

Death and Taxes – Part I

“In this world, nothing is certain but death and taxes.” – Benjamin Franklin

I've often wondered if Benjamin Franklin had estate lawyers in mind when he made his famous quote about the certainty of death and taxes. Estate lawyers, for better or worse, are positioned at the intersection of these two certainties. While we can't do much about the certainty of death, we might be able to do something about the certainty of taxes—or at least the taxes that arise on death.

One of the first things I learned about tax planning way back in my law school courses on income tax was that if you have an opportunity to defer taxes, you should take it. Many Canadians defer taxes through RRSPs. No income tax is paid on monies contributed to an RRSP until those monies are withdrawn. Ideally, RRSP monies are drawn out over a period of years during a person's retirement when their marginal tax rates tend to be lower. Death presents a problem for the RRSP holder in the sense that at death, the entire amount of the RRSP is drawn into income in the person's terminal income tax return. If the RRSP amount is large enough, the resulting spike in income can drive the taxpayer well into the highest tax bracket. For Albertans, each dollar of income (including any RRSP amounts drawn into income at death) above \$120,887 will be taxed at 39%.

Taxes that would otherwise be due on RRSPs can be deferred further by naming the deceased's spouse or common law partner as the designated beneficiary of the RRSP. (For income tax purposes, common law partner means a person who cohabits with the taxpayer in a conjugal relationship for a continuous period of at least one year, and includes common law partners in a same-sex relationship.) The spouse or common law partner so-named can receive the RRSP proceeds free of tax, provided they are then kept in the spouse's or common law partner's own RRSP. The usual rules of taxation of RRSP amounts on eventual withdrawal remain in effect for the surviving spouse or partner.

In circumstances where transfer of RRSP amounts to a spouse or common law partner is not an option, it may be possible to transfer RRSP amounts tax-free to a financially dependent child or grandchild. Generally speaking, taxation authorities dislike tax-free intergenerational transfers of wealth, so the definition of “financially dependent” is quite restrictive and, if available, the deferral lasts only until the financially dependent child or grandchild turns eighteen. Not as good as the deferral available to a spouse or common law partner, but a deferral nonetheless.

Another means of reducing taxes on death is through gifts to charity. Gifts made in a will to a registered charity give rise to non-refundable tax credits that can be used to reduce taxes that would otherwise be payable in the year of death. If

charitable giving is something in which a person believes, charitable giving at death through a will may offer a means of reducing that person's taxes at death.

RRSP rollovers and charitable giving are just two of the many ways that effective estate planning can reduce the impact of taxes at death. In the months that follow, I will endeavour to highlight other ways of dealing with the intersection of death and taxes.