
PERSONAL TAX PLANNING

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RESTRUCTURING THE WILL AND THE TESTAMENTARY TRUST: METHODS, UNDERLYING LEGAL PRINCIPLES, AND TAX CONSIDERATIONS

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Estate planning does not cease with the death of an individual. There are many reasons, both tax and non-tax, why beneficiaries may wish to alter the terms of a will or trust. Often the terms of a testamentary instrument do not contain a mechanism for amending the terms of the will in the desired manner. Where an amending mechanism is not present, there are a number of methods by which post mortem modifications or alterations may be effected. The author explores some of these methods, including disclaimers, releases, and surrenders, as well as the rule in *Saunders v. Vautier* and Ontario's Variation of Trusts Act. In addition to exploring the legal issues, the author considers the tax ramifications of the use of the various available methods for altering wills and trusts, including whether the action is effective in achieving the desired tax treatment; possible adverse tax consequences to the beneficiary who is disclaiming, releasing, or surrendering his or her interest; and possible tax consequences to the person receiving the property as a result of such actions. The law in this area is complicated and often far from clear, and care must be taken to consider both the legal and the tax implications to ensure that the desired result is achieved.

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