

## DEATH OF A TAX PAYER

**Executor** = person who carries out the instructions in the will

### What are the tax implications upon death of a Canadian Resident?

- Deemed disposal at FMV of all capital properties on date of death
  - Including Personal Use Properties(PUP)/Listed Personal Use Properties (LPP)
- But there is an automatic tax free rollover to the living spouse (through a straight transfer or via a spousal trust if the beneficiary is named as the spouse (this also applies to common law spouses)
  - The living spouse pays taxes on these rolled over assets when he/she dies or disposes it
  - The transfer happens at tax value;
    - ACB for non-depreciable capital assets
    - UCC for depreciable capital assets
- You may want to **elect out** of the automatic tax free rollover for the following reasons:
  - Elect some gains to use up:
    - Net capital losses carried over from prior years
    - non-capital losses carried over from prior years
    - Unused Donation carry forwards
    - QSBC Deduction – \$375,000
    - Principal Residence exemption
    - Personal Tax credits and deduction to lower the marginal rates gains gets taxed – you would use this option only when the income from capital gains are minimal
- *There is a valuation issue because we need to value the business so they can pay tax on the gain on the shares (therefore, keep this in mind when writing cases!)*

### Special rules for the Small Business Test for the QSBC Deduction:

- QSBC credits can be used
  - The 90% rule does not have to be met on the date of death, as long as it was met anytime within the last 12 months before death is good enough - a **more lenient QSBC criteria**

### Special rules for unused capital losses

- **Unused capital losses** can be used to offset any source of income (it doesn't have to be just capital gains) in the year of death or the previous two years
  - Used in current year + carry back to previous last two years (any source income) -
    - If tax payer died in 2010 - can carry back against any source income to 2008 and 2009

**Other Matters:**

- If the person who died was disabled in the year he died, remember he/she can get the disability tax credit
- Death benefits that are paid to the living spouse or his family (i.e. by the employer of the deceased person) are tax free up to \$10,000; anything over this amount is taxable in the hands of the recipient (i.e. the living spouse).

**RRSP and Death of a RRSP Policyholder**

- On the death of a **RRSP Policyholder**, the **fair market value of an RRSP** at the time of death is included in the deceased person's income for that year and taxed at their marginal rate.
- **However, if the surviving spouse is designated as the sole beneficiary of the RRSP**
  - The surviving spouse can include the proceeds of the RRSP in his/her income; or
  - Defer taxes by transferring the RRSP to his/her own RRSP on a tax-free basis
    - Under both cases, the deceased tax payer gets an offsetting deduction against the amount included as income
    - The diseased tax payer does not have to deduct the entire refund of premiums (FMV of the RRSP). This is beneficial especially if the diseased tax payer is taxed at a lower marginal rate than the living spouse. The amount not deducted can be transferred to the beneficiary without being taxed again.
- **If a dependent child or grandchild is named as the beneficiary of the RRSP**

A child or grandchild of a deceased annuitant is generally considered financially dependent on that annuitant at the time of death if, before that person's death, the child or grandchild ordinarily resided with and was dependent on the annuitant and they meet one of the following conditions:

- (1) the child or grandchild's net income for the previous year was less than the basic personal amount for that previous year; or
  - (2) the child or grandchild is impaired in physical or mental functions and their net income for the previous year was **equal to or less** than the basic personal amount **plus** the disability amount for that previous year.
- The child/grandchild can include the proceeds of the RRSP in his/her income
    - the deceased tax payer gets an offsetting deduction against the amount included as income
  - Or the child can defer taxes
    - (1) The child/grandchild who is dependent on the tax payer due to physical or mental infirmities can transfer the premiums to his/her own RRSP

- (2) The minor child/grandchild who is dependent (not due to infirmities) can contribute the amount to an annuity with terms not exceeding *18 years less the child's current age*
  - Under both cases, the deceased tax payer gets an offsetting deduction against the amount included as income
  
- **If the beneficiary of the RRSP is a non-dependent child of the deceased**
  - the estate becomes liable for the payment of the tax on the RRSP proceeds received by the beneficiary.

## Tax Returns

Multiple returns can be filed (the advantage of doing this is to double up on credits and get taxed at lower marginal rates).

- Subsection 70(2) of the Income Tax Act gives you the **option to file a separate income tax return for the estate to report the rights or things amounts**. The major advantage of filing the two separate tax returns is that some of the deceased's personal tax credits can be claimed in full on each return. This could lead to sizeable tax savings provided each return has sufficient tax payable to make use of the credits.
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- 1. Rights and things (non-periodic payments not received at the time of death)**
- Only certain items apply such as:
    - **dividends** declared but not received
    - bond coupons matured but not cashed
    - Employment **bonus** declared but not yet paid
    - Employment **salary**, commissions and vacation pay owed by the employer at the date of death, for a pay period that ended before the date of death
    - **Work in Progress** of a sole-proprietor, who has not included income attributable to work in progress
    - CPP and OAS payments received after the date of death
  
  - **Rights or things do not include amounts that accrue periodically**; all of these items must be reported in the terminal (i.e. the final return):
    - interest from a bank account;
    - bond interest accumulated between the last interest payment date before the person died and the date of death;

- The following must be reported only on the final return
  - Income from a registered retirement savings plan;
  - Eligible capital property and capital property;
  - Land in the deceased's business inventory, and
  - Canadian or foreign resource properties.
  
- **Some deductions and personal tax credits can be claimed on the regular terminal return only.** These include
  - capital gains deduction;
  - net capital losses from other years;
  - non-capital losses from other years;
  - allowable business investment losses,
  - registered retirement savings plan deductions;
  - child care or attendant care expenses;
  - support payments;
  - amounts transferred from a spouse, and
  - carrying charges and interest expenses.
  
- **Amounts you can claim in full on both returns are:**
  - the **basic** personal amount;
  - the **age** amount;
  - the spouse or common-law partner amount;
  - the eligible dependant amount;
  - the amounts for infirm dependants age 18 or older,
  - and the caregiver amount.

## 2. Final (Terminal) Return

- You can double up on some tax credits
- You claim the full years' worth of credits; even if you die in January on the taxation year
- Accrued periodic (recurring) payments needs to be included in the terminal return
- Non-periodic payments not received at the time of death need not be included in the terminal return; report these in the rights of things return to double up on your tax credits

### Filing Deadlines

#### **Final (terminal) Tax return needs to be filed at the later of**

- 6 months after the date of death or
- Usual filing date (April 30 for individuals and June 15 for businesses)

#### **Rights of things needs to be filed at the later of**

- One year after the tax payer dies or
- 90 days after you get the **notice of assessment** for the final return

Source

- (1) [http://www.cga-canada.org/en-ca/AboutCGACanada/CGAMagazine/2006/Sep-Oct/Pages/ca\\_2006\\_09-10\\_dp\\_taxstrategy.aspx](http://www.cga-canada.org/en-ca/AboutCGACanada/CGAMagazine/2006/Sep-Oct/Pages/ca_2006_09-10_dp_taxstrategy.aspx)
- (2) [http://www.cra-arc.gc.ca/E/pub/tg/rc4177/rc4177-e.html#P16\\_1059](http://www.cra-arc.gc.ca/E/pub/tg/rc4177/rc4177-e.html#P16_1059)
- (3) <http://www.taxtips.ca/willsandestates/minimizetax.htm>