Volume 13, Number 4
4th Quarter, 2009

Published by
The ECC Group

The Personal Financial Advisor

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2009 AND BEYOND

As in the past, instead of sending Christmas cards, we will be making contributions to several charitable organizations.

The first will be to The Rotary Club of Toronto working in partnership with an organization in Cambodia. The money will be used to purchase bicycles for children in rural Cambodia and a cow for a cow bank, also in Cambodia.

The bicycles will help a child get to school, reducing travel time from as much as a two-hour walk to a 20-minute bike ride.

The cow bank is an ingenious arrangement whereby a cow is loaned to a poor farmer. The farmer pairs the cow with a bull. The first calf goes to the farmer to keep. The second calf goes to the organization lending the cow (their interest). The third calf goes to the farmer to keep. The farmer ends up with two calves, which can ultimately be used for food or fertilizer, or sold or bred.

These programs were discovered on a recent trip Chris Snyder made to Cambodia with Rotary to help build a vocational school.

The Canadian portion of our Christmas contribution will go to 6 St. Joseph House — a downtown Toronto organization that provides more than 40 courses in life skills training to people in transition. Many of these people are or have been homeless.

All these charitable endeavours that we are supporting require individual initiative from the beneficiaries in order to move their lives forward.

All of us wish you a Merry Christmas with the hope that your life will also move forward in fruitful ways in 2010.

Chris Snyder *Fabio Ventolini* *Ian Johnson* *Vicki Lungu*
Julie Dunaiskis *Nadira Harvey* *Victoria Sova* *Suzanne Godbout*

FOREIGN EXECUTORS

Ian Johnson, CFP

When naming an executor, the preferred choice can sometimes present unforeseen problems. For example, Mr. K., a widower, was recently revising his will and wanted to name his son, Todd, as his executor.

While Todd is a responsible, experienced and successful businessman, he lives in Ohio, and would be considered a foreign executor. This can create some serious administrative and tax problems for Mr. K's estate.

Bonding

A foreign executor may need to purchase and file a Surety Bond before the court will grant Letters Probate (in Ontario called a Certificate of Appointment of Estate Trustee). The bond will hold the executor accountable in case the assets are somehow moved out of Canada to the detriment of the beneficiaries. However, many insurance companies are reluctant to issue such bonds. If they do so, they will require considerable personal information about the executor, which he or she may not wish to provide.

Obtaining a bond is time-consuming. It also means an added expense, since the estate will normally bear the cost, which quite often involves more than just the first year's premium up front. Also, once the estate administration is completed, the executor must file sufficient evidence to the court in order for it to release the bond. This creates further delay as well as incurring the cost of discharging the bond.

If it is known or expected that the executor will be living outside Canada, you can state in your will that the executor is excused from purchasing a bond. This does entail a certain degree of trust by the testator and depends on who is named as the executor. However, if the estate is large or complex and there are a number of scattered beneficiaries, the testator, or even the court, may still require a bond to be posted to protect those who inherit.

Residency

The common law of Canada regards a trust as being resident where the trustee resides. The Income Tax Act considers the residency of a trust in Canada to be determined according to the circumstances of each case. The act states that an estate is also a trust for tax purposes, and is generally considered to be resident where the trustee, executor, heir or legal representative who manages or controls the trust assets resides.

So, if your sole executor is a non-resident of Canada, it can cause your estate to also be considered non-resident, resulting in some potentially adverse tax consequences. For example, a non-resident estate or trust would:

- lose the preferred tax treatment for capital gains and Canadian source dividends, even if they flow through to Canadian resident beneficiaries;
- not provide the benefit of tax-splitting between the estate and the Canadian resident beneficiaries, if desired;
- perhaps be subject to tax in the country where the executor resides or even cause tax liabilities in both countries.

Also, should your executor or trustee move from Canada while the estate's trust is still in existence, or before the estate administration is completed, the estate would be subject to a deemed disposition, resulting in unnecessary capital gains taxes.

If there is more than one executor or trustee, the residency of the person who, more than the others, clearly exercises a substantial portion of the management and control of the assets, will determine the residency of the estate or trust. If there is equal management and control, the residency of the estate or trust may be located where the majority of the trustees reside.

If the above cannot determine the residence of the trust, the Canada Revenue Agency will look at other factors, such as location of the assets and where the legal rights of the estate or trust's assets are enforceable.

To avoid residency problems and related costs, it is best to appoint someone whom you can be assured will always reside in Canada. Alternatively, you could consider naming a professional, such as a lawyer or accountant or even a trust company. Certainly, if your estate holds a continuing trust, a trust company may be most suitable, although there will be distribution and other ongoing fees involved.

There are no requirements that an executor be a Canadian resident. After all, a foreign executor can hire a Canadian lawyer, accountant or financial professional to help administer the estate. But, besides the problems and added costs noted above, other complications could arise. Fiduciary responsibility is best served at home. Once advised, Mr. K. agreed, and named his youngest brother and his lawyer as co-executors of his estate.

INCREASED FLEXIBILITY FOR YOUR ONTARIO LOCKED-IN ACCOUNTS

2009 budget changes

Vicki Lungu, CFP

Recent changes to the regulation of Ontario locked-in retirement accounts will provide more flexibility for seniors who require access to additional funds, and will allow them to manage their retirement income more easily.

You may recall that in 2008, the Ontario government introduced new rules for Ontario locked-in accounts that were intended to increase flexibility in managing retirement income. Locked-in accounts, which include locked-in retirement accounts (LIRAs), life income funds (LIFs), and locked-in retirement income funds (LRIFs), generally result from the transfer of pension credits when you change jobs or retire, and are typically not accessible until age 55.

The 2008 rules permitted a one-time unlocking of up to 25% of Ontario LIRAs, LIFs (now, Old LIFs) and LRIFs when transferred to a new life income fund (New LIF). In an effort to further increase flexibility for seniors, the 2009 Ontario budget enhanced this initiative by proposing to increase the unlocking amount from 25% to 50%. This proposal is now law.

New 50% unlocking provision

Effective Jan. 1, 2010, you will be allowed to unlock up to 50% of the amounts transferred from your Ontario LIRAs, Old LIFs and LRIFs to a New LIF. Transfers from registered pension plans will also be allowed, if you are eligible to transfer your pension benefit directly to a New LIF. The unlocking opportunity is a one-time benefit that will depend on the type of locked-in account you own. If you have already taken advantage of the 25% unlocking provision introduced in 2008, you will be allowed to unlock another 25%.

This provision depends on whether or not you own a New LIF and the date you acquired it. If you are not sure what type of locked-in account you have, speak with your financial advisor for clarification.

New LIFs purchased on or before Dec. 31, 2009

If you transfer your LIRA, Old LIF, LRIF or pension plan credits to a New LIF on or before Dec. 31, 2009, you will have a one-year period, effective Jan. 1, 2010, during which you can unlock an additional 25% from your New LIF. The unlocked amount can be taken in cash or can be transferred in-kind to an RRSP or RRIF. This provision allows those who purchase a New LIF before Jan. 1, 2010 to benefit from the new 50% rule. The additional 25% must be unlocked between Jan. 1, 2010 and Dec. 31, 2010, and will be based on the fair market value of assets originally transferred to the New LIF. After Dec. 31, 2010, the opportunity to unlock the additional 25% will be lost.

New LIFs purchased after December 31, 2009s

If you transfer your LIRA, Old LIF, LRIF or pension plan credits to a New LIF in 2010 you will have a one-time opportunity to unlock up to 50% of the amount transferred to the New LIF. Similar to the rules introduced in 2008, the unlocking must take place within 60 days of transfer. Once the 60-day period has passed, the 50% unlocking opportunity is lost.

Old LIFs and LRIFs

If you own an Old LIF or LRIF, you can continue to hold these plans. If you decide to transfer to a New LIF after Dec. 31, 2010, the opportunity to unlock 50% on transfer to the New LIF will not be available, however you could still unlock 50% of the value of your account directly from your Old LIFs and LRIFs.

You must do this between Jan. 1, 2011 and April 30, 2012. A transfer to a New LIF will not be required to access this benefit. Once this period is passed, the one-time unlocking opportunity will be lost.

If the value of your Old LIF or LRIF is under $37,000, you may be able to unlock the entire account under special rules.

Summary of changes

ACCOUNT TYPE	TIMELINES
New LIFs purchased on or before Dec. 31, 2009	**Unlock additional 25% between Jan. 1, 2010 - Dec. 31, 2010** Unlocked amount can be taken in cash or transferred to RRSP/RRIF
New LIFs purchased after Dec. 31, 2009	**Unlock up to 50% on transfer to New LIF** Unlocked amount can be taken in cash or transferred to RRSP/RRIF Unlocking must occur within 60 days of transfer to New LIF
Old LIFs and LRIFs	Unlocking on transfer to New LIF not available after Dec. 31, 2010 **Unlock up to 50% between Jan. 1, 2011 and April 30, 2012 (transfer to New LIF not required)**

The Ontario government has introduced these new rules to allow you greater flexibility and control over your retirement income, but if you are going to implement them to your greatest benefit, you need to understand them completely. Your financial advisor can provide information and advice so that you are well positioned and in control of your retirement assets.

A YEAR LATER

Chris Snyder, CFP, RFP

It was a little over a year ago that financial markets fell into what seemed at the time to be a free fall.

The day I remember best was the Friday before Thanksgiving, Oct. 10, 2008. The market fell 5.5%, resulting in a total drop of 34.17% (4,706 points since the end of August). It was the day when a number of younger clients called and said, "I've had enough — get me out."

That Friday was followed by rollercoaster days of markets going down hundreds of points, then up hundreds of points. Newspapers, TV and radio had never-ending stories of possible bank collapses; bankrupt businesses; huge bonuses to the leaders of these businesses; American subprime mortgage losses; housing prices plummeting; commodity prices falling; oil dropping from $147 a barrel on July 11 to $78.61 by Oct. 10.

During 2008, share prices of giant corporations were reduced to a fraction. For example, in the United States, AIG fell from $59.42 on Jan. 14 to $2.33 on Oct. 10. In Canada, Teck Corp fell from $36.02 on Jan. 1 to end at $15.82 on Oct. 10. The devastation was worldwide. Jobs were lost — and not just in North America. People were angry and frightened. Some remained working longer than they wanted to, and others picked up part-time work if they could get it. Most people reduced their spending, leading to a recession with more lost jobs.

In November, Americans elected Barack Obama as president, and looked to him to be their saviour. After the election, the markets more or less stabilized, partly in anticipation of a U.S.-led recovery plan. When it was announced, the plan was vague and general — "Is that all there is?" exclaimed many. Shortly thereafter, a more specific plan was announced, but the damage was done. Because of the frailty of confidence, the stock market descended even more until, on Nov. 2, the Dow Jones Industrial Average hit bottom at 7,392, down some 5,666 points or 43.39% from its peak of 13,058 on Jan. 3. The Standard & Poors 500 index was 1,447 on Jan. 3, 752 on Nov. 20, then climbed to 903 on Dec. 31. In all, it had lost 544 points or 37.59%.

This collapse broadsided most people, ourselves included. A few had turned their assets to cash in anticipation of the crisis, but the vast majority of those in cash were there because of luck. Investors blamed the greedy bankers and their advisors ("Why did they not get us out?"), as well as politicians for lack of regulation.

In March, the stock market turned. Fear gave way to relief then to optimism. Since then, many have seized opportunities, and many have sat on the sidelines, staying put.

What have we learned through all of this? Here are a few thoughts:

- We have learned, or at least had reinforced, the concept that emotion and behaviour — largely greed — drove the market to artificial highs, and emotion and behaviour — largely fear — drove the market down.
- Those who tried to time the market got caught for the most part. Many sold at the bottom, though a few did get out at the right time. Many who sold at the bottom are still out, afraid to get back in. Those who sat it out have recovered many of their assets.
- Many professional managers and astute investors took advantage of some real opportunities and have done very well.

  The lesson: out of every crisis comes opportunity.
- Much of the overheating of the market prior to the collapse was a result of borrowing to invest, many of the borrowers being large institutions and hedge funds. Those who did this were hurt badly by being forced to sell at rock bottom prices to pay off their loans.

  The lesson: only borrow for what you need and be sure you have the assets to back you up and the income to support your payments.
- Much of the stock market collapse was a result of fear, created and fanned in large part by the media. There is no doubt that the underlying economy was in a huge downturn, but not enough to drive the valuation of companies as low as they were.

  The lesson: do not invest by reading the headlines or watching the news, particularly CNN.
- During the worst of the crisis, many were calling for tougher regulations. Many still are, and no doubt new rules will evolve. There is consensus that many of these regulations must be international in scope. In spite of President Obama's willingness to enter into international agreements, the Americans are still reluctant to be involved in treaties and regulations that call for other countries to set rules for the United States. On the other hand, the Europeans are calling for more stringent rules. While discussions are continuing, there is uncertainty what regulations will evolve.

  The lesson: we must have broad international regulations, but they cannot be so restrictive as to stifle initiative.

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A YEAR LATER

- Greed led to borrowing. Borrowing led to inflated asset values, which led to the bubble bursting, which led, in time, to the crisis. To ease the pressure, interest rates have dropped to the point where the cost of borrowing is negligible. This, in turn, has led to more borrowing. These low interest rates have resulted in a strong Canadian real estate market.

  It appears we are returning to the same behaviour that created the crisis in the first place. We are truly dependent upon the buy, buy, buy syndrome to keep us going. I am concerned about this.

- At the peak of the crisis, people called for a stimulus program. Virtually every country responded — some more than others. Now people are questioning this. The doomsayers' fears are fanned by media talk of inflation and its evils, creating another round of anxieties.

  The lesson: the stimulus did help and at some time will likely result in greater inflation. There are, however, pitfalls, risks and negatives in everything.

- Many predictions, both positive and negative, are being made daily. Some will be right, some wrong. The average investor remains confused, asking, "Whom do I believe?"

  The lesson: No one has a crystal ball. Believe those whom you trust, and who have experience and a good long-term track record.

- Are we headed for good times or bad? In reality, we will know only after the fact. Fear will always be a factor but economically, humankind has advanced markedly.

  The lesson – People are resilient but history will repeat. We will have another crisis, but our economies will resume their growth. We have learned that we have had good times for the most part and, if necessary, we can get by on less.

- Sadly, many in this world suffer, in part because of the aspirations, behaviour and actions of the elite. Fortunately, there are many who will step up and share their wealth and resources. Many people did step forward and help the powerless during this crisis.

- John Donne wrote "No man is an island." It is a time to work together —governments, corporations, individuals. We are interdependent. There is greater benefit when we are collectively pulling in the same direction.

- While it is easy to blame others, a reality of life is that there are many things beyond our control and we must be responsible for our own welfare. Many people get upset about the sense of entitlement of the rich. On the other hand, there are those who feel they should be looked after by the state and that companies should guarantee them a job. Is this not a sense of entitlement? In my opinion, no company has the responsibility to ensure that their employees can count on being employed forever. Everyone ultimately must be responsible for themselves.

SOME TIPS FOR 2010 TAX PLANNING

Fabio N. Ventolini, CFP, CDFA

Most people wait until the end of the year to start tax planning. In our view, planning should start at the first of the year. Here are a few ideas for 2010.

Use that low-income year

If you have only a small amount of income, you may wish to make a withdrawal from your RRSP before year-end and pay little or no tax. It also could make sense, if you don't need the money, to invest it outside the RRSP or Registered Retirement Income Fund (RRIF) once it is withdrawn. Remember, however, once you have withdrawn the money, you cannot put it back. Be sure the short-term benefit justifies this tactic.

Make an advance RRSP contribution

If you turned 71 in 2009, you will be required to wind up your RRSP by year-end and transfer it to a RRIF. However, if you have some earned income in 2009, and therefore RRSP contribution room for 2010, consider making one additional contribution in December 2009 before terminating your RRSP. Note that the contribution must be to an RRSP; you cannot contribute to a RRIF. If you have earned income after age 71, you can also make a spousal RRSP contribution, provided your spouse is under age 71.

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SOME TIPS FOR 2010 TAX PLANNING

For everyone else, contributing early in the year will provide you with an extra year of tax sheltering.

Start to clean up your portfolio

If you realize some capital gains this year, or in one of the three preceding years, you may want to consider selling some of your investments that have dropped in value in order to apply the capital loss against those gains. Capital losses must be used to offset gains in the current year first, but excess losses can then be carried back for up to three years, or forward indefinitely. Trade must be completed by approximately Dec. 21 *(can you give an exact date rather than approximate?)*.

Delay the Home Buyers Plan withdrawal until after year-end

If you qualify, you and your spouse may withdraw up to $25,000 on a tax-deferred basis from your RRSP, if the money is used toward the purchase of a principal residence. However, the home must be purchased by October 1, 2010 and neither you nor your spouse can have owned a home during the five years prior to the withdrawal date. Amounts withdrawn have to be repaid to your RRSP in 15 equal installments, starting in 2011.

If you are planning to use the Home Buyers Plan toward year-end, you may want to consider deferring your withdrawal until after Dec. 31.This will extend by a year the period for purchasing your home and repaying the amounts withdrawn.

Put your children to work

If you have children at home who are 18 or older, you could consider paying them for any time during 2009 in which they looked after your children under age 16, provided it allowed you to work. You can deduct the amount paid and the children will pay tax on the amount earned. It is unlikely, however, that they will pay much tax.

Donate securities to charity

Making a donation by year-end will provide you with a donation credit and tax savings for 2010. If you are considering disposing of certain publicly traded securities, think about donating them to charity to receive a tax credit based on the total value of the securities — otherwise, capital gains will be included in your income.

Apply for OAS benefits

If you turned 65 this year, be sure to apply for Old Age Security (OAS) benefits prior to year-end. At one time, retroactive payments were made for up to five years — it is now one year if you fail to apply on time. You can apply for OAS up to 12 months before your 65th birthday. To receive benefits, you must be a Canadian citizen or landed immigrant and have lived in Canada for at least 10 years since the age of 18. Keep in mind, however, if your net income exceeds $64,000, your OAS starts to get clawed back. If your net income reaches $101,000, it will all be clawed back.

Start your tax planning Jan. 1, not Dec. 1

Tax planning should be a year-round activity.

The Personal Financial Advisor

The Personal Financial Advisor is published by the ECC Group.

The ECC Group are fee-based financial advisors, and have offices and affiliates in Toronto, Montreal and Vancouver.

The information contained in this letter is obtained from various sources believed to be reliable, but cannot be guaranteed.

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