

TFSA DESIGNATIONS MAY CAUSE ESTATE PROBLEMS

Amin Mawani / May 14, 2015

The April 2015 federal budget made TFSAs more attractive by increasing the cumulative contribution limit to \$41,000. But clients should know that financial institutions administer their customers' TFSA accounts differently, and subtle differences could cost accountholders down the road.

DESIGNATION BASICS

TFSA accountholders may designate their spouse or common-law partner as a successor-holder, and anyone else as a beneficiary. The successor holder and beneficiary designations vary across provinces (for example, Quebec only allows transfers to be done via the deceased's estate). A successor-holder trumps a beneficiary if both are alive at the time of the original planholder's death. And, a beneficiary trumps the deceased's estate if the successor-holder is also dead. If neither is specified, the assets in the TFSA account become part of the deceased's estate, losing their tax-sheltered status and becoming subject to probate fees.

THE BENEFITS OF BEING A SUCCESSOR-HOLDER

If a surviving spouse is named the successor-holder in the TFSA contract, he or she will become the new TFSA holder immediately when the original plan-holder dies — regardless of whether the TFSA is a deposit instrument, an annuity contract or a trust arrangement.

The deceased holder's TFSA is never de-registered and the assets remain continuously sheltered inside a TFSA. The deceased is not deemed to have received any amount from the TFSA at the time of death; the TFSA and its tax-sheltering privileges continue, and the successor-holder (surviving spouse or common-law partner) assumes ownership of the TFSA contract and all its contents.

If the TFSA is a trust arrangement, the trust continues to be the legal owner of the property held in the TFSA. The financial institution notifies the CRA of any change in ownership based on successor holder designations in the TFSA contracts.

The successor-holder can make tax-free withdrawals from the deceased holder's TFSA after taking over ownership. The successor-holder can continue having his or her own TFSA, with lifetime and annual contribution limits unaffected. The successor-holder could also consolidate the two separate TFSAs by directly transferring the deceased holder's assets (via a qualifying transfer) into his or her own plan, without affecting available contribution room.

A SPOUSE AS BENEFICIARY IS MORE COMPLICATED

Designating a spouse or common-law partner as a beneficiary (instead of a successor-holder) on the TFSA contract imposes a paperwork burden on the surviving spouse, as well as decreased tax sheltering. Similar to the successor-holder designation, a beneficiary designation also allows the surviving spouse to retain the tax-sheltered status of the TFSA without affecting his or her contribution room. However, this happens thanks to an exempt contribution of the deceased holder's TFSA assets to the beneficiary's TFSA plan.

This exempt contribution cannot exceed the market value of the original owner's TFSA on the date of his or her death. Any change in value between the original owner's death and the exempt transfer by the beneficiary cannot be transferred to the surviving spouse's TFSA. As a result, any such excess is no longer tax-sheltered.

This excess would likely be small if the exempt contribution is done shortly after the death of the original owner. However, such matters often get neglected around the time of a spouse's death. The surviving spouse has to notify the CRA within 30 days of the exempt contribution (or the transfer of the original owner's TFSA assets) using [Form RC240](#).

As a result, many experts recommend designating a spouse (or common-law partner) as a successor-holder in the TFSA contract with the financial institution.

BUT, FINANCIAL INSTITUTIONS VARY

Most provinces allow a TFSA holder to designate both a successor-holder and a beneficiary. If the original holder and the successor-holder die at the same time, the beneficiary can get the money without having to go through probate. Therefore, most planholders prefer to designate both a successor-holder and a beneficiary.

However, not all financial institutions' TFSA contract forms offer that option. At least one major self-directed investment firm appears to restrict accountholders to either a successor-holder or beneficiary, not both – even though the law allows both.

Canadians opening TFSAs need to be careful before signing the associated legal contracts. It is hard to undo what has been legally agreed to and signed by the original planholder. It is worthwhile for new plan members to choose financial institutions that offer this valuable option. And, owners of the 13 million TFSA accounts (as of 2014) should ensure the legal contract they signed in their TFSA forms will not obstruct their estate planning.

Most financial institutions have their relevant successor-holder and beneficiary designation forms on the web, and the forms can be retrieved by searching for “financial institution name, TFSA, successor holder.” Here are links to the forms for some of the largest financial institutions, as of May 13, 2015. (Editor's note: these forms are for self-directed investing accounts. If any institution would like to send their forms, please [email us](#).)

<https://www.bmoinvestorline.com/selfDirected/pdfs/>

[TFSA SuccessorAccountHolderAppointment.pdf](#)

<https://www.investorsedge.cibc.com/ie/pdf/10804.pdf>

<http://www.rbcdirectinvesting.com/pdf/addenda/TFSAbeneficiary.pdf>

http://www.scotiabank.com/itrade/en/files/12/05/etca_tfsa.pdf

<https://www.tdwaterhouse.ca/document/PDF/forms/529214.pdf>

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