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Registered Disability Savings Plans

A registered disability savings plan ("RDSP") allows parents to contribute funds to a plan to provide for the future expenses of their disabled child, and allows the disabled beneficiary and their families (and others) to contribute to a plan for future expenses. Contributions to the plan are not deductible for tax purposes, but income earned in the plan is not taxed while in the plan. The funds within the plan can be used to purchase most types of investments. Plan contributions are subject to a lifetime limit of $200,000. Plan contributions are, to some extent, matched by government contributions, and, in addition, the government makes continuing contributions for low-income families.

Individuals who are eligible in a year for the disability tax credit can establish an RDSP of which the individual is the beneficiary. The plan must be established by the disabled person, unless that person is under 18 or is not legally competent, in which case a parent or legal representative may establish the plan. As with an RESP or RRSP, the plan itself is a trust established with an "issuer" authorized to carry on the business of offering trust services in Canada. The person who establishes the plan becomes a "director" and has certain duties and obligations. There can be only one plan per beneficiary. The beneficiary must be resident in Canada when the plan is established.

A "qualifying family member" may establish an RDSP for a beneficiary, generally if the beneficiary has attained the age of majority and, in the issuer's opinion after reasonable inquiry, the beneficiary's contractual competence to enter into a disability savings plan at that time is in doubt. A qualifying family member includes a legal parent or spouse or common-law partner of the beneficiary. This temporary measure is effective as of June 29, 2012 until the end of 2024, by which time it is anticipated that laws of each province and territory will be amended to permit a trusted person to enter into a contract on behalf of an individual who may lack capacity.

Contributions can be made by anyone. Typically, they are made by parents or other family members, but there is no limitation except that the plan directors must approve the contributions. (This permits them to maximize government contributions.) Contributions to the plan are not deductible, but they will be matched in some degree by government contributions, called Canada Disability Savings Grants ("CDSGs"). As well, the government contributes certain amounts for low-income families regardless of how much the families contribute (Canada Disability Savings Bonds ("CDSBs")). The grants and bonds can continue up to the end of the year in which the disabled person reaches the age of 49.

Private contributions (i.e., excluding government contributions) to a plan cannot exceed a lifetime limit of

$200,000, and cannot be made after the year in which the beneficiary turns 59. Private contributions are not refundable to the contributor; they must be used for the beneficiary or, on death, go to the beneficiary's estate.

Canada Disability Savings Grants

Matching contributions (CDSGs) are calculated as follows.

For families with net incomes equal to or less than the third marginal tax bracket threshold ($97,069 for 2020), the government contributes:

- $3 for every $1 on the first $500 of contributions;
- $2 for every $1 on the next $1,000 of contributions.

Thus, the maximum grant is $3,500, reached on a contribution of $1,500.

For families with net income above the third bracket threshold, the grant is:

- $1 for every $1 on the first $1,000 of contributions.

Grants are subject to a lifetime limit of $70,000 and are not paid after the end of the year in which the beneficiary reaches the age of 49.

Canada Disability Savings Bonds

The federal government may also contribute CDSBs (as opposed to matching grants) of up to $1,000 per year to a cumulative maximum of $20,000. The annual maximum $1,000 is paid where income of the beneficiary does not exceed $31,120 (for 2019). If income exceeds that threshold, the $1,000 is reduced by a formula under, and the amount is zero once family income exceeds $47,630 (for 2019). Essentially, the $1,000 is reduced by $1,000 minus income over the threshold divided by the difference between the two thresholds. No more than $20,000 may be paid under this program during the lifetime of the beneficiary. Income determinations look back to the second preceding year, although income thresholds look at the current year. That is, if there were grants or bonds payable in respect of 2019, income would be measured for 2017, although 2019 dollar thresholds would be used.

Payments and Restrictions

As the name implies, RDSPs are intended to provide for those with long-term disabilities. Accordingly, there is a provision that government contributions and their associated earnings are subject to a 10-year "holdback", during which they cannot be distributed from the plan and must be paid back to the government if the beneficiary withdraws funds from the plan (including normal annual amounts), loses eligibility for the disability tax credit, or dies. Essentially, every $1 withdrawn will require the repayment of $3 of any bonds or grants received in the previous 10 years, up to a maximum of the holdback amount.

Normal payments ("lifetime disability assistance payments") from the plan can commence at any time, but, as discussed above, payments which commence within 10 years of a government contribution will trigger recapture of that contribution. Normal payments, once commenced, must be made at least annually. Payments must commence no later than the year in which the beneficiary turns 60. It appears they can commence at any time, provided plan assets will not fall below the holdback level. Normal payments are closely defined, and generally speaking limited to plan assets divided by life expectancy plus three. Life expectancy is statistically determined unless there is a medical certificate setting out a life expectancy for the particular beneficiary, in which case the certificate governs.

The government contribution elements, and all investment earnings in the plan, are not taxable in the plan. Payments from the plan to the disabled beneficiary are taxable to some extent. Generally speaking, the non-taxable portion of any payment is the proportion of contributions remaining in the plan divided by total plan assets, not counting the holdback amount. The plan must be terminated if the disability ceases, and the remaining amounts paid to the beneficiary, subject as always to the holdback requirements. The termination payment is, as with ordinary payments, a blended payment, only part of which is taxable. The rules contemplate that the plans will be established by private trust companies, as with RRSPs and RESPs.

Where government contributions prove to have been excessive, because of the holdback rules or otherwise, and have already been paid out to the beneficiary and included in taxable income, they may be recaptured from the beneficiary and deducted from the beneficiary's income when repaid.

Payments from an RDSP will not be counted in means-tested government programs; that is, they will not be included in income reducing GST or Canada Child Benefits. As well, they will not be taken into account to reduce Old Age Security or Employment Insurance benefits.

Amounts in addition to normal payments may be withdrawn from the plan for the beneficiary, subject to two limitations. First, withdrawals will trigger the holdback rule, requiring repayment of government contributions and associated earnings of the past 10 years. Second, where the total of government grants and bonds exceeds private contributions to the plan at the end of a particular year (such plan is referred to as a "primarily government-assisted plan"), the amount that can be withdrawn is the greater of the normal LDAPs for the

year, and 10% of the fair market value of the RDSP assets at the beginning of the calendar year (or, if the RDSP owns a locked-in annuity, the sum of 10% of the fair market value of the RDSP assets and the total amount of periodic payments received by the RDSP in the year under the annuity).

If throughout the calendar year the beneficiary ceases to have any disability for which a disability certificate can properly be issued (i.e., the beneficiary is no longer eligible for the disability tax credit), the RDSP can remain open indefinitely after the beneficiary is no longer eligible for the DTC. No further contributions will be allowed, unless the beneficiary subsequently is eligible for the DTC. This change applies after 2020.

Specified Years and Specified Disability Savings Plan

In a "specified year" of an RDSP of a beneficiary, the withdrawal limits that apply where total government-provided Canada Disability Savings Grants ("CDSG") and Canada Disability Savings Bonds ("CDSB") made into the plan before the year exceed the private contributions into the plan before the year, do not apply in that specified year. A "specified year" is the year in which a medical doctor certifies in writing that the beneficiary's state of health was such that, in the professional opinion of the medical doctor, the beneficiary was not likely to survive more than five years, and each of the five calendar years following the particular year. However, if the RDSP is a "specified disability savings plan" ("SDSP"), a specified year also includes the year of the medical certification plus each subsequent taxation year.

An SDSP is essentially an RDSP under which the beneficiary is certified, as discussed above, as having an expected life of no more than five years, where the plan holder makes an election to have the plan be an SDSP and proper notification is provided to the CRA.

If the plan is an SDSP, the 10-year repayment rule, under which CDSG grants and CDSB bonds paid into the plan within the previous ten years must be repaid if withdrawn, is relaxed. As long as the taxable portions of withdrawals (CCSGs, CDSBs, and income earned in the plan) in a year do not exceed $10,000, the grants and bonds do not have to be repaid. If non-taxable withdrawals are also made, the total withdrawals can exceed $10,000. However, if the $10,000 taxable amount is exceeded in a year, the plan ceases to be an SDSP, meaning that the 10-year repayment rule still applies with respect to grants and bonds still in the plan.

Rollover to RDSP upon Death of Parent or Grandparent

A financially dependent infirm child or grandchild can rollover the proceeds from an RRSP, RRIF, PRPP, or RPP held by a deceased parent or grandparent. The rules allow the child or grandchild to make a deduction where the proceeds are contributed to an RDSP of which they are a beneficiary. The rollover is permitted only to the extent that there is sufficient RDSP contribution room. The contribution must be made in the year of receipt of the proceeds or within 60 days after the end of the year. Effective March 19, 2019, a tax-deferred rollover is allowed if it is made from the RRSP, RRIF, PRPP or RPP of the deceased annuitant or member to the RDSP of the eligible beneficiary (even if he/she is no longer eligible for the DTC) provided it is made before the end of the fifth taxation year throughout which the beneficiary was DTC-ineligible.

Rollover from RESP to RDSP

Accumulated income earned in an RESP can be rolled over on a tax-free basis to an RDSP. The rules provide that a subscriber of an RESP and a holder of an RDSP may make a joint election in prescribed form to transfer the income of the RESP to the RDSP if, at the time of the election, the RESP beneficiary is the beneficiary under the RDSP and:

- the beneficiary has a severe and prolonged mental impairment that prevents him or can reasonably be expected to prevent him from enrolling in post-secondary education; or
- the payment is made in the 35th year after the year in which the RESP began, or it is made in the 10th or subsequent year after the RESP began and each beneficiary under the RESP is at least 21 years old of age and is not eligible to receive educational assistance payments.

The promoter of the RESP must file the election with the Minister "without delay". If the election is properly made, the income transferred from the RESP to the RDSP is not included in the beneficiary's (or any other person's) income. The amount so transferred on a rollover basis is subject to the lifetime $200,000 contribution limit for RDSPs.