Hot Tax & Estate Issues for Investors

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Jamie Golombek
Managing Director

RENAISSANCE INVESTMENTS™

Agenda

- Key 2009 tax changes
- Pension splitting
- Capital gains / losses & OAS Planning
- Spousal / partner loans
- TFSAs
- 2009 tax cases

2009 Federal Tax Brackets

2009	2008	Rate
Less than $40,726	Less than $37,885	15%
$40,726 to $81,452	$37,885 to $75,769	22%
$81,452 to $126,264	$75,769 to $123,184	26%
Over $126,264	Over $123,184	29%

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RRSP / RRIF Decline in value

- **FMV of RRSP/RRIF taxable as of date of death on terminal return**
  - Unless qualifying rollover to spouse, partner, qualifying dependent child

- **What if RRSP declines in value post-death?**

- **Example:**
  - Gary dies in June 2008 – FMV of RRSP at date of death is $200,000
  - RRSP is paid out to estate in January 2009 – FMV is $120,000
  - Loss of $80,000

- **Budget 2009**
  - Loss can be claimed on terminal return of deceased

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First-Time Home Buyers' Tax Credit

- **New $5,000 amount eligible for 15% credit**
  - Value = $750

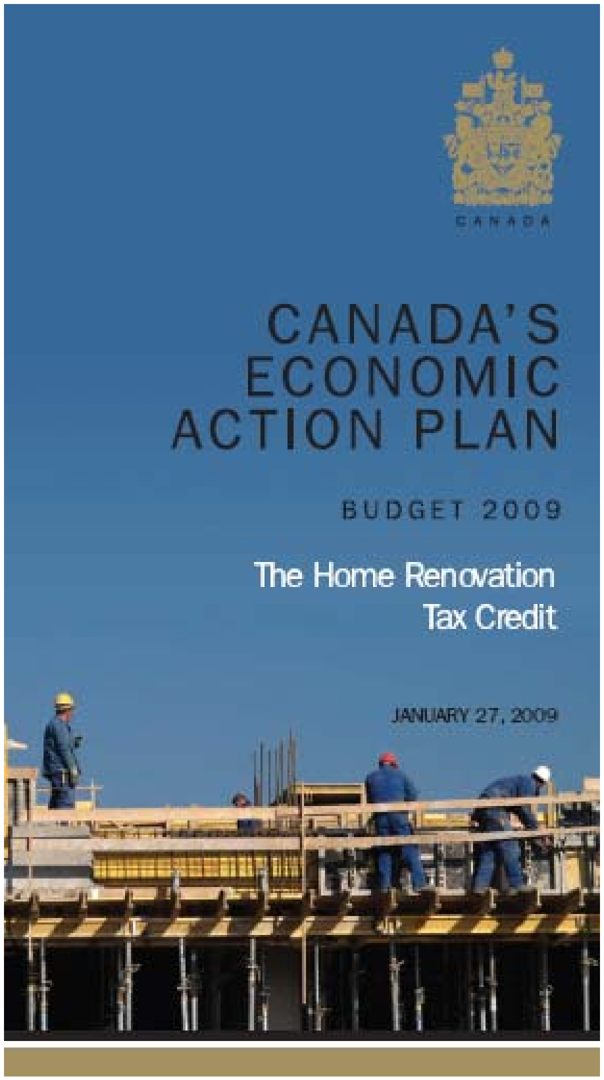
- **"First-time home buyer"**
  - Neither individual nor spouse/partner owned home in current or previous four calendar years

- **One claim per family**
  - Unused credit can be transferred to spouse/partner

Home Buyers’ Plan

- **Increase to $25,000 (from $20,000)**
- **Withdrawn from an RRSP, tax-free**
- **Must be paid back over 15 years to avoid annual income inclusion**
- **“First-time home buyer”**
  - Neither individual nor spouse/partner owned home in current or previous four calendar years

Home Renovation Tax Credit (HRTC)



- Expenditures over $1,000
- Maximum of $10,000
  - Credit worth 15% of $9,000 = $1,350
- Per family (spouse/partner, minor kids)
- From Jan 28, 2009 until Jan 31, 2010
- Eligible expenses?
  - Labour, professional services
  - Building materials
  - Equipment rentals
  - Permits
- Ineligible?
  - Routine maintenance
  - Furniture, drapery, appliances
  - Interest expense

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Small business tax measures

- **Increase in small business limit to $500,000 (from $400,000)**
  – Low federal tax rate of 11% on active business income up to limit

- **Accelerated tax depreciation for computer purchases**
  – Can write off 100% of cost of computers in year acquired
  – No “half-year” rule
  – For purchases from January 28, 2009 through January 31, 2011

Report All Capital Losses

- **Applied against capital gains**
  - Including CG distributions from mutual funds
- **Must be used against 2009 gains first**
- **Excess can be carried back / carried forward**

2006 2007 2008 **2009** 2010 + future years

- **Form T1A**

Canada Revenue Agency / Agence du revenu du Canada

REQUEST FOR LOSS CARRYBACK

- Use this form to ask for the application of a loss from 2008 to any of the three previous tax years. Attach the completed form to your 2008 income tax return or to your request for an adjustment and send it to your tax centre. For tax centre addresses, go to www.cra.gc.ca/tso.
- Complete only the sections that apply to you, and sign the certification section.
- You cannot carry back a loss to reduce any late-filing penalty for the year to which the loss is being applied.
- You can apply the refund arising from the loss carryback adjustment(s) to outstanding taxes owing for any tax year.
- You cannot carry back losses of a limited partnership.
- The lines we mention on this form refer to the *Income Tax and Benefit Return*. For details, see the *General Income Tax and Benefit Guide*.

Name (print)	Social insurance number
Address (print)	

Total non-capital loss for the year available for carryback (line D minus line E – if negative, enter "0".)			=	F
Non-capital loss to be applied to 2005	6625			
Non-capital loss to be applied to 2006	6626	+		
Non-capital loss to be applied to 2007	6627	+		
Subtotal – Add lines 6625, 6626, and 6627. The subtotal cannot be more than line F.		=	▶ –	G
Balance of non-capital loss available for carryforward (line F minus line G)			=	

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Capital losses - quiz

- **Capital loss carried back from 2009 to 2008**
- **2008 reported large capital gain**
  - Client lost all of OAS since income > $104,903 (2008 clawback level)
- **Will loss carryback from 2009 to 2008 restore approx. $6,100 of OAS for 2008?**
  - YES
  - NO

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Capital gain in 2009 – OAS

- Client will pay back all 2009 OAS because large capital gain in 2009 (income > $107,692)
- Client will also lose 2010 OAS based on 2009 income
- What if high 2009 income (gain) was a one-time occurrence?

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Capital gain in 2009 – OAS (cont'd)

- Apply for **2010** reduction of tax at source – OAS
- Form **T1213 OAS**

Canada Revenue Agency / Agence du revenu du Canada

REQUEST TO REDUCE OLD AGE SECURITY RECOVERY TAX AT SOURCE FOR YEAR ________

- Use this form to request a reduction in the amount of Old Age Security Recovery Tax withheld.
- All your income tax returns that are due have to be filed and amounts paid in full before you send us this form.
- Send this completed form to the Taxpayer Services Division of your tax services office. You can find the address on our Web site at **www.cra.gc.ca/tso** or by calling us at **1-800-959-8281**.
- We will write to you in four to eight weeks to let you know if we have approved your request.

Identification

First name	Last name	Social insurance number
Address		

City	Province or territory	Postal code	Telephone

Estimated current-year income from all sources

Employment income	$		1
Old Age Security pension	+		2
Canada Pension Plan or Quebec Pension Plan benefits	+		3
Other pensions and superannuation	+		4

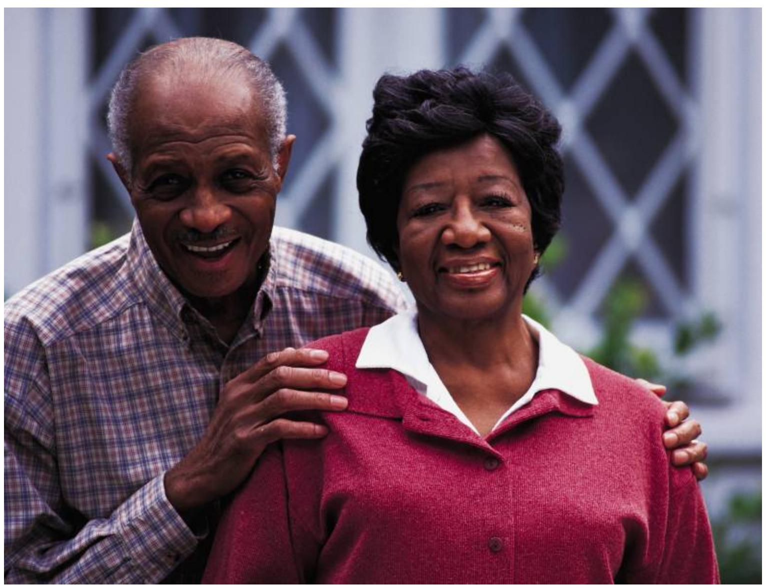
Pension Splitting

- **Pension income?**
  - Before age 65?
    - Regular monthly pension from DB or DC plan
  - After age 65?
    - Includes RRIF (LIF, LRIF, PRIF) withdrawals
- **Benefits:**
  - Transfer up to 50% of pension income to lower-income spouse / partner
  - Avoiding / Minimizing impact of Old Age Security clawbacks
  - Doubling of pension income credit
  - Reducing net income grind of age credit

Pension Splitting (Example)

- Form T1032
- Example:

	Jack (65)	Diane (60)
Pension Income	$100,000	NIL
Investment Income	5,000	10,000
Old Age Security	NIL	



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Joint Election To Split Pension Income

Complete this form if you (the Pensioner) are electing to split your eligible pension income with your spouse or common-law partner (the Pension Transferee) and if all of the following conditions are met:

- You and your spouse or common-law partner were not, because of a breakdown in your marriage or common-law partnership, living separate and apart from each other at the end of the year and for a period of 90 days commencing in the year.
- You and your spouse or common-law partner are residents of Canada on December 31 of the year.
- You received pension income in the year that qualifies for the pension income amount (see line 314 in the guide).

Only one joint election can be made for a tax year. If both you and your spouse or common-law partner have eligible pension income, you will have to decide which one of you will split his or her pension income. This form is to be filed by your filing due date for the year (see the guide for details).

Sign and attach this form to your paper return. Your spouse or common-law partner must also attach a completed and signed copy of this form to his or her paper return. If you are filing electronically, keep it in case we ask to see it.

Tax year ▶

Step 1 – Identification

Information about you (the Pensioner)

Last name	First name	Social insurance number
Home address		

Information about your spouse or common-law partner (the Pension Transferee)

Last name	First name	Social insurance number
Home address (if different from above)		

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Pension Splitting (Solution)

- Jack (65) + Diane (60)

Jack's 2008 income		
Pension income	$	50,000
Investment income		5,000
Diane's 2008 income		
Pension income	$	50,000
Investment income		10,000
Total savings		
Income tax savings (AB)		1,152
Old Age Security savings		6,082
Pension income credit (Diane)		424
Age credit restored (Jack)		126
TOTAL	**$**	**7,784**

Pension income split 50 / 50

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Pension splitting – Question

- **Pension splitting in year of death**
  - Eve received $120,000 of pension income in 2009
  - Adam died on September 1, 2009
  - How much can be reported on Adam’s terminal return?
    - NIL
    - $40,000
    - $45,000
    - $60,000

Make Debt Tax-Deductible

- *“Singleton Shuffle”*

$300,000

$300,000

$300,000 $300,000

Make Debt Tax-Deductible (cont'd)

- *Lipson* decision – Supreme Court (January 2009)
- General Anti-Avoidance Rule (GAAR)
- Use of attribution rules

Source: http://www.scc-csc.gc.ca/Details/d4-eng.asp
Credit: Philippe Landreville, Photographer
Supreme Court of Canada Collection

Spousal Loan at 1%

- **Spouse or partner gifts/transfers funds**
  - FULL attribution of income / gains to transferor
- **Exceptions:**
  - Pay FMV or prescribed rate loan
- **Rate for Q4 2009 – 1%**
  - Lowest ever!

Spousal Loan at 1% (Example)

- Jack loans Diane $200,000
- Investment earns 5% annually

Jack

Interest Expense – 1%

$200,000

Diane

Income	$2,000

Income	$10,000
Interest expense	(2,000)
Net income	$ 8,000

- Income splitting opportunity: $8,000
  - Tax Savings (AB): $8,000 X (39% - 25%) = $1,120 annually

Spousal Loan – Rate Reset?

- **What if you have an existing loan at 3% or 4%?**
  - Can you adjust rate on loan?
  - Can you refinance with new loan?

Contribute to ALL Reg Plans

- **RRSP Limit**
  - 18% of 2008 “earned income”
  - Maximum of $21,000
- **RESP**
  - $50,000 lifetime limit (no annual limit)
  - Basic grant – $500 / child / year
- **TFSA**
- **RDSP**

TFSA – Summary

- "The TFSA is a new general-purpose tax-efficient savings vehicle for Canadians that complements existing registered savings plans for retirement and education like Registered Retirement Savings Plans (RRSPs) and Registered Education Savings Plans."
- Eliminates "double taxation" of savings

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Tax Planning Report
November 2008

Tax Planning with TFSAs
By Jamie Golombek

Tax-Free Savings Accounts (TFSAs) were introduced in the 2008 federal budget and are poised to become the tax planning investment vehicle of choice beginning in 2009, when funds can first be contributed into them.

According to the government, the TFSA is a "flexible, registered general-purpose account that will allow Canadians to earn tax-free investment income."

The basics

Anyone who is at least 18 years old is permitted to open a TFSA. The only requirement is that the individual have a social insurance number when the account is opened. There will be no limit to the number of TFSAs you can set up.

Unlike RRSPs, but similar to Registered Education Savings Plans (RESPs), contributions to a TFSA are meant to come from after-tax funds (hence "tax pre-paid") and therefore will not be tax deductible from income. The big advantage is that any income and gains on investments held within a TFSA won't be taxed either while inside the TFSA or upon ultimate withdrawal.

This provides us with a number of specific planning opportunities.

Savings planning for all Canadians

A 2003 C.D. Howe study ("New Poverty Traps: Means-Testing and Modest-Income Seniors" - http://www.cdhowe.org/pdf/backgrounder_65.pdf) concluded that "for many lower-income Canadians, RRSPs are a terrible investment."

That's because many government benefits, credits and programs are based on net income and are substantially or even totally reduced as your income

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TFSA – Question 1

- **Fact pattern #1**
  - March 2009 – contribute $4,000
  - July 2009 – increases in value to $5,000 and withdrawn
  - October 2009 – how much can I contribute?

TFSA – Question 2

- **Fact pattern #2**
  - March 2009 – contribute $4,000
  - July 2009 – increases in value to $5,000 and withdrawn
  - January 2010 – how much can I contribute?

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Estate Planning with TFSAs

- **Tax-free upon death**
  - Leave to spouse, kids, grandkids, anyone!
- **Spousal / partner tax-free rollover**
- **Successor account holder – spouse / partner**
  - Tax-free transfer
- **Beneficiary designation**
  - Avoid probate tax (where applicable)

Garron Family Trust (2009)

- Barbados trusts
- $450 million capital gain
- Residency of trusts
  - IT 447 “Residence of a Trust or Estate”
  - *Thibodeau*
- *TCC: “where central management and control actually abides”*

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Bilodeau (2009)

- Life insurance commissions on advisor's *own* policy
- Taxability
  - – Interpretation Bulletin IT-470R, "Employees' fringe benefits"
  - – Paragraph 27 - "Discounts on Merchandise and Commissions on Sales"

Dunlop (2009)

- **Failure to report amount in income**
- **10% federal + 10% provincial penalty**
- **T4 slip from Bulk Barn**
  - Not received
  - “T4 missing from Bulk Barn – will amend when received”
- **Penalty - YES or NO?**

Villanueva (2009)

- Failure to report income on return
- 10% penalty of unreported amount
- Taxpayer filed “blank return”, signed
- Included T4 slip in envelope
- **Penalty – YES or NO?**

Jackson (2008)

- **Membership into the "World Network Business Club"**
- **Represented by noted author Dan White**
  - "How to Pay Zero Taxes and Keep the Tax Department Happy!"
- **Claimed various business expenses**
  - a portion of weekly GO commuter Train passes
  - "daily Starbucks meetings with herself"
  - Blockbuster Video rentals for meetings with each other at home
  - Groceries for meetings with family
  - Meetings allegedly held at LCBO outlets."
- **Judge: "preposterous and outrageously aggressive"**

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Thank You

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