TAX MATTERS

Executors, here's what you need to know this tax season

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If you haven't been sweating over your tax return for 2015 yet, that time is just about here. The annual ritual of gathering your information and preparing your tax return is difficult enough as it is, and if you have been dealing with the loss of a loved one and are concerned about properly filing taxes for them, things can be even more confusing. Here's a primer on tax filings for a deceased individual.

Duties of the executor
If you're the personal representative (typically the executor) of a deceased person, you have the responsibility of making sure that tax filings are properly prepared, filed on time, and that payment is made for any taxes owing. Some would say that part of your job is to ensure that taxes are minimized to the extent possible. While tax savings are an important objective, remember that you're bound by the terms of the will and, unless the will states otherwise, certain common law duties, such as maintaining an even hand between beneficiaries, may take priority over saving tax.

Residence of the estate
When people pass away, their assets fall into their estates. An estate is a testamentary trust for tax purposes and is taxed as an individual. In the past, the estate was considered resident and taxable where the executor is resident. In 2009, the case Garron Family Trust v. The Queen established that the residence of a trust is where central management and control resides. If the taxman determines that true control of the estate resides with someone other than the executor, the estate could be deemed resident where control is exercised. If the taxman concludes that the estate is resident outside of Canada, this can cause certain tax advantages to disappear (such as a spousal trust rollover, among others), so it could make sense to change the residency of the estate.

Tax returns to be filed
After someone passes away, there are different potential tax returns that could be filed for that individual. Most commonly, these include: (1) the final (or terminal) tax return (the usual return of the individual, filed for the year of death; it covers the period from Jan. 1 to the date of death for that year), and (2) a rights or things return to report all income that was earned and legally receivable at the time of death, but had not yet been collected. This might include: dividends declared prior to death but not yet received at the time of death; matured but uncashed bond coupons; vacation pay receivable; declared but unpaid bonuses; CPP or OAS benefits due at the start of the month of death but not paid until after death.

It may also be possible to report income from certain testamentary trusts (where the deceased was an income beneficiary of a testamentary trust) and income from a proprietorship or partnership (where the deceased was a proprietor or partner at the time of death) on separate tax returns as well. Speak to a tax pro about these since the rules are complex.

Why choose to report different types of income on different returns? Tax savings. Here's what I mean: Each of these different tax returns has access to the same graduated tax rates and some of the same personal tax credits. For example, the basic personal credit, age credit, spousal credit, equivalent-to-spouse credit, and the credit for infirm dependents age 18 or older can be claimed on each tax return, resulting in meaningful tax savings since these credits are effectively claimed more than once.

Due date for tax returns

The due date for the deceased's final tax return is April 30 of the year after the year of death (the usual filing due date for all taxpayers), or six months after the date of death, whichever is later. If your loved one passed away on Nov. 15, for example, the due date for his final tax return would be the following May 15. If you're the surviving spouse or common-law partner of a deceased individual and lived with him or her at the time of death, your tax filing deadline will match your deceased spouse's (although any taxes owing will still be due April 30). A rights or things tax return is due the later of one year after death or 90 days following the assessment date for the final return. Speak to a tax pro about due dates for testamentary trust income and proprietorship or partnership tax returns.

I'll talk more about this topic next time.

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