

# Estate Planning Council of Winnipeg

Estates & Trusts

The New G.R.E. Regime

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# Estates & Trusts

## The New G.R.E. Regime

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2. New vs Old – A Comparative Summary
3. A checklist of planning issues for the practitioner

# 1. NEW TAX RULES – GRADUATED RATE ESTATE (“G.R.E.”)

## Definition

- ▶ Estate that arose on and as a consequence of the individual's death
- ▶ Not more than 36 months after death
- ▶ Estate is a testamentary trust
- ▶ SIN or Tax ID of individual provided
- ▶ Designated as a graduated rate estate
- ▶ No other estate designated

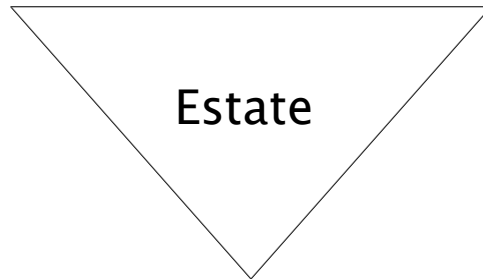
# 1. NEW TAX RULES – GRADUATED RATE ESTATE (“G.R.E.”)

## Testamentary Trust Changes Deemed Year End on Transition

- ▶ Graduated rate estate ceases to be one after 36 months.
- ▶ Required to adopt a calendar year end.
- ▶ Deemed year end occurs on either:
  - The day before the estate’s 36 month anniversary if the estate ceases to be a graduated rate estate after 2015; or
  - December 31, 2015 if the testamentary trust is not a graduated rate estate starting January 1, 2016.
  - The trust will then be required to select a calendar year end.

# G.R.E – Example 1

Existing Estate



Created Nov 20, 2011 on death of testator YE June 30

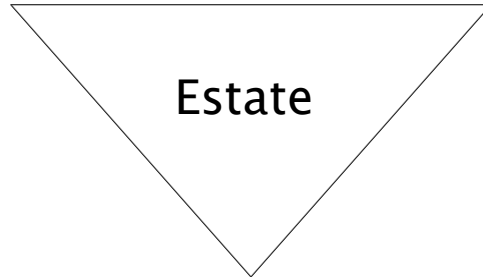
Q. Is this a G.R.E?

A. No – Will have deemed YE at Dec 31, 2015

- In existence for more than 36 months
- STUB PERIOD July 1–Dec31/15 taxed at progressive rates

# G.R.E – Example 2

## Existing Estate



Created August 31, 2014 YE selected Oct 31

Q. Is this a G.R.E?

A. Yes – can continue as a G.R.E until August 31, 2017

# G.R.E – Example 2 cont'd

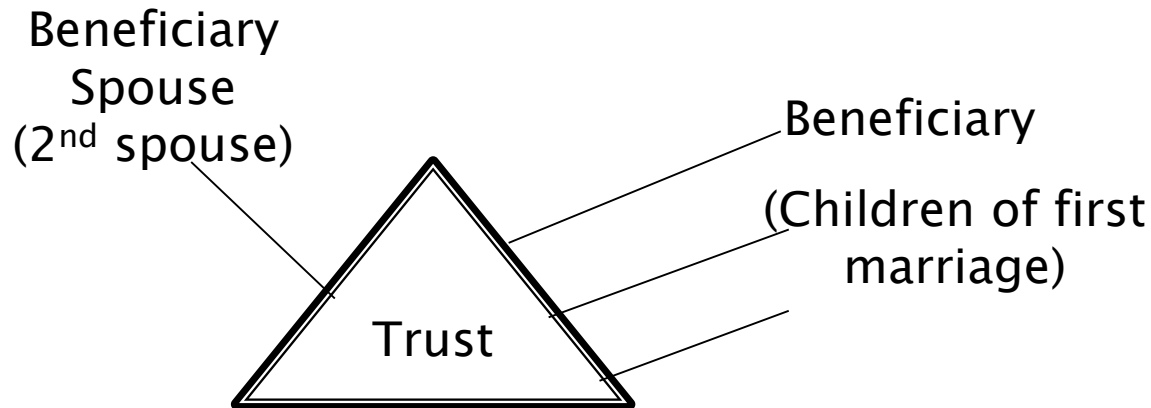
	Tax Year	Cummul # Months in Existence	Taxed
	Oct 31, 2015	14	Progressive
	Oct 31, 2016	26	Progressive
Deemed	Aug 31, 2017	36	Progressive
Deemed	Dec 31, 2017	40	Top rate

# 1. NEW TAX RULES

- ▶ 104(13.3) restrictions <sup>1</sup>
- ▶ 104(13.4) on death of beneficiary <sup>2</sup>
- ▶ Deemed year-end of trust <sup>3</sup>
- ▶ Income taxed to beneficiary <sup>4</sup>

# 1. NEW TAX RULES

## Economic Issues?



## On death of beneficiary spouse...

- Deemed disposition of assets
- Taxable in terminal return of 2<sup>nd</sup> spouse
- No relieving provision under 104(13.2)

# 1. NEW TAX RULES

## Post Mortem Planning?

- Private company shares
- Liquidation
- 164(6) election
- Mindful of 40(3.6) stop loss provisions

# 2. NEW VS OLD – COMPARATIVE SUMMARY

## GRADUATED RATE TAXATION OF TRUSTS AND ESTATES

### New Regime

- ▶ The top rate will now apply to:
  - Grandfathered inter-vivos trusts
  - Testamentary trusts
- ▶ Estates will be taxed at the graduated rates for 36 months from the date of death after which, the top-rate will apply.
- ▶ The amendments are applicable for 2016 and subsequent tax years.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

The new changes do not affect the following:

- ▶ Preferred Beneficiary election (PBE) for disabled beneficiaries
- ▶ Trusts for minor children
- ▶ Rollover of property on death to qualifying spouse or common-law partner trusts.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

### ▶ Income Tax Instalments

#### Current:

Testamentary trusts are currently exempt from the rules for tax instalments.

#### New:

Tax instalment rule would apply to all flat top-rate estates and testamentary trusts.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

### ▶ Alternative Minimum Tax

#### Current:

Testamentary trusts are given the Basic AMT exemption of \$40,000

#### New:

The exemption would be eliminated for all flat top-rate estate and testamentary trusts.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

### ▶ Personal Trust Status

#### Current:

Under current rules, testamentary trusts automatically qualify as “personal trusts”

#### New:

Testamentary Trusts and flat top rate estates would now have to meet the conditions to qualify as a personal trust.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

### ▶ Investment Tax Credits (ITCs)

#### Current:

Testamentary trusts can choose to either claim ITC in the trust or designate the ITC to a beneficiary.

#### New:

All flat top-rate estates and testamentary trusts would now have to utilize the ITC within the trust or estate.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

### ▶ Part XII.2 Tax

#### Current:

Testamentary trusts are exempt from Part XII.2 tax

#### New:

Rules for Part XII.2 tax would extend to all flat top-rate estates and testamentary trusts.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

### ▶ Tax Administration Rules

#### Current:

Special rules apply to testamentary trusts which extend the period:

- ▶ That CRA can refund a tax overpayment
- ▶ For objecting to a tax reassessment
- ▶ For filing the prescribed form to deal with debt forgiveness issues
- ▶ For making a determination of income tax liabilities

#### New

- ▶ These rules would now be limited to estates for the 36 month graduated tax period.

## 2. NEW VS OLD – COMPARATIVE SUMMARY

### ► Taxation Year and Fiscal Period

#### Current:

Testamentary trusts are allowed to have non-calendar year ends

#### New:

Flat top-rate estates and testamentary trusts would now be required to use a calendar year for tax purposes.

# 3. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Ensure estate will qualify as a G.R.E.
  - Anything to offend testamentary status of estate?
  - Resident in Canada?
  - Only one G.R.E per testator
- ▶ Extend administration period to 36 months to maximize marginal rates
- ▶ Non-tax reasons to include testamentary trusts?
- ▶ Any spouse trusts contemplated?
  - Provision for payment of taxes by trust instead of estate of beneficiary spouse ? Concerns are G.R.E status of estate?
  - Concerns with relying on CRA to apply subsection 160 to assess tax against the trust.

### 3. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Are two wills contemplated?
- ▶ Are any “insurance trusts” contemplated in the estate plan?
- ▶ Consider tax implications of charitable bequests provided for under the will:
  - Will the estate qualify as a G.R.E?
  - Will the gifts be made within the first 36 months following death?
  - If gifts to be made by spouse trust no relief for gains on death of surviving spouse.

### 3. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Will the estate own shares of a private company following death:
  - Review planning to mitigate double tax exposure.
  - Will the estate qualify as a G.R.E (subsection 164(6) and 50% solution only apply to a G.R.E)?
  - Does pipeline/bump planning become a higher priority?

# 5. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Will criteria for QDT be met on death:
  - Beneficiary eligible for disability tax credit?
  - Testamentary trust?
  - Factually resident in Canada?
- ▶ Separate QDT for each disabled beneficiary?
- ▶ Only one QDT per disabled beneficiary?
- ▶ Any non-disabled beneficiaries of the Trust anticipated?

# 5. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Maximize use of marginal rates in 2015?
- ▶ Potential for marginal rates beyond 2015?
- ▶ Implications re: deemed year end on December 31, 2015?
- ▶ Wind up the trust?

# 5. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Consider situs of taxation with respect to gains triggered on death:
  - Amend trust document to provide for payment of taxes attributed to estate of spouse beneficiary following death of spouse beneficiary (to avoid tainting spouse trust)? Possible? Concern re estate of spouse beneficiary not being G.R.E?
  - Life insurance to fund tax payment?
  - Rely on CRA re: subsection 160 to assess tax against the trust?
  - Consider wind up of Trust? Is wind up possible?

# 5. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Consider post mortem planning issues:
  - How will planning to mitigate double tax exposure be achieved?
  - How do the provisions of subsection 112(3.3) re: the 50% solution apply where the gain is taxed to the spouse beneficiary on death?
  - Can a subsection 104(13.2) election be late filed to allow for loss carryback planning on the redemption of shares?
  - Does pipeline/bump planning become a higher priority?

# 5. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Consider situs of taxation with respect to gains triggered on death of beneficiary:
  - Concerns regarding taxation to beneficiary's estate?
  - Life insurance to fund tax exposure
  - Amend trust document to provide for payment of taxes, attributed to estate of spouse/settlor beneficiary following death of settlor/spouse beneficiary (to avoid tainting AET or JPT), by the trust? Concern re non-G.R.E status of beneficiary's estate?
  - Rely on CRA applying subsection 160 to assess tax against the trust?

# 5. A CHECKLIST OF PLANNING ISSUES FOR THE PRACTITIONER

- ▶ Consider inter provincial planning during settlor's lifetime re: capital receipts of trust?
- ▶ Consider implications of deemed year end of trust on death of settlor/spouse beneficiary.
- ▶ Consider tax implications of charitable gifts to be made on death of the settlor/spouse.
  - No ability to shelter gains triggered on death from tax using charitable gifts.
  - Should trust be wound up so charitable benefit can be realized to G.R.E?

# 5. A CHECKLIST OF PLANNING ISSUES COMPLIANCE FOR 2016 AND BEYOND

- ▶ December 31, 2015 deemed year end for all trusts that are not G.R.Es.
  - Two taxation years in 2015
  - Otherwise deemed year end when lose G.R.E status and on December 31<sup>st</sup> of the calendar year that includes the date that is 36 months from the date of death.
- ▶ Ensure Estate qualifies as a testamentary trust during the first 36 months following death:
  - Any amount paid by NAL person on behalf of the trust repaid within 12 months.
  - No contributions by other than testator.

# Questions?

## Thank you!

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