

# CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

## TFSA and spouse as joint beneficiary



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Gaeten and Mirielle are a middle aged couple who met through friends. They have been together for almost 5 years. Gaeten is divorced with one adult child. Mirielle, a widow, has two children of her own. The couple do want to take care of each should either one predecease the other. They both wish to have at least some of their own investments pass on to their respective children.

Gaeten has taken full advantage of his Tax Free Savings Account (TFSA) and has experienced some very good growth in his investment portfolio. A holder living anywhere in Canada can designate a beneficiary on a Tax Free Savings Account investing in an insurance GIC or segregated fund. (S)he can designate a beneficiary on a tax free savings account holding any other eligible investments if (s)he lives outside of Quebec. Gaeten has named Mirielle and his own daughter, Marie, as beneficiaries of his Tax Free Savings Account. What happens in the event that Gaeten predeceases Mirielle and Marie?

Mirielle and Marie will receive the fair market value of Gaeten's Tax Free Savings Account as of the date of his passing. Those amounts will be tax-free. Any growth in Gaeten's plan that occurs between the time of his death and the transfer to the beneficiaries is fully taxable to the beneficiaries. The proceeds will be apportioned between them according to the instructions given in the plan.



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Peter works with independent advisors and other professionals raising awareness on issues and concerns faced by affluent individuals, professionals and business owners. He supports efforts in researching and developing optimal solutions for clients aimed at improving their financial well-being and supporting their personal wishes and lifestyles. He has provided 1000s of workshops, seminars and technical support throughout the country on tax, retirement income and estate planning issues, concepts and strategies to both advisors and consumers. As an accredited Registered Financial Gerontologist, a good deal of his time is spent on building awareness and educating people of all professions who work with or specialize in the needs, expectations and issues of elders. Comprehensive lifestyle planning is an important element of these processes.

The Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team provides internal and broker support, including seminars, education, advanced concept illustrations & Client case technical consultations.

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Mirielle can elect to designate any portion of her share of the plan's fair market value as of the date of Gaeten's passing as an exempt contribution. This election allows a surviving spouse or common law partner ('a survivor') who is a beneficiary to contribute and designate all or a portion of a survivor payment as an "exempt contribution" without affecting their own Tax Free Savings Account contribution room. The exempt contribution election is available to a surviving spouse or common law partner who is named as beneficiary even if they are not named as the sole beneficiary of each plan designated as a Tax Free Savings Account originally owned by their now deceased spouse or common law partner. The election may also be available under the Income Tax Act even if they are not the only person who qualifies as a survivor, notwithstanding the TFSA Guidelines published by the Government of Canada.

There are two other instances when the exempt contribution election may not be available to the surviving spouse/common law partner, Mirielle.

1. The deceased's Tax Free Savings Account included amounts classified as excess contributions. If, at the time of Gaeten's death, there was an excess amount in his Tax Free Savings Account, a 1% tax applies to the highest excess amount for each month in which the excess remained, up to and including the month of Gaeten's passing. Any earnings or increase in value reasonably attributable to deliberate excess contributions will be considered an advantage and treated accordingly. That amount will not be eligible as an exempt contribution.

2. The survivor payment was made after the rollover period, specifically, "the period that begins when the plan holder (Gaeten) passes and the end of the calendar year that follows the year of death."

Both Mirielle and Marie can contribute part of their respective proceeds to their own Tax Free Savings Accounts provided they have contribution room. For Mirielle, this would apply to now taxable earnings on the TFSA after Gaeten's death, up to the point she makes a contribution and any amount not qualifying as an exempt contribution.

For Marie, she may deposit an amount up to her contribution limit only. She may not take advantage of a tax free rollover as an exempt contribution.

If Gaeten had opened two Tax Free Savings Accounts and funded them equally up to his combined annual limit, then invested those monies in the same manner, he could have done the following.

- Gaeten could have named Mirielle as sole beneficiary or successor holder (subrogated policyholder in Quebec) of one plan and named Marie as sole beneficiary of the second plan. Mirielle would have had more options and had the opportunity to optimize any special tax treatment.
- Alternatively, Gaeten could have split his plan into two accounts and then named individual beneficiaries in each one.

What are the differences for a spouse named as a beneficiary compared to being named successor holder (subrogated policyholder in Quebec)? Watch for my next article.

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