Tax Planning – Estate Administration

Tax Planning Issues and Opportunities

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Introduction

Tax Planning – Estate Administration

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She is an Associate Member of the Society of Trust and Estate Practitioners (STEP), member of the Executive of the Edmonton Branch of STEP, member of the Estate Planning Council of Edmonton, and Edmonton Chapter of the Certified Executor Advisor Network (CEAN).

Michelle is active in mentoring CPA students both within MNP and through CPA Alberta. Michelle is a volunteer presenter for the CPA Canada Financial Literacy Program and is a member of the Board of Directors of the Edmonton Fringe Festival.

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Estate Planning Items to consider:

- Tax Filings - Responsibilities
- Tax Impacts
- Planning Tools
- Reduce/Defer Taxes
- Residency
- Information the Tax Advisor/Executor needs; and
- What is a Clearance Certificate, and do you need one?

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Building a Support Team

- Family and Friends
- Government Agencies and Community Organizations
- Financial Advisors
- Legal Counsel
- Accountants, Specialists and Estate Planning Advisors

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Estate Planning

Not Simply Signing a Will - A Process

Business Planning
Business Structure
Income Splitting
Asset Protection

Legal Planning
Trusts
Wills
Power of Attorney
Personal Directive

Risk Planning
Life insurance
Create an Estate
Preserve an Estate
Equalize an Estate

Tax Planning
Trusts
Restructuring
Gifts
Donations

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Tax Filings

The Two Certainties

"It's death and taxes to see you - death wants to come in first."

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Tax Filings

Outstanding Returns of the deceased individual

- Prior year personal tax returns;
  - Has all income been reported?
  - Do they have foreign property or pensions?
  - Are there credits such as Home Accessibility or Disability Tax Credit to be applied for?
- GST returns - sole proprietors; and
- Responses to outstanding Canada Revenue Agency ("CRA") requests.

Tax Filings

Potential areas of liability:

- Section 160 assessments for other person's tax liabilities if deceased received transfers of property for less than FMV consideration
- Director's liability for unremitted source deductions, GST or non-resident withholding tax of a corporation; and
- US Gift or Estate Tax on US-situs property gifted during lifetime or owned at the date of death

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Tax Filings

T1 Personal Income Tax Return – Terminal or Final Return

- Covers the period from January 1, to the date of death;
- If death occurs prior to November 1, the return is due on or before April 30 of the following year (June 15 if self-employed); and
- If death occurs between November 1 and December 31, the return is due within 6 months of the date of death.

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Tax Filings

T1 Personal Income Tax Return – Terminal or Final Return

Items to report:

- **Income and deductions** from January 1 to the date of death;
- **Capital gains or losses** from January 1 to the date of death;
- **RRSP FMV balances** at date of death, offset by deductions where possible;
- **RRIF FMV balances** (depending on successor beneficiary);
- **Disposition of the principal residence**;
- Up to **24 months of medical receipts** (those not previously claimed);
- **Other income, deductions and credits** as applicable; and
- **Deemed disposition** of assets owned at the date of death**.

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Tax Filings

T3 Income Tax and Information Return(s) for the Estate

- Returns for the Estate
  - **Graduated Rate Estate** – For period from the day after the date of death to a maximum of one year from the date of death;
  - **T3 Returns** for each year to the wind-up of the Estate; and
  - **T3 Returns for Trusts set up in the Will**

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Tax Filings

Interest and Penalties

T1 Terminal Tax Return

- Late filing penalty – 5% of balance owing plus 1% of balance owing for each full month return is late to a maximum of 12 months.
- May be higher if there is a previous late filing.

T3 Trust Tax Return

- Late filing penalty – 5% of unpaid tax plus 1% of unpaid tax each full month return is late to maximum of 12 months.
- May still be subject to penalty even if no taxes owing, of $25 per day for each day late (minimum $100, maximum $2,500).
- Higher if a demand to file is issued or a repeated failure to file on time and/or report all income.

Trusts in Will

- Subject to new reporting requirements for Trusts for years ending after December 30, 2023
- Penalty greater of $2,500 and 5% of the highest amount at any time of the year that is equal to the total fair market value of the property held by the Trust

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Tax Impacts

"If death and taxes are inevitable, how come we never hear about the death of taxes?"

Tax Impacts

Deemed Disposition

- At the date of death there is a deemed disposition of all property owned by the deceased including real estate, shares of privately owned corporations, investment portfolios, personal use items, listed personal property.
- This includes the deceased taxpayer's share of jointly owned property with the right of survivorship.
- If certain criteria are met, capital gains arising from the deemed disposition of privately owned corporations, qualified farm or fishing property may be offset by the lifetime capital gains exemption.

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Tax Impacts

What will pass outside of the Estate, and how does that impact the Terminal Personal Income Tax Return?

- Items that pass outside of the Estate
  - Items owned jointly with a right of survivorship
    - Joint bank and investment accounts
    - Real estate and other property
  - Items with specific beneficiary designations
  - Life insurance with specific beneficiary designations

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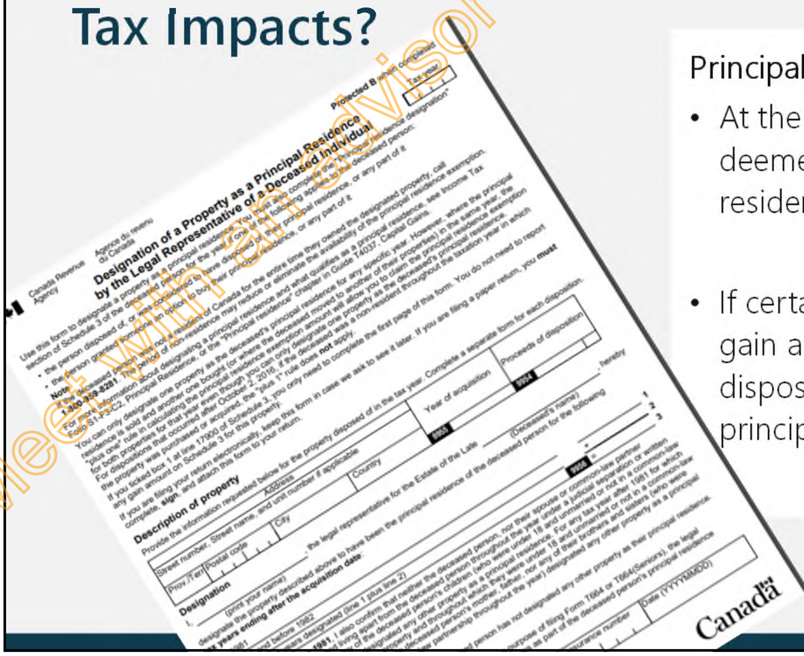
Tax Impacts?


Canada Revenue Agency / Agence du revenu du Canada

Designation of a Property as a Principal Residence by the Legal Representative of a Deceased Individual

Description of property

Designation

Canada

Principal Residence

- At the date of death there is a deemed disposition of the principal residence owned by the deceased.
- If certain criteria are met, a capital gain arising from this deemed disposition may be offset by the principal residence exemption.

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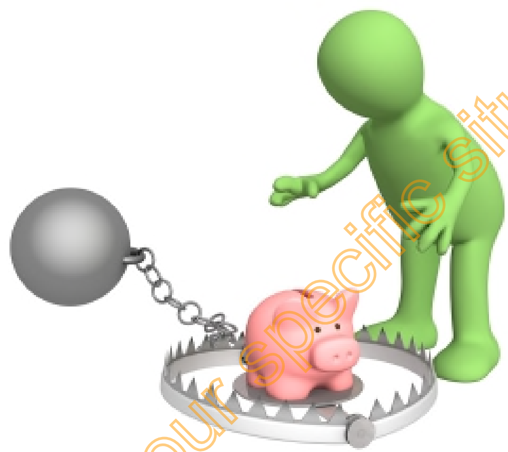
Tax Impacts?

Registered Retirement Savings Plan ("RRSP") or Registered Retirement Income Funds ("RRIF")

- General rule - at death of annuitant, considered the annuitant received fair market value of all property held in plan/fund at date of death.



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Tax Impacts?

RRSP & RRIF

Exceptions if specific criteria are met:

- Spouse or common-law partner is the sole beneficiary of the plan and all plan property is directly transferred to RRSP or RRIF of the spouse or common-law partner;
- Transfer to a qualified beneficiary; or
- Transfer to Registered Disability Savings Plan ("RDSP").

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Tax Impacts?

Tax Free Savings Account ("TFSA")

- Spouse named as successor holder.
- Designated beneficiaries.

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Residency

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Residency

Considerations

RESIDENCY OF ESTATE – MIND AND MANAGEMENT

RESIDENCY OF EXECUTOR AND BENEFICIARIES

ADDITIONAL FILING REQUIREMENTS

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Tax Planning

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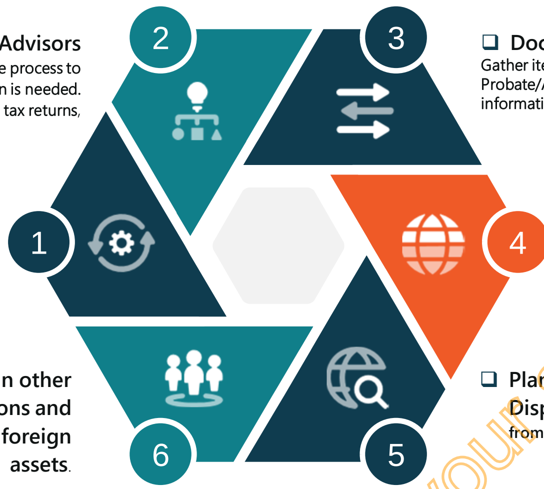
Administrators – Checklist Tax Planning



❑ **Meet w Advisors**
Meet with advisors early in the process to confirm what information is needed.
Review previously filed tax returns,

❑ **Documents**
Gather items needed to apply for the Grant of Probate/Administration, will need additional information for taxes

❑ **Assets/Liabilities**
Inventory of assets and liabilities, secure assets, organize appraisals,

❑ **Taxes**
Estate taxes and probate fees
Budget for taxes and fees, advise beneficiaries of timelines
Returns to be completed,
Clearance Certificate

❑ **Tax filings in other jurisdictions and reporting of foreign assets.**

❑ **Plan Dispositions/Distributions**
from a tax planning perspective

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Tasks - Administration

Items to Consider

Budgeting
Meet with an experienced tax professional to develop an estimate of taxes payable and timeline for filings so you can plan for cash flow for the payment of taxes

Dispositions / Distributions
Will distributions be cash or in-kind.
Dispositions, track expenses to prepare for sale, proceeds received, and value of items donated or destroyed.

Donations in the Will
Review the Will to determine if donations may be made "in-kind" rather than liquidating and donating cash.

Post-mortem Planning
Loss Carry-back, Pipeline Planning

Trusts
Consider filing requirements for Trusts in the Will.

Bookkeeping
Maintaining a full record of transactions
Executor fees, probate fees, advisor fees, and other items

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Planning Tools

Items to assist in planning

Estimate of taxes on death
- First spouse
- Second spouse

Net asset analysis

Table of proposed distributions
- Are they as intended, are they equal, are they fair

System to organize documents and information

How can taxes be reduced in an Estate?

Planning to reduce taxes in the Estate

- Meet with an experienced tax professional as soon as possible. Some planning must occur in first taxation year of the Estate.
- Consider the use of spousal rollovers, transfers to qualified beneficiaries, Qualified Disability Trusts*, and elections to opt out to avoid the loss of carried forward or current losses, deductions or credits to optimize taxes.
- Confirm availability of the lifetime capital gains exemption on Qualified Small Business Corporation Shares or Qualified Farm Property and principal residence exemption
- Manage Trusts set up within the Will and the current Estate in such a manner that the Graduated Rate Estate status is not lost.

How can taxes be reduced in an Estate?

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Confirm information is available from previous returns

- Obtain copies of previous personal tax returns and review the Canada Revenue Agency history of the taxpayer to confirm you have utilized:
  - Carried forward losses;
  - Unused donation receipts; and
  - Unused medical receipts from the previous year.

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How can taxes be reduced in an Estate?

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Donations

- Consider donation of life insurance policy or registered accounts
- Consider donation of securities or mutual funds for current or Estate planning

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Donations

Benefit of Donation of Securities – An Example

	Sell securities and donate after-cash proceeds	Donate securities directly		
Cost of securities	$ 10,000	$ 10,000		
Current market value	$ 50,000	$ 50,000		
Capital gain	$ 40,000	$ 40,000		
Capital gain inclusion rate	50%	0%		
Highest personal tax rate	48%	48%		
Taxes on capital gains	$ 9,600	$ -		
Donation after tax	$ 40,400	$ 50,000	$9,600	Charity gets this much more
Donation tax credit	$ 20,150	$ 24,950	$4,800	Donation credit is higher

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Information the Tax Advisor Will Need

- Copy of Will, Application and Grant of Probate;
- Copy of the death certificate;
- Copies of personal income tax returns filed for the previous three years to review for possible income sources and assets;
- Summaries from Investment Brokers (client records if personally traded) indicating the fair market value and adjusted cost bases of all investment accounts, RRSP, RRIF and TFSA accounts at the date of death;
- Adjusted cost bases and fair market values of personal assets and property;
- History of ownership, year of purchase and use of real estate including the principal residence; and
- Income slips and receipts for deductions or credits.

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How will the taxes be paid?

Planning for the Payment of Taxes

Meet with an advisor to quantify the potential tax liability, once this amount is known consider options for the future payment of the taxes:

- Sale or liquidation of assets;
- Life Insurance for a variety of planning options; and/or
- Tax planning.

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Executor Fees

Tax Planning for Executor

- Limited deductibility for tax purposes.
- Taxable income for recipient:
  - May wish to plan over more than one year if possible.

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What is a Clearance Certificate and Do You Need One?

Clearance Certificate

- A Clearance Certificate confirms the Estate of a deceased person has paid all taxes, interest and penalties for the Estate and the deceased.
- It allows the legal representative to distribute assets without the risk of personal liability for amounts owing to the Canada Revenue Agency.*

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Questions

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Introduction

Tax Planning – Death and Taxes

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