What Happens When a Canadian Resident Dies?

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At the time of death, how will the estate of a Canadian resident be distributed? Also, what are the tax consequences and requirements on a Canadian resident's assets immediately prior to death? This publication provides an overview of the implications from a tax and estate perspective and outlines the tax treatment and estate consequences of assets owned by a deceased Canadian resident.

A tax perspective

In Canada, unlike the United States, an estate tax is not imposed when a Canadian resident individual dies; instead, a Canadian resident is deemed to have disposed of their assets at fair market value immediately prior to death. This may result in an income tax liability on the deceased's terminal (final) tax return.

Certain assets that may be deemed to have been disposed of or otherwise included as income on death include the following:

- Registered accounts such as RRSPs, RRIFs, LIRAs, LIFs and LRIFs;
- Non-registered investment portfolios;
- Real estate, including a principal residence, rental property, vacation property and farm property;
- Shares of public and private corporations; and
- Personal-use property including listed personal property.

An estate perspective

In addition to the potential income tax liability resulting from the deemed disposition of assets when a Canadian resident dies, some provinces/territories impose a probate tax (or fee) as part of the administration of the estate. This is based on the value of the estate assets at the date of death, and the calculation varies widely depending upon the province/territory.

Probate is the judicial approval of the authority of an executor or administrator to administer the assets of a deceased individual. For more information, ask your advisor.

Tax-deferred rollovers on death

The Income Tax Act ("ITA") permits a tax deferral on some assets for individuals who are married or living common-law. For married and common-law partners, a tax-deferred rollover on death may be used to defer the capital gain on capital property or the income inclusion on registered assets when the first spouse/common-law partner dies.

In addition to the tax deferral available for spouses/common-law partners, the ITA also permits a tax-deferred rollover on registered accounts to financially dependent minor or mentally/physically infirm children or grandchildren.

Tax exemptions

In addition to tax-deferred rollovers, other ITA provision that can also provide exemptions at death include:

Principal residence exemption – Shelters all or part of the capital gain associated with the deemed disposition of an individual's designated principal residence if certain conditions are met.

Lifetime capital gains exemption – Shelters all or part of the capital gain associated with the deemed disposition of qualified small business corporation shares or qualified farm or fishing property.

RRSP and RRIF registered accounts – designated beneficiaries[1]

The designated beneficiary of a registered account like an RRSP or RRIF receives the gross value of the account (no income tax withheld) on the death of the account owner. However, the deceased's estate will be responsible for the associated income tax liability if a tax-deferred rollover is not used. It is the executor's responsibility to ensure the income taxes of the deceased are paid, including the income tax associated with the disposition of registered accounts paid directly to a designated beneficiary.

For estate purposes, registered accounts that designate a named beneficiary will pass outside of the estate and avoid probate tax. If there is no named beneficiary, the proceeds of registered accounts accrue to the estate.

Capital losses

The ITA allows the use of capital losses (that exceed the taxable capital gains) against all other sources of income reported on the terminal (final) income tax return in the year of death and the year prior to death.

The ITA also permits the ability to elect out of the tax-deferred rollover to a spouse/common-law partner on capital property on a property-by-property basis. Electing out of the rollover may allow for the use of the deceased's capital gains exemption, and the ability to utilize the deceased's personal income tax credits/deductions or to create a capital loss which may be applied in the year of death or in the year prior to death.

RRSP contribution after death

When an individual dies, they may have unused RRSP contribution room available at the time of death. RRSP contributions to a deceased individual's RRSP account after death are not permitted but contributions to the deceased's spouse/common-law partner's RRSP are still allowed. The contribution can be made by the deceased's executor in the year of death or within the first 60 days after the year of death.

U.S. estate tax

If an individual is a US citizen or dies owning U.S. situs property, such as U.S. securities or U.S. real estate, their estate may be impacted by U.S. estate tax. For more information, contact a cross border tax professional.

Donations

When an individual provides for a charitable gift in their Will, their estate is entitled to a donation tax credit. If the estate qualifies as a graduated rate estate ("GRE"), the donation tax credit may also be used to reduce or completely offset the tax liability that arises from the deemed disposition of capital property that occurs upon death. In the year of death and the year prior to death, a charitable tax credit can be claimed for donations up to 100% of the taxpayer's net income.

Tax filings after death

Terminal (final) income tax return

Generally, the tax filing deadline for the deceased's terminal income tax return (and due date for any balance owing) is the later of six months after the date of death or April 30 of the year following death, based on the following:

- Deaths between January 1 and October 31 – Tax filing deadline is April 30 of the following year; and
- Deaths between November 1 and December 31 – Tax filing deadline is six months from the date of death.

If an individual dies before the tax filing deadline for the previous tax year (e.g., date of death is in February 2022), and the individual has not filed their previous year's tax return (e.g., 2021), the due date of the previous year's return and any balance owing is due six months after the date of death (e.g., August 2022).

Return for rights and things

As well as filing a terminal income tax return, an executor may also elect to file an income tax return for rights and things for the deceased individual for the unpaid amounts the deceased was entitled to at the time of their death. The return for rights and things is an additional income tax return which allows access to a second set of marginal tax rates and personal tax credits, and may include such unpaid amounts as CPP/OAS benefits, employment income and dividends declared before death. The election to file a return for rights and things is due the later of:

- 90 days after the Canada Revenue Agency ("CRA") sends the Notice of Assessment or reassessment for the final return; or
- One year after the date of death.

However, the due date for any balance of tax owing on a rights or things return depends on the date of death (see above).

Estate tax return

An estate income tax return may also be required to be filed after the terminal return. The due date for an estate return is 90 days after the year end of the estate. If the estate qualifies as a GRE, the estate will be subject to tax at the marginal tax rates for up to 36 months after the death of the individual (and the filing due date for a GRE's first tax return is the same as the terminal tax return). If the estate no longer qualifies as a GRE, the estate will be subject to tax at the highest marginal rate in the province/territory of residence.

Clearance certificate

A clearance certificate is provided by the CRA (and Revenu Quebec for Quebec residents) to an executor and confirms all of the tax, interest and penalties of the deceased have been paid at the time of the issuance of the clearance certificate. The clearance certificate permits the executor to distribute the assets of the estate to the beneficiaries without the risk of being personally liable for any unpaid amounts. This assumes the information provided to the CRA to obtain the clearance certificate is complete, accurate and up-to-date but does not ensure the estate does not owe additional amounts to the CRA should more information become available in the future.

Assets held jointly as tenants with right of survivorship[2]

Capital assets such as real property and non-registered investment accounts can be owned as joint tenants with right of survivorship ("JTWROS"). These can pass outside of the estate to the surviving joint owner.

A grant of probate may be avoided on the death of the first-to-die spouse/common-law partner if all assets are owned JTWROS or have designated beneficiaries. This may result in reduced costs and administration for the surviving spouse/common-law partner.

Sometimes planning is put in place that requires assets to be held in just one spouse/common-law partner's name. This type of planning could include creditor protection, family law protection, legacies/spousal trusts in Wills, or other planning proposed or implemented by professional advisors. Aside from this, some people feel more secure having assets in their own name or do not wish their spouse/common-law partner to have access to these assets during their lifetime.

Owning assets JTWROS with anyone but a spouse/common-law partner, such as an adult child, may have other consequences:

- A disposition for tax purposes on the transfer of beneficial ownership from the individual to the new joint owner.
- The inability to remove the joint owner as an owner even if they didn't contribute to the asset;
- The deceased's Will/estate plan should be reviewed to consider the impact of the JTWROS ownership as the asset will now pass outside the Will;
- Joint owners have unlimited access to the jointly owned asset; and
- If the individual added as a joint owner has a relationship breakdown, is getting divorced or has creditor/bankruptcy issues, the jointly owned asset could be at risk.

When a person dies owning assets JTWROS with anyone other than a spouse/common-law partner, the jointly owned asset is presumed to be part of their estate unless there is evidence or documentation that the person intended to make a gift of the asset (Pecore v. Pecore 2009 SCC). Individuals that own assets jointly with anyone other than their spouse/common-law partner should obtain advice from their tax and legal advisors about the best way to document their intentions for the disposition of the asset on death.

Individuals should seek legal and tax advice before making changes to the ownership of assets so they are aware of any potential legal and income tax consequences, and to ensure the changes do not negate other proposed or implemented planning.

Seek professional advice

While every individual's situation is unique, tax and estate planning professionals are experienced in helping you explore all the options available for your estate plan that produces the right result for your specific circumstances.

This publication is not intended to be a comprehensive review of all tax and estate laws. Readers should seek professional legal and tax advice to determine how their estate planning goals can be best met within the rules of their province or territory of residence.

Appendix - Tax treatment and estate consequences of assets owned by a deceased Canadian resident

Asset	Tax Treatment	Estate Consequence (not applicable in Quebec)
RRSP/RRIF/LIRA/LIF/LRIF[3]	• The fair market value ("FMV") of the account is taxable as income to the account holder at death. • A rollover may be utilized and tax may be deferred until surviving spouse/common-law partner withdraws the funds or dies. • If a rollover is not available/utilized, deceased's estate pays the tax liability.	• Designated beneficiary – account passes outside of the estate eliminating the need for probate. • No designated beneficiary, designated beneficiary predeceases the account holder, or estate is the designated beneficiary – account will form a part of the estate and probate will likely be required.
TFSA	• FMV at death is not taxable on death to the account holder. • Can transfer to spouse's/common-law partner's TFSA account without impacting the surviving spouse's/common-law partner's contribution room.	• Designated successor/beneficiary – account passes outside of the estate eliminating the need for probate. • No successor/beneficiary designated, beneficiary/successor predeceases the account holder, or estate is the designated beneficiary – account will form a part of the estate and probate will likely be required.
Non-registered Investment Accounts	• Any accrued gains to the date of death will be taxable on death to the account holder.[4]	• Individual account – probate may be required depending on value of the account. • JTWROS with spouse/common-law partner – probate will likely not be required. • JTWROS other than spouse/common-law partner – evidence/documentation may be required to show the deceased's intention for the disposition of the account. Probate may or may not be required.
Life Insurance	• Death benefit proceeds from exempt policies are not taxable to the beneficiary of the policy.	• Beneficiary designated (other than the estate) – probate likely will not be required, as the death benefit passes outside of the estate. • No beneficiary designated, beneficiary predeceases or estate is the designated beneficiary – death benefit will form a part of the estate and probate will likely be required.

Asset	Tax Treatment	Estate Consequence (not applicable in Quebec)
Principal Residence	• Any accrued gains and recapture of depreciation, if any, will be taxable on death to the owner.[4] • Gain may be sheltered all or in part by the principal residence exemption.	• Individually owned – probate will be required. • JTWROS with spouse/common-law partner – probate will likely not be required. • JTWROS, other than spouse/common-law partner – evidence/documentation may be required to show the deceased's intention for the disposition of the property. It is unlikely probate will be required.
Rental Property	• Any accrued gains will be taxable on death to the owner.[4]	• Same as principal residence.
Vacation Property	• Any accrued gains will be taxable on death to the owner.[4] • Gain may be sheltered by the principal residence exemption, if available	• Same as principal residence.
Farm Property	• Any accrued gains will be taxable on death to the owner.[4] • Farm property may be considered qualified farm property eligible for the lifetime capital gains exemption. • Property may be eligible to be transferred (tax-deferred at cost) to the next generation(s) using an intergenerational rollover.	• Individually owned – probate will be required. • JTWROS with spouse/common-law partner – probate will likely not be required. • JTWROS, other than spouse/common-law partner – evidence/documentation may be required to show the deceased's intention for the disposition of the property. It is unlikely probate will be required.
Shares of a Private Corporation	• Any accrued gains will be taxable on death to the owner.[4] • Shares may qualify as Qualified Small Business Corporation Shares eligible for the lifetime capital gains exemption.	• Probate is not required to transfer private company shares. However, if another asset requires probate, the value of the private company shares will be included, unless a secondary Will strategy is available and has been used (not tested in all provinces/territories).
Personal-use Property ("PUP") (e.g., furniture, vehicles) **Listed Personal Property ("LPP")** (e.g., paintings, jewellery, stamps, coins)	• Any accrued gains on PUP/LPP will be taxable on death to the owner (the deemed cost base/proceeds of LPP/PUP minimum is $1,000).[4] • No capital loss available on PUP. • Losses on LPP can be used to offset gains from LPP's.	• Individually owned – probate may be required. • JTWROS with spouse/common-law partner – probate will likely not be required. • JTWROS, other than spouse/common-law partner – evidence/documentation may be required to show the deceased's intention for the disposition of the property. It is unlikely probate will be required.

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[1] Not applicable in Quebec except for segregated funds.

[2] Not applicable in Quebec. On the death of an owner of jointly held property in Quebec, his or her proportionate share of the property will form part of his/her estate and will be governed by the terms of his or her Will.

[3] Tax may also be deferred if the account passes to a financially-dependent minor or mentally/physically infirm child or grandchild.

[4] Tax may be deferred if the account passes to a spouse/common-law partner, either directly or through the use of a qualifying spousal trust.

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968E (2023/01/19)

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