

Individual tax planning for 2009 investment dispositions

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Although the markets have started to recover, the last part of the year is always a good time for investors to review their portfolio with their investment adviser to determine whether it would be advantageous to dispose of any securities prior to the end of the year.

With that in mind, we've highlighted some of the tax planning opportunities you should consider now.

Capital loss planning

A capital loss results when a capital property, such as a stock, bond or investment fund, is sold at a price that is less than its original cost. Capital losses must first be used to reduce capital gains realized in the current year. If the 2009 capital losses of an individual are greater than their 2009 capital gains, the excess capital loss can be carried back to any or all of the last three years (2006 to 2008) to reduce or eliminate capital gains realized in those years (or carried forward to offset future capital gains).

Taxpayers who have realized a capital gain in 2006 to 2009 should consider selling investments with accrued losses before the end of the year. This can result in a reduction of current year taxes or a refund of taxes paid in a prior year. It is important

to obtain investment advice prior to making this type of a decision.

Investors who plan to dispose of any securities on the open market before the year-end must ensure that the transaction is settled before the end of the year. On Canadian exchanges, the settlement date is generally three business days after the trading date. Different dates may apply for foreign stock exchanges.

When planning to realize a capital loss, it's important to make sure that the loss is not denied. There are rules—the superficial loss rules—that will deny the loss if the property is disposed of to certain related parties. In general, a superficial loss is triggered when a person sells a capital property at a loss and then re-acquires it too quickly—i.e., the person or someone affiliated¹ with the person acquires the same or identical property during the period that begins 30 days before and ends 30 days after the disposition.

¹ A person is affiliated with his or her spouse, RRSPs of which the person or his or her spouse is the annuitant, and with companies that are controlled by the person and his or her spouse. Throughout this article, any reference to “spouse” also includes a common-law partner.

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There are other strategies that can be used for taxpayers who may want to trigger a capital loss, but are concerned about being out of the market for 30 days. For example, the loss property can be sold or gifted to a child or other family member without being caught by the superficial loss rules. Also, most fund companies offer corporate versions of their funds. Investors with an accrued loss on the trust version can switch to the corporate version and crystallize the loss.

In some cases, falling into the superficial loss rules can be a good thing. For example, if one spouse has realized a capital gain (but cannot realize an offsetting capital loss), but the other spouse owns investments with an unrealized loss, there are ways to transfer the loss to the spouse with the gain. The plan involves the spouse with the loss selling the investment to the spouse with the gain. If structured properly, the superficial loss rules will apply and the loss will be added to the cost of the securities acquired by the spouse with the gain. After 30 days, the investment can then be sold in the open market, and the loss can be realized. Tax advice is a must to implement this plan.

Planning with the Tax Free Savings Account

Other planning can be used in conjunction with the new Tax Free Savings Account (TFSA). Contributions to a TFSA can be in cash or “in-kind.” For example, a person may own a stock that has declined in value, but that is expected to recover over time. If \$5,000 of current value is transferred to a TFSA, and the investment recovers to \$10,000 in two years, the person now has

\$10,000 that can be withdrawn tax-free from the account.

Timing the sale of non-registered mutual fund investments

It can be important to plan the timing of the sale of non-registered mutual fund investments. Most mutual funds distribute income and capital gains once a year around mid-December. Taxpayers planning to sell should consider selling the investment before the distribution date. Instead of reporting an income allocation, a capital gain or loss will be realized.

Is it time for an estate freeze?

Now may also be a good time to consider an estate freeze. If much of a person’s estate is comprised of non-registered portfolio investments, the investments can be transferred to a private company and their value for estate purposes can be frozen at their current value. Other family members can own the common shares of the company and benefit from any future appreciation in value. There are pros and cons to this strategy and tax advice is a must!

The above are just a few important planning tips for consideration. Please contact us for more information with respect to any of the above strategies.

