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PUBLICATION

2016 Tax Changes Affecting Estates and Trusts

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The following is a primer on new tax rules for trusts and estates.

1. Loss of Graduated Rates

Effective January 1, 2016, testamentary trusts and estates lose their access to graduated tax rates and will generally be taxed at the top marginal rates for individuals on all of their income. An exception to this general rule is that estates (not trusts) will have access to the graduated rates for the first 36 months following death. Such estates are referred to as "graduated rate estates". To be eligible, the estate must be designated as a graduated rate estate with the Canada Revenue Agency ("CRA") in its first income tax return filed after 2015 and any other returns filed during this 36 month period.

With the loss of graduated rates, it is advisable to seek professional advice regarding alternative options for the future planning for these trusts.

2. Year End

December 31, 2015 will be a deemed year end for all estates over three years old and all existing testamentary trusts. December 31 will be the year end going forward.

The December 31, 2015 deemed year end will not apply to estates over 36 months old at that date but will have one on their third anniversary and again at December 31 in the applicable year. That could result in two year ends in one calendar year. All alter ego trusts, spousal trusts, and joint spousal trusts will have a deemed year end on the date the life interest beneficiary dies.

3. Tax Installments

Only graduated rate estates will be exempt from making installments, where before all testamentary trusts (including estates) were exempt. If you are a trustee or otherwise involved in a testamentary trust or estate, it is advisable to speak to a qualified accountant to determine if you now need to make installments, including in the first quarter of 2016.

4. Shifted Burden

Under the new rules, when the beneficiary of an alter ego, spouse trust, or joint spousal trust dies, the entire income of the trust for the applicable year and deemed capital gains are transferred from the trust to the trust beneficiary that died. This shifts the tax burden to the estate of the deceased beneficiary, which could wipe out that person's estate. There are no grandfathering provisions to allow existing structures to continue on and be taxed as initially contemplated. This affects current wills that are yet to come into effect (which can usually be modified) and also existing life trusts or testamentary trusts (which may or may not be modified).

CRA has announced that it is reviewing the issue of the shifted burden but there is no guarantee that it will take steps to shift the tax liability from the deceased trust beneficiary back to the trust.

We strongly advise that you review your planning, especially if you have incorporated trusts (lifetime or testamentary) into your plan. This is a short summary of some of the issues testators and trustees are faced with in light of these changes. It is provided for informational purposes only and is not intended as legal advice.

For further information please contact the author, Aaron Bickman at 403.873.3734 or any member of our Wills & Estates Group.