TAXADVISOR

Estate Liability with RRSPs and RRIFs

Determining the benefits of beneficiaries

COURT REPORT

BY JAMIE GOLOMBEK

As advisors, we know the general rule is that the fair market value of an RRSP or RRIF, as of the date of death, is fully taxable to the deceased in his or her terminal tax return, unless the amount qualifies for a rollover, generally to a surviving spouse or partner or, in limited situations, to a minor dependant or disabled dependant child.

Note: this tax treatment generally remains the same even if the actual proceeds of the RRSP/RRIF are paid out directly to a named beneficiary. The biggest cause for concern with registered plans is that while the beneficiary of the RRSP/RRIF gets the fair market value of the plan, the tax burden associated with the fair market value (FMV) inclusion *generally* falls to the estate. *Generally*, but not always, as a tax case (*Bélanger v. The Queen, 2007 TCC 502*), decided this past October, demonstrates.

Gail L. Bélanger was reassessed by the Canada Revenue Agency for over $6,200 in tax. Bélanger's mother passed away in 1997 and Bélanger was named as one of the beneficiaries on her late mother's RRIF – Bélanger's share being $15,600.

> It may be worthwhile to name the estate as the beneficiary of an RRSP or RRIF.

She testified that by naming the children as direct beneficiaries of the RRIF, her late mother intended the proceeds of the RRIF to be received "directly and not through her estate," but that her mother's intention was for the estate to be responsible for paying the taxes on the RRIF.

When the CRA attempted to collect the taxes from the estate they were unsuccessful; the CRA, then, turned to the joint and several liability rule under the *Income Tax Act* relating to monies received out of a RRIF. (There is a parallel rule for RRSPs.). Simply stated, this rule provides that upon the death of the annuitant of a RRIF, the estate, and any recipient of RRIF proceeds, are "jointly and severally liable to pay a part of the annuitant's tax" on the RRIF for the year of the annuitant's death.

Bélanger argued the CRA should hold the executor of the estate of her late mother accountable for any liability of the estate and should go as far as to appoint a new estate executor. Unfortunately, the Tax Court doesn't have the jurisdiction to do either.

The judge found that the FMV of the RRIF was indeed taxable in Ms. Bélanger's late mother's return since none of the rollovers discussed above applied. As a result, the estate was appropriately liable for taxes owing on such a deemed FMV realization. In addition, since the *Tax Act* specifically makes the annuitant (or the estate) and a taxpayer who received monies jointly and severally liable for taxes, the CRA could properly go after Bélanger for the taxes owing.

Next, Bélanger questioned the amount of tax assessed (it appears she was assessed at her own, personal marginal tax rate of 40%). The *Tax Act* specifically states that the amount of tax payable in this situation is "equal to the tax liability of the estate, including the benefits from the RRIF, less the result of a second calculation of the tax liability of the estate," but excluding any benefits arising from the deemed FMV inclusion of the RRIF upon death. The difference between the two tax calculations is the amount Bélanger should be required to pay. Since it appears that no tax return was ever filed for the estate of Bélanger's late mother, the Judge ordered the CRA to recalculate the tax liability.

To sum up, how could this situation have been avoided? It may be worthwhile, especially where no qualifying rollover is available, to name the estate as the beneficiary of an RRSP or RRIF and then to name the ultimate beneficiary of the RRSP or RRIF proceeds in the will. This will help ensure that the tax liability follows the money. Of course, the cost of so doing must be weighed against other ancillary (often overexaggerated) benefits of naming a beneficiary directly on the plan, the primary one being probate tax avoidance. **AER**

Jamie.Golombek@aimtrimark.com
Jamie Golombek, CA, CPA, CFP, CLU, TEP is the Vice-President, Taxation & Estate Planning, at AIM Trimark Investments in Toronto.

CORRECTION: In last month's column, the securities firm was Chartwell not Caldwell. Our apologies.