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Death of a RRIF Annuitant

Upon the death of a registered retirement income fund (“RRIF”) annuitant, the money left in the plan is paid to the named beneficiary of the plan, or the estate if there is no beneficiary. The fair market value of the RRIF at death would be reported on the deceased’s terminal tax return. There is often a period of time that elapses between the time of death and the time the plan is wound up as the executor/administrator needs time to wind up the estate. Any income earned in the plan during this period would be taxable to the estate.

A surviving spouse or common-law partner can be named as a “successor annuitant” in the RRIF contract or the annuitant’s will. In that case, the survivor simply becomes the owner of the RRIF, and all future RRIF payments will be reported in his or her income. The survivor, as the RRIF owner, also has the option of transferring the RRIF balance into an RRSP (if he or she is under age 71), registered annuity or another RRIF. Note that where the survivor becomes the successor annuitant, the value of the RRIF will not be reported in the deceased’s income at the time of death.

If the surviving spouse or common-law partner is named as the RRIF beneficiary but not as a successor annuitant, a different set of rules becomes applicable. In such cases, the spouse has the option of rolling the RRIF proceeds into a registered plan (an RRSP if the survivor is age-eligible, a RRIF, or an annuity, for example) in his or her own name. Again, there is no immediate taxation of the RRIF balance except to the extent of the minimum amount that is required to be paid out of the plan for the year. (Technically, the fair market value at death is reportable in the deceased’s terminal return but a deduction is available for a “designated benefit” paid to the survivor; the survivor must report the amount in his or her income but can, in turn, claim a deduction for the contribution to a registered plan. The amount eligible for contribution to the survivor’s own plan is reduced to the extent that the payments received by the deceased during the year of death are less than the minimum amount for that year.)

Note that there are some tax planning opportunities

provided by this rollover process. For example, the executor/administrator could elect to treat an amount less than the full fair market value of the RRIF at death as a designated benefit. This would leave a taxable balance in the deceased’s final return but create a smaller income inclusion to the survivor. This may provide some tax relief, for example, in situations where the deceased has net capital losses or relatively low income that will be subject to lower marginal tax rates.

A RRIF annuitant may name an individual other than a spouse or common-law partner as beneficiary of the RRIF at death. If that person meets the definition of a “qualified beneficiary” as described below, the RRIF proceeds may also be treated as a designated benefit. As a result, the value of the RRIF included in the deceased’s income at death could be offset by a deduction for the designated benefit, and the beneficiary would be taxable on that designated benefit but might have certain rollover opportunities.

A qualified beneficiary is defined as a child or grandchild who is financially dependent on the deceased annuitant. It is presumed that the child or grandchild is financially dependent if his or her net income in the previous year was less than the basic personal amount (\$10,382 in 2010). If the child or grandchild is infirm, presumed financial dependency will depend on net income being less than the basic personal amount plus the disability amount (\$17,621 in total in 2010). Note, however, that the Canada Revenue Agency (CRA) will consider written submissions documenting financial dependency when the child’s income exceeds these threshold amounts.

If the child or grandchild is dependent because of physical or mental impairment, he or she can immediately pay tax on the RRIF balance received, or transfer it to an RRSP, RRIF or annuity. If the child or grandchild is under age 18, he or she can immediately pay tax on the balance received or buy a term certain annuity to age 18. This may offer some tax relief by spreading the receipt of the taxable RRIF balance over a period of years. (In either case, the amount transferred must be reduced by any unpaid minimum

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amount balance under the RRIF for the year.) Finally, if the child or grandchild is over age 18 and not disabled, he or she must include the RRIF proceeds in income and pay the resulting tax in the year of receipt.

In situations not involving a surviving spouse, common-law partner or financially dependent child or grandchild, the tax results at death are as follows:

- Any RRIF payments received by the deceased in the year of death, plus the fair market value of the RRIF balance at the time of death, would be reported on the deceased's terminal tax return.
- The RRIF balance at death could be paid out to the estate or other beneficiaries tax-free because the RRIF

balance was taxable on the terminal tax return.

- Any investment growth on the RRIF balance subsequent to the time of death would be taxable to the recipient (i.e., the estate or beneficiary) as investment income.
- In certain circumstances, a special provision allows for an adjustment to the deceased's terminal return for the amount of an investment loss that occurs between the time of death and the actual distribution from the RRIF.

The taxation of a RRIF upon the death of the annuitant can be very complex. As a taxpayer's circumstances change, it is important to update his or her estate plan in order to achieve the desired results.

I/R 5401.07

Estate Planning for the Business Owner

Estate planning for the business owner is much more involved than just a well-executed last will and testament. There is a greater breadth of issues and more supporting documentation required. For a business owner, additional questions must be addressed in order to ensure a complete and well thought out plan. This article highlights some of those questions, touching on a few of the issues that require further in-depth investigation in the development of a complete estate plan.

What does the testator actually own and what is the structure of the ownership?

- It is very important to know exactly what the testator owns and how he or she owns it in order to determine how the property will pass to the beneficiaries and the incidence of taxation.
- The business may be a sole proprietorship, a partnership, or a corporation. In a partnership or corporation, any or all assets may be owned by the business. However, some assets such as real estate may be individually owned and leased to the business.
- A business owner may own assets in joint title with another individual. In a joint tenancy, ownership rights will pass automatically to the survivor. In a tenancy in common, the ownership interest passes to the deceased's estate. In either case, the deceased's estate will be responsible for any income taxes triggered by the deemed disposition rules.
- A business owner may own his or her shares through a trust. While it may be a discretionary trust, once the testator passes away, the property within the trust may pass to the other beneficiaries of the trust as per the trust document. Tax implications to the deceased, the trust and the trust beneficiaries will need to be considered where a trust is part of the ownership structure.

Who will take over the ownership of the business?

- The transfer of ownership may be subject to a buy-sell arrangement. In situations like this, the ownership interest will generally be sold to partners, shareholders or other individuals, with the proceeds payable to the estate.
- An estate plan needs to address the fair treatment of all of the beneficiaries, including any legal requirement to provide for certain beneficiaries (e.g., a surviving spouse, dependant children, etc.) if the business were to be transferred to one beneficiary.

Who will take over the management of the business?

- Ownership is relatively easy to transfer but the actual management and operation of a business is much more difficult to transition. Without effective management, a business can quickly fall apart, destroying its ability to generate income upon which the surviving family may be reliant.
- Ongoing management of the business operation will be reliant on the current management team, a newly hired team or a planned succession within the family.
- The management succession plan should, where possible, be documented in a contingency plan that would contain instructions on roles and responsibilities in the event of a death. A contingency plan of this nature should be reviewed at least annually and updated promptly as circumstances change.

What is the best way to transfer ownership?

- Ownership of the business can be transferred outright to the beneficiary who will have full and unfettered control. Alternatively, ownership could be transferred indirectly with the use of a trust. A trust could be utilized to control the asset and eventually distribute the shares.
- Ownership could be broken into different attributes and transferred separately. For example, the value,

income, control and growth of the business could potentially be transferred to different beneficiaries through differing share attributes. Value could be represented by fixed value preferred shares. Income could be represented by special shares. Growth could be represented by common shares. Control could be represented by voting shares. Such a strategy is complex and needs to be carefully evaluated to ensure it meets the intentions of the business owner and the needs of surviving business partners, the management team and family members.

Will the estate have sufficient liquidity?

- The shares owned by the business owner may bear a significant tax liability on the accrued growth in their value. This tax liability will become payable upon the business owner's death, or on the subsequent death of

his or her spouse.

- An estate may also need liquidity for the repayment of debt, the settlement of bequests, establishment of trusts, creation of capital that can be invested to replace capital, etc.
- The provision of liquidity may be addressed through the sale of an investment portfolio, the disposition of specific assets such as a family home or cottage, or through the provision of life insurance. The choice is really about what is the most efficient and desirable for the family.

Estate planning can be complex, especially in the case of a business owner. Examination of all the facts is the first step in ensuring the objectives of the business owner are appropriately addressed.

I/R 2500.00

General Anti-Avoidance Rules

The general anti-avoidance rules (GAAR) were introduced into the Income Tax Act in 1988, just over 20 years ago. Since that time, these rules have generated a large number of court cases. Some cases were dealt with before they reached the courts, some were settled at the Tax Court level, some were appealed to the Court of Appeal, and a few cases made it to the Supreme Court of Canada.

The Supreme Court has set out three criteria that must exist in order for GAAR to be applied:

- (1) The taxpayer must realize a tax benefit;
- (2) The transaction must have been arranged primarily for the tax benefit and not for bona fide purposes; and
- (3) The transaction must be abusive tax avoidance, (i.e., it is not within the object, spirit or purpose of the Income Tax Act provisions relied upon by the taxpayer).

The burden is on the taxpayer to refute points (1) and (2), and on the CRA to establish point (3).

GAAR is applied only in situations that have been approved by the GAAR Committee. The GAAR Committee is comprised of senior officials at the CRA as well as senior officials from the federal departments of Justice and Finance. If the tax assessor feels that GAAR may apply, he or she submits the file to the GAAR Committee. This group will then review the file and determine whether the CRA should apply GAAR to the taxpayer's situation.

From the time that GAAR was introduced in 1988 until June 30, 2010, there were 905 referrals to the GAAR Committee. In 652 (or 72%) of the cases, the CRA applied GAAR. Of the 652 files approved by the GAAR Committee, GAAR was the primary assessing position in 300 cases (or 46%) and a secondary assessing position in 352 cases (or 54%).

The 905 referrals to the GAAR Committee have been categorized as follows by the CRA:

Summary of Issues and Dispositions Before the GAAR Committee as of June 30, 2010*			
Issue	GAAR Applied	No GAAR	Total
Kiddie tax	68	6	74
Offshore trusts	11	1	12
Cross-border leases	11	0	11
Part XIII tax	3	9	12
Losses, rental	11	2	13
Kiwi loan	14	0	14
Losses and stop losses	9	5	14
Charitable donations	14	10	24
Capital gains	24	9	33
Interest deductibility	18	17	35
Debt parking	17	7	24
Indirect loans	28	3	31
Debt forgiveness	33	10	43
Capital and non-capital losses	36	18	54
Loss creation via stock dividend	57	0	57
Part I.3 tax	38	11	49
Provincial GAAR	0	3	3
Surplus strips	111	31	142
Treaty exemption claims	5	2	7
Tower structures	1	3	4
Foreign tax credits	13	3	16
Income splitting	8	3	11
Partnership issues	15	6	21
Miscellaneous	107	94	201
Total	652	253	905

*Chart presented by the CRA at the Canadian Tax Foundation 2010 Annual Meeting

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GAAR is the CRA's biggest stick in dealing with creative tax planners. Tax planners aware of the CRA's concerns and the Court's criteria are invaluable in developing appropriate strategies for their clients.
I/R 7401.00

Government Pension Plans: Benefits And Contributions For 2011

Contributions and benefits under government pension plans are adjusted periodically to reflect increases in the Consumer Price Index or the average Canadian wage. The new amounts, commencing January 1, 2011, are shown in the table below. Each benefit is subject to income tax when received, with the exception of the Guaranteed Income Supplement and the Allowance. All benefits shown are paid monthly unless otherwise indicated, and are the maximum amounts.

	CPP	QPP	OAS
CPP / QPP benefits (for new beneficiaries)			
Retirement pension (at age 65)	\$960.00	\$960.00	
Disability pension	\$1,153.37	\$1,153.34	
Disabled contributor's child benefit (each child)	*\$218.50	*\$69.38	
Survivor's*** pension			
• under age 65	**\$529.09	**\$793.34	
• age 65 or over	\$576.00	\$576.00	
Surviving child's benefit (each child)	*\$218.50	*\$69.38	
Death benefit (lump sum)	\$2,500.00	\$2,500.00	
Combined benefits			
• survivor's*** pension and disability (under age 65)	\$1,153.37	n/a	
• survivor's*** pension and retirement (age 65 and over)	\$960.00	\$960.00	
Annual CPP/QPP contribution			
Self-employed (9.9%)	\$4,435.20	\$4,435.20	
Employee (matched by employer) (4.95%)	\$2,217.60	\$2,217.60	
Old Age Security (OAS)			
January to March 2011			\$524.23
Guaranteed Income Supplement (GIS)			
January to March 2011			
• spouse/common-law partner receives OAS or Allowance			\$436.95
• single person (or spouse/common-law partner receives neither OAS nor Allowance)			\$661.69
Allowance			
January to March 2011			
• age 60 to 64, and spouse/common-law partner receives OAS and GIS			\$961.18
• age 60 to 64, survivor's*** Allowance			\$1,065.45
Notes:			
* flat benefit amounts			
** these amounts may vary depending on whether the survivor is under age 45, disabled, or with or without children			
*** a survivor is the spouse or common-law partner of a deceased individual			

I/R 3201.01 and 3201.03

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