

# 2018 ESTATE PLANNING

## Quick Reference Guide

### 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.

Province/Territory	Estate Value	Probate Fee/Tax
Alberta	\$10,000 or under	\$35
	\$10,001 – \$25,000	\$135
	\$25,001 – \$125,000	\$275
	\$125,001 – \$250,000	\$400
	\$250,001 and over	\$525 (Maximum)
British Columbia	\$25,000 or under	Nil
	\$25,001 – \$50,000	\$200 + \$6 per \$1,000 (0.6%)
	\$50,001 and over	\$350 + \$14 per \$1,000 (1.4%)
Manitoba	\$10,000 or under	\$70
	\$10,001 and over	\$70 + \$7 per \$1,000 (0.7%)
New Brunswick	\$5,000 or under	\$25
	\$5,001 – \$10,000	\$50
	\$10,001 – \$15,000	\$75
	\$15,001 – \$20,000	\$100
	\$20,001 and over	\$5 per \$1,000 (0.5%)
Newfoundland & Labrador	\$1,000 or under	\$60
	\$1,001 and over	\$60 + \$0.6 per \$100 (0.6%)
Northwest Territories	\$10,000 or under	\$25
	\$10,001 – \$25,000	\$100
	\$25,001 – \$125,000	\$200
	\$125,001 – \$250,000	\$300
	\$250,001 and over	\$400
Nova Scotia	\$10,000 or under	\$85.60
	\$10,001 – \$25,000	\$215.20
	\$25,001 – \$50,000	\$358.15
	\$50,001 – \$100,000	\$1,002.65
	\$100,001 and over	\$1,002.65 + \$16.95 per \$1,000 (1.695%)
Nunavut	\$10,000 or under	\$25
	\$10,001 – \$25,000	\$100
	\$25,001 – \$125,000	\$200
	\$125,001 – \$250,000	\$300
	\$250,001 and over	\$400
Ontario	\$1,000 or under	Nil
	\$1,000 – \$50,000	\$5 per \$1,000 (0.5%)
	\$50,001 and over	\$250 + \$15 per \$1,000 (1.5%)
Prince Edward Island	\$10,000 or under	\$50
	\$10,001 – \$25,000	\$100
	\$25,001 – \$50,000	\$200
	\$50,001 – \$100,000	\$400
	\$100,001 and over	\$400 + \$4 per \$1,000 (0.4%)
Quebec	No probate fees	nominal registration fees apply
Saskatchewan	All estates	\$7 per \$1,000 (0.7%)
Yukon	\$25,000 and under	Nil
	\$25,001 and over	\$140

Source: Ernst & Young Electronic Publishing Services Inc.

### 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 30 of the following year
December 15 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.

### RRSP and RRIF at death

The deceased is deemed to have received the fair market value of all property held in a Registered Retirement Savings Plan (RRSP) or Registered Retirement Income Fund (RRIF) at the date of death. No amount is included in the deceased's income if the designated beneficiary or heir is an "eligible beneficiary" and certain conditions are met. An eligible beneficiary who acquires rights in an RRSP or an RRIF has several options for deferring the income tax on those amounts.

The following table summarizes the rules:

Heir/Beneficiary	Amount taxable at death	Transferable to: <sup>1</sup>	
		RRSP/RRIF	Annuity
Spouse	Nil <sup>1</sup>	Yes	Yes
Child or grandchild financially dependent because of an infirmity	Nil <sup>1</sup>	Yes	Yes
Child or grandchild financially dependent not because of an infirmity	Nil <sup>1</sup>	No	Yes <sup>2</sup>
Other	FMV	No	No

<sup>1</sup> Certain terms and conditions may apply.

<sup>2</sup> The annuity may provide for payments for a period of not more than 18 years, less the age of the child or grandchild when the annuity is purchased. Annuity payments must start no later than one year after the purchase.

### Transfer from an RRSP or RRIF to an RDSP

It is possible to transfer funds held in an RRSP or an RRIF at the time of death to a Registered Disability Savings Plan (RDSP) of a child or grandchild who was financially dependent on the deceased because of a mental or physical disability. However, the amount transferred must not exceed the beneficiary's RDSP contribution room of \$200,000, and is not eligible for the Canadian Disability Savings Grant/Bond.

### Transfer from an RRSP or RRIF to a Lifetime Benefit Trust

It is possible to transfer funds held in an RRSP or an RRIF at the time of death to a Lifetime Benefit Trust (LBT). A LBT is a trust established for the benefit of a child or grandchild who was financially dependent on the deceased because of a mental or physical disability. The LBT is a personal trust under which a surviving but mentally infirm spouse of a deceased individual or a mentally infirm child or grandchild of a deceased individual is the sole beneficiary of any income or capital of the trust. The trustees may pay amounts out of the trust to the beneficiary but the trustees are not required to pay out all the income of the LBT to the beneficiary. A Qualifying Trust Annuity (QTA) can be purchased by the LBT with the RRSP/RRIF proceeds coming from the deceased spouse, parent, or grandparent. The QTA must be for the life of the taxpayer a fixed term equal to 90 years minus the age of the taxpayer who is the sole beneficiary of the LBT.

Source: EY, Managing Your Personal Taxes, 2015 – 2016.

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## 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
Alberta <sup>(1a)</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 the surviving spouse, the spouse gets 50% of the value of the estate, and the children receive the remainder of the estate.	
British Columbia <sup>(1b)</sup>	If all children are also children of the surviving spouse, first \$300,000 <sup>(6)</sup> + half of the remainder goes to spouse; if any of the children are not also children of the surviving spouse, the first \$150,000 go to the spouse <sup>(6)</sup> , 1/2 of the balance goes to the spouse, 1/2 of the balance of the balance to the children.	
Manitoba <sup>(1g), (1j)</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.	
New Brunswick	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>
Nfld and Labrador	Split equally <sup>(1)</sup>	1/3 to spouse; 2/3 to children <sup>(1)</sup>
NWT/Nunavut <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>
Nova Scotia <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>
Ontario	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>
Prince Edward Island	Split equally <sup>(1)</sup>	1/3 to spouse; 2/3 to children <sup>(1)</sup>
Quebec <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>
Saskatchewan <sup>(1b), (1i)</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>
Yukon <sup>(1f), (1h)</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 (i.e., grandchildren, great-grandchildren) takes that child's share.

<sup>(1a)</sup> In addition to “spouse”, the Alberta Will & 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.

<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.

<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>(1h)</sup> If cohabit for 1 year a CLP can inherit

<sup>(1i)</sup> If cohabit for a minimum of 2 years a CLP can inherit.

<sup>(1j)</sup> If cohabit for 3 years or 1 year with a child a CLP can inherit.

<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 (Homestead Act) and a possible equalization payment under the Family Property Act.

<sup>(6)</sup> Plus household furniture.

## Commonly Used CRA Guides

<b>P105</b>	Students and Income Tax	<b>T4011</b>	Preparing Returns for Deceased Persons
<b>P113</b>	Gifts and Income Tax	<b>T4036</b>	Rental Income
<b>RC4110</b>	Employee or Self-employed?	<b>T4037</b>	Capital Gains
<b>RC4112</b>	Lifelong Learning Plan (LLP)	<b>T4040</b>	RRSPs and Other Registered Plans for Retirement
<b>RC4169</b>	Tax Treatment of Mutual Funds for Individuals	<b>T4055</b>	Newcomers to Canada
<b>RC4177</b>	Death of an RRSP Annuitant	<b>T4058</b>	Non-Residents and Income Tax
<b>RC4178</b>	Death of a RRIF Annuitant		
<b>RC4188</b>	What You Should Know About Audits		
<b>T4002</b>	Business and Professional Income		

## Mackenzie Tax Brochures

- Income Splitting
- Mackenzie Charitable Giving Program Guide
- Strategies for Trusts in Tax and Estate Planning
- TFSA Investor Guide
- Guide to Registered Disability Savings Plans
- Tax & Estate Planning for Business Owners kit
- RRSP or TFSA
- RRSP Guide
- RESP Guide
- RDSP, Henson Trust or TFSA
- United States FATCA rules
- Individual pensions plans (IPP) and retirement compensation agreements (RCA)

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