

# DEATH OF A TFSA HOLDER

When the holder of a TFSA dies, the income and gain in value accrued up to the date of death, are not taxable. However, the income and gain in value that accrue in the TFSA after the date of death are taxable, except if the surviving spouse has been designated as successor holder.

## DESIGNATION OF SPOUSE OR COMMON-LAW PARTNER AS SUCCESSOR HOLDER

Only a spouse or common-law partner can be designated as successor holder in a TFSA contract or will. In this respect, the surviving spouse becomes the new TFSA holder as soon as the initial holder dies. This is an optimal method, since it is the only way for the income and gains earned in the TFSA after the date of death to be tax-exempt. In addition, after the death of the initial TFSA holder, such a designation will not affect the surviving spouse's unused contribution room.

Unfortunately, for TFSA holders in Quebec, the designation of successor holder is currently only allowed if the TFSA is tied to an insurance policy or annuity contract, such as if the TFSA is invested in segregated funds. At present, most TFSAs in Quebec do not allow the designation of a successor holder.

Let's look at the case of Lise, who lives in Ontario. Lise is the holder of a TFSA and has designated her spouse, Sylvain, as successor holder. Lise dies on February 1, 2020, at which time the value of her TFSA is \$45,000. Income of \$1,000 has accrued in the TFSA since the date of death.

Sylvain has become the new holder of Lise's TFSA. Neither the value of the TFSA of \$45,000 at the date of death or the income of \$1,000 earned after the date of death is taxable. In such a case, Form RC240, "Designation of an Exempt Contribution Tax-Free Savings Account (TFSA)," does not have to be submitted.

## DESIGNATION OF A BENEFICIARY OTHER THAN THE SPOUSE OR COMMON-LAW PARTNER

If, instead, a beneficiary other than a spouse or common-law partner was designated in the TFSA contract or will, the income and gains accrued up to the date of death are also tax-exempt.

However, the income and gains earned after the date of death are taxable for the beneficiary.

In Quebec, the designation of a beneficiary is currently allowed only if the TFSA is tied to an annuity contract or insurance policy; and an example of this would be if the TFSA is invested in segregated funds. At present, most TFSAs in Quebec do not allow the designation of a beneficiary.

Let's take the case of Denise, who lives in Ontario and is the holder of a TFSA. Denise designated her son, Pierre, as the beneficiary for her TFSA. Denise dies on February 1, 2020, at which time the value of her TFSA is \$45,000. Income of \$1,000 has accrued since the date of death and the full amount of the TFSA, \$46,000, is paid to Pierre on December 15, 2020.

The value of the TFSA of \$45,000 at the date of death is not taxable. The income of \$1,000 earned after the date of death is taxable to Pierre. The latter may use all or part of the funds he has received to contribute to his own TFSA, provided he has sufficient unused contribution room.



## BENEFICIARY OF TFSA BY WAY OF WILL

The bequest of a TFSA by way of a will, will have the same tax implications as indicated above, regardless of the TFSA holder's province of residence at the time of death.

In Quebec, in most cases, given that the designation of a beneficiary is currently only allowed if the TFSA is tied to an annuity contract or insurance policy, the transfer of a TFSA at death will generally be done through a bequest in a will.



Let's go back to the case of Denise. Denise is the holder of a TFSA, which she bequeathed in her will to her son, Pierre. Denise dies on February 1, 2020, at which time the value of her TFSA is \$45,000. Her estate is settled on December 15, at which time income of \$1,000 has accrued and the full amount of the account, \$46,000, is paid to Pierre.

The value of the TFSA of \$45,000 at the date of death is not taxable. The income of \$1,000 earned after the date of death is taxable. This amount of \$1,000 is taxable income in Denise's estate, but can be taxed in Pierre's hands instead under regular trust taxation rules. Pierre may use all or part of the funds he has received to contribute to his own TFSA, provided he has unused contribution room.

## DESIGNATION OF AN "EXEMPT CONTRIBUTION"<sup>1</sup> BY A SURVIVING SPOUSE OR COMMON-LAW PARTNER DESIGNATED AS THE BENEFICIARY OF THE SPOUSE'S TFSA

A surviving spouse or common-law partner designated as the beneficiary of the spouse's TFSA on the TFSA contract (as opposed to "successor holder") has the option to contribute

and designate all or a portion of the payment as an "exempt contribution" to their own TFSA. Doing so has the advantage of not affecting their unused contribution room. However, the following conditions must be met for a contribution to qualify as an "exempt contribution":

- An amount paid out directly or indirectly of an arrangement that ceased to be a TFSA upon the death of its holder must be made to the surviving spouse following the holder's death;
- A contribution is made by the surviving spouse to their own TFSA by December 31 of the calendar year that follows the year of death (rollover period)<sup>2</sup> ;
- The surviving spouse must fill out form RC240, "Designation of an Exempt Contribution Tax-Free Savings Account (TFSA)," and send it to tax authorities within 30 days after the day of the contribution to their own TFSA account<sup>3</sup> and
- The amount of the "exempt contribution" must not exceed the fair market value of the TFSA at the time of death.

Given that the time required to file form RC240 is very short, namely, 30 days after the contribution to the surviving spouse's TFSA, the surviving spouse must therefore be vigilant and make sure to file the form on time, even if there is ministerial discretion that appears to permit a longer time period.

Let's look at the case of Julie, who lives in Ontario. Julie is the holder of a TFSA and has designated her spouse, Luc, as the beneficiary. Denise dies on February 1, 2020, at which time the value of her TFSA is \$45,000. Income of \$1,000 has accrued since the date of death until the time when the full amount of the TFSA, \$46,000, is paid to Luc on December 15, 2020.

The value of the TFSA of \$45,000 at the date of death is not taxable. However, the income of \$1,000 earned after the date of death is taxable to Luc. On December 17, 2020, Luc contributes \$45,000 to his TFSA. Given that Luc has contributed the amount of \$45,000 to his own TFSA during the rollover period, he can treat this contribution as an "exempt contribution" by filing form RC240 with the CRA within 30 days following the contribution date. Such an "exempt contribution" will thus have no effect on Luc's unused contribution room. If Luc wanted to contribute all or a portion of the income of \$1,000 he received to his own TFSA he would require unused contribution room to do so.

<sup>1</sup>Subsection 207.01(1) ITA | <sup>2</sup>Or at any later time that is acceptable to the Minister | <sup>3</sup>Or at any later time that is acceptable to the Minister

## **DESIGNATION OF AN “EXEMPT CONTRIBUTION” BY A SURVIVING SPOUSE OR COMMON-LAW PARTNER WHO INHERITS THE SPOUSE’S TFSA BY BEQUEST**

Another case is where a spouse or common-law partner has not been designated as successor holder or as beneficiary of the spouse’s TFSA on the TFSA contract, but instead inherits the TFSA from the spouse in a will. In such a case, the surviving spouse has the option to contribute and designate all or a portion of the payment as an “exempt contribution” to their own TFSA.

This is true regardless of the holder’s province of residence, but will be especially true in Quebec, given that a contract level designation of a successor holder or beneficiary is currently only allowed if the TFSA is linked to an annuity contract or insurance policy.

Let’s take the case of Julie, who lives in Quebec. Julie is the holder of a TFSA, which she bequeaths in her will to her husband, Luc. Julie dies on February 1, 2020 at which time the value of her TFSA is \$45,000. Income of \$1,000 has accrued in the TFSA account since the date of death until the time when the full amount of the TFSA, \$46,000, is paid to Luc on December 15, 2020.

The value of the TFSA of \$45,000 at the date of death is not taxable. However, the income of \$1,000 earned after the date of death is taxable. This amount of \$1,000 is to be included in Julie’s estate, but can ultimately be taxed in Luc’s hands under regular trust taxation rules. On December 17, 2020, Luc contributes \$45,000 to his TFSA. Given that Luc has contributed \$45,000 to his own TFSA during the rollover period, he can treat this contribution as an “exempt contribution” by filing form RC240 with the CRA within 30 days following the contribution date. Such an “exempt contribution” will thus have no effect on Luc’s unused contribution room. If Luc wanted to contribute all or a portion of the income of \$1,000 he received to his own TFSA, this would reduce his contribution room by the same amount.

## **DESIGNATION OF AN “EXEMPT CONTRIBUTION” BY A SURVIVING SPOUSE OR COMMON-LAW PARTNER WHO INHERITS THE SPOUSE’S TFSA IN AN INTESTATE SUCCESSION**

A spouse may also receive the TFSA following the death of their spouse following the settlement of an intestate succession. In such a case, the surviving spouse also has the option of

contributing and designating all or part of the payment received as an “exempt contribution” to their own TFSA, subject to their succession rights and provided that the contribution to their TFSA is made during the rollover period. Form RC240 must also be filed within the specified time period.



## **DESIGNATION OF AN “EXEMPT CONTRIBUTION” WHEN THE TRANSFER OF AMOUNTS FROM A DECEASED SPOUSE’S TFSA IS MADE TO SATISFY THE BEQUEST OF A SUM OF MONEY PROVIDED IN THE WILL IN FAVOUR OF A SURVIVING SPOUSE OR COMMON-LAW PARTNER**

It should not necessarily be concluded that because a will does not specifically provide for the bequest of the TFSA in favour of the surviving spouse that the latter may not designate a contribution made to his TFSA as an “exempt contribution” subsequent to the death of the spouse. This is in fact what was confirmed in Technical Interpretation 2016-0679751E5 issued by tax authorities on May 11, 2017.

The question asked to the CRA involved determining whether the transfer by the legal representative of the estate (executor/liquidator) of amounts from a deceased TFSA holder to his surviving spouse, in order to satisfy a specific bequest of a sum of money provided in the will, meets the definition of “exempt contribution,” if the surviving spouse were to subsequently use the amounts to contribute to her own TFSA.

**Such a situation can occur, for instance, when the following facts are found:**

Pierre died on July 1, 2020 and was notably the holder of a TFSA in the amount of \$45,000. No successor holder was designated for the TFSA and there was no designation of a beneficiary.

Pierre's will provided for a specific bequest of \$45,000 to his spouse, Christine, and a bequest of the remainder of all his other assets to his daughter, Nicole. Although Pierre's will did not provide for a bequest of the TFSA in favour of his spouse, the legal representative of the estate (executor/liquidator), Nicole, agreed to transfer the value of the TFSA in the amount of \$45,000 to Christine, the surviving spouse, to satisfy the specific bequest of an amount of \$45,000 made by Pierre in favour of Christine under the terms of the will.

**More specifically, the question asked of the CRA was as follows:**

Would such a practice allow Christine to contribute the amount of \$45,000 as an "exempt contribution" to her own TFSA, meaning, without affecting her contribution room, if the transfer of funds to her TFSA was done during the rollover period, i.e. by December 31 2021, and that form RC240 is sent to the CRA within 30 days following the contribution date? A favourable response was given as follows:

[Translation] "(...) Provided that the payment to the surviving spouse is made under the terms of the deceased's will, the CRA will generally consider that such an amount is distributed as a consequence of the taxpayer's death. The fact that the will provides for a sum of money to be bequeathed to the

surviving spouse rather than a specific bequest of all or a portion of the TFSA would not in itself prevent payment therefrom to be a survivor payment for the purposes of the definition of "exempt contribution" provided that the liquidator has, under the will, the authority to satisfy the bequest directly from the amounts held in the TFSA."

## **DECEASED'S UNUSED CONTRIBUTION ROOM**

To conclude, we remind you that no contributions may be made to a taxpayer's TFSA after their death. Contrary to an RRSP, where the legal representative of the estate is allowed to make a contribution to the surviving spouse's RRSP using the deceased's unused contribution room at the time of death, there is no spousal TFSA, and therefore, any unused contribution room when a TFSA holder dies is lost.

However, when death is imminent and a TFSA holder will be leaving a spouse behind, it may be beneficial to take advantage of unused contribution room by contributing the maximum amount to the TFSA before the holder's death. This will increase the surviving spouse's entitlement when the funds are subsequently transferred to the surviving spouse's own TFSA as an "exempt contribution" or when a spouse has been designated as a successor holder.

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