

Minding YOUR BUSINESS



S U M M E R 2 0 0 9

From The Desk Of

What Am I Going To Do?

The death of a spouse is one of life's great stressors. Not only do you have to deal with the physical and emotional void, you must also deal with the details of winding up an estate.

In the midst of sudden grief, the banality of searching for the information needed to close the deceased's estate may be an intrusive and even offensive process. On the other hand, making the necessary phone calls may start you on your path through the stages of grief.

However the process of winding up the estate affects you, you will need to reach out for information and should call:

Your Accountant

Your accountant may have information concerning investments, RRSPs, and insurance that may lead you to others you must call. You will also need your accountant's advice concerning the tax consequences of your spouse's death. It is always advisable to discuss how the liquidation of assets, investments or government-sponsored savings vehicles, such as RRSPs or RESPs, and HBP's will impact the deceased's estate and perhaps even your own income taxes.

Your Lawyer

Your lawyer will probably have the original copy of the will and may even have been named executor. Your lawyer can also provide insight into your responsibility for paying any outstanding debts incurred by the deceased. The will can be expected to provide details as to where assets, insurance policies or investments are held and name contacts.

The Funeral Home

Funeral arrangements can be expensive. Make sure you know the funeral costs in

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Are We Living Together?

It is indeed, but love also has some pretty banal earthly aspects that need to be looked into before that love becomes a living arrangement. Any two people contemplating marriage or merely living together for the long term should be aware that each type of relationship carries legal and tax implications. So, before getting too financially involved, the parties should pull together their respective financial information and meet with their lawyers and accountants to discuss the implications of what they are contemplating.

Marriage, Common Law and the CRA

But how are these relationships defined in law? The term spouse has been reserved for a legally married couple; determining when two individuals are considered to be living together as common-law partners is a bit more complex.

For tax purposes the individuals in a common-law partnership (same or opposite sex) must have:

- lived together in a conjugal relationship for at least 12 consecutive months
- had a birth child together or adopted a child
- a child wholly dependent upon one of the individuals in the relationship and the other individual must have custody and control of the child.

Once married or determined to be common-law partners the Canada Revenue Agency does not differentiate for income tax purposes.

Partners in either type of relationship will see changes in many deductions and tax credits to which they were accustomed as single tax filers. Some changes are beneficial while others appear to penalize those whom love has brought together. Some common changes that each partner should review for their possible impact on the individual and the family unit are as follows:



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: **"It is not because things are difficult that we do not**
: **dare, it is because we do not dare that they are**
: **difficult"** – Seneca
:

OUR COMMITMENT *To You.*

We recognize that while "accounting" is an integral part of your business, it is only a part of your business. Our approach to accounting doesn't miss the forest for the trees or the people for the numbers. Our dedicated professionals will provide you with the creative, proactive and timely solutions to assist you in responding to the daily challenges confronting your business.



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Are We Living Together?

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Partners in both types of relationship may now make RRSP contributions to the other partner's RRSP. The result is a reduction in the contributor's taxable income and a consequent reduction in tax liability while the recipient is permitted to build a tax deferred RRSP nest egg. Couples should be aware of the rules concerning ownership of the plan and withdrawal from the plan before contributing to their partner's RRSP.

Individuals earning less than \$25,000 per annum are recipients of GST rebates approximating \$250 per annum. Once it is determined that individual taxpayers are married or in a common-law relationship, the GST calculation becomes based upon the combined income of the two partners; the GST benefit attributable to two "unmarried" individuals each earning \$25,000 is greater than the GST attributable to a "married" couple with combined earnings of \$50,000.

There are tax credits, including age credit, disability and tuition (to name but a few) that are transferrable to a spouse or common-law partner if one individual in the relationship cannot use them.

Many employers provide a \$10,000 tax-free death benefit payment to the surviving spouse, partner, or child of the deceased employee. If two friends living together do not meet any one of the conditions that define a common law partnership, the tax-free benefit may not be paid.

Medical expenses: are deductible once the aggregate of the expenses exceeds the lesser of 3% of net income or \$1,962. Those couples who meet the married or common-law criteria can transfer medical expenses to each other to attain an overall benefit. Similarly, donations made by individuals within a relationship can be transferred to the tax return of the other taxpayer if tax benefits accrue.

When an individual dies: the value of an RRSP and capital gains deemed realized upon death are taxed in the year of death. If the amount is large, it can create a hefty tax bill when added

to any other income earned during the year of death. If the deceased is married or a common-law partner, RRSP amounts are transferred to the survivor's RRSP tax free. Capital items can, depending upon the decision made by the spouse or common-law partner, be transferred to the survivor without tax consequences.

Principal residence may be a pressing issue: Whether married or in a partnership the Tax Act allows for only one principal residence. This means that, if each partner possessed a residence at the time of union, one residence will be subjected to tax on capital gain at the time of sale. This does not imply that one of the units should be sold just because of the union, but it does suggest that individuals should consider the tax implications of holding a second residence including a cottage.

A single parent who marries or enters into a common-law relationship will lose the equivalent-to-spouse credit of \$10,100 for the 2009 taxation year. Further, if the single parent enters into a relationship, does not earn income, and circumstances permit the payment of child care by the major breadwinner, the child care payments will not give rise to a tax deduction for the individual paying tax on earnings because such payments must be deducted by the lower income "spouse".

For older individuals entering into a new relationship, the ability to split pension income with a partner who earns less can provide significant tax savings not permitted if the individuals were just friends.

Dispel Those Urban Myths

Meeting with Majewski Shaler & Co. before entering into any kind of a long-term conjugal relationship is an excellent means of clearing up urban myths about the positive and negative aspects of splitting various items of income and deductions. Furthermore, the knowledge Majewski Shaler & Co. gathers during the initial meeting will allow consideration of strategies that may prove beneficial to both partners as their lives together progress.

Tax Tips & Traps

CAPITAL GAINS AND LOSSES

Capital Gains Deductions

The rules in the Income Tax Act note that a capital gain deduction may not be claimed if the individual knowingly, or under circumstances amounting to gross negligence, fails to file the Return of Income within one year after the due date or, fails to report the capital gain in the Return of Income for the particular taxation year; and CRA establishes the facts justifying the denial of the capital gain exemption.

In a February 26, 2009 Tax Court of Canada case, the issue was whether the capital gains deduction should be disallowed because of the taxpayer's failure to file his 1998 tax return on time and to report the capital gain.

Taxpayer Wins!

The Court noted that there was no evidence that the Appellant had any intention of deceiving CRA or evading taxes or any malicious intent not to comply with the Act. In order for the Appellant to have failed to report the capital gain under circumstances amounting to gross negligence, his conduct would have had to have been tantamount to an intentional failure to report the capital gain to deceive CRA to realize an economic gain. There was no evidence of such culpable conduct.

As a result, the taxpayer's appeal is allowed and the taxpayer may claim a capital gain deduction of \$155,443 for the 1998 year.

SWISS BANK ACCOUNTS

The Swiss Banking Corporation (UBS) appears to have solicited and funneled an estimated \$5.6 billion from Canadians into offshore bank accounts. CRA has refused to confirm or deny the launching of an investigation into the UBS activities in Canada but it has informally noted that a Canadian investigation has begun.



In addition, there is an ongoing United States investigation into the UBS accounts held by Americans. A number of Americans are seeking to use Voluntary Disclosure in the United States. However, the Voluntary Disclosure rules in Canada are less generous. In Canada, if a taxpayer is aware of, or had knowledge of, an audit, investigation or other enforcement action by the CRA regarding the disclosed information or, if the CRA or any other authority or administration initiated an enforcement action relating to the disclosure against the taxpayer (or a related or associated person) and the enforcement action was likely to have uncovered the information disclosed, Canadian Voluntary Disclosure may not be allowed. Therefore, a Canadian taxpayer may, or may not, be afforded Voluntary Disclosure with respect to UBS deposits.

It was noted in the Globe and Mail (February 24, 2009, page B13) that a July 13, 2009 U.S. Court case will determine whether the 52,000 Americans who have secret accounts at UBS will have to be turned over to the IRS. It is estimated that the 52,000 accounts consist of \$14.8 billion in deposits.

BUSINESS/PROPERTY INCOME

Rent From Family Members

In a March 12, 2009 Tax Court of Canada case the taxpayers collected a modest rent from their son, who lived in the home with his wife and three children (\$500 per month), and their daughter (\$200 per month) after she finished school. The taxpayers claimed a loss on the rental operations on the basis that 50% of home expenses were related to the rental operation in 2004 and 75% in 2005.

Taxpayers Lose

The Court found that the parents did not intend to earn a profit from the rent charged to their children as it was essentially a family arrangement with a modest amount being charged to help defray the costs of maintaining the home. Therefore, the losses were denied.

Home Renovation Tax Credit (HRTC)

In an April 1, 2009 Technical Interpretation, CRA notes that even though there is no legislation yet regarding the new HRTC introduced in the January 27, 2009 Federal Budget, some examples of expenditures that would likely be eligible for the HRTC include:

- renovating a kitchen, bathroom or basement;
- new carpet or hardwood floors;
- building an addition, deck, fence or retaining wall;
- purchasing a new furnace or water heater;
- painting of the interior or exterior of a house;
- a new driveway or restoring a driveway; and
- laying new sod (the HRTC includes land that forms part of the eligible dwelling).

What Am I Going To Do?

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detail. The funeral director may allow you to defer payment until funds are available through the executor or the estate. Ask the funeral home for copies of at least twelve certificates of death since banks, insurance companies and government agencies will require proof of death.

The Bank

Notifying the bank of the death will freeze all accounts and access to any safety deposit box that might hold jewelry or evidence of investments. This action by the bank ensures the estate is intact for the executor and eliminates the possibility of unscrupulous individuals withdrawing funds or valuables.

The Investment Advisor

The company handling the deceased's investments must be contacted. The advisor will be able to provide the portfolio, its market value at the date of death, the adjusted cost base and whether the assets are held solely or jointly. This information will enable your accountant to calculate the deceased's tax liability, if any, for submission of the final return.

The Deceased's Employer

If the deceased was employed at the time of death, the employer will have to be notified. There may be accrued remuneration and vacation pay owing. For many, there may be insurance policies, pension plans, death benefits, that is, payments for built-up sick-leave credits owing, if the deceased had not yet retired, and payments acknowledging the deceased's service. You will also want to determine whether medical, drug and dental insurance continue for the

immediate family. If the deceased had been a union member, the survivors might be entitled to union benefits.

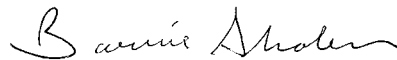
Human Resources and Social Development Canada

The survivor should contact HRSDC as soon as possible after the loved one's death to claim the one-time lump sum death benefit of \$2,500 as well as the survivor's pension and children's benefits. The survivor's pension is based on the deceased's contribution to the CPP. The monthly children's benefit for all children under the age of 18 continues while the children attend school full time.

A low-income survivor between 60 and 64 may apply for an allowance based on the previous year's income. Payments traditionally start six-to-12 weeks from the date of application. Early application is suggested as there may be difficulties receiving back payments exceeding 12 months. At age 65 the allowance changes to the Old Age Security pension. Once the survivor is receiving the OAS pension, application may be made for the Guaranteed Income Supplement.

Seek objective advice from Majewski Shaler & Co.

Emotional support and practical advice are much needed when a loved one dies. The emotional support can be garnered from family members or close friends, but it is best to speak with an independent and unbiased outsider such as Majewski Shaler & Co. for objective advice.



Tax Tips

cont. from previous column

We understand that CRA has disallowed CCA and ECE where the client cannot produce the invoice for capital assets and goodwill purchased many years prior.

Editor's Comment

On March 17, 2009, CRA issued a News Release on "Keeping Books and Records". Also see CRA 19-page Guide RC4409 - Keeping Records.

Inter-Company Debt—Business Loss

In a November 21, 2008 Tax Court of Canada case, the Court found that losses from certain cash advances made to its subsidiary totalling \$12,639,732 were currently deductible, rather than capital losses as assessed by CRA.

This 11-page Decision noted that there are two exceptions to the general proposition that losses of these nature are on account of capital. First, where the loan is made in the ordinary course of the taxpayer's business (example, financial institutions). This exception also extends to cases where the advance is made for income-producing purposes related to the taxpayer's own business.

For example, in another 1961 Tax Court case, the taxpayer made voluntary payments to the suppliers of its subsidiary for the purpose of protecting its own goodwill. The subsidiary had defaulted on its obligations. The parent made payments on behalf of its subsidiary and successfully claimed these as business losses.

The second exception is where a taxpayer holds shares in a corporation as a trading asset, and not as an investment.

In the first case, the taxpayer fell squarely within the first exception. The loans were made to protect the parent's stream of income and its future as a Tier 1 supplier. For these reasons, the parent's appeals were allowed and the losses were business losses.

Tax Tips & Traps

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More information can be found at www.cra.gc.ca/hrtcc.

Also, a pamphlet on the HRTC can be found at www.budget.gc.ca/2009/pamphlet-depliant/pamphlet-depliant3-eng.asp.

Source Documents for Depreciable Assets

A CRA Information Circular notes that documentation relating to long-term transactions such as investments

and other capital and depreciable property should be maintained until six years after the year in which such a transaction could enter into any calculation for income tax purposes.

With respect to depreciable assets and eligible capital property, it is important that the source documents be kept because capital cost allowance (CCA) and eligible capital expenditures (ECE) are claimed continuously on the asset.

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