Estate Planning

Legal representative

You are the legal representative of a deceased person if:

- you are named as the executor in the will;
- you are appointed as the administrator of the estate by a court

Note
As the legal representative, you may wish to appoint an authorized representative to deal with the CRA for tax matters on your behalf. You may do so by completing Form T1013, Authorizing or Cancelling a Representative.

As the legal representative, you should contact CRA to provide them with the deceased's date of death as soon as possible. To keep records up to date, send the following information to CRA:

- a copy of the death certificate; and
- a complete copy of the will or other legal document such as a grant of probate or letters of administration showing that you are the legal representative.

Include this information with the final return if you did not send it right after the deceased's death.

Note
You should advise Service Canada of the deceased's date of death.

Under the *Income Tax Act*, as the legal representative, it is your responsibility to:

- file all required returns for the deceased;
- pay all taxes owing; and
- let the beneficiaries know which of the amounts they receive from the estate are taxable.

As the legal representative, you are responsible for filing a return for the deceased for the year of death. This return is called the Final return.

You also have to file any returns for previous years that the deceased person did not file. If the person did not leave records about these returns, or if you cannot tell from existing records whether or not the returns were filed, contact CRA. If you have to file a return for a year before the year of death, use a T1 General Income Tax and Benefit Return for that year. Previous year returns are available by calling 1-800-959-2221.

You have to file a T3 Trust Income Tax and Information Return, for income of the estate earned after the date of death. If the terms of a trust were established by the will or a court order in relation to the deceased individual's estate under provincial or territorial dependant relief or support law, you also have to file a T3 Trust Income Tax and Information Return for that trust.

Note
You may not have to file a T3 return (not to be confused with the final return, which always has to be filed) if the estate is distributed immediately after the person dies, or if the estate did not earn income before the distribution. In these cases, you should give each beneficiary a statement showing his or her share of the estate. See CRA's T3 Trust Guide, for more information and, where a trust is created, to determine whether that return has to be filed and what income to report on the T3 return.

As the legal representative, you may need information from the deceased person's tax records. Before this information can be disclosed, you will need to provide CRA with the following:

- a copy of the death certificate;
- the deceased's social insurance number; and
- a copy of the will, trust agreement, or letters of administration showing that you are the legal representative.

If you visit CRA to get information from the tax records of the deceased, you will also have to provide one piece of identification with your picture and signature on it, or two pieces with your signature on them.

When you write to CRA for such information, include the words "The Estate of the Late" in front of the deceased person's name.

You should also provide your address so that CRA can reply directly to you. Send this information to your tax services office or tax centre.

Final return

On the final return, report all of the deceased's income from January 1 of the year of death, up to and including the date of death. Report income earned after the date of death on a T3 Trust Income Tax and Information Return. As mentioned earlier, to find out what income to report on the T3 return, see CRA's T3 Trust Guide.

Tax tip

In addition to the final return, you can choose to file up to three optional returns for the year of death. Information about the deceased's income sources will help you determine if you can file any of these optional returns.

You do not have to file any of the optional returns. However, by filing one or more of the returns, you may reduce or eliminate tax that you would otherwise have to pay for the deceased.

You do not report the same income on both the final and an optional return. However, you can claim certain credits and deductions on more than one return. There may be a tax advantage if you file one or more of the optional returns in addition to the final return.

For more details, see *Optional returns* and *Chart 1* on CRA's website.

Can I deduct funeral expenses, probate fees, or fees to administer the estate?

No. These are personal expenses and cannot be deducted.

Who reports a death benefit that an employer pays?

That depends on who received the death benefit. A death benefit is income of either the estate or beneficiary that receives it. Up to $10,000 of the total of all death benefits paid (other than CPP or QPP death benefits) is not taxable. If the beneficiary received the death benefit, see line 130 in the General Income Tax and Benefit Guide or the guide that came with the beneficiary's return. If the estate received the death benefit, see the T3 Trust guide.

On what return do I report Canada Pension Plan (CPP) or Quebec Pension Plan (QPP) death benefits for the estate of the deceased?

A CPP or QPP death benefit can be reported either on the tax return of the recipient beneficiary of the deceased person's estate, or on a T3 Trust Income Tax and Information Return, for the estate of the deceased. If the estate then pays the death benefit to the beneficiary, a T3 slip will be issued in the beneficiary's name. The amount of the CPP or QPP death benefit is shown in box 18 of Form T4A(P), Statement of Canada Pension Plan Benefits. Do **not** report the amount on the deceased's return. Unlike a death benefit that an employer may pay to the estate or to a named beneficiary, this benefit is not eligible for the $10,000 death benefit exemption. You have to report all other CPP or QPP benefits on the deceased's return. For details see, line 114 - CPP or QPP benefits, in the General Income Tax and Benefit Guide.

Who reports amounts an employer pays for vacation and unused sick leave?

Vacation pay is income of the deceased person and can be reported on a return for rights or things. Payment for unused sick leave is considered a death benefit and is income of the estate or beneficiary that receives it. For details, see CRA’s bulletin IT508R, Death Benefits.

If the deceased person was paying tax by instalments, do I have to continue making those instalment payments?

No. The only installments that must be paid are those that were due before the date of death but not paid.

Why do I have to return the deceased person's GST/HST credit?

The amount of the GST/HST credit payment is based on the previous year's return. Since the payments are an advance on purchases for the current year, you have to return GST/HST credit payments that were paid to the deceased after his or her death. If the deceased was single and the estate is entitled to the payment, another cheque payable to the estate will be issued.

Deemed disposition of property

Here, we discuss the tax treatment of capital property the deceased owned at the date of death. We also deal with capital property in general (capital property other than depreciable property), as well as the particular treatment of depreciable property. We discuss only property acquired after December 31, 1971.

There are special rules for property that a deceased person owned before 1972. For details about these rules and for information about other property such as eligible resource property, or an inventory of land, contact CRA.

When a person dies, CRA considers that the person has disposed of all capital property right before death. We call this a **deemed disposition.** Also, right before death, CRA considers that the person has received the deemed proceeds of disposition (we will refer to this as "**deemed proceeds**"). Even though there was not an actual sale, there can be a capital gain (except for depreciable property or personal-use property) or a capital loss.

For depreciable property, in addition to a capital gain, there can also be a recapture of capital cost allowance. Also, for depreciable property, instead of a capital loss there may be a terminal loss.

What is a capital gain?
When the proceeds or deemed proceeds of disposition of a capital property are **more** than its adjusted cost base, the result is a capital gain. In most cases, one half of the capital gain is the taxable capital gain.

Use Schedule 3, Capital Gains (or Losses), to calculate the taxable capital gain to report on the final return.

What is a capital gains deduction?
This is a deduction you can claim for the deceased person against eligible taxable capital gains from the disposition or deemed disposition of certain capital property.

The lifetime capital gains exemption has been increased from $500,000 to $750,000 for dispositions after March 18, 2007. Since the inclusion rate for capital gains and losses is 50%, the lifetime capital gains deduction limit will be increased from $250,000 (1/2 of $500,000) to $375,000 (1/2 of $750,000).

For more information, see Line 254 - Capital gains deduction in CRA's General Income Tax and Benefit Guide.

What is a capital loss?
When the proceeds or deemed proceeds of disposition of a capital property are **less** than its adjusted cost base, the result is a capital loss. One half of the capital loss is the allowable capital loss. You cannot have a capital loss on the disposition of depreciable property.

For more information on claiming a capital loss, see Net capital losses in the year of death on CRA's website.

Recaptures and terminal losses
For depreciable property, when the proceeds or deemed proceeds of disposition are **more** than the undepreciated capital cost, you will usually have a recapture of capital cost allowance. Include the recapture in income on the deceased's final return.

For depreciable property, when the proceeds or deemed proceeds of disposition are **less** than the undepreciated capital cost, the result is a terminal loss. Deduct the terminal loss on the deceased's final return.

Note
A terminal loss is not allowed in respect of depreciable property that was personal-use property of the deceased.

For more information about a recapture of capital cost allowance or a terminal loss, see CRA's bulletin, IT478, Capital Cost Allowance - Recapture and Terminal Loss.

Clearance certificate

As the legal representative, you may want to get a clearance certificate before you distribute any property under your control. A clearance certificate certifies that all amounts for which the deceased is liable to CRA have been paid, or that they have accepted security for the payment. If you do not get a certificate, you can be liable for any amount the deceased owes. A certificate covers all tax years to the date of death. It is not a clearance for any amounts a trust owes. If there is a trust, a separate clearance certificate is needed for the trust.

To request a certificate, complete Form TX19, Asking for a Clearance Certificate, and send it to the Assistant Director, Audit, at your tax services office. Do **not** include Form TX19 with a return. Send it only **after** you have received the notices of assessment for all the returns filed and paid or secured all amounts owing.

Do not send this form to CRA until:

- you have filed all the required return(s) and have received the notice(s) of assessment; and
- all income taxes (including provincial or territorial taxes we administer), Canada Pension Plan contributions, Employment Insurance premiums, and any related interest and penalties have been received or secured.

Provide CRA with the documents noted below to help CRA issue the certificate without delay. Attach to this form the documents that apply to your situation:

- a copy of the will, including any codicils, renunciations, or disclaimers, and all probate documents (if the taxpayer died intestate, also attach a copy of the document appointing an administrator, and details of the proposed distribution of assets. Include the name, address, and social insurance number or account number of each beneficiary and his or her relationship to the deceased);
- a copy of the trust document;

- a statement showing the properties and distribution plan including the date chosen for the distribution of properties, and a list of the recipients of each of the properties (for each property, provide a description, the adjusted cost base, and the fair market value at the date of death or distribution);

- any other documents that are necessary to prove that you are the legal representative; and

- a letter of authorization that you have signed if you want us to communicate with someone else.

If you need more information about clearance certificates, contact your Tax services office. You can also see CRA's bulletin, IC82-6, Clearance Certificate.

Tax-Free Savings Accounts

Tax-free savings accounts may be transferred to the spouse of the deceased.

Principal Residence

CRA notes that there would usually be no taxable capital gain on death on a principal residence because of the principal residence exemption. If the house is subsequently sold at a capital loss by the Estate because of the selling expenses incurred in the Estate, this capital loss could be carried back to the terminal T1 Return if it occurred in the first year of the Estate. This assumes that the residence owned by the Estate has not been used by any of the Estate's beneficiaries, or any person related to the beneficiaries, as it would then be considered "personal-use property" and the capital loss disallowed.

RRSP Proceeds

RRSP proceeds do not generally form part of a deceased's Estate if they go directly to a designated beneficiary.

We trust the above discussion has proven helpful. Please refer to Canada Revenue Agency's website, www.cra-arc.gc.ca, to view the details noted above or to gain further information regarding the settling of estates.