# ESPG

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## LOSING A LOVED ONE

Losing a loved one is difficult enough without having to worry about the related tax implications. It may also pose some challenges if your knowledge of tax matters is restricted to your own personal tax situation. Below are some important tax issues you'll need to know about when dealing with your loved one's estate.

### MAKE SURE YOU GET A CLEARANCE CERTIFICATE

If you are the executor of the deceased's estate, do not distribute any of the estate property before you get a Clearance Certificate from the Canada Revenue Agency certifying that all taxes owing by the deceased have been paid. If you do not get a certificate, the CRA can make you personally liable for any unpaid taxes up to the value of the distributed property.

To apply for a Clearance Certificate, file Form TX19 -*Asking for a Clearance Certificate*. The CRA will not issue the certificate until it has assessed all of the deceased's tax returns.

### ELECTIVE RETURNS

Some types of income that must be reported in the year of death may not normally have been taxed until a future year. As a result, you are allowed to report these amounts on a separate return. Because you are allowed to claim full personal amounts on both the final return and the elective return, this can produce substantial tax savings for the estate. "Rights or things" are the most common types of income that can go on an elective return. This is the technical term for amounts that were owing to the deceased at the time of death, but were not paid until after death.

Some examples include:

- The Old Age Security payment and Canada Pension Plan retirement or disability benefit for the month of death.
- Unpaid wages, commissions and vacation pay for pay periods ending prior to death.
- Bonuses, if the bonus was declared but unpaid at the time of death.
- Dividends declared but not paid at the time of death if the date of record was before death.
- Bond interest earned up to a payment date before death, but not paid and not reported in previous years.
- Uncashed matured bond coupons.
- The value of harvested farm crops if the deceased used the cash method of accounting
  If the deceased had a business with a non-calendar year-end, and he or she died after the yearend, you may report the income earned after the end of the fiscal year and before death on a separate return. If the deceased was a beneficiary of a testamentary trust, and he or she died after the fiscal year-end of the trust but before the end of the calendar year, you may also report the income earned after the end of the fiscal year and before death on a separate return.

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## Capital Property

If the deceased owned capital property (such as shares, mutual funds or real estate), he or she is deemed to have disposed of it immediately prior to death. Unless the property passes to a surviving spouse, there will be a capital gain or loss based on the difference between its Adjusted Cost Base and its Fair Market Value at that time.

If the property passes to a surviving spouse, then it is deemed to have been transferred at its Adjusted Cost Base, with the result that no capital gain or loss will arise (although you can elect to have it transferred at its Fair Market Value if that would be advantageous).

If the deceased owned capital property on February 22, 1994, check whether he or she included it in his or her capital gains election of that year. If so, its Adjusted Cost Base will be higher than what it actually cost, resulting in a lower capital gain or bigger capital loss on the final return.

## Net Capital Losses

Normally, you can only claim capital losses to the extent that they can be used to offset taxable capital gains. The balance becomes a net capital loss that can be carried back three years or forward indefinitely to offset capital gains realized in those years. However, in the year of death, both capital losses incurred in the year and net capital losses carried forward may be claimed against other income.

Check whether the deceased had net capital losses from prior years that can be used to reduce income on the final return.

## Registered Retirement Savings Plans (RRSPs)

If the deceased had an RRSP and there is no surviving spouse, common-law partner or dependent child or grandchild, the Fair Market Value of the plan at the time of death is included in income on the deceased's final return. However, if there is a surviving spouse or common-law partner, the RRSP funds can be transferred to his or her RRSP or RRIF, or they may be used to purchase an annuity.

If there is no surviving spouse or common-law partner, but there is a financially dependent child or grandchild under the age of 18, the funds can be transferred to the child or grandchild in order to purchase an annuity. The annuity must provide for payments over a period of not more than 18 years less the child's age. If a child is dependent by reason of a physical or mental infirmity, there is no age restriction and the amount may be transferred to his or her RRSP or RRIF as an option to purchasing an annuity.

## Filing a T3 Return for the Estate

Generally, you have to file a T3 return if you are retaining estate income in the estate as opposed to allocating it to a beneficiary. Since trusts are taxed at the same graduated rates as individuals, this is usually advantageous when the beneficiaries are in higher tax brackets.
You also have to file a T3 return if you are allocating more than $100 of estate income to a single beneficiary, or if the estate has total income of more than $500 that you are allocating to one or more beneficiaries. If one of the beneficiaries is a non-resident, you have to file a T3 return if any amount at all is allocated.
Regardless of the above requirements, you must file a T3 return if the estate disposed of, or is deemed to have disposed of, capital property.

## Deadlines

The deadline for filing the deceased's final return is the later of the usual deadline and six months after the date of death. So if the deceased died on December 1, 2013, and his or her deadline would otherwise have been April 30, 2014, you have until June 1, 2014.

The deadline for filing an elective return for rights or things is the later of one year after death and 90 days after the Notice of Assessment for the final return was mailed.

The deadline for filing the T3 return is 90 days after the end of the estate's taxation year.

Note:  that you can choose a taxation year-end that does not coincide with the calendar year-end. However, the taxation year cannot be more than 12 months.