PDL Financial Consulting & Valuations Inc.

YEARS 2021/2022

February 27, 2022

# TAX PLANNING

**INSIDE THIS ISSUE:**



**2022 Tax Highlights**

- RRSP contribution limit increases to $29,210
- Employment Insurance Rates continue at 1.58%
- Lowest tax bracket remains at 15%
- Corporate tax rate decreases to 12.2% for Ontario SBC's
- Top Tax bracket starts at income over $221,708
- No Tax on personal income up to $14,398
- CPP Rates rise to 5.70%
- OAS repayment threshold increases to $81,761
- TFSA annual limit is $6,000
- First time home buyers amount $5,000
- RRSP Homebuyers $35,000

## CRA—REVISED RULES FOR CLAIMING HOME

There's a revised temporary flat-rate method for up to $500, and a simplified "detailed" method with a new Form T2200S. The Canada Revenue Agency (CRA) released details on its new home office expense rules, introducing a temporary flat-rate method for employees with modest expenses to claim up to $500, and a shortened Form T2200 declaration for those claiming expenses through the traditional method. The agency also provided a new calculator on its website to help employees claiming home office expenses.

Employees who worked from home more than 50% of the time over a period of a least four consecutive weeks in 2021 due to the pandemic will be eligible to claim the home office expenses deduction for 2021. Prior CRA eligibility guidance indicated that employees needed to be principally working from home — meaning more than half the time — for the year. The CRA said in the release that the shorter qualifying period will ensure more employees can claim the deduction. The temporary flat-rate method, will allow eligible employees to claim a deduction of $2 for each day they worked from home in 2021 due to Covid-19, up to a maximum of $500.

Under this method, employees will not have to get Form T2200 or a Form T2200S completed and signed by their employer. The new method also eliminates the need for employees to determine their expenses to calculate their claim. However, employees who use the temporary flat-rate method can't claim any other employment expenses (for example, motor vehicle expenses).

Under the detailed method, eligible employees working from home in 2021 due to Covid-19, or employees who were otherwise required to work from home, can claim the amount paid for eligible expenses, supported by documents.

For employees choosing to file under this method, the CRA also launched simplified versions of the Form T2200S, Declaration of Conditions of Employment for Working at Home Due to Covid-19 and Form T777S, Statement of Employment Expense for Working at Home Due to Covid-19. For employees using the detailed method, the CRA expanded the list of eligible expenses to include home internet access fees. The CRA provided a comprehensive list of all eligible expenses on its website.

## SELLING U.S. REAL ESTATE

Selling a U.S. property is a tough decision, particularly when taxes are factored in. And if you die while owning U.S. property, your heirs will experience severe headaches. Here are some of the pitfalls of moving on from your U.S. property. You won't be able to avoid them, but being prepared can soften the blow.

**Selling your U.S. property**
The first thing to know about selling a home in the U.S. is that after you sell it, you're legally obligated to file a tax return with the Internal Revenue Service — even if you sell at a loss. You'll be required to fill out IRS Form 1040NR, the document used for non-residents. If you've owned the property for more than a year, you'll also need to fill out a Schedule D form, which details capital gains. U.S. capital gains levies can be severe. The maximum capital gains rate in America is currently an eye-watering 37 per cent. You'll also have to pay the IRS a withholding tax on the gross proceeds of your sale. When a non-resident of the U.S. sells property, the IRS makes sure they get their money, So there's a requirement to withhold tax when the property is sold. The IRS generally withholds 15 per cent of the gross proceeds, but if those are less than US$1 million, the level of withholding tax would be ten per cent. If buyers plan on using the property as their primary residence, and the proceeds of the sale are less than US$300,000, then no withholding tax will be required. Some states, including California and Hawaii, have their own withholding taxes. But most, including snowbird favourites Florida and Arizona, do not. You'll also have to pay tax on the proceeds of your sale to Canada, by reconciling it in Canadian dollars and entering it on your tax return. Generally, the level of tax we pay in Canada on the profit will be greater than on the U.S. side. Sellers can help mitigate

## How To Change Your Tax Return

If you have filed your return and then determine that you need to make a change, either because you have received another T-slip, or because you didn't claim an expense and later learned it was deductible, you can request an adjustment to your tax return. The time limit for filing adjustments to your tax returns by mail is **ten (10) years**. An adjustment request may be made in 2022 for the 2012 or subsequent taxation years.

You can request the change online for your most recent return, or your returns for the previous two tax years, or by mail, for tax returns for the past ten years.

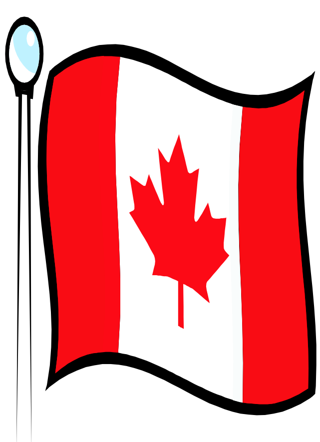
**Requesting a change online**

Requesting a change online is very simple, and is done by logging into your account at the CRA My Tax Account page. A separate request has to be filed for each tax year.

You can also use the online request if you forgot to apply for the GST/HST tax credit when you filed your tax return.

**Requesting a change by mail**

You can obtain a form T1ADJ from the CRA web site, complete it and mail it in, along with documents supporting your change request.



# IN-TRUST ACCOUNTS AND TAXATION

An in-trust-for (ITF) account is a convenient way for parents and grandparents to set aside funds for minor children, allowing the account holder to make binding investment decisions on behalf of minor beneficiaries and potentially split income for tax purposes. An ITF can also be helpful with inheritances because minors can't directly accept a gift under a will. An ITF may be preferable to a formal trust due to the time and cost of creating and executing a formal trust deed. Which tax slips are issued and who reports the income for tax purposes depends on the legal relationship underlying the account and whether the attribution rules of the Income Tax Act (ITA) will apply.

**An ITF may be a trust, a gift or neither**

A trust requires three certainties: certainty of intention to establish the trust; certainty of object, which is the trust beneficiaries; and certainty of subject, which is trust property. In common-law jurisdictions, the certainties aren't required to be set out in writing, but a written trust deed is proof of a trust's existence and terms. An ITF, often referred to as an informal trust, lacks the documentation helpful to prove the intention to set up the trust in the first place. Still, it may be considered a trust depending on the facts of each case. The Canada Revenue Agency (CRA) will consider intention at the time the property was transferred to the ITF and how the account was dealt with to determine whether a trust relationship exists and who is liable for taxes payable on any income or gains earned from the account. If the CRA determines that any of the three certainties required for a trust aren't present, contributions to an ITF account may be considered a gift to the beneficiary. When an ITF account represents a gift or is set up to hold an inheritance or insurance settlement for a minor, the account holder acts as an agent for the minor's property.

Absent clear evidence of irrevocable property transfer, there is neither a trust nor a gift. Consider a hypothetical example. Jill opens a bank account in her name, in trust for her minor grandchild Sheila. The account opening documents clearly identify Jill as contributor and trustee, and Sheila as beneficiary. The funds are legally owned by Jill as trustee until Sheila reaches the age of majority in her province (18 in Ontario). The account would be considered a trust. If Jill had opened the account in Sheila's name, there would be an immediate gift of both legal and beneficial ownership to Sheila. If the account had been opened in Jill's name with no clear intention that it be for Sheila, the account would be neither a trust nor a gift. To help clarify the account's status — particularly when questioned by the CRA or where claims are made by beneficiaries — it's helpful to document the contributor's intention to irrevocably transfer property for the benefit of the named beneficiary and to maintain records regarding the source of funds.

**Taxation of ITF accounts**

Non-spouse transfers of beneficial ownership (whether indirectly through a trust or directly by a gift) are taxable dispositions to the transferor for the year of transfer. Transferring cash or unappreciated assets will alleviate exposure to tax on capital gains. Trusts are taxed as separate individuals under the ITA. The CRA makes no distinction between formal trusts and informal trusts for tax purposes, including the requirement by the trustee to annually file a T3 Trust Income Tax and Information Return. Trust income and taxable capital gains that aren't paid or payable to a beneficiary or attributed back to the transferor are taxed in the trust at top marginal rates. Because Sheila is related to Jill, income other than capital gains will attribute back to Jill until Sheila turns 18, whether the transfer is in respect of immediate gift or a trust. If instead, Jill created a discretionary trust for Sheila, then subject to the same attribution rules for minors and also subsection 104(18) of the ITA, for a particular year when no amount from the trust was paid to Sheila, trust income and capital gains would be taxed in the trust. Income not subject to attribution and capital gains paid or payable to a beneficiary are taxed in the beneficiary's hands at the beneficiary's graduated tax rates. Losses generally can't be allocated to a beneficiary. If, upon review of the facts, the CRA determines the ITF isn't a trust, all income and capital gains may attribute back to the contributor from account inception, resulting in arrears taxes and penalties.

In *Blum vs. the Queen*, a grandfather successfully appealed a CRA reassessment wherein the CRA attributed capital gains to him that were previously taxed in the hands of his grandchildren. Even though there was no formal trust agreement, he won his appeal as it was determined that all three certainties were present. The trust property (shares of his own companies) was identified and clearly delivered to his name as trustee for the benefit of his grandchildren as named beneficiaries.

**Attribution rules and transfers to related minors**

ITA subsection 74.1(2) provides that first-generation income other than capital gains, from property gratuitously transferred to a related minor either indirectly through a trust or directly by gift attributes back to the transferor for tax purposes. Second-generation income and taxable capital gains are taxed in the minor's hands. ITA subsection 75(2) may apply where a trust allows the contributor to maintain control over trust property after the trust is set up — including, for example, if Jill named herself the trustee of the account she opened for Sheila. When 75 (2) applies, all trust income, capital gains or losses attribute back to Jill for tax purposes. Jill could mitigate exposure to 75 (2) by naming someone other than herself as trustee or appointing multiple trustees. Attribution ceases if the contributor dies or becomes a non-

## IN-TRUST TAXATION - CONTINUED FROM PAGE 2

resident of Canada, and attribution doesn't apply to inheritances or to most arm's-length transfers.

**Other considerations and alternatives**
Whether a gift or a trust, contributions to an ITF can't be redirected or returned to the contributor without tax consequences, including the risk that a beneficiary may make a claim for the capital and earnings of the account since inception. Alternatives to an ITF include an RESP, paying for certain expenses for the child, or setting up a formal trust and using a prescribed rate loan strategy to avoid attribution rules while the beneficiaries are minors. Whether an ITF account is the best alternative depends on the family's resources and goals.

## SELLING U.S. REAL ESTATE (CONTNUED FROM PAGE 1)

the tax hit with a foreign tax credit based on the amount paid to the IRS. Getting a foreign tax credit approved can be a hassle. The Canada Revenue Agency will ask for a copy of an IRS account receipt to show tax was truly paid in the U.S., and you'll have to present a copy of your U.S. tax return as well.

**Dying and estate taxes**
It's uncommon for Canadians to die while in possession of U.S. property. If a couple owns a property jointly and one of them dies, the remaining partner typically winds up using it less and eventually sells it before dying. In the rare cases where Canadian residents die while owning a U.S. residence, their heirs or an executor will have to go through the estate tax exercise for the IRS. But most Canadians will not have to pay estate taxes because the IRS provides a rather generous exemption — $11.7 million; double that for a couple. If your worldwide assets total less than $11.7 million, you're off the hook completely. Lawyers and accountants often charge Canadians "a lot of money" to help them avoid paying estate taxes. But for most of these property owners, it's a non-issue. It's important to understand the estate planning implications, but it doesn't come up as often in a practical sense as it would if you were to rent or sell your property.

**Situations where transactions can be difficult**
If you were to die while still holding your U.S. property, and its value is more than $60,000, your executor is still obligated to file a U.S. estate tax return, Form 706NA. It's not just a box-ticking exercise. Your estate will have to disclose the fair market value of *all* its worldwide assets as of the date of death. If you've got a business in Canada, an RRSP, a RRIF, bank accounts, insurance policies — all of that information has to be included and valued for U.S. estate tax purposes — even though the net result of this exercise is going to be zero. Full disclosure to a foreign country! That's not all. When you submit an estate tax return, the assets entered into your 706NA are frozen. It could take a year, if not longer, for the IRS to even look at the estate return and allow for the property to be unfrozen. In Canada, your estate will have to pay a deemed disposition tax, where the property is considered to have been sold at fair market value, adjusted for Canadian dollars, at the time of your death. A lot of snowbirds focus on worrying about their U.S. issues when, at the end of the day, it's Canada that's going to get them. If you die and leave behind a spouse, the deemed disposition tax can be deferred by transferring the property to your partner. If your spouse then dies while in possession of the property, their estate will eventually have to pay the tax. And if no estate tax was paid in the U.S., there will be no foreign tax credit available to help lessen the hit.

## COLLECTIBLES ARE A CHALLENGE FOR EXECUTORS

Dealing with collections of art, antiques or other valuable property in an estate can be tough for executors, particularly if the deceased left little guidance as to their intentions. Collections have an emotional connection for beneficiaries and that can often lead to the biggest problems and litigation. Major battles can emerge when a will isn't clear about a collection. There are stories of pieces going missing and of accusations and fights among family members. More estates are including art collections, and a growing and sophisticated industry arising around their documentation and valuation.
However, collections today are not limited to traditional items such as art or coins but may include high-value sneakers or rare pens. Sports memorabilia and wine have increased substantially. In an ideal situation, a testator will leave detailed information about the collection, often via a separate document included by reference into the will. Identifying a collection in a will separates the property from regular personal effects and facilitates tax planning, charitable giving and estate planning.
Collections are made up of movable objects, and movable objects move around. If you're an executor, you have to find those objects — and to do that, you have to know where they are. A summary document would list each item, its location, its original purchase cost and its approximate value, which would help determine tax liability arising from selling or gifting the items. The will would also address how and to whom the collection, or individual items in the collection, should be distributed. However, such careful estate planning is more the exception than the rule. Executors

## TFSA LIMIT FOR 2022

The TFSA new contribution limit for 2022 has been officially released. That limit is $6,000, matching the amount set in 2021. With this TFSA dollar limit announcement, the total contribution room available in 2022 for someone who has never contributed and has been eligible for the TFSA since its introduction in 2009 is $81,500. The annual TFSA dollar limit is indexed to inflation and rounded to the nearest $500.

**Unused TFSA contribution room to date + total withdrawal made in this year + next year's TFSA dollar limit = TFSA contribution room at the beginning of next year.**

Anyone 18 or older and who has a valid social insurance number is eligible to open a TFSA. Contribution room accumulates beginning in the year in which a person turns 18. You can find your unused TFSA contribution room on your last CRA notice of assessment form.

TFSAs can be an "ideal" savings and investment vehicle for younger Canadians who are starting their working lives and expect to be in higher income tax brackets in the years ahead. While contributions to a TFSA are not tax deductible, withdrawals are tax free. Money withdrawn from a TFSA in a future year can be used to make a down payment on a home or purchase a car, for example.

If the TFSA holder's tax rate is higher at that time, they realize a benefit accessing tax-free income from their account as opposed to having to pull out taxable income as from an RRSP.

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## FILING DEADLINES

April 30th is the filing deadline for 2021 tax returns. The self-employed must file by June 15th, 2022. All taxpayers will incur interest charges on any unpaid balances after April 30th, 2022. Don't miss your deadline as there is an automatic 5% late penalty levied against unpaid balances.

## APPEALS

Appeals of tax reassessments for prior years must be filed within 90 days of the mailing date of the reassessment. The deadline for objecting to an assessment of the 2021 filing is 90 days from the date of the assessment or 1 year from the filing deadline of April 30th, 2022, whichever is later.

## INSTALLMENTS

If your tax balance owing is greater than $2,000 in current year and one of 2 preceding years, Revenue Canada will request that you make quarterly tax installment payments based on the balance owing in the upcoming year.

Don't ignore CRA installment notices as they may levy installment interest charges against you.

**PDL Financial Consulting & Valuations Inc. specializes in the areas of Income tax planning and preparation, Real Estate appraisal, acquisition, management, Mortgage analysis, Financial Consulting & Investment Planning, Business start up, registration & planning.**

## COLLECTIBLES CHALLENGE– CONCLUDED

often have to rely on their judgment.

First, the executor will need to identify the items in the collection and have them appraised for probate and insurance purposes, and to help with the ultimate sale and distribution of the assets. Next, the property needs to be stored properly. For example, a collection of vintage cars should be protected from the elements in a temperature-controlled garage. If there are no distribution instructions for the collection, then the collection will fall into the residue of the estate, in which case the property is to be sold — through an auction house, for example — and the proceeds distributed to beneficiaries according to their respective share.

However, executors should contact beneficiaries first about their interest in receiving the collection before selling the property. Send out the appraised value and other relevant information and give them a first chance at it. Communicating with beneficiaries proactively will reduce the chances of the estate administration being challenged. Without communication, you may have a bunch of litigation to come. A beneficiary who had the same interests as the deceased may want the entire collection; other beneficiaries may simply want an item from the collection for sentimental value. If a beneficiary is interested in receiving an item (or the full collection) uncontested, then its corresponding value will be taken out of their entitlement under the will.

If two or more beneficiaries want an item, however, the executor may have to find creative ways to break the deadlock. For example, a diamond necklace desired by two beneficiaries could be divided into two bracelets. Administering a collection becomes all about negotiation and/or family dynamics. Sometimes a collection turns out to be less valuable than the deceased believed. And increasingly, beneficiaries today are not necessarily interested in inheriting their grandparents' stamp or ceramic figurine collections. The best thing you can do for your family as the testator is to give them permission in the will to just sell everything.

### 2022 FEDERAL TAX RATES

- 15% **on the first** $50,197 of taxable income, **+**
- 20.5% **on the next** $50,195 of taxable income (on the portion of taxable income over $50,197 up to $100,392), **+**
- 26% **on the next** $55,233 of taxable income (on the portion of taxable income over $100,392 up to $155,625), **+**
- 29% **on the next** $66,083 of taxable income ( on the portion of taxable income over $155,625 up to $221,708), +
- 33% on taxable income over $221,708

### CANADA REVENUE AGENCY CONTACT NUMBERS:

| | |
|---|---|
| **T.I.P.S.** | **1-800-267-6999** |
| **INDIVIDUAL INCOME TAX** | **1-800-959-8281** |
| **TELEREFUND** | **1-800-959-1956** |
| **BUSINESSES AND SELF EMPLOYED** | **1-800-959-5525** |
| **UNIVERSAL CHILD CARE BENEFITS** | **1-800-387-1193** |
| **GST/HST CREDIT** | **1-800—959-1953** |
| **FORMS & PUBLICATIONS** | **ORDER ONLINE** |
| **PAYMENT ARRANGEMENTS** | **1-888-863-8657** |