSGs (and possibly CDSBs) and may limit the CDSG match to 100% up to \$1,000 and preclude the CDSB altogether.

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<sup>1</sup> Being a federal income tax issue, it is not the age of majority (19 in some provinces, but age 18 in others), but rather age 18 under the Income Tax Act which determines when one is considered to be "independent" of one's parents.

The amount of the CDSG payable when family income is under \$98,040 (2021 level, indexed annually to inflation) is:

- 300% on the first \$500 of contributions and
- 200% on the next \$1,000 of contributions.

For example, if contributions for a year were \$500, a 300% CDSG amounting to \$1,500 would be paid into the RDSP. If an additional \$1,000 of annual contributions were made, the total CDSG for the year would be \$3,500, equal to 300% of the first \$500 (\$1,500) plus 200% of the next \$1,000 (\$2,000). Thus, a contribution of \$1,500 in this case would yield \$3,500 of CDSGs for a total of \$5,000.

If the family income is over \$95,259, then the CDSG is equal to 100% of the total contributions up to a maximum of \$1,000.

The maximum amount of CDSGs payable to an RDSP during the beneficiary's lifetime is \$70,000.

## Canada Disability Savings Bond (CDSB)

The CDSB is equal to \$1,000 per year when family income is below \$ 32,028 (2021 level, indexed annually to inflation). No contributions are required to receive the CDSB. The CDSB is phased out, pro-rata, based on family income between \$32,028 and \$49,020 (2021 figures indexed in future years.)

A maximum of \$20,000 of CDSBs can be paid to an RDSP over a beneficiary's lifetime.

## CDSG and CDSB entitlements from prior years

An RDSP can receive CDSG and CDSB based on unused entitlements for 11 years — the current year and the 10 previous years. Both CDSG and CDSB entitlements are based on the beneficiary's family income related to those particular years. The maximum CDSG entitlements in one year (with low income) would be \$38,500, calculated as (\$500 times 300%, plus \$1,000 times 200% per year) times 11 years. The maximum CDSB entitlement would be \$11,000, calculated as \$1,000 per year times 11 years.

Although an RDSP may be entitled to receive up to \$38,500 of CDSG and \$11,000 of CDSB, contributions must be made to receive CDSGs and there are limits on the government assistance that can actually be received in any one year.

For CDSBs, it is quite straight-forward and a maximum of \$11,000 of CDSBs may be received with no contributions.

For CDSGs, the calculations are more complex. A maximum of \$10,500 in CDSGs may be received in one year, based on contributions in the year. CDSGs are first received at the 300% rate based on entitlements for the current year and prior 10 years (oldest year first); then CDSGs are received at the 200% rate based on entitlements for the current year and prior 10 years (oldest year first).

## Example

Here is an example that shows how the CDSG calculations work. Suppose that Mary became eligible for the disability tax credit in 2010. Mary has had family income below the minimum threshold since 2010, so she has always been eligible to receive the maximum CDSG and CDSB amounts. In 2020, Mary opens an RDSP.

In 2020, Mary's RDSP would be entitled to the maximum CDSGs for 11 years, from 2010 through 2021. The 2020 entitlements would total \$38,500 (calculated as \$500 times 300% times 11 years, plus \$1,000 times 200% times 11 years); however, the maximum amount of CDSGs that can actually be received in 2020 is limited to \$10,500. If Mary contributes \$3,500 in 2020, her contribution would be allocated to the earliest years with entitlements at 300% (\$500 to each of the 7 years from 2010 through 2016), resulting in the maximum CDSGs of \$10,500 (\$500 times 300% times 7).

In 2021, Mary's RDSP would be entitled to CDSGs for the 11 years from 2011 through 2021. Mary's RDSP previously received CDSGs at 300% for the years 2010 to 2016, so CDSG entitlements at 300% would only be available for the years 2017 to 2021. The 2021 entitlements would total \$29,500, calculated as \$500 times 300% times 5 years (2017 through 2021) plus \$1,000 times 200% times 11 years (2011 through 2021). If Mary contributes \$4,000 in 2021, the RDSP would get the maximum CDSG of \$10,500. First \$2,500 would be allocated to the earliest years with entitlements at 300% (\$500 to each of the 5 years from 2017 through 2021) resulting in CDSGs of \$7,500 (\$500 times 300% times 5). Then the remaining \$1,500 would be allocated to the earliest years with entitlements at 200% (\$1,000 to 2011 and \$500 to 2012) resulting in CDSGs of \$3,000 (\$1,000 times 200% plus \$500 times 200%).

## Assistance holdback amount

The assistance holdback amount was put into place to promote RDSPs being used for long-term savings as well as to prevent government grants and bonds from being essentially recycled through withdrawals to obtain future years' matching grants. An assistance holdback amount is calculated as the total amount of government assistance paid into the RDSP within the 10 preceding years, less any repayments that have been made to the government of those amounts within the preceding 10 years. The RDSP issuer must keep this amount in the plan to be available to repay it to the government in certain circumstances.

Under the 10-year total repayment rule, some or all CDSGs and CDSBs that were paid into an RDSP in the previous 10 years must be repaid to the government (if they were not previously repaid) if any one of the following events occurs: plan termination or deregistration, or the death of the beneficiary.

In addition, under the proportional repayment rule, for each \$1 withdrawn from an RDSP, \$3 of any CDSGs or CDSBs that were paid into the plan in the 10 years preceding the withdrawal must be repaid, up to a maximum of the assistance holdback amount. These repayments will be attributed to CDSGs or CDSBs that make up the assistance holdback amount based on the order in which they were paid into the RDSP, beginning with the oldest amounts.

### Example:

Let's assume that Jeff opened an RDSP in 2009 and contributed \$1,500 to his plan annually, which is eligible for the maximum CDSG each year of \$3,500 ( $300\% \times \$500 + 200\% \times \$1,000$ ). He does this until the end of 2020, by which time he has received \$42,000 ( $12 \times \$3,500$ ) in CDSGs, which is equal to the assistance holdback amount. Jeff is considering making a withdrawal of \$600 from his RDSP. The plan would not be terminated or deregistered and Jeff continues to be eligible for the DTC. Under the proportional repayment rule, \$1,800 ( $\$600 \times 3$ ) of CDSG would be repaid. The assistance holdback amount would be reduced to \$40,200.

## Payments out of an RDSP

There are 3 types of payments possible under an RDSP: disability assistance payments (DAPs), transfers from one RDSP to another as permitted under the *Income Tax Act*, and repayments to the government that may be required (see "Assistance holdback amount" above).

### Disability assistance payments

A disability assistance payment (DAP) is any payment made to an RDSP beneficiary from the RDSP during the beneficiary's lifetime or to the beneficiary's estate after the death of the beneficiary.

The plan can stipulate whether the holder can require DAPs to be made. Under the legislation, there is no restriction on the timing of a DAP, or on the use of the DAP for any specific purpose, other than it must be paid to the beneficiary (or the beneficiary's estate if the beneficiary has died). That being said, an RDSP is prohibited from making a DAP if it could cause the fair market value (FMV) of the RDSP's assets to fall below the assistance holdback amount. Also, DAPs from primarily government-assisted plans are subject to maximums (see below).

For example, if the assistance holdback amount was \$10,000 but, due to market conditions, the RDSP's assets dropped to a total of only \$9,000, no DAPs could be paid out. This measure was meant to ensure that the RDSP has enough assets to meet any potential repayment obligations. The amount by which a DAP exceeds the non-taxable portion of the DAP (see below under the heading "Taxability of RDSP payments") must be included in the beneficiary's income (or the deceased beneficiary's estate, as the case may be).

### **Lifetime disability assistance payments**

Lifetime disability assistance payments (LDAPs) are meant to provide ongoing payments from an RDSP to a beneficiary. LDAPs are a subset of DAPs that, once they commence, must be paid at least annually until the earlier of the death of the beneficiary or the termination of the plan. The plan text will specify whether or not the particular RDSP will permit DAPs that are not LDAPs.

LDAPs must begin no later than the end of the year in which the beneficiary turns 60. The maximum LDAP that may be paid out in any given year is determined by a formula based on the FMV of the assets and the beneficiary's age. The purpose of the formula is to allow the RDSP assets to be paid out more or less evenly over the beneficiary's remaining years. However, unless the RDSP is a primarily government-assisted plan (see below), DAPs that total more than the LDAP maximum can still be paid out.

The formula limiting the maximum amount of LDAPs that can be made in any one year is as follows:

$A/(B + 3 - C) + D$ , where

A = the FMV of the RDSP assets on January 1 of that year;

B = greater of:

- i) 80 or
- ii) beneficiary's age (in whole years) on January 1 of that year;

C = beneficiary's age (in whole years) on January 1 of that year; and

D = total amount of periodic payments received by the RDSP in the year under a "locked-in" annuity held by the RDSP on January 1.

You can see that once the RDSP beneficiary reaches age 80, the annual limit on LDAPs will be simply equal to one-third of the RDSP's opening assets that year.

Note that the FMV of the RDSP specifically ignores the value of a locked-in annuity. A locked-in annuity is essentially a lifetime annuity with a guarantee period of 15 years or less that can't be surrendered. As a result of variable D of the above formula, the annual LDAP limit can never be less than the annuity payment received by the RDSP from a locked-in annuity in that year.

Once the RDSP beneficiary is 60 years of age, DAPs at least equal to the above formula must be paid out. If the plan's assets have declined significantly in value due to market losses, the issuer need only pay out what's in the plan.

### **Primarily Government-Assisted Plan (PGAP): Minimum / maximum DAP rules for restricted years**

There are additional rules where the majority of the RDSP has been funded with government monies (grants and bonds) as opposed to individual (generally made by the holder(s)) contributions. A plan is considered to be a primarily government-assisted plan (PGAP) in a year (referred to as a restricted year) when the total of all the grants and bonds paid into any RDSP on behalf of a particular RDSP beneficiary in all previous calendar years exceeds the total of the actual contributions made to all RDSPs in those years.

In a restricted year, an RDSP can only pay out a maximum DAP equal to the greater of the amount determined by the LDAP formula above and 10 per cent of the FMV of plan assets at the beginning of the calendar year. This maximum limit doesn't apply in the case of shortened life expectancy (a specified year), which is

discussed further below. It also doesn't apply if the beneficiary has died and a payment of the plan's assets is being paid to the beneficiary's estate.

As with any RDSP, in the year that the beneficiary of an RDSP turns 60 and thereafter, the minimum LDAP annual withdrawal requirement equal to the LDAP formula above applies.

An RDSP beneficiary of a PGAP who is between 27 and 58 (inclusive) has the right to direct that disability assistance payments be made. The purpose of this rule is twofold. First, it's to ensure that if the beneficiary asks for a DAP, such payment will not affect repayment of government grants and bonds paid into the RDSP while the beneficiary was a minor, but would only require repayment of up to 10 years' worth of grants and bonds under the assistance holdback rule. The other reason is to ensure that government assistance is actually available to a beneficiary, even if a holder (who was not the beneficiary), refused to authorize any DAPs. This is an important condition particularly for adult beneficiaries of RDSPs set up by their parents before they attained the age of majority. Absent this condition, the adult beneficiary would have no say as to the amounts or timing of disability assistance payments; however, it only applies where government assistance exceeds private contributions.

## Shortened life expectancy

A beneficiary with shortened life expectancy may have greater access to RDSP funds and possibly avoid repayment of CDSGs and CDSBs that might otherwise be required.

The annual maximum LDAP limit will not apply if the issuer of the plan has been provided with the written certification of a medical doctor or nurse practitioner that the beneficiary is not likely to survive more than five years. The year of certification and the following five years are referred to as specified years.

Note, it does not include any calendar year prior to the calendar year in which the certification is provided to the plan issuer. For example, if a doctor makes the certification in 2021 and the certification is provided to the RDSP issuer in 2021, then 2021 through 2026 would be specified years. However, if a doctor issues a medical certificate in November 2021, but the issuer doesn't get a copy of it until January 2022, 2021 will not be considered a specified year. Rather, the years 2022 through 2026 will be considered specified years.

The period of specified years can be extended indefinitely if the plan holder elects for the RDSP to be treated as a specified disability savings plan (SDSP) and provides the election to the plan issuer. Once the election is made, no further contributions can be made to the plan. In addition, no CDSB or CDSG is paid, and unused CDSB and CDSG entitlements will not be carried forward for years other than the year of the election.

During the time that the plan is an SDSP, a limited portion of withdrawals will not trigger repayment of the assistance holdback amount; however, as noted below, one of the conditions for remaining an SDSP is that the taxable portion of all withdrawals in the year cannot generally exceed \$10,000.

A plan holder must wait 24 months to file a new SDSP election if a plan loses its SDSP status, which will occur under any of the following circumstances:

- The plan holder elects to have the plan stop being an SDSP.
- Total taxable DAPs exceed \$10,000 in a year, unless the formula provides for a greater amount.
- A contribution, bond or grant is paid into the plan.
- The plan is terminated or stops being an RDSP due to non-compliance.
- LDAPs have not commenced by the calendar year following the year in which the plan last became an SDSP.
- Under a PGAP, the total of DAPs in the calendar year is less than the amount determined by the maximum LDAP formula.

The 24-month waiting period, or indeed even the loss of SDSP status, may be waived under Ministerial discretion.

## Taxability of RDSP payments

When a DAP is made from an RDSP, the *Income Tax Act* specifies that such a payment is to be apportioned between taxable and non-taxable components. Essentially, the proportion of the payment that is non-taxable is equal to a ratio of RDSP contributions received to total FMV of the RDSP assets, reduced by the assistance holdback amount.

Expressed as a formula, the non-taxable portion of any RDSP payment is:

(Total RDSP contributions minus prior non-taxable payments) divided by (FMV of RDSP assets minus assistance holdback amount) times DAP

As a result of this formula, as the FMV of the RDSP assets increases (due to CDSGs, CDSBs or growth), so does the taxable portion of the DAP.

## RDSP transfers

The holder is always able to transfer the assets or value of the RDSP from one issuer to another. Where there are multiple holders, all holders must agree to request the transfer.

ESDC is responsible for forwarding all of the historical transactional information concerning the original plan that exists in ESDC's system to the issuer of the new plan once a transfer is completed and the original plan is closed. The historical information (for example, information about grants, bonds and contributions) is necessary so that the new RDSP issuer can properly determine the appropriate future pro-rata taxability of DAPs as well as any subsequent government repayments of grants and bonds (the assistance holdback amount), if necessary.

Since there can be only one RDSP for any given beneficiary at any time (other than an overlap period permitted during a plan transfer), the transferring RDSP must be terminated immediately following the transfer to the transferee RDSP.

Once an RDSP beneficiary is at least 60 years of age and LDAPs have commenced, upon a transfer of an RDSP from one issuer to another, the receiving plan issuer must undertake to pay to the beneficiary any LDAPs that the transferring plan would have been required to make during the remainder of the year had the transfer not taken place. This includes the minimum payments that the transferring RDSP would otherwise have had to make, as discussed above.

## Rollover of RESP investment income

Investment income and growth earned in a Registered Education Savings Plan (RESP) may be transferred on a tax-deferred (or rollover) basis to an RDSP.

To qualify, the plans must share a common beneficiary and the RESP must allow accumulated income payments. Also, one of the following criteria must be met:

- The beneficiary must have a severe and prolonged mental impairment that can reasonably be expected to prevent the beneficiary from pursuing post-secondary education;
- The RESP must have been in existence for at least 10 years, and each of the RESP beneficiaries is at least 21 years of age and is not pursuing post-secondary education; or
- The RESP must have been in existence for at least 35 years.

The amount of the RESP investment income rolled over to an RDSP cannot exceed, and will reduce, the beneficiary's available RDSP contribution room, but will not attract CDSGs. Proceeds can't be rolled over to an RDSP if the beneficiary is deceased. The rollover amount will be included in the taxable portion of RDSP withdrawals. RESP contributions, which can generally be returned to the RESP subscriber on a tax-free basis, with holder consent, can be contributed to an RDSP to the extent of existing RDSP contribution room,

potentially attracting CDSGs. As a reminder, the holder only can make contributions until the end of the calendar year in which the beneficiary turns 59 and the total contributions cannot exceed \$200,000.

In addition, any Canadian Education Savings Grants and Canada Learning Bonds in the RESP will be required to be repaid to the government and the RESP must be terminated by the end of February of the year after which the rollover to the RDSP is made.

## **Rollover of registered assets to an RDSP**

If an individual dies and has a financially dependent child or grandchild who is DTC eligible, proceeds from the individual's RRSP can be transferred to an RDSP for the grand(child). The (grand)child must have received the RRSP proceeds as a consequence of death of the individual. Generally, this means they were a designated beneficiary under the RRSP or, if the RRSP has no designated beneficiary, a beneficiary of the individual's estate. The RDSP holder and the (grand)child must consent, and the contribution must be made within 60 days after the end of the year in which the individual dies. These rules also apply to amounts contributed to an RDSP using registered retirement income fund (RRIF) proceeds and certain lump-sum amounts paid from a registered pension plan (RPP).

The amount rolled over to an RDSP cannot exceed, and will reduce, the beneficiary's available RDSP contribution room, and will not attract CDSGs. Contributions can be made until the end of the calendar year in which the beneficiary turns 59 and the total contributions cannot exceed \$200,000. Proceeds can't be rolled over to an RDSP if the beneficiary is deceased. The rollover amount will be included in the taxable portion of future RDSP withdrawals.

## **Beneficiaries who are no longer eligible for the DTC**

For years, individuals with disabilities, their families and other advocates have raised concerns about the need to close an RDSP and pay back the CDSGs and CDSBs upon loss of DTC eligibility as it did "not appropriately recognize the period of severe and prolonged disability experienced by an RDSP beneficiary."

As a result, the rule was changed such that RDSPs can continue to remain open (although contributions will not be permitted) even if the beneficiary becomes ineligible for the DTC. For years throughout which the beneficiary is ineligible for the DTC and that are prior to the year in which the beneficiary turns 51 years of age, the assistance holdback amount rules apply and withdrawals may prompt the repayment of grants and bonds; however, once the beneficiary turns 51, and over the following ten years, the assistance holdback amount will be reduced based on the CDSGs and CDSBs paid into the RDSP during a reference period. For example, for the year in which the beneficiary turns 51, the reference period will be the nine-year period immediately prior to the beneficiary becoming ineligible for the DTC. The assistance holdback amount will therefore be equal to the amount of grants and bonds paid into the RDSP in those nine years, less any repayments of those amounts.

### **Example**

In 2011, Ali's parents open an RDSP for him when he is 5 years old and contribute \$1,500 annually to his plan for 10 years, attracting the maximum amount CDSGs of \$3,500 annually. Thus, for 2021, the assistance holdback amount for his plan is \$35,000. While his parents continue to contribute \$1,500 to his plan each year for the subsequent five years (attracting the maximum \$3,500 of CDSGs annually)<sup>2</sup>, the assistance holdback amount for his plan remains at \$35,000, as CDSGs received during the first five years that fall out of the assistance holdback amount, are replaced with new grant amounts.

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<sup>2</sup> It is assumed that no CDSBs would be available due to the level of family income.

In 2024, the effects of Ali's disability improve so that he no longer qualifies for the DTC after 2023. Under the new rules, Ali could choose not to close his RDSP. His assistance holdback amount is frozen at \$35,000 until the year he turns age 51 (in 2055), when the amount of his assistance holdback amount begins to decline by \$3,500 each year.

By 2066, the year Ali turns age 60, he will be able to withdraw amounts from his RDSP and no longer be required to repay CDSGs as his assistance holdback amount will have been reduced to zero.

## Bankruptcy

As of November 1, 2019, RDSPs are exempt from being available on the beneficiary's bankruptcy, with the exception of contributions made in the 12 months before the filing.

## Death of beneficiary

An RDSP must be terminated by the end of the year following the year in which the beneficiary dies. The RDSP assets must be paid out to the deceased beneficiary's estate, less any assistance holdback amount that must be repaid to the government, by the end of the year following the year of the beneficiary's death. This means the RDSP assets will pass in accordance with the beneficiary's will, or if there is no will, on an intestacy.

## Effect on federal and provincial disability programs and benefits

Many government programs, at both the federal and provincial level, are either income or asset-tested, such that income earned or assets accumulated over certain government-determined thresholds either disqualify or significantly reduce the amount of government assistance.

Assets in an RDSP, when paid to the beneficiary, do not reduce the beneficiary's entitlement to federal income-tested benefits that are delivered through the tax system, such as the GST/HST credit or the Canada Child Benefit. In addition, RDSP payments to the beneficiary would neither reduce Old Age Security benefits nor Employment Insurance benefits.

All provinces and territories also provide various levels of income support for disabled persons, which are means-tested. Provinces and territories have generally announced either a full or partial exemption of RDSP assets and withdrawals from provincial income- or asset-tested disability benefits.

## RDSPs vs. trusts

Until the advent of the RDSP, most planning for persons with disabilities focused on the use of trusts. Specifically, a fully discretionary trust (often referred to as a "Henson trust"<sup>3</sup>) is frequently used to protect the assets, including an inheritance, on behalf of the beneficiary and to preserve the beneficiary's rights to collect asset-tested government benefits and entitlements.

If the trust is fully discretionary and there is no direct entitlement of the beneficiary to the trust's assets, the general rule in most provinces is that funds in these trusts, set up either during the donor's lifetime or on the donor's death, can be provided for a beneficiary without affecting the beneficiary's entitlement to provincial government benefits.

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<sup>3</sup> The "Henson Trust" is named after an Ontario Appeal Court decision (*Ontario Ministry of Community & Social Services vs. Henson* (1989), 36 ETR 192 (Ont. CA)) involving a father who established a fully discretionary trust for his daughter. The Ontario Ministry of Community and Social Services tried to look through the trust such that she would be disqualified from certain asset-tested government benefits. The Court ruled that the assets were not to be considered hers. In early 2019, the validity of the Henson trust was upheld by the Supreme Court of Canada in the *S.A. v. Metro Vancouver Housing Corp* case.

Clearly, the ability to collect the CDSGs and CDSBs will be a major factor in the decision to use an RDSP as opposed to the Henson trust, assuming a contributor's funds are not unlimited. In addition, the costs to set up and maintain the trust (such as annual trustee fees or tax return filing fees) may reduce its ultimate benefit unless significant funds are available to settle the trust. Keep in mind, however, that funds contributed to an RDSP must be paid to the beneficiary or the beneficiary's estate. There is no option to "sprinkle" assets among other family members while the beneficiary is alive or when the beneficiary dies; nor to have the assets revert back to the contributor(s). A trust likely affords more flexibility in this regard. You need to consult with your legal advisor to set up this kind of trust.

One final consideration is that in the case of an individual with a mental disability, who lacks capacity to make a will, the distribution of any remaining funds in an RDSP would be governed by provincial intestacy rules. By contrast, if money was set aside for the support of a person with a disability through a trust, upon the death of that person, the assets in the trust could flow directly to beneficiaries chosen by the settlor of the trust.

For wealthier parents, the RDSP will likely be used in conjunction with the Henson trust to provide for a disabled child. For people with disabilities who want to plan for their future, the RDSP can offer them another means to help secure their retirement.

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