ENSURING THE EFFECTIVENESS OF REGISTERED DISABILITY SAVINGS PLANS

1. Introduction

An important consideration for parents and grandparents of a child with a severe disability is how best to ensure that child's financial security when they are no longer able to provide support. In July 2006, the Minister of Finance appointed the Expert Panel on Financial Security for Children with Severe Disabilities to examine this issue. The panel submitted its report, *A New Beginning*, in December 2006.

The Government acted on the Panel's recommendations by announcing the introduction of a new tax-assisted Registered Disability Savings Plan (RDSP) in Budget 2007, which became available in December 2008.

In Budget 2011, the Government of Canada announced that it would undertake a review of the RDSP program in 2011, consistent with the commitment in Budget 2008 to undertake a review of the program in three years. Budget 2011 noted that "while there is broad agreement on the RDSP's overall structure and eligibility conditions, the review will provide an opportunity to seek input from individuals, families, groups representing Canadians with disabilities and financial institutions on specific features [of the RDSP]." (Budget Plan, p. 127)

This consultation paper outlines the major elements of the RDSP program and seeks the views of Canadians on important elements of the program, including issues related to establishing plans, accessing plan savings, plan termination, and the administration of the RDSP program. The Government encourages interested Canadians to submit comments on these and other relevant issues.

2. RDSPs in Canada Today

An RDSP may be established for an individual who is eligible for the Disability Tax Credit (DTC). The DTC-eligible individual is the plan beneficiary. The plan holder is the person who generally opens the RDSP and makes decisions regarding contributions, investments, and withdrawals. The plan holder can be the beneficiary, or if the plan is opened for a minor child, a parent. The plan holder can also be a legal representative of the beneficiary.

The plan consists of three elements:

1. Parents, beneficiaries and others wishing to save on behalf of the beneficiary are allowed to contribute to an RDSP, with the written permission of the plan holder. Contributions to an RDSP for a beneficiary are limited to a lifetime maximum of $200,000. Contributions are permitted up until the end of the year in which a beneficiary attains 59 years of age.

2. Annual RDSP contributions attract Canada Disability Saving Grants (CDSGs) at matching rates of 100, 200, or 300 per cent, depending on the beneficiary’s family income and the amount contributed, up to a maximum lifetime CDSG limit of $70,000. The family income ranges and the corresponding maximum annual CDSGs are set out in Table 1.1. An RDSP is eligible to receive CDSGs up until the end of the year in which the plan beneficiary attains 49 years of age.

Table 1.1
Maximum Annual Canada Disability Savings Grants

Family Income*	Matching Rates
Up to $83,088	300% on the first $500 200% on the next $1,000
Over $83,088	100% on the first $1,000

*Family net income thresholds are for 2011. These income thresholds are indexed to inflation.

3. The Government provides up to $1,000 in Canada Disability Savings Bonds (CDSBs) annually to RDSPs established by low- and modest-income families, up to a lifetime limit of $20,000. The amount of the CDSB begins to be phased out when the beneficiary’s family income exceeds $24,183 and is fully phased out at family income of $41,544 (for 2011). CDSBs are paid into RDSPs up until the end of the year in which the plan beneficiary attains 49 years of age.

Investment income earned in an RDSP grows tax-free. Contributions to an RDSP are not deductible and are not included in the beneficiary’s income when withdrawn. CDSGs, CDSBs and investment income earned in an RDSP are included in the beneficiary’s income for tax purposes when paid out of the RDSP.

Any CDSGs and CDSBs paid into the plan in the 10 years preceding a withdrawal from the plan must be repaid to the Government (except in cases where the beneficiary has a shortened life expectancy, subject to certain conditions). Payments from an RDSP are required to commence by the end of the year in which the beneficiary attains 60 years of age.

To ensure that RDSP payments supplement, rather than replace, other income-tested benefits, amounts paid out of an RDSP are not taken into account for the purpose of calculating federal income-tested benefits delivered through the income tax system, such as the Canada Child Tax Benefit and the Goods and Services

Tax Credit. In addition, amounts paid out of an RDSP do not reduce Old Age Security or Employment Insurance benefits.

The Government has worked with provinces and territories to ensure that RDSPs can achieve their intended objectives. Newfoundland and Labrador, Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, the Northwest Territories, Nunavut, and Yukon have announced that RDSP income and assets will not affect income support benefits, while Quebec, New Brunswick and Prince Edward Island have announced that RDSP payments will not reduce income support benefits up to certain limits.

3. Recent Improvements

The RDSP is widely regarded as a major policy innovation and positive development in helping to ensure the long-term financial security of children with severe disabilities.

The Government has made several improvements to the RDSP program since its introduction to respond to the needs of beneficiaries and improve the effectiveness of the program (see Table 1.2).

Table 1.2
Improvements to the RDSP since 2008

Year	Changes
2008	To provide greater certainty for parents planning to establish an RDSP for their child, the rules were amended to ensure that a mandatory wind-up of the plan occurs only where the beneficiary's condition has factually improved to the extent that the beneficiary no longer qualifies for the DTC. Previously, the rules would have required a plan to be collapsed if a beneficiary's DTC certification were rescinded, even if the beneficiary continued to meet the substantive eligibility requirements for the DTC. To ensure that as many individuals as possible could establish an account and be eligible for CDSGs and CDSBs for 2008, the deadline for opening an RDSP, making contributions and applying for grants and bonds for that year was extended by two months.
2010	In recognition of the fact that families of children with disabilities may not be able to contribute regularly to their plans, a 10-year carry forward of CDSG and CDSB entitlements was introduced. To give parents and grandparents more flexibility in providing for a disabled child's long-term financial security, rules were amended to allow a deceased individual's Registered Retirement Savings Plan or Registered Retirement Income Fund proceeds and certain Registered Pension Plan proceeds to be transferred, on a tax-free basis, to the RDSP of a financially dependent infirm child or grandchild.
2011	In recognition of the greater immediate need for beneficiaries with shortened life expectancies to access their savings, rules were amended to give such beneficiaries more flexibility to withdraw their RDSP assets without requiring the repayment of CDSGs and CDSBs.

4. Topics for the RDSP Three-Year Review

This section is divided into five topics: basic parameters; establishing plans and legal representation; savings accumulation and access; plan termination; and improving administration and reducing red tape. A number of questions are included after each topic to seek feedback from stakeholders.

BASIC PARAMETERS

The basic parameters of the RDSP (outlined in the "RDSPs in Canada Today" section earlier in this paper) include: a lifetime contribution limit of $200,000; a matching grant regime to encourage contributions; a bond payment to support low- and modest-income beneficiaries; the ability for investment income to grow tax-free; and age requirements to encourage long-term savings and ensure that plan assets are used for the beneficiary.

Are existing parameters effective in supporting the objectives of the RDSP?
Are there aspects of these parameters that could be improved?

ESTABLISHING PLANS AND LEGAL REPRESENTATION

Like all registered plans, there are certain conditions that must be met before an RDSP may be established for a beneficiary. For example, beneficiaries must be eligible for the DTC, under age 60, and a resident of Canada. These rules help ensure that RDSPs are used for the long-term savings needs of Canadians with severe disabilities.

There are also rules that determine who may be the plan holder of an RDSP. The plan holder is the person who opens the RDSP and makes decisions regarding the operation of the plan, including for example, authorizing contributions to the plan and making withdrawals on behalf of the beneficiary.

- If the beneficiary is a minor at the time the RDSP is opened, a legal parent, guardian, tutor, or curator of the beneficiary (or an individual, public department, agency, or institution that is legally authorized to act for the beneficiary) may open an RDSP for the minor and become a plan holder. When a plan is opened by a beneficiary's legal parent, the legal parent may continue as holder of the plan after the beneficiary reaches the age of majority. When the beneficiary becomes an adult and is legally able to enter into a contract, the parent may choose to remain as the sole plan holder, to add the beneficiary to the RDSP as a joint holder, or to remove themselves as plan holder and allow the beneficiary to become the sole plan holder of the RDSP. If a plan is opened by somebody other than the beneficiary or the beneficiary's legal parent, that person or body generally must be removed as a holder of the plan when the beneficiary reaches the age of majority.

- If the beneficiary has reached the age of majority when a plan is opened for the first time and is legally able to enter into a contract, the beneficiary must be the plan holder.
- If the beneficiary has reached the age of majority and is not legally able to enter into a contract when a plan is opened for the first time, another qualified person must open an RDSP for the individual and become the plan holder. These qualified persons are: a guardian, tutor, or curator of the beneficiary, or an individual, public department, agency, or institution that is legally authorized to act for the beneficiary.

These rules give as much control as possible to the beneficiary with regard to decision-making in an RDSP, recognizing that the beneficiary's interests are paramount, while permitting parents to continue to be the plan holder of an RDSP that was established for a minor child once the child reaches the age of majority.

When a beneficiary has attained the age of majority and is not able to enter into a contract, the rules effectively limit potential plan holders to the beneficiary's legal representative. While this helps ensure that the beneficiary's interests are protected, it can prevent some individuals from becoming a plan holder. In this regard, a number of adults with disabilities have experienced problems in establishing a plan as the nature of their disability precludes them from entering into a contract.

Questions of appropriate legal representation in these cases are a matter of provincial and territorial responsibility. In many provinces and territories, an RDSP can be opened for an individual who has attained the age of majority and is not able to enter into a contract only if the individual is declared legally incompetent and someone is named as their legal guardian—a process that can involve a considerable amount of time and expense on the part of concerned family members. Some provinces, such as British Columbia, have instituted more streamlined processes to allow for the appointment of a trusted person, such as a parent or friend, to manage resources on behalf of a disabled individual. The Government of Canada has encouraged other provinces and territories to determine whether such streamlined processes would be appropriate for their jurisdiction.

Some stakeholders have expressed support for provincial or territorial responses that would streamline procedures for the appointment of legal guardians; others have advocated that a solution be found through different channels. Any proposal would require careful consideration of costs, administrative feasibility, liability issues, oversight, and accountability.

Are the general rules related to establishing RDSPs working well? Do beneficiaries and their families face obstacles in establishing RDSPs, and if so, how could these obstacles be overcome?

In particular, what is the appropriate approach to addressing legal representation issues? What elements would need to be part of a solution that would meet the needs of beneficiaries and their families, as well as the needs of RDSP providers?

SAVINGS ACCUMULATION AND ACCESS

The RDSP rules are generally designed to facilitate savings accumulation to ensure that beneficiaries are able to build private savings that, in conjunction with the government assistance provided to RDSP beneficiaries, make a substantial contribution to their long-term financial security. It is important that these rules provide beneficiaries with sufficient flexibility, while still supporting the long-term savings objective of the RDSP.

Rollovers

Changes in Budget 2010 provided, for the first time, the ability to transfer funds from a registered plan to an RDSP on a tax-free basis (referred to as a “rollover”), in order to give parents and grandparents more flexibility in providing for a disabled child’s long-term financial security. Specifically, Registered Retirement Savings Plan or Registered Retirement Income Fund proceeds and certain Registered Pension Plan proceeds of a deceased individual may be rolled over to the RDSP of a financially dependent infirm child or grandchild, subject to the beneficiary’s available RDSP contribution room. Rolled-over proceeds reduce a beneficiary’s RDSP contribution room, but do not attract CDSGs.

Some parents have noted that the ability to transfer funds from Registered Education Savings Plans (RESPs) could improve the RDSP’s potential as a savings vehicle.

Would it be appropriate to accommodate rollovers from RESPs to RDSPs? If so, how could a rollover be consistent with the objectives of both plans, while still being responsive to changes in individual circumstances?

The 10-Year Rule

The ability for a beneficiary to access savings when he or she is in need of support is key to the success of the RDSP. However, this flexibility must be balanced against the need to promote long-term savings.

One requirement in this regard is the “10-year rule,” which requires that upon a withdrawal from an RDSP, the cessation of a beneficiary’s eligibility for the DTC, or the death of the beneficiary, any CDSGs and CDSBs paid into the plan during the preceding 10 years be repaid to the Government. Investment income in the plan, including income earned on CDSGs and CDSBs, does not need to be repaid.

While the 10-year rule serves to encourage long-term savings, some stakeholders have suggested that it could also prevent some beneficiaries with a shortened life expectancy from obtaining income support through RDSP withdrawals when they need it. In recognition of the greater immediate need for these beneficiaries to access their savings, Budget 2011 waived the 10-year rule for beneficiaries with shortened life expectancies, subject to certain conditions. While this measure will provide flexibility to those in immediate need due to shortened life expectancy, there may be other beneficiaries whose specific needs may not be consistent with the 10-year rule.

Under what circumstances should exemptions from the 10-year rule be allowed? What alternatives to the 10-year rule could be considered that would improve access to savings, while still supporting the long-term savings objective of the RDSP?

PLAN TERMINATION

There are a number of factors that can cause an RDSP to be terminated, generally due to the death of the beneficiary, voluntary plan closure, or the cessation of DTC eligibility. Terminating an RDSP has numerous implications: all CDSGs and CDSBs paid into the plan during the preceding 10 years before its closure must be repaid to the Government and any funds remaining in the RDSP must be paid to the beneficiary, some of which are taxable and included in the income of the beneficiary in the year the payment is made to the beneficiary. These rules help ensure that RDSPs are used only for the long-term savings needs of individuals with a severe disability during their lifetime.

Cessation of DTC Eligibility

Currently, if an RDSP beneficiary ceases to be eligible for the DTC, their RDSP must be terminated by the end of the year following the first calendar year throughout which the beneficiary has no severe and prolonged impairment. (This means, for example, that if a beneficiary ceased to be severely impaired in 2011, the RDSP would need to be terminated by the end of 2013, since 2012 would be the first year throughout which the beneficiary was no longer severely impaired.) This policy addresses situations where a beneficiary ceases to have a prolonged or severe disability for the foreseeable future.

However, there may be some RDSP beneficiaries who cease to have an impairment whose effects qualify them for the DTC, but who also have a medical likelihood of becoming eligible for the DTC again in the foreseeable future—for example, individuals with episodic illnesses. In such cases, the requirement to close the RDSP and repay CDSGs and CDSBs may limit the capacity of the RDSP to provide for the long-term savings needs of the beneficiary.

What should happen to an RDSP when a beneficiary ceases to be eligible for the DTC (particularly if there is a medical likelihood that the beneficiary would be eligible for the DTC in the foreseeable future)? Are changes needed to provide greater flexibility in these circumstances?

IMPROVING ADMINISTRATION AND REDUCING RED TAPE

To ensure that RDSP transactions occur in a practical and timely manner, beneficiaries, plan holders, and financial institutions are required to comply with various administrative rules set out in the *Income Tax Act* and the *Canada Disability Savings Regulations*.

In general, the administrative rules support the policy objectives of the program by establishing compliance standards. These rules deal with matters that include transferring RDSPs between financial institutions; record keeping and information reporting; deadlines for applying for CDSGs or CDSBs; and collection of authorized information.

While these rules play a vital role in allowing RDSPs to operate effectively, it is important to ensure that they are straightforward and their implications can be understood by beneficiaries and their families, so as not to hamper decision-making. Administrative rules should also not present an unnecessary burden for RDSP issuers, in order to make offering RDSPs appealing to eligible financial institutions.

Are existing administrative rules effective in supporting the objectives of the RDSP? If not, what changes are necessary to ensure that they are?

Can existing administrative rules be easily understood by beneficiaries and their families? If not, what steps can be taken to reduce red tape for beneficiaries and simplify the rules?

Do existing administrative rules present an unnecessary administrative burden for RDSP issuers? If so, how could this be alleviated?

PROVIDING YOUR INPUT

These consultations are open to anyone.

The closing date for submissions is December 16, 2011.

Submissions can be emailed to RDSP-REEI@fin.gc.ca.

Also, written submissions can be forwarded to:

RDSP Review
Tax Policy Branch
Department of Finance
L'Esplanade Laurier
16th Floor, East Tower
140 O'Connor Street
Ottawa, Canada K1A 0G5
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Once received by the Department of Finance, all submissions will be subject to the *Access to Information Act* (ATI Act) and may be disclosed in accordance with its provisions. If a request pertaining to your submission is received under the ATI Act, you will be consulted under Section 27 of the ATI Act.