Wealth Management Times

June 2020
Number 105

COVID-19 Update 2

Technical Interpretations 4

THE PANDEMIC DEFICIT: HOW WILL THE PIPER BE PAID?

— *Jonathan Éthier*[1] *and David H. Sohmer*[2]*, Spiegel Sohmer Inc., Montreal*

The extent of the deficit being incurred to fund COVID-19-related programs is overwhelming. The Canada Emergency Response Benefit program (the "CERB") has already cost approximately $35.8 billion as a result of the 13.77 million applications received.[3] Given that the decrease in tax revenues will deepen the hole, it is not premature to consider the tax measures which may be adopted to bail out the public treasury.

In 2015, the Liberal government demonstrated its willingness to target the most fortunate when it proposed the adoption of a new top personal income tax rate of 33% on taxable income in excess of $200,000[4] (a fifth tax bracket at the time). Two years later, in 2017, 1% of Canadian tax filers were in this tax bracket and the tax paid by them accounted for 26% of federal personal income tax revenues ($36.3 billion).[5] The government may be tempted to create a sixth level of taxation directly targeting the wealthiest members of society. The pandemic has removed the political constraints so that a federal tax rate of, say, 40% applicable on the portion of taxable income exceeding $500,000 may be considered.

The Harper government introduced a reduction in GST to provide economic stimulus and the Liberals were far from supportive of the measure.[6] The GST was reduced from 7% to 6% on July 1, 2006 and from 6% to 5% on January 1, 2008. For the period 2018–2019, GST revenues accounted for 11.5% of total federal revenues, approximately $38.2 billion.[7] Bringing the rate back to 7% would be consistent with the Liberal's objections to the

---

[1] Jonathan Éthier, Spiegel Sohmer Inc., Montreal, jethier@spiegelsohmer.com

[2] David H. Sohmer, Spiegel Sohmer Inc., Montreal, dhsohmer@spiegelsohmer.com

[3] Government of Canada, Canada Emergency Response Benefit statistics, May 15, 2020.

[4] Government of Canada, Government of Canada Announces Tax Cut to Strengthen the Middle Class, December 7, 2015.

[5] Department of Finance Canada, "Report on Federal Tax Expenditures — Concepts, Estimates and Evaluations" (2020), page 42.

[6] *Cf*. Philip Demont, "Ottawa's GST cut hiked deficit by as much as $10B", *CBC News*, June 19, 2009 (updated on June 22, 2009).

[7] Department of Finance Canada, Annual Financial Report of the Government of Canada (Fiscal Year 2018–2019), page 11.

Wolters Kluwer

Harper reductions.

For almost 20 years, the capital gain inclusion rate was 50%. Professor David Duff argued that low inflation and substantial reductions in corporate income tax dilute the main arguments in favour of partial taxation of capital gains, namely, to reduce the impact of the tax on inflationary gains and to take into account the corporate income taxes that are assumed by shareholders.[8] In a pre-pandemic context, he argued that an 80% inclusion rate would be appropriate.[9] The cost of the partial inclusion was projected to be $21.645 billion in 2020.[10] Author John Lester pointed out that in 2019 "[m]easures related to the taxation of capital income [. . .] account for more than half of the total tax revenue forgone".[11] The inclusion rate could be raised to 75% as was the case from 1990 to 1999. Whether accrued gains would be protected is a more difficult call.

The cost associated with the non-taxation of capital gains on principal residences is also significant. The Department of Finance projected that it will cost $5.87 billion in 2020.[12] Wealthier taxpayers can acquire more expensive residences and so benefit disproportionately from the exemption.[13] The exempt portion of the capital gain could be capped at the lesser of the actual capital gain and a fixed amount.

The morality of tax planning to mitigate the impact of anticipated tax increases is an issue with which the tax community will have to grapple.

COVID-19 UPDATE

Registered Plan Withdrawals (March 18, 2020)

Effective March 18, 2020, the required minimum withdrawal amounts for Registered Retirement Income Funds ("RRIFs") and defined contribution Registered Pension Plans ("RPPs") are reduced by 25% for 2020.

Supports for Senior Citizens (May 12, 2020)

The Prime Minister announced the following new supports for senior citizens:

- Providing a one-time tax-free payment of $300 for seniors eligible for the Old Age Security ("OAS") pension, with an additional $200 for seniors eligible for the Guaranteed Income Supplement ("GIS") for a total of $500 for individuals who are eligible to receive both the OAS and the GIS;
- Expanding the New Horizons for Seniors Program with an additional investment of $20 million to support organizations that offer community-based projects that reduce isolation, improve seniors' quality of life, and help them maintain a social support network; and

[8] *Cf*. David Duff, "Time for Liberals to limit tax breaks that favour highest earners", *The Globe and Mail*, February 6, 2017 (updated on April 13, 2017).

[9] *Id*.

[10] Department of Finance Canada, "Report on Federal Tax Expenditures — Concepts, Estimates and Evaluations" (2020), page 218.

[11] John Lester, "Tax Expenditures in Canada — Historical Estimates and Analysis", in *Finances of the Nation* feature (2019) 67:3 Canadian Tax Journal 755-73.

[12] Department of Finance Canada, "Report on Federal Tax Expenditures — Concepts, Estimates and Evaluations" (2020), page 196.

[13] The non-taxation of imputed rent on owner-occupied property also disproportionately benefits the well-off. Imputed rent is the amount it would cost to rent an otherwise owner-occupied property. The more expensive the property, the higher the imputed rent. The Carter Report proposed taxing imputed rents, but the proposal was rejected. It is reasonable to assume that the proposal continues to face insuperable political obstacles.

- Temporarily extending GIS and Allowance payments if seniors' 2019 income information has not been assessed; to avoid an interruption in benefits, seniors are encouraged to submit their 2019 income information as soon as possible and no later than by October 1, 2020.

CRA Provides Relief From Late-Filing Penalty (May 22, 2020)

The deadline for most individuals (not self-employed) to file their 2019 taxes was previously extended to June 1, 2020. The deadline to pay amounts owed has also been extended, to September 1, 2020. Penalties and interest will not be charged if payments are made by the extended deadline of September 1, 2020. The CRA has now clarified that the late-filing penalty will not be applied for a return filed after the June 1, 2020 deadline as long as the return is filed by September 1, 2020.

CRA Extends Return Filing Deadline for Corporations and Trusts (May 22, 2020)

On May 22, 2020, the CRA extended the filing deadlines for corporations and trusts. The CRA is deferring the deadline for T2 corporation income tax returns otherwise due in June, July, or August to September 1, 2020. The deadlines for T3 trust returns that would otherwise be due in June, July, or August are also extended to September 1, 2020.

Previously, the CRA extended the deadline to June 1, 2020 for corporations that would otherwise have a filing due date after March 18 and before June 1, 2020. Similarly, the date was extended to June 1, 2020 for trusts that would otherwise have a filing due date on March 31, or in April or May 2020. Also, the filing date was extended to May 1, 2020 for trusts that had a year end of December 31, 2019.

CCB and GST/HST Credit Payments Extended (May 15, 2020)

The federal government announced that Canadians who are presently receiving the GST/HST credit and/or Canada Child Benefit ("CCB") payments will continue to receive these payments until the end of September 2020 — a three-month extension. Therefore, benefit payments starting in July 2020 and those scheduled for August and September will not be interrupted if an individual takes advantage of the extended filing deadline of June 1, 2020. If the 2019 tax return is not assessed, and to allow time to calculate benefits and/or credits for the July to September 2020 payments, payment amounts will be based on information from 2018 tax returns.

If an individual receives an estimated benefit and/or credit payment based on the 2018 tax return, they are still required to file a return for 2019. If the CRA is unable to assess the 2019 return by early September 2020, the estimated benefits and/or credits will stop in October 2020 and the individual must repay the estimated amounts that were paid beginning in July 2020. The CRA encourages Canadians to file their tax returns by June 1, 2020 or as soon as possible in order to receive the right amount of benefits based on their 2019 tax return, and in order to ensure continuity of benefits beyond September 2020.

CCB Amount Increased (May 16, 2020)

The federal government announced that the Canada Child Benefit ("CCB") will increase again, beginning in July 2020. For the 2020–21 benefit year, the maximum benefit will increase to $6,765 per child under age 6, and $5,708 per child aged 6 through 17. This increase is in addition to the one-time $300 per child special payment that was made to parents for the month of May.

CRA Provides Guidance on International Tax Issues (May 19, 2020)

The CRA has added a page to its website that provides guidance on international income tax issues raised by the COVID-19 crisis (https://www.canada.ca/en/revenue-agency/campaigns/covid-19-update/guidance-international-income-tax-issues.html). Domestic and international travel restrictions could create specific income tax issues, so this document describes each potential issue and outlines the CRA's approach to the issue. The tax issues considered are:

- Income tax residency;
- Carrying on business in Canada/permanent establishment;
- Cross-border employment income;
- Waiver requests — payments to non-residents for services provided in Canada;
- Disposition of taxable Canadian property by non-residents of Canada.

TECHNICAL INTERPRETATIONS

The following are summaries of recent income tax interpretations, issued by the Minister of National Revenue. Copies of these interpretations can be found in our online Federal Income Tax service, under Window on Canadian Tax.

Tax on Split Income (TOSI) – Meaning of "Actively Engaged"

The Canada Revenue Agency ("CRA") was asked to consider the following situation:

- The individual A is 30 years old, is a "specified individual" (as defined under s. 120.4(1) of the *Income Tax Act* (the "Act")) and owns 5% of the shares in the "small business corporation" ACO.
- The individual B is a "source individual" (as defined in s. 120.4(1) of the Act) in respect of the individual A and owns 95% of the ACO shares.
- ACO is a "small business corporation" in operation since January 2017.
- Since A has been actively engaged in the activities of ACO on a regular, continuous, and substantial basis ("active engagement") since the company's opening, ACO is considered an "excluded business" (as defined in s. 120.4(1) of the Act) for A. The dividend income received by A from ACO shares is thus an "excluded amount" (as defined in s. 120.4(1)) and is not "split income" (as defined in s. 120.4(1)).

More specifically, the CRA was asked to answer the following questions:

(1) Will the maternity/ parental leave taken by A be considered active engagement, and will ACO be considered an "excluded business" of A for the year 2020 where:

- A is pregnant,
- the delivery is expected for December 31, 2019,
- A takes maternity/parental leave from January 1,2020 to December 31, 2020, and
- A intends to be actively engaged again in ACO's activities as of January 1, 2021.

(2) Will the temporary disability leave taken by A be considered active engagement and will ACO be considered an "excluded business" of A for the year 2020 where:

- A is put on temporary disability leave because of a work accident which took place on January 1, 2020 while actively engaged in ACO's activities,
- A intends to return to work after the disability leave, and
- the temporary disability leave is from January 1, 2020 to December 31, 2020.

(3) Will ACO be considered an "excluded business" of A for the year 2020 where:

- A must stop working permanently because of a work accident, which took place on January 1, 2020, while actively engaged in ACO's activities;
- had the accident not occurred, A's intention was to continue to be engaged in ACO's activities; and
- because of the accident, A could not continue to be engaged in ACO's activities.

The CRA did not respond specifically to each question, noting that the question of whether A was actively engaged on a regular, continuous, and substantial basis in ACO's activities for a particular year was one of fact to be determined after a thorough analysis of all the facts and circumstances particular to a situation. Note that, under the definition of "excluded business" in s. 120.4(1) of the Act for a particular year, an "excluded business" is one in which a "specified individual" is actively engaged on a regular, continuous, and substantial basis in either that particular year or any five prior taxation years. However, in each the above three scenarios, A worked for ACO for at least 20 hours per week for each of 2017, 2018, and 2019, but not for 2020. A will therefore be deemed to be actively engaged in ACO for 2017 to 2019, but not 2020. ACO will thus be deemed to be an "excluded business" for A for 2017 to 2019, but not 2020. The dividend income received by A for 2017 to 2019 will therefore not be "split income", but the dividend income received for 2020 will be. Although this was not stated clearly by the CRA, except for in scenario 3, where A will not return to work for ACO because of the permanent disability, ACO could become an "excluded business" for A for 2021 and subsequent years if A was actively engaged in ACO's business for those years.

— Association de planification fiscale et financière (APFF), 2019 Conference, Federal Taxation Roundtable - Question 18, October 11, 2019, document number 2019-0812771C6

Tax on Split Income (TOSI) – Transfer of Loan to Corporation

The Canada Revenue Agency ("CRA") was asked to consider the following situation:

- The individual X proceeds with the freeze of his holding company Holdco (that is not a small business corporation but has a business) in favour of a family trust FT through an exchange of Holdco common shares for Holdco preferred shares under s. 51 of the *Income Tax Act* (the "Act") and through a subscription by FT to new Holdco common shares for a nominal amount.
- The trust beneficiaries are X, his wife, and their children, and are all Canadian residents.
- X's wife and children do not participate actively on a regular, continuous, and significant basis in Holdco's business and none of the exceptions applicable to the "split income" rules would apply in this case to exempt the income received by the FT beneficiaries.
- The trust agreement does not contain any clause preventing the distribution of trust income and capital to X's wife and children for the exception in s. 74.4(4) of the Act.
- Therefore, any income allocated by FT from Holdco to the trust beneficiaries would be viewed as "split income" for the purpose of s. 120.4 of the Act.

Since the transfer resulting from X's implementation of the freeze does not reduce X's income to benefit a designated person, and since s. 120.4 of the Act could apply to the income that could be allocated by FT to its beneficiaries, the CRA was asked to confirm that the condition in respect of the transfer in s. 74.4(2) should not apply and s. 74.4(2) should not apply in this situation.

The CRA simply noted that the question of whether it is reasonable to consider that one of the main purposes of the loan or transfer was to reduce the individual's income to benefit, directly or indirectly, a designated person is a question of fact to be determined from the circumstances of each situation (i.e., purpose test). The CRA added that the tax consequences for the designated person arising from the trust distribution (e.g., "whether there is split income") is not relevant for the purpose of determining if the purpose test was met. If one of the main objects of the loan or transfer is to benefit the designated person, then the purpose test is met.

— Association de planification fiscale et financière (APFF), 2019 Conference, Federal Taxation Roundtable - Question 16, October 11, 2019, document number 2019-0812751C6

Tax on Split Income (TOSI) – Interest Income Earned by Trust

Subparagraph (*d*)(i) of the definition of "split income" in s. 120.4(1) of the *Income Tax Act* (the "Act ") excludes an income amount related to a debt obligation of a mutual fund corporation, a corporation whose shares are listed on a designated stock exchange, or a mutual fund trust (i.e., "excluded debt"). Assuming the sole asset held by a trust was an "excluded debt" and the interest earned from the was paid to the trust beneficiary, the Canada Revenue Agency ("CRA") was asked if the amount included in the income of the beneficiary under s. 104(13) of the Act would also be related to an "excluded debt" for the purpose of the definition of "split income" in s. 120.4(1). If not, the CRA was asked under what circumstances this exception could be applicable.

The CRA confirmed that, because of s. 108(5)(*a*) and 104(13) of the Act, the income included in a trust beneficiary's income is deemed to be income earned from a trust, not from another source, but this does not affect the application of s. 120.4. This means that the character of the amounts allocated by the trust (interest, in this case) is maintained.

Since the preamble of paragraph (*d*) of the definition of "split income" in s. 120.4(1) of the Act uses the expression "in respect of" (which has a very broad scope), it could apply to an interest received from a trust and included in the calculation of the income of a "specified individual" (as defined in s. 120.4(1)) provided all the other conditions of this paragraph are also met. However, any interest amount that is earned from an "excluded debt" held by the trust is not "split income" for the "specified individual".

— Association de planification fiscale et financière (APFF), 2019 Conference, Federal Taxation Roundtable - Question 15, October 11, 2019, document number 2019-0812741C6

Impact of Change of Use on Principal Residence Exemption

The Canada Revenue Agency ("CRA") was asked to consider the following situation:

- A purchased a duplex in January 2011.
- From January 2011 to July 2019, A used 60% of the surface of the duplex as his principal residence and rented the remaining 40% to a third party.
- From July 2019 to December 2022, A used 100% of the surface of the duplex as his principal residence after making the necessary renovations to the duplex.
- A sold the duplex in December 2022 and realized a capital gain of $150,000.

Assuming that A filed an election under s. 45(3) of the *Income Tax Act* (the "Act") to be deemed not to have sold 40% of the duplex after its change of use in July 2019, he will be able to defer the taxation of the capital gain on the deemed disposition of 40% of the duplex to the time of its actual sale. However, for the purpose of the principal residence exemption of the capital gain realized on the sale of the duplex, the portion of the duplex inhabited by A as his principal residence increased form 60% to 100% in July 2019. The CRA was asked how A will calculate and present the principal residence exemption on his 2022 tax return in respect of the capital gain realized on the sale of his duplex, taking into account the change of use in July 2019.

The CRA noted that, from January 2011 to December 2022, there are three units in the duplex:

- Unit 1 (40% of duplex) rented to a third party from January 2011 to July 2019.
- Unit 2 (60% of duplex) occupied by A from January 2011 to July 2019.
- Unit 3 (100% of duplex) occupied by A from July 2019 to December 2022.

In this case, A will have to attach to his 2022 tax return a separate Form T2091 for each dwelling unit (i.e., Unit 2 and Unit 3) that he will designate as his principal residence for the years 2011 to 2022 for the purpose of claiming the principal residence exemption in respect of the capital gain of $150,000 realized on the sale of the duplex. The CRA added that, where an election is filed under s. 45(3) of the Act, the taxpayer must inform the CRA of the election by attaching a letter to his tax return for the year the property is actually sold or earlier if a formal demand is served on the taxpayer. An allocation of the sales proceeds and adjusted cost base of the duplex based on the surface of the unit could be reasonable, but other factors may have to be taken into account.

— Association de planification fiscale et financière (APFF), 2019 Conference, Federal Taxation Roundtable - Question 3, October 11, 2019, document number 2019-0812621C6

Reporting on Form T5008

The situations the Canada Revenue Agency ("CRA") was asked to consider involved the preparation of Form T5008, "Return of Securities Transactions", for sales of naked options or short sales of shares. For the purpose of the five situations described below, the CRA assumed that the preparer of the T5008 form was a "trader or dealer in securities", as this term is defined in s. 230(1) of the *Income Tax Regulations*.

The CRA was asked which amount to include in box 20 of the T5008 form in the following five situations:

- Sales of naked options followed by:

  (1) the expiration of the options;

  (2) the exercise of the options; or

  (3) the closing out by the acquisition of offsetting options on the market.

- Short sales of shares if:

  (1) identical shares bought by the short seller are delivered to the lender in the same taxation year as the short sale; or

  (2) shares are transferred by the short seller to the lender after the taxation year of the short sale.

The CRA confirmed that the amount to include in box 20 would be:

- "0" (or the box should be left blank) for the first 3 situations involving sales of naked options.

- cost of shares borrowed for the last 2 situations involving short sales of shares.

The CRA noted that, under s. 49(1) of the *Income Tax Act*, options have no cost and any expenses incurred to grant an option can be deducted from the proceeds of disposition to calculate the capital gain.

The CRA also noted that the cost of the shares borrowed by the short seller comprised the fair market value of the shares at the time of their transfer. Where the shares sold by the short seller correspond to the shares borrowed, the cost of the shares borrowed must be shown in box 20. Note that the cost of the shares borrowed may only be determined after a careful review of all the relevant information, including the applicable agreements and other documentation.

— External Technical Interpretation, Reorganizations Division, January 22, 2020, document number 2014-0559281E5

Part XI.01 Penalty Tax – Advantage – Promotional Incentive Exception

The situation the Canada Revenue Agency ("CRA") was asked to consider involved the Part XI.01 penalty tax assessed on the advantage received by a controlling individual of a registered plan (RRSP, RESP, TFSA, RRIF, or RDSP), a person related to that individual, or a trust governed by that registered plan. Subparagraph (*a*)(v) of the definition of "advantage" in s. 207.01(1) of the *Income Tax Act* (the "Act") excludes from the definition any promotional incentive granted under a program offered to a broad class of persons (in a normal commercial or investment context in which parties acting prudently, knowledgeably, and willingly deal with each other at arm's length) if it is reasonable to conclude that the main purpose of the program is not to enable a person or partnership to benefit from the registered plan's tax exemption.

The CRA was asked the following questions regarding the scope of the above exclusion:

(1) What do we mean by a broad class of persons? Would it include a promotional incentive offered by a financial institution to a select group of clients? Would it include an incentive only offered by a financial institution to its employees?

After noting that the expression "broad class of persons" was not defined in the Act, the CRA confirmed that it would include a large group of persons not related to the financial institution that was offered the same incentive regardless of the tax considerations and other personal or financial circumstances. This would normally include clients keeping or investing a minimum amount in their registered or non-registered accounts, but would not include an investment fee incentive offered to members of a select professional group.

(2) What do we mean by a "normal commercial or investment context"?

The question of whether a promotional incentive is commercially reasonable or not is one of fact. Moderate fee rebates or bonus interest payments offered by financial institutions would be considered reasonable incentive programs offered in a normal commercial or investment context. See Income Tax Folio S3-F10-C3 for some examples of promotional incentives related to registered plans that would be considered commercially reasonable. Promotional incentives representing disproportionate benefits relative to the size of the investments made by the clients would not be considered commercially reasonable.

(3) Referring to the commercially reasonable incentives described in paragraph 3.12 of Income Tax Folio S3-F10-C3 (i.e., low value incentives eligible for the above exclusion), the CRA was asked if the relative value of the incentive compared to the amount invested was a major factor in determining whether the incentive qualified for the exclusion.

The CRA agreed that the value of the incentive relative to the amount invested by a client was a significant factor in determining if the incentive was commercially reasonable, while noting that the market constraints would ensure that the incentive programs would be in fact commercially reasonable if offered to a broad class of investors.

(4) Will a referral bonus paid in a registered plan be viewed as premium, gift, or contribution?

If the payment of the referral bonus was directed to the registered plan itself, it would be considered a contribution or premium paid to the plan by the controlling individual. In this case, the referral bonus was paid as a consequence of the relationship between the existing investor and the new investor, and therefore was not considered a return on the amounts invested from the registered plan with the financial institution.

— External Technical Interpretation, Financial Industries and Trusts Division, April 3, 2020, document number 2019-0830101E5

Retirement Compensation Arrangements – Benefit Replacement

The situation the Canada Revenue Agency ("CRA") was asked to rule on involved a supplemental plan replacing the benefits provided under an existing retirement compensation arrangement ("RCA"). More specifically, the CRA was asked if the supplemental plan would qualify as an RCA (as this expression is defined under s. 248(1) of the *Income Tax Act* (the "Act")), and if the proposed property transfer from the existing RCA to the new RCA would qualify as a transfer under s. 207.6(7).

Facts

- Participant A was continuously employed by ACO and then retired from ACO.
- A was a member of both an existing pension plan and an existing supplemental plan.
- A was entitled to receive benefits under both plans.
- The existing supplemental plan is an RCA, the property of which is held in an existing RCA trust.
- The existing RCA trustee only acts in respect of property upon instructions from ACO.

Proposed transactions

ACO will implement a new supplemental plan (an RCA) to provide some retirement income to A for his service as an employee and as a substitution for benefits provided to him by the existing RCA. ACO will establish a new RCA trust of which A will be sole beneficiary. The new RCA trust will hold property in connection with the benefits to be provided by the new RCA. The custodian of the new RCA will hold funds transferred from the existing RCA to the new RCA trust for the purpose of distributing them to A on a periodic basis as per the terms of the new RCA. After the transfer is completed, ACO will have no further contribution obligations in respect of the new RCA.

Purpose of proposed transactions

The purpose of the proposed transactions is to allow the property in the existing RCA trust to be:

(1) segregated in a separate trust from the property and investment activities of the existing RCA trust; and

(2) managed by different investment managers who may have investment objectives different from those pursued by the existing RCA trust.

Ruling

The CRA ruled that the new supplemental plan qualified as an RCA and that the property transfer from the existing RCA to the new RCA also qualified as a transfer under s. 207.6(7) of the Act.

External Technical Interpretation, Business and Employment Division, 2019, document number 2019-0803761R3

Death of RRSP or RRIF Annuitant

The Canada Revenue Agency ("CRA") was asked to consider

(1) whether the deduction provided in s. 146(8.9) or 146.3(6.2) of the *Income Tax Act* (the "Act"), as the case may be, is discretionary when the surviving spouse is named the sole beneficiary in an unmatured registered retirement savings plan ("RRSP") or a registered retirement income fund ("RRIF") contract;

(2) whether an amount may be deducted under s. 146(8.9) or 146.3(6.2) when the surviving spouse is designated in the contract as successor annuitant of a matured RRSP or a RRIF;

(3) when the annuitant of an unmatured RRSP or a RRIF dies and the surviving spouse is named as the sole beneficiary in the contract, whether the exception to issue a T4RSP and a T4RIF slips in the name of the surviving spouse, instead of in the name of the deceased, is applicable only when all of the property of the unmatured RRSP or RRIF is transferred directly to an RRSP or RRIF under which the spouse is the annuitant;

(4) what is the time limit applicable for the issuer of an RRSP or RRIF to file the T4RSP or T4RIF slip when the annuitant died in December 20X1 and the issuer is notified of the death in March 20X2; and

(5) whether the deduction of an amount pursuant to s. 146(8.9) or 146.3(6.2) of the Act is possible even if the estate did not receive in the prescribed delay a T4RSP or a T4RIF slip in the deceased annuitant's name.

The CRA responded as follows:

(1) Yes, s. 146(8.9) and 146.3(6.2) both provide for a discretionary deduction.

(2) No. For s. 146(8.9) to apply, an amount must otherwise be deemed received pursuant to s. 146(8.8), and an amount must qualify as a refund of premium which is not possible in the case where the annuitant dies after the maturity of the RRSP. Similarly, for s. 146.3(6.2) to apply, there must be an amount that would otherwise be included under s. 146.3(6). S. 146.3(6) of the Act applies only when the last annuitant of an RRIF dies.

(3) The exception only applies when all the conditions are met. As explained in RC4177, RC4178, and T4079, unless all the conditions are met, T4RSP and T4RIF slips must be issued in the name of the deceased.

(4) Subsection 205(1) of the *Income Tax Regulations* provide that T4RSP or T4RIF information returns shall be filed on or before the last day of February in each year and shall be in respect of the preceding calendar year. However, when an issuer or a carrier is only notified of the death of an annuitant of an RRSP or a RRIF after its information return has been filed, the issuer or the carrier must file an additional slip for the deceased individual as stated in Chapter 5 of the T4079 Guide.

(5) Yes. The fact that the estate did not receive in the prescribed delay a T4RSP or a T4RIF slip does not change the responsibility of the deceased annuitant's legal representatives to properly include in the final return the amount deemed received by the last annuitant under s. 146(8.8) or 146.3(6), as the case may be. Such amount will be dependent on any reduction under s. 146(8.9) or 146.3(6.2), as applicable, provided all the conditions set out in the applicable provision are met.

— External Technical Interpretation, Financial Industries and Trusts Division, April 8, 2020, document number 2016-0668991E5

WEALTH MANAGEMENT GUIDE

Published quarterly by Wolters Kluwer Canada Limited. For subscription information, see your Wolters Kluwer Account Manager or call 1-800-268-4522 or (416) 224-2248 (Toronto).

For Wolters Kluwer Canada Limited

Email: cservice@wolterskluwer.com *Phone: 1-800-268-4522 or (416) 224-2248 (Toronto)*

© 2020, Wolters Kluwer Canada Limited

Wolters Kluwer Canada Limited
300-90 Sheppard Avenue East
Toronto ON M2N 6X1
1 800 268 4522 tel
1 800 461 4131 fax
www.wolterskluwer.ca

Wolters Kluwer