Federal Creditor Protection in Force for RSPs and RIFs

This article discusses changes made to federal law and existing provincial laws that deal with Retirement Savings Plans (RSPs) and Retirement Income Funds (RIFs) in the event of bankruptcy.

Background

Bill C-55 - *An Act to establish the Wage Earner Protection Act, to amend the Bankruptcy and Insolvency Act, and the Company Creditor Arrangement Act*, received Royal Assent on November 25, 2005, was amended in 2007 by Bill C-12, and came into force on July 7, 2008.

Bankruptcy protection

This law is significant for investors because it protects all RSPs and RIFs from creditors in the event of bankruptcy.

As a result of the amendments to the federal *Bankruptcy and Insolvency Act*, bank, brokerage, mutual fund and self-directed RSP and RIF assets will now be exempt from seizure by creditors in the event of bankruptcy. Only property contributed within the 12 month period prior to the date of bankruptcy will be recoverable by creditors ("clawed back"), unless further protected under a provincial law.

There is no limit on the amount of money that can be protected from creditors within an RSP or RIF (other than the 12-month claw back).

Provincial laws

Until recently, only assets held in insurance RSPs and RIFs, registered pension plans and locked-in plans (since they are funded with pension assets and governed by pension legislation) were protected from creditors. Some provinces have enacted laws that protect assets held in non-insurance RSPs and RIFs from creditors in certain circumstances, including situations other than bankruptcy. The laws in these provinces will continue to be very important as the amendments to the federal *Bankruptcy and Insolvency Act* only apply in the event of bankruptcy. Where provincial protection exists additional protection may be available even outside of bankruptcy.

Manitoba, Saskatchewan and Newfoundland & Labrador have legislation in place that protects assets held within RSPs, RIFs and Deferred Profit Sharing Plans (DPSPs) so they cannot be seized by creditors, other than in the enforcement of maintenance orders (e.g. spousal or child support). Upon death, if the assets are transferred to another RSP or RIF (e.g. for a spouse) they will remain protected, but any amounts paid out of the plan to beneficiaries are not protected.

Prince Edward Island exempts RSP or RIF assets from seizure during life and after death where the spouse, child, grandchild or parent is designated as the beneficiary of the plan. In addition, provided a beneficiary is designated on an RSP or RIF, the benefits paid to the beneficiary do not form part of the estate and are not subject to the claims of the deceased's creditors. As a result, RSP and RIF assets are protected after death provided a beneficiary is designated.

Ontario provides that when a beneficiary is designated on an RSP or RIF, the benefits paid to the beneficiary do not form part of the estate and are not subject to the claims of deceased's creditors. The assets are only protected upon death; Ontario current laws do not provide any additional protection during the lifetime of the plan holder. However, the Ontario Legislature introduced Bill 96, *Registered Retirement Savings Protection Act, 2010* to address this gap. Bill 96 is designed to protect RSPs, RIFs and DPSPs from certain creditors. As of the date of this revision, Bill 96 has not been passed and is not enacted yet.

As of November 1, 2008, the British Columbia government amended the *Court Order Enforcement Act* to exempt all property in a registered plan from creditor claims. However, creditor protection does not apply to property contributed to the registered plan after or within 12 months before the date on which the debt being enforced came due, any property paid out of the registered plan and claims under the *Family Maintenance Enforcement Act*.

In Quebec, only insurance products are creditor protected, however, annuities held in RSPs or RIFs with trust companies ("trusteed plans", such as those with TD Waterhouse which are established with the Canada Trust Company as the trustee) have the same creditor protection as annuities held in RSPs or RIFs with insurance companies.

Summary

While insurance and registered pension plan assets still have the furthest reaching creditor protection, the passing of this law means that all RSPs and RIFs, wherever held, will receive similar protection in the event of bankruptcy (the exception by province and plan type being the 12-month claw back).

As the provinces begin to enact legislation to provide all registered plans similar creditor protection, the level of protection in situations other than bankruptcy vary widely from province to province and from plan to plan.

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