

## 2009 Estate Planning – Quick Reference Guide

	Estate Size	Probate Tax
<b>Alberta</b>	\$10,000 or under \$10,001 - \$25,000 \$25,001 - \$125,000 \$125,001 - \$250,000 Over \$250,000	\$25 \$100 \$200 \$300 \$400 (Maximum)
<b>British Columbia</b>	\$10,000 or under \$10,001 - \$25,000 \$25,001 - \$50,000 Over \$50,000	No fee \$208 \$208 + \$6 per \$1,000 over \$25,000 \$358 + \$14 per \$1,000 over \$50,000
<b>Manitoba</b>	\$10,000 or under Over \$10,000	\$70 \$70 + \$7 per \$1,000 over \$10,000
<b>New Brunswick</b>	\$5,000 or under \$5,001 - \$10,000 \$10,001 - \$15,000 \$15,001 - \$20,000 Over \$20,000	\$25 \$50 \$75 \$100 \$5 per \$1,000
<b>Newfoundland &amp; Labrador</b>	\$1,000 or under Over \$1,000	\$60 \$60 + \$0.5 per \$100 over \$1,000
<b>Northwest Territories</b>	\$10,000 or under \$10,001 - \$25,000 \$25,001 - \$125,000 \$125,001 - \$250,000 Over \$250,000	\$25 \$100 \$200 \$300 \$400
<b>Nova Scotia</b>	\$10,000 or less \$10,001 - \$25,000 \$25,001 - \$50,000 \$50,001 - \$100,000 Over \$100,000	\$74.76 \$187.97 \$312.92 \$875.76 \$875.76 + \$14.79 per \$1,000 over \$100,000
<b>Nunavut</b>	\$10,000 or under \$10,001 - \$25,000 \$25,001 - \$125,000 \$125,001 - \$250,000 Over \$250,000	\$25 \$100 \$200 \$300 \$400
<b>Ontario</b>	\$50,000 or under Over \$50,000	\$5 per \$1,000 \$250 + \$15 per \$1,000 over \$50,000
<b>Prince Edward Island</b>	\$10,000 or under \$10,001 - \$25,000 \$25,001 - \$50,000 \$50,001 - \$100,000 Over \$100,000	\$50 \$100 \$200 \$400 \$400 + \$4 per \$1,000 over \$100,000
<b>Quebec</b>	Non-notarial wills Notarial wills	\$93 \$0
<b>Saskatchewan</b>	All estates	\$7 per \$1,000
<b>Yukon</b>	\$24,999 and under \$25,000 and over	\$0 \$140

### Provincial probate taxes

- Probate is the process of having a will validated by the courts.
- Probate taxes vary considerably from province to province, but in most cases these taxes are a percentage of the value of the estate being probated.

### Due date for filing tax returns for deceased individuals

Period when death occurred	Due date for the return
January 1 to October 31	April 30 of the following year
November 1 to December 31	Six months after the date of death

If the deceased or the deceased's spouse or common-law partner was self-employed, the following due dates normally apply:

Period when death occurred	Due date for the return
January 1 to December 15	June 15 of the following year
December 16 to December 31	Six months after the date of death

\* Any balance owing would be due the later of April 30th the year after death or six months after death.

### Income splitting using testamentary trusts

- Testamentary trusts are created through a deceased's will or by beneficiary designation and can greatly reduce taxes after death.
- Testamentary trusts provide considerable opportunity for income splitting with spouses and children.
- The trustee will invest the trust's assets and file income tax returns on behalf of the trust.

- A testamentary trust is taxed according to the graduated tax rates applicable to individuals. This can result in far less income tax paid than if the beneficiary received the inheritance directly.

**Example:** direct inheritance vs. testamentary trust

	Direct inheritance @MTR – 45%	Testamentary trust @graduated rates
<b>Amount of inheritance</b>	\$1,000,000	\$1,000,000
<b>Annual income @ 8%</b>	\$80,000	\$80,000
<b>Taxes payable</b>	\$36,000	\$21,000*
<b>Income retained</b>	\$44,000	\$59,000
<b>Net annual savings through a testamentary trust</b>		\$15,000

\* Approximation based on graduated tax rates in Ontario for 2009.

- Income earned by the trust can be taxed in the hands of the trust, the trust's beneficiary, or both. This provides the opportunity to split income between the trust and its beneficiary.
- If there are a number of beneficiaries, the will can instruct that individual testamentary trusts be set up to hold each beneficiary's portion of the inheritance.
- Clients should always be careful when choosing a trustee, as this person will have control over the trust assets.
- Every 21 years, a trust is deemed to have disposed of all assets, thus limiting the deferred recognition of unrealized capital gains.

## Provincial intestacy rules

- “Intestate” is the term used when an individual dies without a will.
- Each province has its own laws as to how assets are to be divided when someone dies without a will.

	Spouse and One Child	Spouse and Children
<b>Alberta</b> <sup>(1a)</sup>	First \$40,000 to spouse, balance split equally <sup>(1)</sup>	First \$40,000 to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children <sup>(1)</sup>
<b>British Columbia</b> <sup>(1b)</sup>	First \$65,000 to spouse <sup>(3)</sup> , balance split equally <sup>(1)</sup>	First \$65,000 to spouse <sup>(1)</sup> ; 1/3 of the balance to spouse <sup>(3)</sup> , 2/3 of the balance to children <sup>(1)</sup>
<b>Manitoba</b> <sup>(1g)</sup>	If all children are also children of surviving spouse, entire estate goes to spouse; if any of the children are not also children of surviving spouse, greater of \$50,000 and half of estate goes to spouse <sup>(5)</sup> . Remainder of estate is split 1/2 and 1/2 between spouse and children.	
<b>New Brunswick</b>	Marital property to spouse; balance split equally <sup>(1)</sup>	Marital property to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children <sup>(1)</sup>
<b>Nfld and Labrador</b>	Split equally <sup>(1)</sup>	1/3 to spouse; 2/3 to children <sup>(1)</sup>
<b>NWT/Nunavut</b> <sup>(1e)</sup>	First \$50,000 to spouse, balance split equally <sup>(1, 2)</sup>	First \$50,000 to spouse; 1/3 balance to spouse, 2/3 balance to children <sup>(1, 2)</sup>
<b>Nova Scotia</b> <sup>(1c)</sup>	First \$50,000 to spouse; balance split equally <sup>(1)</sup>	First \$50,000 to spouse <sup>(2)</sup> ; 1/3 of the balance to spouse; 2/3 of the balance to children <sup>(1)</sup>
<b>Ontario</b>	First \$200,000 to spouse; balance split equally <sup>(1, 4)</sup>	First \$200,000 to spouse; 1/3 of the balance to spouse; 2/3 of the balance to children <sup>(1, 4)</sup>
<b>Prince Edward Island</b>	Split equally <sup>(1)</sup>	1/3 to spouse; 2/3 to children <sup>(1)</sup>
<b>Quebec</b> <sup>(1d)</sup>	1/3 to spouse; 2/3 to child <sup>(1)</sup>	1/3 to spouse; 2/3 to children <sup>(1)</sup>
<b>Saskatchewan</b> <sup>(1b)</sup>	First \$100,000 to spouse; balance split equally <sup>(1)</sup>	First \$100,000 to spouse; 1/3 balance to spouse, 2/3 balance to children <sup>(1)</sup>
<b>Yukon</b> <sup>(1f)</sup>	First \$75,000 to spouse, balance split equally <sup>(1)</sup>	First \$75,000 to spouse; 1/3 balance to spouse, 2/3 balance to children <sup>(1)</sup>

Note: In some cases, provincial Family Law Acts can override these distribution formulas.

<sup>(1)</sup> Issue of a deceased child (ie. grandchildren, great-grandchildren) take that child's share.

<sup>(1a)</sup> In addition to “spouse”, the Alberta Intestate Succession Act refers to and accords equal rights to an “adult interdependent partner”.

<sup>(1b)</sup> “Spouse” in British Columbia and Saskatchewan includes common-law same-sex partners.

<sup>(1c)</sup> Domestic partners (common-law partners of any sex registered as such in Nova Scotia) will have the same rights and obligations as spouses under the Intestate Succession Act.

<sup>(1d)</sup> A civil union spouse has the same rights to inherit as a spouse. A civil union is a new legal institution in Quebec which entitles couples, whether of the same or opposite sex, to similar legal rights and obligations as married spouses.

<sup>(1e)</sup> Includes common-law partners (does not include same-sex common-law partners)

<sup>(1f)</sup> If an intestate dies leaving a common-law spouse, under the Estate Administration Act, the court may order that whatever portion of the intestate's property that it deems appropriate be retained and allotted to the common-law spouse for support and maintenance.

## Commonly Used CRA Guides

- IC 82-6R5** Clearance Certificate
- P113** Gifts and Income Tax
- RC4111** What to Do Following a Death
- RC4142** Tax Advantages of Donating to Charity
- RC4177** Death of an RRSP Annuitant
- RC4178** Death of a RRIF Annuitant
- T4011** Preparing Returns for Deceased Persons
- T4013** T3 Trust Guide
- T4037** Capital Gains
- T4040** RRSPs and Other Registered Plans for Retirement

## Mackenzie Estate-Related Brochures

- Donating Flow-Through Shares to Charity
- Income Splitting
- Mackenzie Charitable Giving Fund
- Making a Challenge Less Challenging (Disability Benefits)
- Segregated Funds
- Strategies for Trusts in Tax and Estate Planning

<sup>(1g)</sup> The Intestate Succession Act of Manitoba, provides common-law opposite-sex or same sex partners with equal rights to those of a married spouse upon intestacy.

<sup>(2)</sup> Spouse may elect to receive house and contents in lieu of \$50,000.

<sup>(3)</sup> Plus household furniture and life interest in family home.

<sup>(4)</sup> Subject to possible equalization claim under Family Law Act.

<sup>(5)</sup> Plus life interest in the home plus a possible equalization payment under the Marital Property Act.

Source: CCH Canadian Limited

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