



Tax Information for Estate Trustees

The estate trustee is responsible for the filing of all prior year income tax returns of the deceased. It is also his or her responsibility to ensure that any outstanding income tax returns are filed when they are due, along with payment of any income taxes, penalties and interest that may be owing.

The final income tax return, called a 'T1', is the same as that filed by living individuals. When it is being filed on behalf of a deceased person, it is referred to as a "terminal return". If the individual died in the months of January through October and was not carrying on a business, the terminal 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 terminal return is due six (6) months following the date of death. The terminal return reports the income of the deceased for the period from January 1 to the date of death. If the deceased owned capital property (such as mutual funds or stocks) or held an RRSP or RRIF, there will likely be a deemed disposition of such property as of the date of death. The taxes owing in such a case can be significant.

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 terminal return. Until the estate trustee is confident that all prior year tax liabilities are known and dealt with, it is our recommendation that the estate trustee further delay distribution of assets until he or she has applied for, and received, a clearance certificate to cover the period up to the date of death. Without a clearance certificate from Canada Revenue Agency ("CRA"), formerly Revenue Canada, should any additional taxes, penalties or interest be owing and not discovered until some future date, perhaps during an audit by CRA, the estate trustee can be held personally liable if the estate trustee has distributed assets to

beneficiaries and, as a result, there are insufficient estate assets remaining to cover the amount owing. If the estate trustee has obtained a clearance certificate, CRA will seek re-imbursement from all of the beneficiaries pro rata if there are insufficient undistributed estate assets.

If a beneficiary of an estate is not a resident of Canada, the estate trustee must obtain a s.116 clearance certificate from CRA before distributing assets to that beneficiary. Note that this is not the same clearance certificate referred to in the previous paragraph. We recommend that the estate trustee consult a tax professional to ensure that the proper forms are completed and submitted so that a s. 116 clearance certificate can be obtained in advance of making such a distribution.

Where an individual dies in the months of January to April and has not yet filed his or her income tax return for the previous year, the previous year's income tax return will be due six (6) months following the date of death. For example, if an individual dies on March 20, 2005 and his or her 2004 income tax return has not yet been filed, the return is due six (6) months after the date of death or September 20, 2005 rather than April 30, 2005 when it would normally be due.

An estate trustee may file a T3 trust return to report income received by an estate in the year(s) following the date of death and there are a number of reasons why an estate trustee would consider this. For example, if an estate has significant income and the beneficiaries have income of their own, the possible tax savings resulting from the filing of a T3 trust return may outweigh the additional professional fees required to prepare and file a T3 trust return. Similarly, if there are unavoidable delays in winding up the estate or if the Will provides for one or more

trusts, the filing of a T3 trust return will likely be required for every year that the estate is not wound up or a trust or trusts exist.

If an estate trustee is considering filing a T3 trust return, the estate trustee should consult with a chartered tax accountant who is familiar with the taxation of estates and trusts. In consultation with the tax accountant, the estate trustee determines what the 'trust year' will be. The starting date of the trust will be the date of death; however, the end date of the 'trust year' can be any date up to one (1) year after the date of death. The estate trustee will generally determine an end date which is convenient for administration purposes, calculating investment earnings, etc. In our experience, the end date most often chosen by an estate trustee is the date which is the month-end immediately prior to the one (1) year anniversary of the date of death or the end of the calendar year in which the individual died, i.e., December 31st. Please note that the filing deadline for trust returns is ninety (90) days after the trust year end.

We also advise an estate trustee to seek the advice of a chartered tax accountant to assist in determining whether additional returns should be filed. For example, a Rights and Things Return may allow for tax savings in certain circumstances.

If the estate is not being probated, i.e., you are not applying for a Certificate of Appointment of Estate Trustee with a Will, file the Terminal Return with a notarial copy of the Will and an original (or notarial copy) of the death certificate.

If any of the deceased or the deceased's parents were born in the U.S. or were ever resident in the U.S., or if the deceased owned U.S. situs assets at the date of death, we advise you to obtain the advice of a U.S. tax specialist to ensure that you are in compliance with U.S. tax laws. Failure to do so can have serious consequences for the estate trustee and the beneficiaries.

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