

NetWorth

2015 Federal Budget Review

On April 21, Finance Minister Joe Oliver unveiled his first Federal Budget entitled "Strong Leadership: A Balanced Budget, Low-Tax Plan for Jobs, Growth and Security". The most significant income tax measures affecting individuals and Canadian private companies are summarized below. Note that the measures introduced are only proposals at this stage and may not ultimately be enacted into law. Readers are cautioned to consult with their tax advisors for specific advice on how they may be affected by these proposals.

Summary of Personal Income Tax Proposals

Increase in Tax-Free Savings Account Limit

The Budget proposes to increase the TFSA annual contribution limit to \$10,000, effective for 2015 and subsequent years. As a result of this increase, the TFSA annual contribution limit will no longer be indexed to inflation. The Canada Revenue Agency (CRA) confirmed shortly after the Budget that financial institutions and individuals could act upon this change immediately – prior to it passing through Parliament and before receiving Royal Assent.

Home Accessibility Tax Credit

The Budget introduced a new non-refundable "Home Accessibility Tax Credit" effective in 2016 for seniors and persons with disabilities in recognition of the additional costs necessary to support independent living, such as improvements to safety, accessibility and functionality of their dwellings. The proposed 15% non-refundable tax credit would apply on up to \$10,000 of eligible home renovation expenditures per year per eligible dwelling, providing up to \$1,500 in federal tax relief. Eligible expenditures will include certain home renovations or alterations of an enduring and integral nature, such as costs associated with the purchase and installation of wheelchair ramps, walk-in bathtubs and grab bars.

Registered Retirement Income Funds – Reduction in Minimum Withdrawal Factors

The Budget proposes to reduce the RRIF minimum withdrawal factors that apply in respect of ages 71 to 94 to be more consistent with long-term historical real rates of return on a portfolio of investments and expected inflation. The new RRIF factors will permit holders to preserve more of their RRIF savings in order to provide income at older ages, while continuing to ensure that the tax deferral provided on RRSP/RRIF savings serves a retirement income purpose.



Let's connect

Hassan Wealth Advisory Group

4881 Yonge St. 9th Floor
North York, ON
M2N 5X3

Tel.: 416-590-7620
Toll Free: 800-567-2626
Fax: 416-590-7601

www.faisalhassan.com

The new RRIF factors will apply for the 2015 and subsequent taxation years. To provide flexibility, RRIF holders who at any time in 2015 withdraw more than the reduced 2015 minimum amount will be permitted to re-contribute the excess (up to the amount of the reduction in the minimum withdrawal amount provided by this measure) to their RRIFs. Re-contributions will be permitted until February 29, 2016 and will be deductible for the 2015 taxation year.

Capital Gains Exemption for Qualified Farm or Fishing Property

The Budget seeks to increase the lifetime Capital Gains Exemption (CGE) to \$1,000,000 of capital gains realized by an individual on the disposition of qualified farm or fishing property, effective for dispositions occurring on or after the Budget date. For taxation years after 2015, the CGE for qualified farm or fishing property will be maintained at \$1,000,000 until the indexed CGE applicable to capital gains realized on the disposition of qualified small business shares (which was not affected by the Budget and remains at \$813,600 for 2015 to be indexed annually thereafter) exceeds \$1,000,000. At that time, the same CGE limit, indexed to inflation, will once again apply to all three types of property.



Canadian Private Business Tax Measures

Small Business Deduction

The Budget will lower the corporate tax rate applicable to Canadian small businesses on the first \$500,000 of qualifying active business income. These proposals seek to reduce the current 11% federal small business tax rate by 2% to 9% phased in over the next four years (i.e. 2016 to 2019).

Ineligible Dividends

In conjunction with the proposed reductions in the small business tax rate, the Budget will adjust the dividend gross up and tax credit factors on ineligible dividends which will gradually increase the effective tax rates on these dividends from 2016 to 2019.

Proposals Affecting Charitable Giving Strategies

Donations Involving Private Company Shares or Real Estate

As described in our BMO Nesbitt Burns publication entitled "Donating Appreciated Securities", donations of publicly-traded securities provide a charitable tax receipt and may also be exempt from capital gains tax. The Budget proposes to broaden the scope of this (additional) incentive by exempting donors from capital gains tax in respect of certain dispositions of private corporation shares and real estate. The exemption will be available where:

- cash proceeds from the disposition of the private corporation shares or real estate are donated to a qualified donee within 30 days after the disposition; and
- the private corporation shares or real estate are sold to a purchaser that is dealing at arm's length with both the donor and the qualified donee to which cash proceeds are donated.

The exempt portion of the capital gain will be determined by reference to the proportion that the cash proceeds donated is of the total proceeds from the disposition of the shares or real estate. This measure, which will include some anti-avoidance rules to ensure the legitimacy of these transactions, will apply to donations made in respect of dispositions occurring after 2016.

International Tax Measures

Form T1135 – Foreign Reporting

As outlined in our BMO Nesbitt Burns publication "The CRA's Foreign Reporting Requirements", since 1998 Canadian-resident individuals, corporations, trusts or certain partnerships that, at any time in a taxation year, own specified foreign property with a total cost of more than \$100,000 must file a Foreign Income Verification Statement (Form T1135) with the CRA.

The CRA introduced a revised Form T1135 in 2013 which requires more detailed information regarding specified foreign property held. However, in an effort to reduce the compliance burden for some taxpayers, the Budget proposes to simplify the foreign asset reporting system for taxation years that begin after 2014 if the total cost of a taxpayer's specified foreign property is less than \$250,000 throughout the year. These taxpayers will be able to report foreign assets under a new simplified reporting system currently being developed by the CRA. The existing reporting requirements will continue to apply to taxpayers with specified foreign property that has a total cost at any time during the year of \$250,000 or more.



Beneficiary Designation

Naming an individual, a trust, or, a company as the one entitled to receive proceeds of death of your life insurance policy ("Policy or Policies") or the funds in your registered plans ("Plan or Plans") at death, is called designating a beneficiary. This type of a beneficiary designation is different from the naming of a beneficiary to whom you make a gift in your Will.

The effect of a beneficiary designation regarding a Policy or a Plan is that the payment of proceeds or funds is made by the insurer or provider directly to the named beneficiary, bypassing the estate, without involving the executor of your estate. In most provinces the designation can be done by filling out a Beneficiary Designation Form with the Policy or Plan contract, by executing a stand-alone document, or, if properly drafted, in the Will but not as part of the body of the Will that deals with distribution of estate assets. In Quebec, designation of Plans other than an Annuity, must be done in a Will or a marriage contract.

With respect to Policies, there are two kinds of beneficiary designations – revocable and irrevocable. In Quebec, unless a contrary intention is expressed, designation of a spouse is irrevocable. In all other provinces, a designation is revocable unless otherwise stipulated. Revocable designations can be changed without the beneficiary's consent or knowledge. A Policy with an irrevocable beneficiary designation cannot be altered in any way nor revoked without the written consent of the beneficiary. Policies should be made irrevocable only if required by agreement such as separation, divorce, or shareholders' agreements. It is the owner of the Policy, not the life insured (where they are not the same person), who designates the beneficiaries. Often, of course, the life insured is also the owner of the Policy.

Advantages

There are several benefits to using beneficiary designation as part of the overall succession plan. These include the ability to:

- Reduce or eliminate probate tax;
- Protect against creditors of the estate;
- Protect against family law claims;
- Maintain privacy;
- Avoid the probate process in court;
- Expedite payment of proceeds, funds, to beneficiaries;
- Equalize beneficiaries.

Instead of allowing the property to fall to your estate and into the hands of your executor, a beneficiary designation is one way to transfer part of your wealth after your death while protecting the assets from potential estate creditors, and, reducing probate tax in Ontario, British Columbia, and Nova Scotia. The direct payment to named beneficiaries is more expedient than the distribution of an estate since there is no time delay waiting for the probate process in court, and, it is a private matter, not in the public domain.

Enhancing the Estate

A beneficiary designation is one way to provide for your unpaid taxes and other estate debts that may arise after death, or to equalize (compensate) members of the family. Additionally, in the event that there is insufficient liquidity in the estate for other liabilities or gifts, a beneficiary designation outside the estate provides funding without having to sell assets such as real estate. It is important to ensure that both primary and contingent beneficiaries are named so that in any event, the proceeds or funds will not fall to the estate. It is important to keep in mind that while the payment of proceeds of death under Life Insurance Policies does not trigger an income tax liability for the estate, the payment of funds under Plans does, unless the beneficiary is a spouse or a dependent child or grandchild, in which case the tax is deferred.

Designating Minors as Beneficiaries

Minor children are often the designated beneficiaries of Policies or Plans. Minor children, however, are not legally authorized to deal with property. While a parent of a minor child is automatically the guardian of the child's person, the parent is not the guardian of the child's property. For this reason, a Trustee must be named, to manage the child's funds until the age of majority, or beyond the age of majority. The funds must be received by the appointed Trustee on behalf of the child, and kept invested for the child's benefit. Proper documentation of the creation of a Trust for the benefit of the minor child and under what terms the child is to receive distributions, as part of the designation, is critical. Without a proper Trust document outlining the terms of Trust, there is no ability to access the funds for the child's needs (for example, for sports, camps, orthodontics, music lessons, counseling, education, etc.) other than, in some circumstances, by way of application to court. Without terms of Trust there is no authority to hold funds for a child beyond the age of majority.

Creditor Protection

In most provinces and depending on the circumstances, Policies and Plans which are designated to beneficiaries (other than the estate) are protected from estate creditors. Registered Plans which are not insurance products are protected in the context of bankruptcy during

the lifetime and after death of the Plan owner, with the exception of the contributions made to the Plan in the 12 months preceding date of bankruptcy. In most provinces, insurance products (Plans and Policies) are also protected outside the context of bankruptcy so long as at least one named beneficiary is a spouse, child, parent or grandchild ("creditor protected class") of the owner of the Plan or Policy. With respect to corporately owned Policies and Segregated Funds that are held in a nominee-registered account, protection from creditors may be lost.

Other Considerations

Divorce nullifies gifts made in a Will to a former spouse but it does not affect beneficiary designation outside the Will. The designation remains intact and as a result, the former spouse would be entitled to the proceeds or funds, although that may not have been the intention of the deceased. Where a marriage or common-law partnership ends, clients should be advised to make appropriate changes to any beneficiary designations they may have made, in addition to changing their Wills.

Typically, the last document signed which is a valid beneficiary designation trumps previous designations. The onus is on the owner of the Policy or Plan to inform the insurer or provider of any redesignation. Additionally, with respect to life insurance Policies, beneficiary designations govern only those Policies which exist at date the designation is made.

Beneficiary designation regarding registered Plans and life insurance Policies can be complicated. There are differences in provincial laws that govern how designations are to be made. Federal and provincial statutes as well as case law and the Civil Code in Quebec determine under what circumstances there is creditor protection, the nature and extent of creditor protection, whether during lifetime or after death, of Plans and Policies. It is critical that you consult with a professional in your jurisdiction before making a beneficiary designation on a Plan or a Policy. It is also important to keep a detailed list of Plans or Policies where beneficiary designations have been made and to review these every few years to ensure that the designations are consistent with your overall estate plan, and that they reflect your current intentions and your current life circumstances.



If you are already a client of BMO Nesbitt Burns, please contact your Investment Advisor for more information. The comments included in this publication are not intended to be a definitive analysis of tax applicability or trust and estate law. The comments contained herein are general in nature and professional advice regarding an individual's particular tax position should be obtained in respect of any person's specific circumstances. BMO Nesbitt Burns Inc. provides this commentary to clients for informational purposes only. The information contained herein is based on sources that we believe to be reliable, but is not guaranteed by us, may be incomplete or may change without notice. The comments included in this document are general in nature, and professional advice regarding an individual's particular position should be obtained. BMO Wealth Management is the brand name for a business group consisting of Bank of Montreal and certain of its affiliates, including BMO Nesbitt Burns Inc., in providing wealth management products and services. ® BMO "(M-bar roundel symbol)" is a registered trade-mark of Bank of Montreal, used under license. ® "Nesbitt Burns" is a registered trade-mark of BMO Nesbitt Burns Inc. BMO Nesbitt Burns Inc. is a wholly-owned subsidiary of Bank of Montreal.

Member-Canadian Investor Protection Fund and Member of the Investment Industry Regulatory Organization of Canada