

## **Establishing Allowable Capital Loss on In-Kind Contributions**

Within the *Income Tax Act*, there exists an inequity between claiming capital gains and losses when making in-kind contributions to Registered Retirement Savings Plans.

A commonly used RRSP tax strategy is to contribute investments in-kind (the pure investment form like stocks and bonds vs. cash) to one's Registered Retirement Savings Plan. The main reasons for the "in-kind contribution" would be to possibly conserve cash outside the RRSP or because there is a shortage of cash.

The purpose of the in-kind contribution is to prevent having to sell a good investment to make an RRSP contribution. Selling would create unnecessary brokerage fees to sell, contribute the cash and repurchase when in the RRSP. It should be noted that selling also triggers a capital gain or a capital loss for tax purposes.

While allowing an investment to be moved into an RRSP without having to sell and incur fees, the government still requires that any capital gains on that investment must be recognized at the time of the contribution (also known as deemed disposition). However, if the investment was in a capital loss situation (i.e. the cost is greater than the current market value), Section 40 (2)(G)(iv) of the *Income Tax Act* states that the "losses are deemed nil". Otherwise stated, an individual does not get to claim the capital loss.

Recognizing that the government is moving toward a fairer and more usable taxation system, this is inconsistent. There should be a balance on the tax liability if the *Act* is trying to prevent unusual superficial loss. It is easy enough for the investor to simply sell the investment, crystallizing the loss to offset any capital gains. It would, for consistency, practicality and investor efficiency, make sense to simply allow the loss as a result of an in-kind transfer or contribution.

### **Recommendation**

That the federal government remove Section 40 (2)(G)(iv) from the *Income Tax Act* in order to allow recognition of capital losses as a result of an in-kind contribution (moving an asset in its original form) to an RRSP.