

# STEPUP

Sales Tax Estate Planning Underwriting & Product Newsletter

## Tax-Free Savings Account – Bequest and renunciation

### Situation

The following situation was presented to the Canada Revenue Agency:

- Mr X died on January 1st, 2021
- Among other things, he had a tax-free savings account (TFSA) trust with a value of \$100,000 at the date of death
- His last will provided for a specific legacy of his TFSA to his daughter (at the age of majority) and a residuary legacy of all his property to his spouse, Ms Y, with full ownership
- The specific legacy of his TFSA included a clause stipulating that if Mr X's daughter renounced the legacy of the TFSA to her, the proceeds of that legacy would then fall into the residue of the estate
- After her father's death, Mr X's daughter signed a written renunciation of the TFSA legacy to her and, in accordance with the will, the executor of the estate, after winding up the TFSA and during the rollover period, transferred the value of the TFSA of \$100,000 to Ms Y as the residuary legatee
- During the rollover period, Ms Y contributed \$100,000 to her own TFSA.

### Question to CRA

Could you confirm that this would allow Ms Y to designate the contribution made to her own TFSA as an "exempt contribution" under the definition of "exempt contribution" in subsection 207.01(1) (the "Definition") of the Income Tax Act (ITA), if the other conditions of the Definition are otherwise satisfied?

### CRA's comments

In the situation described, the principal question is whether the payment is made as a consequence of the individual's death. In that regard, paragraph 248(8)(a) ITA provides that a transfer, distribution or acquisition of property made under a will of a taxpayer or as a consequence of such a will is considered to be a transfer, distribution or acquisition of property made as a consequence of the death of the taxpayer.



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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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Furthermore, paragraph 248(8)(b) ITA provides that a transfer, distribution or acquisition of property as a consequence of a disclaimer, release or surrender by a person who was a beneficiary under a taxpayer's will is considered to be a transfer, distribution or acquisition of property made as a consequence of the taxpayer's death.

For that purpose, subsection 248(9) ITA defines "disclaimer" as including a renunciation of a succession made under the laws of the Province of Quebec that is not made in favour of any person but does not include any disclaimer made after the period ending 36 months after the death of the taxpayer (or such longer period as the Minister considers reasonable in the circumstances, if any).

The same subsection defines "release or surrender" as including a gift inter vivos made under the laws of the Province of Quebec of an interest in, or right to property of, a succession that is made to the person or persons who would have benefited if the donor had made a renunciation of the succession that was not made in favour of any person, to the extent that the release or surrender is made within the aforementioned period.

### Conclusion

In the situation described, the CRA is generally of the view that the payment of \$100,000 made by the executor to Ms Y of the TFSA proceeds would be a payment made as a consequence of Mr X's death by virtue of subsection 248(8) ITA.

It should also be noted that to the extent that the effect of the renunciation by Mr X's daughter of her specific bequest is, under applicable private law, to increase the residue of the estate to which Ms Y is entitled, CRA would come to the same conclusion, even in the absence of a specific clause in the will stipulating what happens to the TFSA in the event of a renunciation by Mr X's daughter of her bequest

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