

STEPUP

Sales Tax Estate Planning Underwriting & Product Newsletter

Tax-Free Savings Accounts – Exempt contribution and terms of will

Question to CRA

Whether an amount paid out of an arrangement that ceased to be a tax-free savings account (TFSA) upon the death of its last holder to the deceased holder's estate and distributed by the estate executor to the deceased's surviving spouse in satisfaction of a bequest of a sum of money would qualify as a survivor payment for the purposes of the definition of "exempt contribution"?

CRA's comments

In order to satisfy paragraph (b) of the definition of "exempt contribution" in subsection 207.01(1) of the Income Tax Act (ITA), a payment derived directly or indirectly out of or under an arrangement that ceased, because of the individual's death, to be a TFSA must be made to the survivor during the rollover period, as a consequence of the individual's death. Such a payment is termed a "survivor payment" in the "exempt contribution" definition.

For a payment made to a survivor during the rollover period to be a survivor payment, the following conditions must be met:

1. it is made, directly or indirectly out of or under an arrangement that ceased, because of the death of the last holder, to be a TFSA; and
2. it is made as a consequence of the individual's death.

As to whether the payment is made as a result of the death of the individual, paragraph 248(8)(a) ITA provides, among other things, that a transfer, distribution or acquisition of property made under or as a consequence of the will of a taxpayer or as a result of such will is considered a transfer, distribution or acquisition of property as a consequence of the death of the taxpayer.

Conclusion

To the extent that the payment to the surviving spouse is made in accordance with the individual's will, the CRA would generally be of the view that it is a payment made as a consequence of the individual's death.



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Services

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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