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Tax Window Files

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2016-0632641C6 2016 CALU Q.5 - Clearance certificate and GRE rules

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SUBJECT 2016 CALU Q.5 - Clearance certificate and GRE rules

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu''exact au moment émis, peut ne pas représenter la position actuelle de l''ARC.

PRINCIPAL ISSUES: Will the CRA clearance certificate process be modified in situations where a clearance certificate is needed before a gift can be completed by a graduated rate estate?

POSITION: The overall process to receive a clearance certificate is currently under review. A legal representative may request a clearance certificate for a partial distribution.

REASONS: CRA policy and clearance certificate procedures.

CALU Roundtable - May 2016

Question 5 - Clearance Certificates and GRE rules

Background

Subsection 159(2) of the Act requires a legal representative of a taxpayer to obtain a clearance certificate before distributing property under the legal representative's control. A legal representative that distributes a taxpayer's property without a certificate is personally liable for any of the taxpayer's unpaid amounts under the Act up to the amount distributed. For the purposes of subsection 159(2), a legal representative includes the executor(s) of an estate.

In general, the CRA will issue a clearance certificate when the representative has filed, and the CRA has assessed, the required tax return(s) and the CRA has received or secured all amounts for which the taxpayer is liable. Where the taxpayer is an estate, the CRA's administrative guidelines are that application for a clearance certificate should not be made until the estate is effectively concluded (this includes the filing of the tax returns to be assessed and the receipt of the Notice of Assessment) with the only remaining step being the final distribution of the estate property.

Pursuant to the definition of a GRE in subsection 248(1) of the Act, an estate can only qualify as a GRE during the period that is no more than 36 months from the date of the individual's death.

GREs are granted flexibility in allocating the Charitable Donations Tax Credit (CDTC) where a gift is made to a qualified donee on the death of an individual after 2015. In particular, the GRE can allocate the gift among:

- the taxation year of the GRE in which the gift is made;
- an earlier taxation year of the GRE; or
- the last two taxation years of the deceased individual.

While draft legislative proposals released January 15, 2016 extend some of a GRE's flexibility in allocating the CDTC to 60 months from the individual's date of death in cases where GRE status is lost solely because of the expiry of the 36-month period, the extension has limitations such that there will still be a need in many situations to have the gift completed within 36 months after the death.

Question

Can the CRA comment on whether the clearance certificate process will be modified in situations where it is needed before a gift can be completed by a GRE? For example, if a GRE requires a clearance certificate before it can complete a gift to a qualified donee, is there any assurance that it will be provided to meet the 36 month limitation period to complete the gift? If no, will there be any relief provided if the only reason a gift cannot be completed within the 36 months is the receipt of a clearance certificate?

CRA Response

The overall process to receive a clearance certificate is currently under review. In order to administer more efficiently the clearance certificate program, the CRA has undertaken the centralization of the processing of clearance certificates in some offices across Canada. Be assured that the CRA is committed to provide efficient, effective, and consistent service to deceased taxpayers' legal representatives requesting clearance certificates while working toward enhancing compliance.

One avenue that can be pursued by legal representatives is the request of

a clearance certificate for partial distribution. This type of certificate is issued to the executor or the administrator of an estate for partial distribution of estate assets. The process to request a partial clearance certificate is the same as with other types of clearance certificate requests.

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