
PERSONAL TAX PLANNING

Co-Editors: P.E. Schusheim* and Gena Katz**

VESTED INDEFEASIBLY: ITS IMPORTANCE FOR TAX PURPOSES

*Catherine Brown****

The concept of “vested indefeasibly” and the related concept of vesting are integral to a number of rollovers and other tax benefits under the Income Tax Act, including rollovers to a spouse or common-law partner or to a conjugal trust, rollovers of farm property to children, and exemption from the 21-year deemed disposition rule generally applicable to trusts. Too often, access to these benefits is precluded by the inclusion of certain conditions in a will, deed of trust, or shareholder agreement or by the structure of an estate plan. This article is intended to alert practitioners to such potential errors. It examines relevant legislation, jurisprudence, and administrative practice, and concludes that, in order to maximize tax benefits, close attention must be paid to the provisions of the Act, the relevant case law, and, in particular, the Canada Revenue Agency’s current administrative practices and concessions.

KEYWORDS: WILLS ■ TRUSTS ■ ROLLOVERS ■ ESTATE PLANNING ■ 21-YEAR RULE

* Of Couzin Taylor LLP and Ernst & Young L.P., Toronto.

** Of Ernst & Young LLP, Toronto.

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