

# TAX ALERT



**TAX ALERT** is a commentary on topics of current interest – usually topics relating to recent changes in tax law, new CRA administrative practices or current interpretations arising from tax cases. Professional advice should be obtained before acting on any of this information.

## SOME WILL PLANNING THOUGHTS

When the subject of wills comes up, most people say they just have a simple will – *everything to my spouse on my death but should she predecease me, my assets will be divided amongst my children.* That would seem to be the extent of will planning in many cases. But there are a number of financial and tax issues that should be dealt with even in the most straightforward situations. Here are some important clauses to consider for your will:

- ◆ Indicate that the trustees are allowed to make all elections allowed by the Income Tax Act.
- ◆ Indicate that the assets passing to beneficiaries and income therefrom will not be part of net family property under family law so children will be protected in the event of their marriage breakdown.
- ◆ Where there is a surviving spouse, consider leaving assets in a non-qualifying spousal trust to reduce his/her income taxes because capital can be transferred to children on a tax free basis when the surviving spouse dies and the new rules for spousal trusts will be avoided.
- ◆ Designate beneficiaries of all RRSP's and RRIF's in your will and make sure they are consistent with designations in the policies as well.
- ◆ Include a clause in your will referring to a personal memorandum designating personal assets to various family members. This will permit changes from time to time without the need for a new will.
- ◆ Provide for alternate executors in case one of the primary executors is unwilling or unable to act.
- ◆ Where estate administration will be complicated, allow executors to use the services of a corporate trustee and outside professional advisors for estate administration.
- ◆ Do a new will after a divorce. The old one is not valid.

As mentioned in the first point above, the Income Tax Act allows many elections that can reduce income taxes. Some of the important ones that may apply are as follows:

- ◆ Executor's can elect to offset capital losses in the estate after death against capital gains shown on the decedent's final return.
- ◆ Executor's can deem property passing to a spouse or spousal trust be deemed to be transferred at fair market value which in certain cases will result in no additional taxes payable and increase the cost of inherited assets to beneficiaries.

- ◆ Executor's can designate RRSP proceeds to have been received by the spouse for tax purposes rather than the estate which will permit a tax free spousal roll over treatment.
- ◆ Executor's can designate trust income arising from a taxable gain on the sale of shares of a private corporation to be a gain of a beneficiary and therefore eligible for the \$500,000 capital gains deduction.

There is often a tax advantage to splitting assets between spousal and non spousal trust in a will at the discretion of the executors. A Revenue Canada Interpretation Bulletin indicates that they will accept such an allocation by the executors where the will allows this. This can be an extremely important provision in larger multiple asset estates. The tax treatment of spousal and non spousal trusts is quite different and there are advantages and disadvantages to both depending upon the tax characteristics of the assets at the time. Hence, the reason for giving allocation authority to executors.

Your lawyer can help you prepare a will that contains appropriate clauses so your wishes are carried out as you wish. However, it is also important to have your will reviewed by an advisor knowledgeable in tax and financial planning so that all tax saving opportunities are utilized on and after death.

*J. E. Arbuckle Financial Services Inc.*  
30 Dupont St. E., Suite 205, Waterloo, Ontario N2J 2G9  
Phone: 519-884-7087 Fax: 519-884-7087  
Email: [jea@personalwealthstrategies.net](mailto:jea@personalwealthstrategies.net)  
[www.personalwealthstrategies.net](http://www.personalwealthstrategies.net)

