Death and Taxes – It's Never Too Early To Plan

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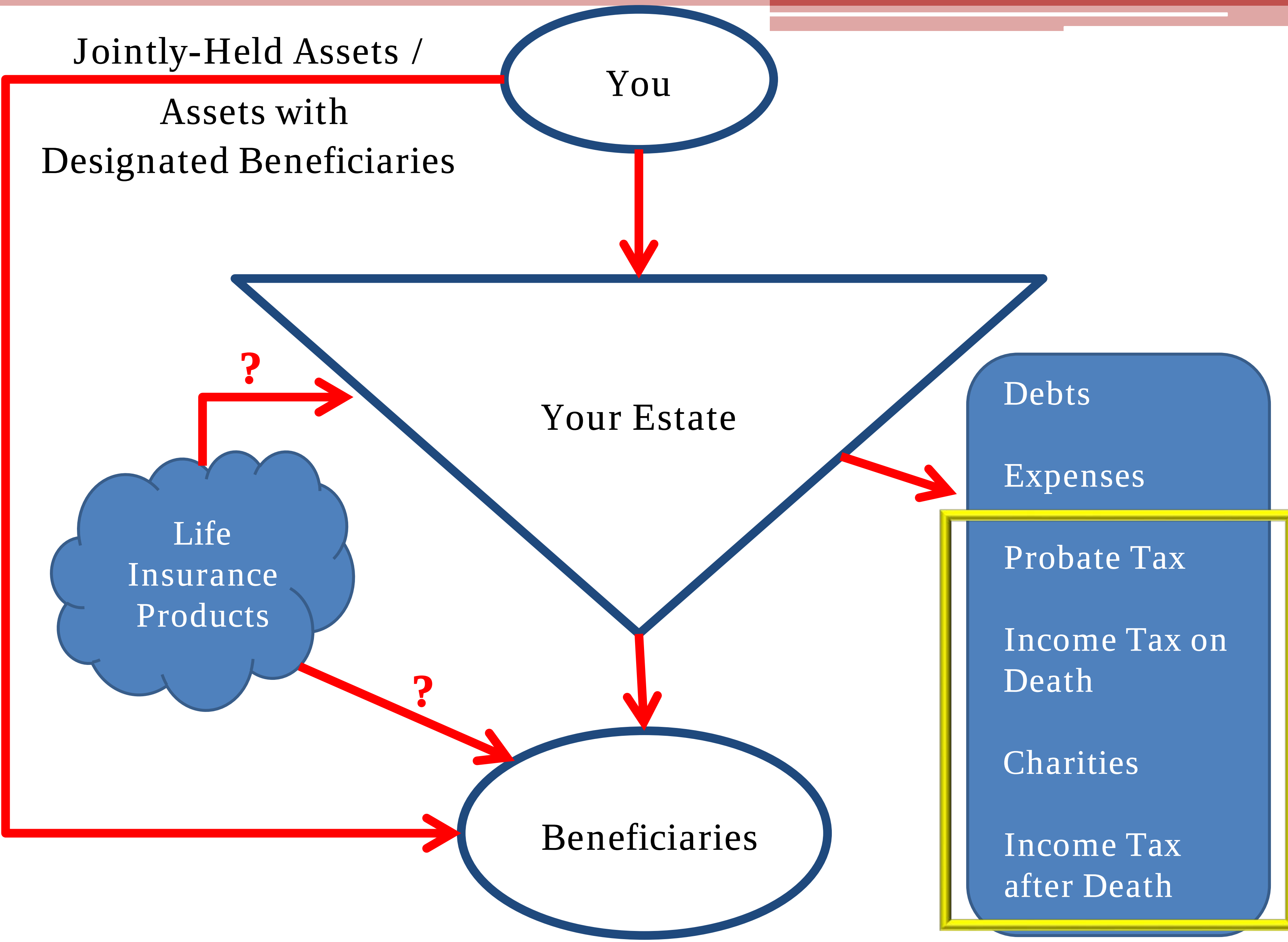
"In this world, nothing can be said to be certain except Death and Taxes"

Benjamin Franklin

Agenda

- Understanding Estates
- Taxes Upon Death
  - Probate
  - Income Tax
- Taxes After Death

Understanding Estates


Jointly-Held Assets /
Assets with
Designated Beneficiaries
You
Your Estate
?
Life
Insurance
Products
?
Beneficiaries
Debts
Expenses
Probate Tax
Income Tax on Death
Charities
Income Tax after Death

Taxes Upon Death: Probate

What is Probate?

Probate is the process of the Provincial Court approving the presented Will as authentic and valid. The following fees (called Estate Administration Tax) are charged when you apply for probate in Ontario:

Bracket	Fee Rate
$1,000 or less	Nil
$1,000 - $50,000	$5 for each $1,000 or portion (0.5%)
$50,000 and over	$15 for each $1,000 or portion (1.5%)

What is Probate?

Since 1992, Ontario has tripled its probate fees. This tax can be significant, setting you back $14,500 on a $1 million Estate.

There are tips to help you avoid Probate, but traps exist when trying to avoid this tax.

Avoiding Probate: Tips and Traps

Tip #1 – Jointly Register Assets

Potential Traps:

Scenario 1: Mother adds daughter's name onto title to her home for succession planning reasons. Daughter refuses to sign transfer for Mother to sell.

Scenario 2: Father adds son onto bank account for succession planning. Son gets divorced.

Avoiding Probate: Tips and Traps

Tip #2 – Name a Beneficiary

<u>Potential Traps:</u>

Scenario 1: Beneficiary on life insurance policy is minor child

Scenario 2: Beneficiary on life insurance policy receives a disability pension

Avoiding Probate: Tips and Traps

Tip #3 – Prepare Multiple Wills

Potential Traps:

Scenario 1: Accidentally revoking the first will.

Scenario 2: Mistakenly making double gifts.

Avoiding Probate: Tips and Traps

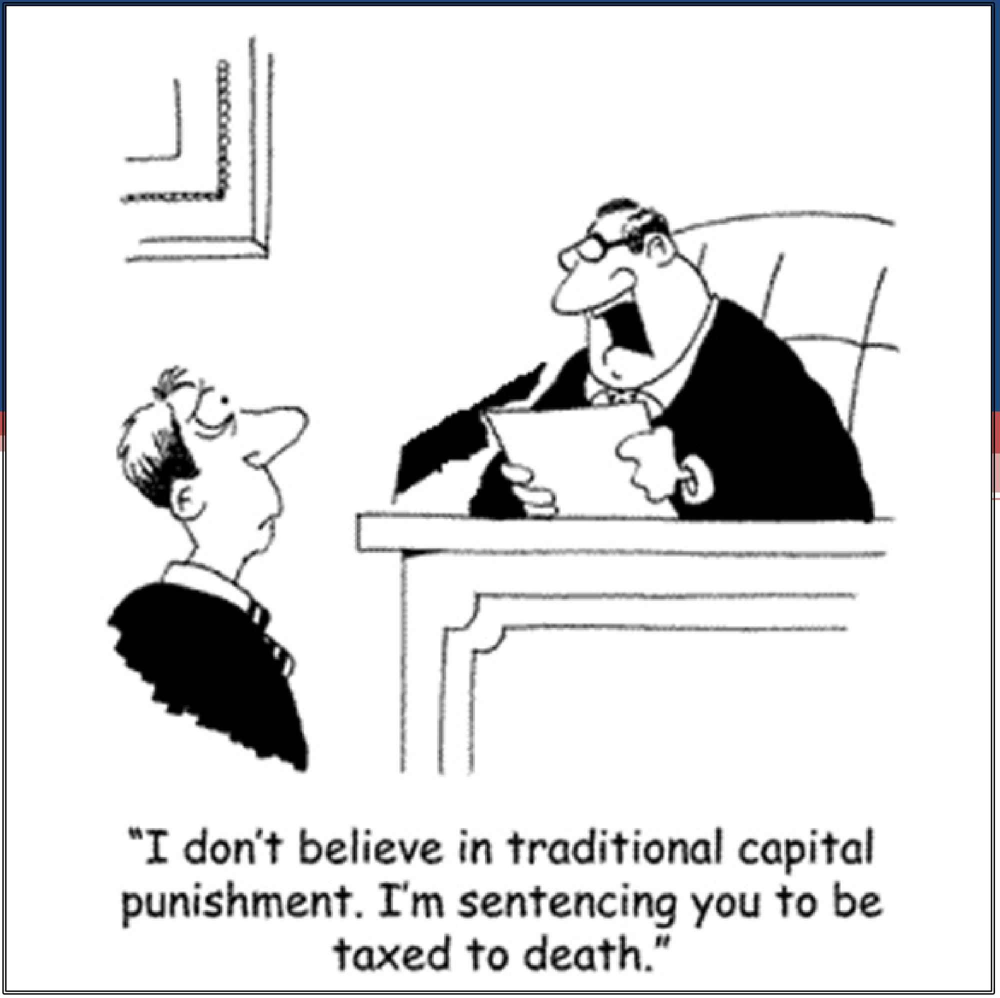
Tip #4 – Gift Assets During Your Lifetime

Potential Traps:

Scenario 1: Parents gift money by way of trust to child in university, and child loses OSAP

Scenario 2: Unforeseen capital gains tax

Taxes Upon Death: Income Tax



Deemed disposition on death

On your date of death, you are deemed to have disposed of all of your property:

- RRSPs are deemed to be sold and are fully taxable
- Investments deemed to be sold and capital gain realized
- Shares in private companies deemed sold
- Real property deemed sold (non-principal residence) including farm property

Your year to date income plus the realized gain on property and deemed dispositions will be subject to tax at your marginal tax rates.

Tax Rates

2017 Taxable Income	2017 Marginal Tax Rates			
	Salary, Business & Other Income	Capital Gains	Canadian Dividends	
			Eligible	Non-Eligible
first $42,201	20.05%	10.03%	-6.86%	6.13%
$42,201 up to $45,916	24.15%	12.08%	-1.20%	10.93%
$45,916 up to $74,313	29.65%	14.83%	6.39%	17.37%
$74,313 up to $84,404	31.48%	15.74%	8.92%	19.51%
$84,404 up to $87,559	33.89%	16.95%	12.24%	22.33%
$87,559 up to $91,831	37.91%	18.95%	17.79%	27.03%
$91,831 up to $142,353	43.41%	21.70%	25.38%	33.46%
$142,353 to $150,000	46.41%	23.20%	29.52%	36.97%
$150,000 to $202,800	47.97%	23.98%	31.67%	38.80%
$202,800 to $220,000	51.97%	25.98%	37.19%	43.48%
over $220,000	53.53%	26.76%	39.34%	45.30%

Personal Tax Rates (2017 Ontario)

Bracket	General Tax Rate (capital gains at ½ of rates)
$0 - $46,000	20%
$46,000 - $92,000	31%
$92,000 - $142,000	43%
$142,000 - $220,000	48%
> $220,000	54%

Note:
Highest non-eligible dividend rate ~45%
Highest eligible dividend rate ~39%

Rates and brackets are approximate

What can be done to avoid excessive tax on death?

If you have substantial unrealized gains and RRSPs on death, you may be pushed into the top tax brackets (the highest one being ~54%). You may want to take steps to avoid the top tax brackets:

1. Pay taxes earlier rather than later
    a. Unwind RSPs / RIFs early
    b. Distribute corporate property early
    c. Realize gains on portfolio
    d. Side issues with proactive taxation
2. Spousal rollover and election upon death
3. Freeze the value of your property
    a. Corporate shares
    b. Side issues with transferring of ownership
4. Charitable donations
5. Farm property transfers

1. Pay taxes earlier rather than later

Unwind RSPs / RIFs early

To avoid a distribution of your remaining registered funds on death which may be taxed at a higher rate, considering earlier withdrawals:

- Access lower brackets while available
- Consider converting part to RRIF to access pension splitting (lump sum withdrawals are not eligible to split)
- Be aware of OAS 15% clawback on income greater than $74,789
- If you do not need the money, you can reinvest in an open trading account

1. Pay taxes earlier rather than later

Distribute corporate property early

The value of your private corporation is taxed on death and certain further steps need to be taken to avoid double taxation (capital gain on death and subsequent dividend on redemption):

- Distribute property via dividends
- Realize capital gains and distribute capital dividend
- Sell your company (if possible)

1. Pay taxes earlier rather than later

Realize gains on portfolio

Rather than stockpiling gains which may be taxed on death, consider triggering capital gains early.

Consider disposing of assets.

There is no tax on a gift of cash to the next generation (although there could be capital gains if securities are sold).

1. Pay taxes earlier rather than later

Side issue – downsides to triggering income early

- Time value of money – paying tax now vs later
- Income tested items
  - OAS clawback
  - Ontario Trillium benefit
  - Guaranteed Income Supplement
  - HST credits
- Possible changes to future tax rates?

1. Pay taxes earlier rather than later

Side issue – OAS and CPP considerations

If you have substantial RRSPs or corporate assets to unwind, consider deferring CPP and OAS.

- There is a 7% per year increase for each year of deferral
- Removes the $74,789 limitation on distributions for clawback, allowing for more income to be absorbed
- Allows for more income to be distributed

2. Spousal rollover and election

Assets owned by a spouse are automatically transferred to the surviving spouse at cost, therefore avoiding the deemed capital gain on death.

You may want to elect out of this automatic rollover to make use of lower tax brackets, if the deceased spouse has lower bracket room. However, you cannot elect on a partial property in most circumstances.

3. Freeze the value of your property

Corporate shares

As your investments grow, the value of your assets continue to grow and so does your final tax bill.

Consider:

- Transferring property to your beneficiaries early resulting in future income and growth in their hands
- Corporate reorganization – exchange common shares for preferred shares and have beneficiaries subscribe for common shares
- Transferring assets may avoid probate (use caution)

Note: Certain post-mortem tax planning strategies exist to deal with capital gains taxation and even double taxation on death, but those are beyond the scope of this course.

3. Freeze the value of your property

Side issue – transferring assets

- Control could be lost when transferring assets
- May create legal issues if multiple people on ownership
- Does not necessarily trigger tax event:

  ie. Principal residence where children are added as legal title and parents continue to live have not transferred beneficial ownership, therefore principal residence exemption remains

4. Charitable donations

Specific bequests to charities can be used on the final tax return to reduce income taxes on death.

First $200 = 20% credit
Over $200 = credit ranging from 40-50%

Tax Tip: Consider transferring securities with large capital gains to charities while alive. You will get a donation receipt equal to the fair value of the security on the date of transfer, and the capital gain on the transfer will be $nil.

5. Farm property transfers

Farm property can be transferred to a spouse at either cost or fair market value, but no where in between.

Farm property can be transferred to a child or grandchild at anywhere between cost and fair market value.

The above two rules apply whether done while alive or upon death of a taxpayer.

What is “farm property”? What factors would be considered to determine the transfer amount for tax purposes?

5. Farm property transfers
Capital gains exemption

- Exemption limit for 2017 is ~$835,000 (and up to $1,000,000 for qualified farm property)
- Exemption can be used on death for disposition of qualified farm property (farmland and farm quotas), interest in a family-farm partnership, or shares in a family farm corporation – also, there is no minimum tax on death
- Remember: Corporations do not have capital gains exemptions – just individuals

5. Farm property transfers

When is Personal Land Eligible as Qualified Farm Property?

If purchased <u>prior to</u> June 18, 1987

- The property must have been principally used by certain individuals in the business of farming in Canada in the year of disposal

Or

- The property was used in at least five years principally in the business of farming in Canada by certain individuals

Watch – if farm crystalized in 1994, it is deemed to be reacquired after June 18, 1987

5. Farm property transfers

When is Personal Land Eligible as Qualified Farm Property?

If purchased <u>after</u> June 18, 1987

- The property must have been owned by certain individuals for at least 24 months immediately preceding the time of disposition

And

- Either:
  - In at least 2 years, the property must have been used principally in a farming business in Canada on a regular and continuous basis, and gross income from that business must exceed income from all other sources, or
  - During any 24 month period was used in a farming business in Canada by a family farm partnership or corporation

5. Farm property transfers

When are family farm corporation shares eligible as Qualified Farm Property?

To qualify as a share of capital stock of a family farm corporation, <u>all</u> of the following conditions must be met:

- The corporation must have existed for at least 24 months
- Throughout any 24 month period, more than 50% of FMV of corporation assets must be attributable to farming
- At the time of disposition, 90% or more of the FMV of the corporation's assets must be attributable to farming

(*Note: a farm within a company that is rented is not considered to be a farming asset*)

Much care must be taken to fall within these rules, and special planning often surrounds keeping companies "pure" for eventual sale.

Taxes After Death

"The meek will inherit the earth, but the inheritance tax will force them to sell it back to the rich."

Estate Issues

- Subsequent to death, assets that do not have a specified beneficiary are transferred to your estate to be distributed
- In the period between death and distribution, income earned is taxed in the estate (testamentary trust)
- Testamentary trusts are taxed as the same tax rates as individuals for up to 36 months, then convert to regular trusts with one high rate
- Beneficiaries do not pay tax on any bequests received as taxes already paid in estate or on death

Thank you. Questions?

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