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ESTATE LAW
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General Tax Information for Estate Trustees

An estate trustee (commonly referred to as an 'executor') is responsible for filing income tax returns of the deceased including prior year returns and any necessary estate or trust returns. It is also his or her responsibility to ensure that tax returns are filed when due, and to pay from the estate any income taxes, penalties and interest that may be owing.

The last income tax return or T1 filed for a deceased is referred to as the 'final return'. Although a T1 form is the same as is used by individuals each year, there are many factors to consider in order to complete it properly. For example, there will be deemed disposition of capital property (such as mutual funds, shares, or a second home) owned by the deceased at the date of death and capital gains or losses will need to be calculated and reported. If the deceased held an RRSP or RRIF, the deemed disposition (assuming no rollover or transfer to a spouse) can mean there are significant income taxes owing.

If the individual died in the months of January through October and was not carrying on a business, the final return for the year of death is due the following year, no later than April 30th. If the deceased died in the months of November or December, the final return is due six months following the date of death. The final return reports the income of the deceased for the period from January 1 to the date of death.

We strongly recommend that an estate trustee not distribute assets until he or she has received at least a Notice of Assessment with respect to the final return. Until the estate trustee is confident that all prior year tax liabilities are known and dealt with, the estate trustee should delay distribution of assets until he or she has received a clearance certificate to cover the period up to the date of death. Without a clearance certificate from Canada Revenue Agency (CRA) any additional taxes, penalties or interest discovered to be owing at some future date, perhaps during an audit by CRA, the estate trustee can be held personally liable if there are insufficient estate assets remaining. If the executor has obtained a clearance certificate, CRA will seek re-imbursement from all of the beneficiaries pro rata rather than looking solely to the estate trustee.

If an individual dies in January, February, March, or April without having filed his or her prior year tax return, the previous year's tax return will be due six months following the date of death. For example, if an individual dies on March 20 and his or her prior year tax return has not yet been filed, the return is due September 20 rather than April 30 when it would normally be due if the person were alive.

If the beneficiary of an estate is a non-resident of Canada, the estate trustee must complete and file certain forms within the timeframes specified by CRA. Some forms require the non-resident beneficiary's signature before receiving his or her distribution. It is essential that, if an estate has non-resident beneficiaries, the estate trustee obtain advice from a knowledgeable tax professional well before distributing the estate.

If the deceased had a connection to the US, there may be US tax filing obligations. The estate trustee should consult a US tax specialist who can assist the estate trustee in complying with such requirements.

A tax professional can help the estate trustee decide whether to file a T3 trust return or to advise beneficiaries that they must report a pro rata share of estate income earned after date of death. There are a number of reasons why an estate trustee might file a T3 trust return such as if the estate has significant income or there were unavoidable delays in winding up the estate, or the Will includes an on-going trust.

Every estate trustee should consult a tax professional who is knowledgeable about taxation on death and has experience with completing and filing returns for estates and trusts. Effective January 1, 2016, significant tax law changes make it more critical then ever to have proper advice. For example, if an estate qualifies as a graduated rate estate (GRE) for tax purposes, there are potential tax savings if certain steps are taken within required timeframes.

If the deceased's Will included a trust for the benefit of a person with a disability and if the person qualifies for the disability tax credit (DTC) and certain other conditions are met, the trust may benefit from graduated tax rates. A trust for a person who qualifies for the DTC and which is established as a consequence of death, even if not included in a Will (such as an insurance trust or a regulation discretionary trust) may also potentially benefit from graduated tax rates.

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