Vol. 11 No. 1 January/February 2008

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Marmer Penner Inc. Newsletter

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2008 Budget – The Birth of the TFSA

Finance Minister Jim Flaherty tabled the 2008 federal budget yesterday. From a family law standpoint, there may be really only one relevant change. Perhaps as a substitute for the Conservatives' unfulfilled promise of a capital gains tax deferral, Mr. Flaherty introduced us to the Tax-Free Savings Account ("TFSA").

Starting in 2009, Canadians over 18 can contribute up to $5,000 per annum to their TFSA's. Unlike an RRSP, there will be no deduction for this contribution, nor will there be an income inclusion on a withdrawal from a TFSA. However, just like an RRSP, the investment income earned inside the plan will not be taxable to the annuitant. But, remember that in the case of an RRSP, this is just a tax deferral since the accumulated income will eventually be taxed on actual or deemed withdrawals. Except for rare occasions, the TFSA income will never be taxed.

The $5,000 annual contribution is cumulative, so in 2010, a taxpayer may contribute another $5,000. Furthermore, if a taxpayer contributed less than $5,000 in 2009, there is a carryforward for the difference of unused contributions. Given this, we can imagine that in ten years, shrewd (or lucky) investors can have TFSA's that have grown to about $100,000 if they have averaged a 12% return. At that point, the TFSA can be expected to earn about $5,000 per annum even on the most conservative assumptions.

The next question among family law practitioners must be "How will this affect *Guidelines* income calculations?" Given that paragraph 19(1)(h) of the *Guidelines* permits the court to impute additional income where a spouse derives income from sources that are taxed at a lower rate, one might expect that the TFSA income will not only be added to a spouse's *Guidelines* income, but will be subject to a gross-up for its tax-free nature. For those who may argue that we do not add RRSP income to *Guidelines* income calculations nor do we subject this income to a gross-up, we point out that RRSP income is not freely available to the annuitant as it is fully taxed on withdrawal. The TFSA is freely available to the contributor at any time. In fact, withdrawals free up new contribution room.

From a net family property standpoint, the TFSA is very easy to value since there is no present value of contingent income tax to calculate as a reduction of its value. It is also flexible in that it can be transferred to a spouse on breakdown of marriage without losing its tax-free status. There will most assuredly be a new tax form akin to the Form T2220 on transfers of RRSP's on breakdown of marriage.

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The partners and staff at Marmer Penner wish all the best to Pier Sperti, CA•CBV who managed the rare feat of getting married and passing the CICBV Membership Entrance Exam within one month. A tight-lipped Pier is not saying which was more stressful. Congratulations, Pier!