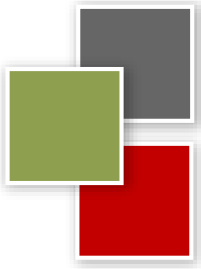

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Estates and Income Taxes in Ontario

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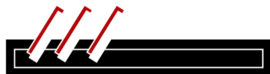

Introduction

During the course of dealing with executors and estates throughout the years there have been certain questions which are frequently asked and there are situations that arise that can cause problems in settling the estate.

This document will be informative regardless of your age or stage in life. It pertains to anyone who has been asked to be the executor of an estate; is the executor of an estate; is considering the transfer of property into joint names; contributes to Canada Pension Plan; and contributes to Employment Insurance.

You may have been asked by someone with whom you are not close to be the executor of their estate and, having been flattered by the request, agreed to without understanding fully the duties of the office of the executor. Or else you may be the executor of the estate of a close family member and just not be sure of what you are supposed to do and what you are responsible for. You may have questions such as will it take a lot of time, will I be paid for my work and could I be sued?

Experience has shown that the beneficiaries of some estates are cooperative and the beneficiaries of other estates are not so cooperative. Regardless of the situation you should not put yourself in a position that would cause the beneficiaries to pursue litigation against you in your position as executor. The executor is expected to act expeditiously in carrying out his or her responsibilities of administration. Fortunately, the executor has the benefit of the “executor’s year” which is a period of time following the death in which the executor may need to complete his or her responsibilities of executor and resist the beneficiaries’ demands to be paid.

The duties on appointment as executor of an estate have been outlined in this pamphlet. The list is an outline and not intended to document all the responsibilities required by law. It would be best to consult a lawyer for particular situations.

The executor is responsible for filing the income tax returns for the final year of the deceased and if required the estate. When a taxpayer dies not only do the tax rules that are in effect during a taxpayer’s lifetime apply in the year of death, there is an additional set of tax considerations. This section of the pamphlet is not meant to contain a comprehensive list of all tax considerations but outlines areas that we have found are common to final tax returns.

In the course of assisting clients with estate planning we are often asked about transferring property into joint names and have included a section on the pros and cons of doing this.

Most people in Canada during their lifetimes have contributed to the Canada or Quebec Pension Plan. We have found that some people are not aware there are certain beneficial provisions available to them during their lifetime such as receiving the Canada Pension Plan before they reach the age of 65 and splitting their pension credits with their spouse. The 2009 federal budget has proposed changes to the Canada Pension Plan and some of these have been addressed.

There are also certain questions addressed with regards to survivor benefits, children’s benefits and death benefits with the Canada Pension Plan. A section has been included to address these issues.

As of January 24, 2004, Employment Insurance provides compassionate care benefits to a person who has to be absent from work to provide care or support to a gravely ill family member. This pamphlet touches briefly on this and raises the question of whether or not the gravely ill person is eligible for EI sickness benefits and disability benefits from the Canada or Quebec Pension Plan. A section has been included to address this new benefit.

Most references in the Income Tax Act refer to a “spouse or common-law partner.” Readers should note that for the sake of brevity, we have used the word “spouse” in this pamphlet to refer to either a spouse or common-law partner.

An executor is required to administer the estate according to the will and according to provincial law. The information provided in this pamphlet is according to Ontario law. Quebec law is very different from Ontario law, for example wills in Quebec if notarized are not required to be probated, there is no right of survivorship and so forth. If you are in this situation it would be best to consult with a lawyer knowledgeable in Quebec estate law.

This pamphlet deals with complex matters and may not apply to particular facts and circumstances. As well, the information reflects laws and practices that are subject to change. This pamphlet should not be relied on as a substitute for professional advice.

Responsibilities of an Executor

A friend, relative or business associate may ask you to be executor of their will. Do not take this request lightly. The office of executor comes with many responsibilities that must be performed with an even hand among beneficiaries. You may want to ask to see the will before agreeing to be named as executor in the will to see if there is remuneration or limits on what your remuneration will be.

If you choose to accept the office of executor you may be inheriting the executorship of more than one estate. If the person you are executor for dies “in office” (was executor for another estate) then you would inherit the executorship for the other estate.

You can decline the appointment but you must sign a formal renunciation. If you intend to turn down the appointment, you must be very careful not to take on any responsibilities of the office. If you start conducting yourself as the executor you may find yourself with the responsibility until you are relieved by a court.

You may decide to decline the appointment for such reasons as failing health, you were not told about a limitation in the will on your entitlement to executor’s compensation or a conflict of interest.

Here is a list of some of the responsibilities of an Executor:

Locate the Original Will

It is important that you locate the original will. A copy of the will is not considered the last will. The original will could typically be located at the deceased’s residence, in a safe deposit box, with the lawyer who drew the will or with a central court depository. You may have been given a copy of the will after it was signed but it may not be the last will. If the will was prepared by a lawyer, it is a good idea to get in touch with him or her to ensure that no subsequent will or codicil was made.

Communicate with Beneficiaries

The executor should remember that it is to their benefit to maintain open lines of communication with the beneficiaries. Problems with the beneficiaries can be avoided by making sure that beneficiaries are kept reasonably informed about the administration of the estate. This does not mean that you have to report to the beneficiaries on every decision that is being made. An executor can manage anger, frustration or suspicion by letting the beneficiaries know in general terms what is going on.

Funeral and Burial

The executor has control over the disposition of the body. The executor does not have to follow the instructions of the deceased as to funeral or burial arrangements, even if they are written in the will. The duty of the executor is to ensure that funeral and burial costs are reasonable.

You will need several original copies of the proof of death that the funeral director can provide. The deceased's bank, insurance companies, investment companies and the Canada Revenue Agency will require that you provide these.

Probate the Will

The executor has to decide whether or not to probate the will. When you probate a will you receive letters of probate where the court declares that this is the final will of the deceased and confirms you as the executor. In this process, the executor has to swear to the value of the assets and pay probate fees on those assets. Your authority as executor comes from the will itself and there may be no need to obtain letters of probate. To avoid probate have as many assets as possible pass to your beneficiaries by means of naming them beneficiary (refer to Death and Taxes, RRSP's) or by joint ownership (refer to Pros and Cons of Joint ownership).

Most financial institutions require probate before they will release the deceased's assets because it provides assurance that they are handing the assets over to the person who by is law is entitled to receive them. In the case of small estates, a financial institution may release the assets of the estate without probate thereby avoiding probate fees and legal fees.

Locate the Assets

The executor must identify and locate the assets owned by the deceased and identify liabilities which may exist. The different locations/sources could include but are not limited to; safe deposit box, individual's home, personal accountant, floater on a home insurance policy, bank and investment statements and most recent income tax return.

Life insurance policies are a form of assets. There is either a named beneficiary on the policy or the estate may be named as the beneficiary. In the case of a named beneficiary the proceeds from the policy are paid directly to the named beneficiary usually within a short period. If the estate is named as the beneficiary the proceeds are paid after the appropriate estate documentation is received.

There is a Canadian Life and Health Insurance Association that may be able to help if you cannot locate the life insurance policy.

The deceased may have also been covered through a work group insurance plan or an insurance plan through a professional association. If the deceased was involved in an accident, he or she may be covered by an automobile association or a credit card. If the accident occurred while on the job, there may be eligibility for payments through the Workplace Safety and Insurance Board.

The deceased may be entitled to benefits through employment—salary, vacation pay, bonuses, severance pay, company pension etc.

There are government pension plans and other benefits that should be considered. These are covered under Death and Taxes.

Protect the Assets

As executor you are responsible for protecting and preserving the estate. All assets must be adequately insured against loss including real estate, vehicles and personal possessions. If there is a property and it is vacant, the insurer must be informed because with some insurers the insurance policy is invalid if the residence is left vacant for a specified period of time and the insurer was not notified. The property must be checked on a regular basis.

If there is a business, the executor must ensure that there are competent people in place to run the company until it is sold or wound up.

The executor will want to terminate leases, cancel newspaper and magazine subscriptions, reroute mail, cancel telephone/cell phone/cable/internet services, pay house and car insurance, property taxes and utilities etc.

As executor you are responsible for notifying the deceased's bank(s) and other financial institutions. You will have to provide proof of death and identify yourself as executor. If the bank accounts are frozen the bank will allow you to pay for certain expenses. The allowable expenses vary between financial institutions.

Return all debit/credit cards to the issuer and have them stop any further use of the cards. If the cards are in joint names let them know they must stop using the card.

Return governments issued documents such as passports, social insurance cards, health cards and driver's license. Keep a photocopy of them in case you need the numbers to make claims to the government.

Value the Assets

The executor is required to determine the market value of each asset at the date of death. There may be pressure from the beneficiaries for low values for probate and income tax purposes that will lead to problems when the assets are being distributed to the beneficiaries.

Your will also need the tax cost to calculate capital gains or losses to be reported on the final tax return. In the case of an asset such as real estate, the costs of certain renovations are added to the original purchase price. For marketable securities such as stocks, you will need to determine the adjusted cost base of the asset—original purchase price, stock dividends, stock splits etc. must be taken into account.

If a beneficiary has been named or if the asset was held jointly with rights of survivorship these assets would not be considered to be part of the estate.

To decide if you need to sell the assets and pay the proceeds to the estate, refer to the will to determine which assets are to be transferred to a beneficiary or to be sold.

Manage the Assets

An executor in managing the investments of an estate has the investment authority of a “prudent investor.” You may wish to invest any surplus cash until the estate is settled. The types of investments available for estate assets are governed by the terms of the will and by provincial legislation.

Pay the Debt

The executor is responsible for making sure all proper debts and obligations of the deceased are paid before distributing the assets of the estate. These might include loans, mortgages, lines of credit, credit cards and income taxes. Income taxes are discussed below.

Income Taxes

The executor is responsible for filing the income tax returns for the final year of the deceased and if required the estate. Any taxes owing are required to be paid. If the taxes owing are not paid by the due date, interest will be added to the final tax bill. If the return is filed late, penalties will be charged. Trust (estate) returns have particularly punitive charges for late filing and non-payment of taxes.

An estate tax return would be required if the estate earns income after the deceased died and before assets are distributed to the beneficiaries.

If the deceased was a Canadian resident living part-time in the United States or was a U.S. citizen, you may need to file a U.S. income tax return.

If the deceased owned U.S. assets or was a U.S. citizen you may need to file a U.S. estate return.

Clearance Certificates should be obtained from the Canada Revenue Agency (CRA) before the final distribution of the estate to the beneficiaries. The request for a Clearance Certificate can only be made after all taxes owing have been paid and you receive the Notice of Assessment. The Clearance Certificate covers the year of death and all prior years. If a Clearance Certificate is not obtained before this, the executor is personally liable to pay any taxes owing if there are insufficient funds left in the estate to cover the liability.

Details regarding the preparation of the final income tax return can be found under Death and Taxes.

Special Claims

The executor must be aware of any special claims against the Estate. There could be a potential property claim by a surviving spouse or a claim by a dependent. The Family Law Act of Ontario prohibits the executor from making any distributions out of an estate during the first six month period after death without consent of the surviving spouse or the court’s approval. Under the Ontario Succession Law Reform Act, once a claim is made by a person who claims to be a dependent of the deceased, there can be no further distribution of assets out of the estate.

Distribute the Assets

Once all bequests, legacies, expenses, fees, taxes and debts have been paid, the proper Clearance Certificates have been received and there is money left in the estate, the remaining amount can be distributed to the beneficiaries according to the will.

If the deceased owned a home in joint tenancy, the property passes to the surviving joint owner and is not part of the estate. If the deceased was the sole owner and left the home to the beneficiaries named in the will, it may be possible to either transfer title to the beneficiaries or sell the home and distribute the proceeds to the beneficiaries as set out by the will.

In the case of stocks or bonds, a Declaration of Transmission is required with the certificates to transfer the securities to either the estate or the beneficiaries depending on the will and the wishes of the beneficiaries.

Where one or more trusts are to be set up under the will, the executor will have to set up individual accounts to keep the respective trust funds separate and track the receipts and disbursements for each of them. If the executor has absolute discretion on allocating assets among the funds, care should be taken to make sure that they are, if not equal, then at least equitable. Be careful when you are establishing trusts for disabled beneficiaries as you do not want to disqualify them from receiving government assistance.

Keep Proper Accounts

The executor must keep proper accounts from the very beginning. The accounts cover the assets the deceased owned at death, the expenses and debts that were paid and how the remaining assets were distributed. The Ontario government has rules on what must be included in the accounts. When the executor has finished the work on behalf of the estate and if all the beneficiaries are of a legal age, they may approve the accounts of an estate by signing a comprehensive release form that releases the executor from any further responsibility in the administration of the estate and liability from the beneficiaries. Otherwise, the executor must submit the accounts to a court for audit.

Executor's Fees

An executor is entitled to be paid for his or her efforts on behalf of the estate. The will itself may set out what the executor is entitled to or an agreement can be reached with the beneficiaries on the compensation. Historically, a 2 ½% charge on account of capital receipts and disbursements and revenue receipts and disbursements have been considered appropriate as compensation for an executor. An executor can ask for more compensation if special services are required.

If an executor retained an accounting firm to complete the income tax returns this work could be paid by the estate without reducing the executor's compensation if this is not the normal expertise of the executor. The same principle would apply to the payment of investment counsel fees where given the amount and complexity of the portfolio it would require expertise. However, the executor is required to prepare an accounting of the estate and if the executor pays a professional to prepare this statement the amount paid reduces the executor's fees.

The executor fees are taxable to the executor while inheritances are not taxable in Canada. Trustee or executor fees paid to a person who acts in the capacity of an executor in the course of a business are part of that individual's business income and the estate is required to report this income on a T4A slip. Otherwise, if the fees paid are $500 or more the estate is required to prepare a T4 slip for that individual. The estate is under to obligation deduct and remit withholdings as required by law, to keep records and to report and file the information on the T4 or T5 Information return by the last day of February following the calendar year to which the information return applies.

In selecting an executor for your will you probably have chosen someone that is responsible, knowledgeable, objective and fair and who you trust. It is in your best interest and your beneficiaries to inform the executor as to the location of certain documents. For example, let the executor know: where the original will is located; where (if any) the safety deposit box(es) and keys are located; the location of previous year's tax returns and notices of assessment; and where they can find an-up-to date list of the bank accounts, investments, properties and debts that includes the original purchase price of assets.

Time and money spent on gathering the assets and determining tax values could otherwise be in the hands of the beneficiaries. In particular, the valuation of stocks, rental properties, cottages and situations where the deceased has lent money in the form of loans or mortgages

Death and Taxes

Coping with the death of a loved one is difficult. If you are the executor of the estate then following the death there are many functions that you are required to perform (refer to the section Responsibilities of an Executor). From an income tax perspective there are functions required in settling the affairs of the deceased person.

First, you should notify Canada Revenue Agency (CRA) and provide them with the deceased's date of death. This is particularly important if the deceased or the surviving spouse and the deceased was receiving the GST/HST credit, if the deceased or the surviving spouse and the deceased receives the Canada Child Tax Benefit (CCTB), or the deceased was a child for whom the CCTB or GST credit payments are made. Arrangements have to be made to stop these payments and if applicable transfer them to a survivor.

If the deceased was paying tax by installments, no further installment payments have to be paid after death. The only installments required are those that were due before the date of death but not paid.

GST/HST payments are issued on the fifth day of the month in July, October, January and April. The payments are an advance on purchases for the current year. If the deceased was receiving GST/HST credit payments, CRA may send out a payment after the date of death because they are not aware of the death. If this happens, CRA requires that you return the payment to them.

If a single person dies in a month before CRA sends out the quarterly GST/HST credit payment, CRA requires that you return the payment to them. If a single person dies during or after a month in which CRA sends a quarterly payment, the person's estate is entitled to that payment. Return the cheque to CRA and they will make the cheque payable to the estate.

If the deceased had a spouse, that person may be eligible to receive the GST/HST credit payments based on his or her net income alone. CRA should be contacted and a request that the person be eligible to receive the GST/HST credit payments based on his or her net income alone.
If the deceased person was receiving CCTB payments for a child and the surviving spouse is the child's parent, that person should contact CRA and provide them with the date of death. The CCTB payments are usually transferred to the surviving spouse.

Funeral expenses, probate fees or fees to administer the estate are considered personal expenses and are not deductible.

You have at least six months before the deceased's final income tax return is due to be filed. The final return and any balance owing are due on or before the following dates:

Period when death occurred	Due date for the return
January 1 to October 31	April 30th of the following year
November 1 to December 31	Six months after the date of death

If the deceased or the deceased's spouse was carrying on a business during the year the death occurred, special rules apply, unless the expenditures of the business are primarily in connection with a tax shelter.

If you file a return late and there is a balance owing, CRA will charge a late filing penalty. If you do not pay any balance owing from the final return in full by the due date, CRA will charge interest on the unpaid amount. The interest will start to accumulate from the day after the return is due to be filed to the date you pay the amount owing.

With regards to a previous years' return, if a person dies after December 31, but on or before the filing due date for his or her return (usually April 30), and that person has not yet filed that return, the due date for filing as well as the payment of the balance owing is six months after the date of death.

When a taxpayer dies not only do the tax rules which apply during a taxpayer's lifetime apply in the year of death, there is an additional distinct set of tax considerations.

Those additional tax considerations arise for a number of reasons including:

- Deemed disposition of certain properties owned by the taxpayer at the time of death.
- Special treatment of registered retirement savings plans and registered retirement income funds.
- Pension income splitting.
- Special filing rules.
- Possible taxation of testamentary trusts arising on death.
- U.S. estate taxes.

Deemed disposition on Death

Upon death, a taxpayer is deemed to have disposed of all the capital property owned immediately before death and to realize all the accrued gains and losses on those capital properties. "Deemed disposition" is an expression used when you are considered to have disposed of property even though you did not actually sell it. Some common types of capital properties include:

- Cottages
- Securities, such as stocks, bonds, mutual fund units
- Land, buildings and equipment used in a business or rental operation
- Listed, personal property; for example prints, paintings, jewelry, stamps, coins
- Personal use property

Upon death, a taxpayer is deemed to have disposed of all the capital property owned immediately before death for deemed proceeds of disposition. "Deemed proceeds of disposition" is an expression used when you are considered to have received an amount for the disposition of the property, even though you did not actually receive the amount. The proceeds of disposition are usually equal to the fair market value of the property immediately before death. For example, the fair market value of a stock at the date of death would be the number of shares the deceased held at that time multiplied by the market share price on that date.

Capital cost allowance may not be claimed in the terminal period, January 1st of the year of death and ending on the date of death, since the property was deemed to have been disposed of immediately prior to death and therefore was not owned at the end of that period.
There are provisions that allow the capital property to be transferred to a spouse, it is deemed to have been disposed of immediately before death and subsequently acquired at the deceased taxpayer's tax cost. This provision applies to both depreciable and non-depreciable property.

There are special rules for eligible capital property, resource properties, land inventory, interest in a foreign investment entity, farm property and qualifying small business corporation shares.

It is important to note that in certain cases there is an election to pay the tax resulting from certain deemed realizations over 10 years.

RRSPs and Registered Retirement Income Funds

Generally, the value of property in the plan (matured or unmatured) owned by the deceased will be included in the income of the deceased in the year of death. This general rule is subject to a number of exclusions. For example, transfers to a beneficiary who is a surviving spouse and transfers to a beneficiary who is a financially dependent child or grandchild to purchase an annuity are not included in the deceased's final income tax return.

The rules for the tax treatment of registered retirement income funds on the death of a taxpayer parallel the rules respecting RRSP's.

With regard to an RRSP, any income taxes payable for amounts that are included in the deceased's final income tax return are paid by the executor through the estate. Remember this when you are asked if you want to name a beneficiary on your RRSP contract. The beneficiary will receive the full proceeds of the RRSP without any withholdings and the taxes that are to be paid on this amount are paid by the executor through the estate. This may cause problems if there is not enough money to pay the income taxes in the estate.

When an RRSP or RRIF is included in the deceased's income tax return in the year of death it is the fair market value of the investments in the RRSP/RRIF that are reported. Previous to 2009, where an RRSP/RRIF decreases in value between the date of the annuitant's death and the date the investments are distributed to beneficiaries, the loss in value could not be deducted. The 2009 federal budget proposes to permit, upon the final distribution of property from a deceased annuitant's RRSP/RRIF, the amount of post-death decreases in the value of the RRIF/RRSP to be carried back and deducted against the RRSP/RRIF income inclusion for the year of the annuitant's death. The proposal will apply where the final distribution from the RRSP/RRIF occurs after 2008.

Pension Income Splitting

A joint election is required to split eligible pension income. In the year of death, eligible pension income for the purposes on pension income splitting is pro-rated by the number of months up to and including the month of death.

Special Filing Rules

An election can be made to file one or more optional returns with the expectation of reducing or eliminating tax for the deceased. Such a return is regarded as a return of a separate person entitled to claim certain personal tax credits to which the deceased was entitled for the year. In effect, this means that certain personal tax credits may be claimed a second time. You can choose to file up to three optional returns:

- Return for rights or things
- A business as a partner or proprietor
- A testamentary trust

Rights or things are amounts that were not paid at the time of death and that, had the person not died, would have been included in his or her income when received. Employment rights or things include salary, commissions and vacation pay as long as the employer owed them to the deceased on the date of death and they are for a pay period that ended before the date of death. Other rights or things include OAS, uncashed matured bond coupons, bond interest earned to a payment date before death but not paid or reported in previous years, unpaid dividends declared before the date of death and other special provisions relating to farmers, fisherman and sole proprietors and professionals. The filing of this return is time sensitive.

A deceased person may have been a partner in, or the sole proprietor of, a business. The business may have a fiscal year that does not start or end on the same dates as the calendar year. If the person died after the end of the business's fiscal period but before the end of the calendar year in which the fiscal year ended, you can file an options return for the deceased.

You can file an optional return for a deceased person who receives income from a testamentary trust.

Up to $10,000 of the gross amount of death benefits attributable to a deceased taxpayer's service from an office or employment can be excluded from income. The amount must be paid in recognition for the employee's service in an office or employment. Payments out of a superannuation or pension fund, a salary deferral arrangement, retirement compensation arrangement or accumulated vacation leave do not qualify; nor do death benefits paid out under the Canada Pension Plan or Quebec Pension Plan.

The legal representative of a deceased person is required to file income tax returns. An individual acting in a representative capacity is required by the Income Tax Act to obtain a tax clearance certificate before distributing property which he or she controls. The Income Tax Act imposes a personal liability up to the value of the property distributed for unpaid taxes on the person who distributed property without first obtaining a clearance certificate. You do not need a clearance certificate before each distribution, as long as you keep sufficient properties to pay any liability to the Canada Revenue Agency (CRA).

Even though CRA issues a clearance certificate the agency can reassess for the taxation years covered by the certificate (unless the years are statute-barred from reassessment). However, the clearance certificate will protect the executor from any liability for taxes that cannot be recovered from the beneficiaries.

If the executor is dealing with the estate of a Good and Services Tax (GST) registrant, the executor can apply for a GST Tax Clearance Certificate. The obligation is for the representative to obtain a clearance certificate before distributing any property or money under their control.

The Taxation of Trusts

A trust is not a legal entity. It is a relationship between one person (trustee) or group of persons (trustees) and another person (beneficiary) or persons (beneficiaries). There are trusts which arise on and as a consequence of the death of an individual and are called testamentary trusts. An inter vivos trust is any trust which is not a testamentary trust. There are other definitions that determine what trusts are excluded as testamentary trusts and there are different types of testamentary trusts.

Testamentary trusts have a number of tax advantages over inter vivos trusts:

The trust's year end can be selected to be any date up to the first anniversary of the individual's death.

There is no obligation to make installment payments of tax.

The trust pays tax on the same graduated rates as does an individual.

The trust is entitled to the same basic exemption of $40,000 as is an individual, for the purposes of calculating the alternative minimum tax.

Income and capital gains even though payable to the beneficiary can be allocated to the beneficiary or taxed in the trust.

The tax benefits of a testamentary trust can be substantial, particularly the right to be taxed at graduated rates. Care should be taken to avoid tainting a testamentary trust by adding property to it after the death of the individual. For the same reason, it is not a good idea to include in a Will a direction to transfer property on death to an existing inter vivos trust.

United States Estate Taxes

If the deceased was a Canadian resident living part-time in the United States or was a U.S. citizen, you may need to file a U.S. income tax return.

If the deceased owned U.S. assets or was a U.S. citizen you may need to file a U.S. estate return.

For Canadians, U.S. estate tax is imposed on "U.S. Situs Assets" which include:

- U.S. real property
- Tangible personal property in the U.S.
- Shares of U.S. corporations
- Certain U.S. debt obligations, including U.S. T-bills with a term over 183 days

There is a Canada-U.S. treaty dealing with tax imposed on death. There is a new general rule that Canadian residents who are not U.S. citizens will pay U.S. estate taxes on U.S. situs assets, subject to a calculated unified credit.

U.S. income taxes are complex and may require consultation with a U.S. tax expert. It is important that the executor be aware of this requirement and take the appropriate action if required.

Joint ownership of property: Pros and cons

In Ontario spouses usually hold property jointly with something called "rights of survivorship." Rights of survivorship is designed as a way for couples to pass property to the surviving spouse and avoid income taxes and probate fees.

In order to avoid probate fees a parent may wish to transfer property into joint names with one or more children. Conflicts can arise when administering an estate of a person who has transferred property into joint names with a right of survivorship.

If you are considering transferring property into joint names with one or more of your children here are some issues to consider:

- All owners have immediate access to the property.
- The property may become subject to the claims of creditors of all joint owners.
- The transfer, unless to a spouse, triggers a "deemed disposition" for income tax purposes on the portion that is transferred to another joint owner. The death of a joint owner would also create another deemed disposition on that person's share.
- Assuming a "right of survivorship," the property would pass to the surviving owners on the death of one of the joint owners. That means that this property does not become part of the deceased's estate and may conflict with distribution plans that have been set up in the will.
- Family members may be disinherited if there is an "out of order death." If property is held jointly with a right of survivorship with children and one of the children dies before the parent, a grandchild will not receive the share of property.
- A portion of the "principal residence exemption" will be lost if the other joint owners have their own residence on which they will claim the exemption.
- All joint owners will have to declare their portion of any income and capital gains from the jointly held property.

If you are considering transferring property into joint names or becoming a joint owner, talk to a legal advisor and accountant about the benefits and risks.

Canada Pension Plan

Survivor benefits include monthly survivor's benefit, monthly benefit for children and a lump sum death benefit. It is important to apply for Canada Pension Plan benefits. If you do not apply you may lose benefit you are entitled to receive. You should apply as soon as possible after the contributor's death.

The amount a surviving spouse would receive depends upon whether or not the spouse is also receiving CPP, how much and how long the contributor has paid into the plan and the surviving spouses' age when the contributor dies. If the surviving spouse is 65 or older, 60% of the pension will continue to your spouse but subject to maximum of 100% of individual pension.

A child who has lost at least one parent who was a Canada Pension Plan contributor may qualify for children's benefits. The monthly children's benefit is a flat rate that is adjusted annually.

There is also a death benefit which is a one-time payment made to the deceased contributor's estate. The amount of the death benefit depends on how much, and for how long, you paid into the Canada Pension Plan. Canada Pension Plan first calculates the amount that your Canada Pension Plan is, or would have been if you had been age 65 when death occurred. The death benefit is equal to six months' worth of this "calculated" retirement pension, up to a maximum amount.

If you are receiving a survivor's pension and remarry, your pension will continue even if you remarry. This change in rules took place in 1987. If you previously lost a Canada Pension Plan survivor benefit because you remarried you may now be eligible.

The Canada Pension Plan office recommends that you should apply for survivor benefits as soon as possible after the contributor's death. The office that administers Canada Pension Plan has communicated that they will only make back payments for up to 12 months.

Canada Pension Plan and Tax Considerations

Note

In the budget tabled January 2009, major changes to the Canada Pension Plan policy were introduced and if passed will be phased in gradually. Starting in 2012 individuals will be able to draw CPP benefits as early as 60 without leaving their jobs or reducing their hours. However, this comes with a slight catch. Those who take CPP before age 65 will have their pension reduced by 0.6% (from the current 0.5%) per month for each month that the pension is taken before age 65. In other words, CPP benefits are reduced for a person who begins drawing at age 60 by 36% (up from 30%). Those opting for early CPP benefits and are still working are required to contribute to CPP at the same time. Another change is that people who are 65 and older who draw on CPP but continue to work can continue to make contributions to the federal plan, thereby boosting the amount of benefits received.

What you will receive as a pension will depend on how much and how long you have contributed. You have to apply to receive the Canada Pension Plan, it is not automatically sent to you when you are 65.

If you are retired and 60 years of age you can apply to take CPP when you reach 60 years of age. There is a 30% (36% proposed amendment) reduction in the amount you would receive had you waited until reaching 65 years of age. For example, if you are retired and 60 years of age and the amount of CPP you would receive at age 65 is $814/month, you would receive $570/month ($521/month proposed amendment) at age 60. In the majority of cases, it is beneficial to receive the CPP at age 60. Given this example, the total of $34,195 ($31,260 proposed amendment) that would be received from age 60 to 65 divided by the difference in monthly payments between age 60 vs. 65 ($244 currently and $293 proposed amendment) would take 11 years and 8 months (8 years and 10 months proposed amendment) to recuperate. Exceptions do occur and each case should be considered separately.

If you had some low earnings years, some parts of your contributory period may be dropped out of the calculation. This would include; lower or no earnings while raising your children under the age of seven, 15% (17% proposed amendment) of your lowest earning years, eligible for CPP disability benefits.

When both spouses are over the age of 60, they may apply to have the pension payment split between them even if one spouse did not pay into the plan. This could be particularly advantageous for tax purposes.

Employment Insurance Compassionate Care Benefits

As of January 4, 2004, compassionate care benefits may be paid up to a maximum of 6 weeks to a person who has to be absent from work to provide care or support to a gravely ill family member at risk of dying within 26 weeks.

You have to be eligible for compassionate care benefits and you must apply for them.

You can share the 6 weeks compassionate care benefits with other members of your family who must also apply and be eligible for these benefits. Whoever is first claiming compassionate care benefits serves the two week waiting period. In some circumstances the two week waiting period may be waived.

When requesting compassionate care benefits, EI requires that you must provide a medical certificate as proof that the ill family member needs care or support and is at risk of dying within 26 weeks.

The basic benefit rate is 55% of your average insured earnings. Some monies that you receive from different sources may affect your EI payments. Your EI payment is taxable income and federal and provincial income taxes will be deducted.

Compassionate care benefits can be combined with maternity, parental and sickness benefits.

Compassionate care benefits to care for or support a family member who is gravely ill and at risk of dying can be paid regardless of where that family member lives. If you go outside of Canada you do have to notify EI.

If the gravely ill family member dies while you are receiving compassionate care benefits you must let EI know immediately to prevent EI overpayment.

The gravely ill family member may be eligible for EI sickness benefits and disability benefits from the Canada or Quebec Pension Plan. That person may apply for both benefits at the same time.

Charitable Donations

More and more people are providing for donations to their favorite charities in their wills. Specific charitable donations made in a will are treated as though the individual made them in the year of death. The limit on donations claimed in the year of death or the immediately preceding year is 100% of the individual's net income and any amount that is not claimed may be carried back to the immediately preceding year. This can significantly reduce the amount of taxes payable in the year of death and the immediately preceding year. Donations cannot be carried forward from the final personal tax return to the trust income tax and information return.

Donations of Registered Retirement Savings Plans, Registered Retirement Income Funds, Tax Free Savings Accounts and insurance proceeds made by way of direct beneficiary designations within the contracts are treated as gifts in the year of death.

To encourage gifts of appreciated property, the income-inclusion rate for capital gains arising from the donation of publicly listed securities after May 1, 2006 to qualified charities is nil. The donor receives the charitable donation deduction as previously described and is not liable for taxes on the capital gains. Stocks (including shares of mutual fund corporations), bonds, or other rights listed on designated stock exchanges (both Canadian and foreign), as well as Canadian units of mutual fund trusts, interests in segregated (insurance) trusts and prescribed debt obligations (such as certain government bonds) qualify for this incentive.

The deceased may have donated amounts in the five years before the year of death. As long as the deceased did not claim the amounts before, you can claim them in the year of death.

Tax Free Savings Account (TFSA)

In provinces and territories that recognize TFSA beneficiary designations, an applicant may designate a spouse as a "successor holder" in the TFSA contract. Ontario allows for this designation in the TFSA contract. If named as a successor holder, the surviving spouse will become the new holder of the TFSA immediately upon the death of the original holder and keep the tax exempt status of the account. The TFSA continues to exist and both its value at the date of the original holder's death and any income earned after that date continue to be sheltered from tax under the new successor holder. The surviving spouse, after taking over ownership of the deceased holder's TFSA, can make tax-free withdrawals from that account and can also make new contributions to that account, subject to their own unused TFSA contribution room. If the surviving spouse already has their own TFSA and they wish, they can transfer part or all of the value from one to the other (for example, to consolidate accounts). The tax benefits in the transfer of the TFSA to the surviving spouse are substantial.

In provinces and territories that recognize TFSA beneficiary designations, an applicant may designate a beneficiary other than a spouse. In this case the account will no longer be a tax free savings account. Beneficiaries (other than a surviving spouse) can contribute any of the amounts they receive to their own TFSA as long as they have available unused TFSA contribution room.

When there is no successor holder or beneficiary designated in the TFSA contract or the will, the TFSA becomes part of the deceased's estate and distributed in accordance with the will. At the date of death the TFSA ceases to exist and it is considered to have been disposed of for an amount equal to the fair market value of all the property held in the TFSA at the time of death.

Medical Expenses

In the year of death, medical expenses can be claimed for any 24-month period that includes the date of death, as long as no one has claimed them on any other return. This also applies if you are claiming medical expense paid for a dependent who died in the year. Eligible medical expenses to consider are premiums paid to private health services plans, travel expenses, attendant care expenses, full time care in a nursing home, etc.

Joanne Routliffe CA, Jeff LeBlanc CA, Andrew Foreman CA or David Brighten CGA are available to discuss your concerns.

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