

Death and Taxes – Part II

Taxation has probably been on the minds of a lot of people with April 30 having just passed recently. Just as death and taxes are both unavoidable, so is taxation at death. There are some important things about taxation at death that people should know.

The first thing that people should know is that there is a deadline for filing the terminal return. Generally speaking, the terminal return is due on April 30 in the year following the death of the deceased. The deadline is extended to six months following the death of the deceased if the deceased passed away in the last two months of the year. This ensures plenty of time for the executor to gather the information required to file the terminal return.

Another thing that people should know is that RRSPs and RRIFs form part of the deceased's income in the year of death. Depending on the amount of money in the deceased's RRSP or RRIF, this can result in a major spike in income in the year of death. If the deceased left a surviving spouse or common law partner, the surviving spouse or common law partner can have the deceased's RRSPs or RRIFs "rolled over" to them without immediate tax consequence. The survivor will pay tax as amounts are drawn out of their RRSP or RRIF. Otherwise, whatever amounts are in the deceased's RRSP or RRIF will be taxed as ordinary income in the year of death.

Capital gains taxes are also determined at death on any capital properties owned by the deceased. As with RRSPs and RRIFs, tax-free rollovers are available to surviving spouses and common law partners meaning any capital gains taxes that would otherwise be due can be deferred until those properties are disposed of by the surviving spouse or common law partner. Principal residences are not subject to capital gains taxes, so any increase in the value of your home is yours to keep at death; however, only one principal residence is allowed per couple, so while your home is not subject to capital gains tax, your cottage or any other land you may own will be.

I'm frequently asked whether the capital gains tax on a property can be avoided by putting the property into joint names prior to death. The answer, quite simply, is no, no, no. In fact, transferring property into joint names could trigger an immediate capital gains tax—quite the opposite of what many people seem to believe. While transferring property into joint names would enable people to avoid paying a *probate* tax on that property, Alberta does not levy a probate tax, so nothing is gained from a tax perspective.

The estate of a deceased person is treated as a taxpayer, distinct from the beneficiaries of the estate. Any income earned by the estate while the administration of the estate is on going is taxed in the hands of the estate. This is not necessarily a bad thing since the estate pays taxes at the same graduated

rates as an individual would pay. In many cases, these rates are lower than the rates of tax being paid by the beneficiaries. Why be in a rush to receive the estate property when doing so means paying higher rates of tax? For people who are motivated to reduce the amount of tax that their beneficiaries will pay, there are advanced estate planning strategies available that take advantage of the fact that testamentary trusts and estates pay reduced amounts of tax. Here we enter the realm of complicated (and expensive) estate planning. Have you ever wondered why wealthy people set up complicated trusts in their wills? They don't do it just to be eccentric. There are usually some substantial tax motives for doing so. And here's the best part—you don't have to be among the super-rich to make this type of tax planning worthwhile. You don't have to be eccentric either.

Maybe that's the most important thing there is to know about taxation at death.