

# STEPUP

## Sales Tax Estate Planning Underwriting & Product Newsletter

### Tax-Free Savings Account – Exempt contribution and Ministerial discretion

#### Situation

The following situation was presented to the Canada Revenue Agency:

- Mr X died on January 1st, 2018
- He held a tax-free savings account (TFSA) trust with a value of \$100,000 at the date of death
- His will provided for a specific legacy of his TFSA to his spouse, Ms Y.
- During the administration of the estate, the TFSA account remained open and its value did not fluctuate.
- However, because the estate was not settled quickly, it was only after the expiry of the rollover period, i.e., after December 31, 2019, that the executor finally wound up the TFSA and paid Ms. Y \$100,000, representing the value of the TFSA, in full settlement of her legacy.
- Ms Y would like to make a \$100,000 contribution to her own TFSA and designate it as an "exempt contribution" within the meaning of the definition of "exempt contribution" in subsection 207.01(1) (the "Definition") of the Income Tax Act.

#### Question to CRA

In the situation described, would the CRA be prepared to allow Ms Y to make a contribution to her own TFSA and designated it as an exempt contribution after receiving the amounts paid by the executor?

#### CRA's comments

A contribution can qualify as an exempt contribution to the extent that it satisfies all the conditions set out in the Definition. In particular, paragraph (b) requires that a survivor payment be made to the survivor during the "rollover period".

Paragraph (a) of the Definition defines the "rollover period" for the purposes of the Definition as the period that begins when the individual dies and that ends at the end of the first calendar year that begins after the individual dies (or at any later time that is acceptable to the Minister). Thus, paragraph (a) of the Definition gives the Minister the discretion to extend the rollover period. In such a case, the rollover period so extended shall be relevant not only for the purposes of paragraph (a) but also for the purposes of paragraph (b).



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Alex is a well-regarded Tax and Estate Planning specialist with a sought-after ability to analyze and articulate complex matters. He completed graduate studies in tax law which allows him to provide integrative advice and comprehensive solutions to problems faced by Canadian residents and business owners. Before joining Empire Life, Alex worked for renowned accounting and legal firms, where he regularly advised clients on various tax and estate planning matters.

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As a result, a survivor payment made after December 31 of the first calendar year that begins after the death of the TFSA holder could satisfy the conditions of paragraph (b) of the Definition, provided that the Ministerial discretion is exercised to extend the rollover period.

## Conclusion

In the situation described, Ms. Y could, after receiving the amounts paid by the executor, make a contribution to her own TFSA and designate it as an exempt contribution, if the Ministerial discretion is exercised in her favour to extend the rollover period.

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