Revenue Canada Taxation / Revenu Canada Impôt

Supplementary Guide

Guide for Preparing T1 Returns for Deceased Persons

1991

Your Guide

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What's new for 1991?

In the Introduction of this guide, you will find more information about legal representatives of deceased persons, and their income tax responsibility and obligations.

The major changes are outlined below and are highlighted in yellow throughout this guide.

Proposed changes

This guide includes changes to the *Income Tax Act* introduced by the Minister of Finance on May 30, 1991. These had not yet become law at the time of printing. However, we are preparing to apply the proposed changes.

This guide uses plain language to explain the most common tax situations. If you need more help, please contact your district taxation office.

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Introduction

Who should use this guide?

This guide is for you if you are a legal representative of an estate filing a return on behalf of a deceased person. However, it does not include all the information you need to complete the return. Please see the 1991 *General Tax Guide* for step-by-step details.

You will notice that this guide also refers to other publications, such as Interpretation Bulletins and Information Circulars, that contain more details on certain topics. If the information in this guide does not cover your situation, you may want to refer to these publications. This guide also refers to forms that you have to attach to the deceased person's return. You can use the order form at the back of this guide to order any forms and publications you need.

Since there is no specific income tax return for deceased persons, you have to use the General income tax return. You can use the Special return if it contains all the lines you need to report the income, deductions, and credits of the deceased person.

Who is the legal representative?

The legal representative of a deceased person can be either the executor or an administrator.

The **executor** is usually someone who has been appointed in the will to act as the legal representative in handling the estate of the deceased person, effective from the time of death.

If there is no will, or if the executor is not appointed in the will, the court can appoint an **administrator** to administer the estate of the deceased person. An administrator is usually the spouse or the next of kin.

Income tax responsibilities of the legal representative

As a legal representative of an estate, you are responsible for various duties, depending on the size and the nature of the estate. However, this guide only deals with the responsibilities that fall under the *Income Tax Act*, and the steps you should take to meet these obligations.

Your basic responsibilities are:

- filing all necessary tax returns;
- paying all taxes owing;
- obtaining a clearance certificate before you distribute any property under your control to avoid being personally liable for any unpaid taxes, interest, and penalties; and
- advising beneficiaries of the income they receive from the estate that is taxable.

As the legal representative, you should locate the will which is often in the possession of the deceased person's lawyer or in a safety deposit box. With the will, you determine the assets and liabilities of the deceased person and the beneficiaries of the estate.

It is also important that you make a list of the deceased person's assets, and find out the original cost (if possible), and the fair market value on the date of death for these assets. If the assets were purchased before 1972, you will also need to find out the Valuation Day (V-Day) value. See Chapter 3 on page 13 for more details.

Dealing with Revenue Canada, Taxation

In executing your duties as legal representative, you may need to obtain the deceased person's income tax information from Revenue Canada, Taxation. When you write to us, you should precede the name of the deceased person with "The Estate of the Late..." Use your address on the letter so we can send our reply to you directly. Always quote the deceased person's social insurance number on all correspondence.

Before we can give you any income tax information from the deceased person's records, you need to submit the following information to your local district office:

- a copy of the deceased person's death certificate; and
- a copy of the will or other document (e.g., Letters Probate or Letters of Administration from the Courts) identifying you as the legal representative of the deceased person.

A Letters Probate is an official document issued by the court that proves the will is valid.

A Letters of Administration is an official document issued by the court when there is no will or when the will does not appoint an executor, which proves your right to administer the estate of the deceased person.

Whether or not there is a will, you also have to provide your identification. To find out what information you will be asked to identify yourself, see the paragraphs under the heading "Before you contact us" in the section called "At your service" in the *General Tax Guide*.

Filing returns

You have to file any required income tax returns, including any prior-year returns, that were not filed before the person died. You usually have to do this to obtain a clearance certificate. If there is no record of prior-year returns being filed, or if the records of the deceased person make it difficult to determine if the returns were filed, you can contact the local district office to find out which tax returns still have to be filed.

You should also determine the types and sources of income the deceased person earned, as well as any possible entitlements because of the death. Contact the payers for the amounts received or earned during the year of death, and the amounts that are still due to the deceased. Payers include employers, banks and trust companies, stock brokers, and pension plan administrators. A safety deposit

box may contain information about some of the above sources of income.

Depending on the income sources of the deceased person, and if certain elective provisions of the *Income Tax Act* are exercised, you can file up to four separate income tax returns for the year of death. As the legal representative, it may be beneficial for you to make elections that apply to specific types of income and properties received by filing separate income tax returns for the year of death. By doing so, you can make certain claims on each of these returns, as well as on the ordinary return. See "Elective returns" on this page and Chapter 2 for more details about these elections.

If the income tax return for the year you are filing is not yet available, you can use a previous year's General income tax return. Just change the year at the top right-hand corner of page 1.

Under proposed legislation, we may be able to issue a refund to an individual for a taxation year after 1984, even if the tax return or requested adjustment to a tax return was filed after the normal three-year limit. The legislation also proposes that we may be able to waive penalties and interest relating to the 1985 and later taxation years if they resulted from extraordinary circumstances. Examples of extraordinary circumstances are illness, death, disaster, civil disturbance, disruption in service, or departmental error.

Ordinary return

You have to file a return on behalf of the deceased person for the year of death. With this return, you should report all the income the individual received from January 1 of the year of death up to, and including, the date of death. The filing deadline for this return depends on the date of death.

- For those who died during the period January 1 and October 31 of 1991, the filing deadline for their 1991 return is April 30, 1992.
- For those who died during the period November 1 and December 31 of 1991, you have to file their 1991 return within six months of the date of death.
- For those who died during the period January 1 and April 30 of 1992, you have to file their 1991 return within six months of the date of death.

As the legal representative for the deceased person, you do **not** have to remit income tax instalments that would otherwise be due after the person's death. However, if there is an amount owing on the return for the year of death, you should pay it when the return is due. If you do not pay the balance owing in full, any amount outstanding will be subject to interest. Interest on arrears will begin to accrue immediately after the filing deadline.

Previous year's return

You should file all previous-year tax returns that have not been filed as at the date of death.

1989 and previous-year returns

These returns have to be filed by April 30 following the year that applies. However, if the person died before November 1, 1990, the legal representative has six months from the date of death to file these returns.

1990 returns

The filing deadline for the 1990 returns depends on the date of death:

- For people who died during the period January 1 and April 30, 1991, you have to file their 1990 return within six months of the date of death.
- For people who died during the period May 1 and December 31, 1991, you have to file their 1990 return by April 30, 1991.

If the previous-year returns were not filed by the due dates, any amount outstanding will be subject to interest. Interest on arrears will begin to accrue immediately after the filing deadline.

Spouse trust

If a spouse trust exists from which testamentary debts have to be paid, we may extend the deadline for filing the 1991 return for the deceased person to 18 months after the date of death. However, the payment date for any taxes owing on this return is either April 30, 1992, or six months after the date of death, whichever is later. Any amount outstanding after this date will be subject to interest. For more information on spouse trusts, see Chapter 5 on page 19.

Note

If any ordinary return is filed late, the amount outstanding could also be subject to a penalty of 5% of the tax owed at the time the return should have been filed, plus 1% for each complete month the return is late, up to a maximum period of 12 months.

Elective returns

Note

If you choose to file any one of the elective returns, you should identify it by entering the provision of the *Income Tax Act* at the top of page 1 of the return.

Separate return for rights or things (subsection 70(2) of the *Income Tax Act*)

As the legal representative for the deceased, you can elect to file a separate return for the value of "rights or things" at the time of death. You have to file this return within one year of the date of death, or 90 days after we mail any Notice of Assessment or Reassessment of tax for the year of death, whichever is later. For more details on rights or things, see Chapter 2 on page 11.

If there is an amount owing on this return, you should pay it when the return is due. If you do not pay the amount in full, we will charge interest on the unpaid amount. Interest will begin to accrue immediately after the required filing deadline. However, you can elect to defer payment of part of the tax attributed to income from the value of rights and things. For more information, see the section called "Payment of taxes" in Chapter 5 on page 21.

Separate return for income from partnerships or proprietorships (subsection 150(4) of the *Income Tax Act*)

Special rules apply if the deceased person was a member of a partnership or carried on a business as a sole proprietor, that has a fiscal period that is different from the calendar year. If the person dies after the end of the fiscal period of the partnership or business but before the end of the calender year in which the fiscal period ended, you have to

report the business income from the end of the last fiscal period to the date of death (stub period) on the ordinary return in the year of death, unless you file a special election. This election allows you to report the income for this "stub period" on a separate return.

Example

Mrs. Bujak died in an accident on November 6, 1991. Her proprietorship, Renata's Bakery, has a February 28 fiscal year-end. If you do not want to include business income from March 1, 1990 to November 6, 1991 (20 months) on the ordinary return for 1991, you can file a separate return under subsection 150(4) of the *Income Tax Act.*

In this way, you can include business income for the normal fiscal period (March 1, 1990 to February 28, 1991) on the ordinary return. The final proprietorship income from March 1, 1991 to November 6, 1991 will be on the elective return (subsection 150(4)).

You have to file this elective return at the same time as the ordinary return, and you have to include full payment of any tax owing. If you file this return late and there is an amount outstanding, we will charge interest on this amount. Interest will begin to accrue immediately after the filing deadline.

Separate return for trust income (paragraph 104(23)(d) of the *Income Tax Act*)

You can file a separate return if the deceased person was an income beneficiary of a testamentary trust with a fiscal period that is different from the calendar year. This return should include the income from the trust from the end of the trust's last fiscal period to the date of death. You have to file this return at the same time as the ordinary return.

Example

Mr. Lem is the beneficiary under his late wife's estate. The testamentary trust, created because of his wife's death, receives investment income. The fiscal year of the trust is November 1, 1990 to October 31, 1991. If Mr. Lem dies on December 11, 1991, you could file a separate return on his behalf for the period November 1, 1991 to December 11, 1991. The filing due date of such an elective return is six months after the date of Mr. Lem's death (June 11, 1992).

If you file this return late and there is an amount outstanding, we will charge interest on this amount. Interest will begin to accrue immediately after the filing deadline.

T3 trust return

When an estate is created after a person's death, income that you can attribute to the period after death is reported by the estate on a *T3 Trust Income Tax Return and Information Return.* For more information about this return, see the *T3 Guide and Trust Return*, which is available from any district office.

Chapter 1
Ordinary return for the year of death

"Step 1 — Identification"

If you use a personalized return, make sure that all the information on the label is correct. Be sure to do the following:

- write "The Estate of the Late" before the name of the deceased;
- give your address as the return address;
- check that the province or territory of residence on December 31 is the one where the deceased resided on the date of death; and
- enter the date of death on the appropriate line.

"Step 2 — Calculation of total income"

To complete the income area of the return, you need to determine the deceased person's income from all sources. A copy of the immediately preceding year's income tax return may help.

In some instances, like in the case of an early-filed 1992 return, you may need to contact the people who made the payments to obtain the following information slips:

- T4 *Statement of Remuneration Paid*
- T4A *Statement of Pension, Retirement, Annuity and Other Income*
- T4A(P) *Statement of Canada Pension Plan Benefits*
- T4A(OAS) *Statement of Old Age Security*
- T4U *Statement of Unemployment Insurance Benefits Paid*
- T5 *Statement of Investment Income*
- T600 *Ownership Certificate*
- TFA1 *Statement of Family Allowances*

You have to report all types of income described on the return if the deceased person received them, even if no information slip was issued. If you cannot obtain an information slip, attach a letter or some other statement to the return from the payer to confirm the income. If you cannot get this written confirmation or an information slip, estimate the income and attach a note to the return stating the amount received, and the name and address of the person who made the payment.

On the ordinary return for the year of death, include any amount that is not received by the person before death but is considered to have accrued to the date of death.

Income that is paid on a periodic basis, such as interest, rents, royalties, annuities, or salaries and wages, is considered to accrue in equal daily amounts during the period the amount was payable. This rule applies to amounts that were not yet due at the time of death. It does not apply to income from annuity contracts that we consider as having been disposed of on death. For more information on income receivable on or before the date of death, see Chapter 2 on page 11. If you need more information, see Interpretation

Bulletin IT-210, *Income of Deceased Persons — Periodic Payments*.

You can report certain income received after the date of death on a separate return for "rights or things," if you exercise that filing option. See Chapter 2 on page 11 for more information on rights or things.

Employment and employment-related income paid after death

If a person dies while employed, there are a number of entitlements that the employer may pay to the employee's estate. In most cases, a T4 or T4A information slip will be made out to the estate. These payments fall into three groups for taxation purposes:

- amounts to be reported in the ordinary return of the deceased person;
- amounts to be reported in the T3 return of the estate; and
- amounts that are not taxable.

1. Amounts to be reported in the ordinary return

These payments form part of the employee's employment income for the taxation year in which the employee died even if they are received in a year after the year of death. The following table describes the payments that are to be reported in the ordinary return of the deceased person. These payments are shown in box 14 of T4 slips. The table also indicates whether the payments qualify for an election as a right or thing.

Type of payment	Right or thing
(a) Salary or wages (including overtime) from the end of the last pay period to the date of death. For example, last pay period is May 16-31; date of death is June 4; accrued period: June 1-4; paid on June 19.	No
(b) Salary or wages (including overtime) for a pay period completed before the date of death but paid after death. For example, pay period: June 1-15; date of death: June 16; paid: June 19.	Yes
(c) Payment for accrued vacation leave	Yes
(d) Retroactive adjustments to amounts in (a), (b), or (c) as a result of an agreement or promotion where the authorizing instrument was signed before the date of death.	Yes

If, before the time for making an election to file a separate rights or things return has expired, a right or thing has been transferred directly to a beneficiary or to the estate, the income is to be reported on the beneficiary's return or on the T3 trust return, where applicable.

2. Amounts to be reported in the T3 return of the estate

The following payments are to be reported in the T3 return of the estate for the year in which a payment is received. If a payment is received in a year after the year of death, it is to be reported in the T3 return for that subsequent year.

Type of payment	Information slip
(a) Salary or wages (including adjustments) paid for the period after the date of death (usually to the end of the month); or payment for the full month of death for which the employee was not receiving pay but was on authorized leave.	T4A, Box 28
(b) Severance pay received on account of death (since this is a death benefit, an amount up to $10,000 may be non-taxable).	T4A, Box 28
(c) Future adjustments to severance pay regardless of when the collective agreement was signed.	T4A, Box 28
(d) Refund of pension contributions payable because of death.	T4A, Box 18
(e) Guaranteed minimum pension payment (not a death benefit).	T4A, Box 18
(f) Deferred profit sharing plan payment.	T4A, Box 18

3. Amounts that are not taxable

The following amounts are not taxable:

- retroactive adjustments to amounts in 1(a), (b), or (c) where the collective agreement or other authorizing instrument was signed **after** the date of death; and
- group term insurance such as the federal government's supplementary death benefit.

The line numbers listed below refer to lines on the General and Special income tax returns. We have only explained the most commonly used lines. For more information on these lines and other lines not discussed in this guide, see the *General Tax Guide*.

Lines 101 to 104 — Income from employment

Include all amounts of salary or wages received from January 1 to the date of death. This includes amounts accrued from the beginning of the pay period in which the employee died to the date of death.

Lines 113 to 115 — Pension income

Include all amounts of pension or superannuation income received for the period from January 1 to the date of death. Do not include the "Net federal supplements paid" as shown in box 21 on the T4A(OAS) slip. If the total "net income before adjustments" (line 234) from all returns filed for the year of death is more than $51,765, you may have to repay part of the Old Age Security benefits that the deceased person received. For more information, see line 235 of the *General Tax Guide*.

Lump-sum amounts paid out of a pension fund or plan because of death are normally included in the income of the recipient. This includes a death benefit paid under the Canada or Québec Pension Plan. The recipient beneficiary may be the spouse, the children, or the estate. For information on how to report various lump-sum payments, including death benefits, see line 114 and line 130 in the *General Tax Guide*. If you need more information, see Interpretation Bulletins IT-301, *Death Benefits — Qualifying Payments*, and IT-508, *Death Benefits — Calculation*.

Line 118 — Family Allowance payments

If the deceased person was married from January 1, 1991, until the date of death, or separated because of a marriage breakdown for less than 90 days starting in 1991:

- the spouse with the higher net income (before including Family Allowance and deducting child care expenses and social benefits repayments) reports the Family Allowance payments received for all months in the year before the month of death, no matter who received them; and
- the surviving spouse reports the Family Allowance benefits that were received for the rest of the year.

If the deceased person married in 1991 or separated because of a marriage breakdown for 90 days or more starting in 1991:

- the person who received the Family Allowance payments for all months that the couple was separated or not married reports the payments;
- the spouse with the higher net income (before including Family Allowance and deducting child care expenses and social benefits repayments) for the year reports the Family Allowance payments for all the other months, before the month of death; and
- the surviving spouse reports the Family Allowance benefits that were received for the rest of the year, including the month of death.

Note

If one of the spouses is claiming an equivalent-to-married amount for a child, that person has to report the Family Allowance payments for the entire year for that child. This is the case regardless of who actually receives the payments.

You may have to repay part of the Family Allowance payments if the total "net income before adjustments" (from line 234) on the deceased person's return(s) for the year of death is more than $51,765. This amount includes the "net income before adjustments" from all returns you file for the year of death. For more information, see line 235 in the *General Tax Guide*.

Line 119 — Unemployment Insurance benefits

The deceased person may have received Unemployment Insurance benefits before his or her death in 1991. You have to repay part of these benefits if the total "net income before adjustments" (from line 234) on the deceased person's return(s) for the year of death is more than $53,040. This amount includes the "net income before adjustments" from all returns you file for the year of death. For more information, see line 235 in the *General Tax Guide*.

Lines 120 and 121 — Investment income

Report investment income received from January 1 to the date of death that was not reported in a previous year. You should also include amounts accrued in that period but that have not yet been paid.

Report interest from bonds that accrued from the last interest date before death to the date of death. Interest accrued on compound interest bonds to the date of death that was not already included in income in a previous year, is income of the deceased person. You can report certain amounts of investment income as rights or things on a separate return. See Chapter 2 on page 11 for more information.

If you need more information on investment income, see the *General Tax Guide*.

Line 127 — Taxable capital gains

If the deceased person owned capital property on the date of death, see Chapter 3, "Deemed disposition of capital property at death."

Line 129 — Registered retirement savings plan (RRSP)

Include annuity payments received by the deceased person from his or her RRSP(s). If, because of death, the remaining annuity payments become payable to the surviving spouse, then report the payments as the spouse's income.

If the person died before his or her RRSP matured, include the fair market value of the property held by the RRSP as income in the year of death.

If the deceased person's spouse was the beneficiary under the plan, the spouse is entitled to receive the amount built up in the plan. The amount received is a "refund of premiums," and is included in the spouse's income. If there is no spouse, but certain children or grandchildren were financially dependent on the deceased person and are beneficiaries under the plan, the amount they receive as a "refund of premiums" is considered to be their income. The amount you include is the difference between the fair market value of all the property in the RRSP at the time of death, and the amounts designated as a "refund of premiums" to the spouse, dependent children, or dependent grandchildren.

For payments made out of an RRSP, a spouse has to be a person of the opposite sex who, until the time of death:

- was married to the deceased person;
- was living with the deceased person in a conjugal relationship for at least one year; or
- was living with the deceased person in a conjugal relationship and is a natural or adoptive parent of the child of the deceased person.

Sometimes, the deceased person names the estate as the beneficiary of the RRSP. If this is the case, the funds in the RRSP are paid to the estate. The legal representative and a beneficiary of the estate can then jointly elect to treat part or all of the amount as having been received by the beneficiary as a "refund of premiums." However, this can only be done if the elected amount would have qualified as a "refund of premiums" had it been paid out of the RRSP directly to the beneficiary. You can make this designation by filing Form T2019, *Registered Retirement Savings Plan (RRSP) Refund of Premiums Designation - Spouse*. You can also use this form to designate a "refund of premiums" to a child or grandchild. Form T2019 is available at any district office.

Note

You can no longer report a refund of premiums received by the estate of the deceased person on the T3 return for the estate.

Under certain circumstances, a "refund of premiums" to a named beneficiary can be transferred to an annuity or to an RRSP. You have to make this transfer during the year the funds are received, or within 60 days of the end of that year. For more information about amounts paid out of an RRSP because of death, see the *Pension and RRSP Tax Guide*, and Interpretation Bulletin IT-500, *Registered Retirement Savings Plans (maturing after June 29, 1978) — Death of Annuitant after June 29, 1978.*

Lines 130 to 143 — Other types of income

These lines on page 1 of the return cover other types of income you have to report. You will find information on the various types of income in the *General Tax Guide.*

Reserves in year of death

When you are calculating income from a business and gains from disposing of capital property, there are provisions that allow you to deduct the portion of the proceeds that are not receivable until after the end of the year as a reserve. A similar provision permits an insurance agent or broker to deduct a reserve for unearned commissions.

Generally, you cannot claim any deductions for reserves in the year of death. However, if the right to receive the uncollected proceeds is transferred to the spouse or to a testamentary spouse trust, the legal representative and the beneficiary of the transfer can jointly elect to claim a reserve for this property. To make this election, you have to fill out Form T2069, *Election in Respect of Amounts Not Deductible as Reserves for the Year of Death*, and send it to us.

For the election to be valid, the deceased person and the spouse to whom the property right is transferred have to have been resident in Canada immediately before the person's death. In the case of a spouse trust, the trust has to have been resident in Canada immediately after the property vested indefeasibly in the trust. Include an amount equal to the reserves claimed in the election as income from business, capital property, or commissions, when you calculate the income of the spouse or spouse trust for the first taxation year ending after the death. The term "vested indefeasibly" is explained in Interpretation Bulletin IT-449, *Meaning of "vested indefeasibly"*.

When a capital gains reserve arises from disposing of property occurring after 1984 and is reported by the spouse, the spouse trust, or by the deceased person, this amount may qualify for the capital gains deduction for 1988 and later taxation years. If you need more information about the capital gains deduction, see the *Capital Gains Tax Guide.*

"Step 3 — Calculation of taxable income"

Line 208 — Registered retirement savings plan (RRSP) contributions

When a person dies, no further contributions can be made to his or her RRSP because there is no longer an annuitant. However, within the limits, contributions can be made to a spousal RRSP on behalf of the deceased person within 60 days of the date of death. If you need more information on the purchase of a spousal RRSP, see Interpretation Bulletin IT-307, *Registered Retirement Savings Plan for Taxpayer's Spouse*. The *Pension and RRSP Guide* has more information on RRSPs.

Line 237 — Accumulated forward-averaging amount withdrawal

There are three options available for a deceased person with an accumulated forward-averaged amount. As the legal representative, you can choose among the following options:

- Ignore the accumulated forward-averaged amount. If you do so, there will be no further tax consequences.
- Elect to bring back all or part of the forward-averaged amounts into the income of the deceased person for the year of death. In this case, the income may be taxed at a reduced rate under special provisions. Complete Form T581, *Forward Averaging Tax Credits*, and attach it to the return. If you make such an election using only part of the accumulated forward-averaged amount, there will be no further tax consequences on the balance unless you elect to have the three-year carryback provision apply.
- Elect to apply the three-year carryback provision. Use Form T541, *Forward Averaging Tax Calculation — Deceased Taxpayers*, to calculate the tax on the forward-averaging amount.

You can get both Forms T581 and T541 at any district office.

Note

You have to send us these forms on or before the date you have to file the ordinary return for the year of death.

Line 253 — Net capital losses of other years

Special rules apply to capital losses in the year of death. See Chapter 4 for more details.

"Step 4 — Calculation of total non-refundable tax credits"

Personal amounts

You can claim the full personal amounts on the deceased person's income tax return. In other words, you do not prorate the personal amounts unless the deceased person lived outside Canada at any time from January 1 until the date of death. If the deceased person immigrated to or emigrated from Canada before the date of death, see the *Tax Guide for Emigrants*, or the *Tax Guide for New Canadians.*

Line 300 — Basic personal amount

The deceased person is entitled to the full basic personal amount of $6,280 for 1991.

Line 301 — Age amount

If the deceased person was 65 or older on the day of death, the person is entitled to the full age amount of $3,387 for 1991.

Line 303 — Married amount

The deceased person is entitled to the full married amount for a spouse whose income for the entire year was not more than $524. You can claim a partial amount if the spouse's income for the entire year was more than $524 but less than $5,757.

Note

You have to use the income of the surviving spouse for the entire year, rather than to the date of death, to calculate the married amount. When you claim amounts for dependent children and additional personal amounts, you also have to use the income for the entire year in the calculations.

The surviving spouse can claim the married amount for the deceased person within the same limits, as long as the surviving spouse had sufficient income before the death of the deceased person, and was in a position to support the deceased. To calculate the married amount, the surviving spouse has to use the net income of the deceased from all returns you file for the year of death.

Lines 304 and 305 — Amounts for dependent children and additional personal amounts

How to calculate amounts for dependent children is explained in the *General Tax Guide*. You can calculate additional personal amounts on Schedule 6, *Additional Personal Amounts.*

The person who has reported the Family Allowance payments for a child claims the personal amount for that child. However, if someone claims the "equivalent-to-married amount" for the child, no one else can claim a personal amount for the same child.

If more than one person reports the Family Allowance benefits received for a particular child, they can both claim an amount for the dependent child. Split the amount for the child in the same proportion as the Family Allowance is reported. The combined claim made for the deceased person and the other person for each dependant cannot be more than the maximum amount allowed for each child.

Line 314 — Pension income amount

If the deceased person received eligible pension income before the date of death, you may be able to claim the pension income amount of up to $1,000.

Line 314 in the *General Tax Guide* lists eligible and ineligible pension income. Also included are charts to help you calculate the pension income amount.

Lines 316 and 318 — Disability amount

You can claim the disability amount if the deceased person:

- had a severe and prolonged mental or physical impairment in 1991 (a severe impairment is one that markedly restricts all or almost all of the time the basic activities of daily living); and
- the impairment has lasted or was expected to last for a continuous period of at least 12 months.

Under proposed legislation, the disability amount has increased to $4,118.

You cannot claim the disability amount if the deceased person or some other person claimed, on behalf of the deceased, medical expenses for a full-time attendant or full-time care in a nursing home because of a mental or physical impairment. You can claim either the medical expenses or the disability amount, whichever is more favourable. You cannot claim both.

Subject to certain conditions, the deceased person may be entitled to the disability amount plus up to $5,000 of attendant-care expenses. The attendant has to have cared for the taxpayer in Canada before the date of death to enable the deceased person to earn income for the year. These expenses are different from medical expenses for a full-time attendant. If you need more information on Attendant-care expenses, see line 215 in the *General Tax Guide.*

For more information on the disability credit, see the brochure called *How You Claim the Disability Credit*, and Interpretation Bulletin IT-519, *Medical Expense and Disability Tax Credits.*

Line 326 — Amounts transferred from spouse

You can transfer to the deceased person's return the unused part of certain available credit amounts that you do not need to reduce the surviving spouse's federal income tax to zero. Note that you have to consider the surviving spouse's income for the entire year.

Similarly, you can transfer to the return of the surviving spouse any unused part of these amounts that you do not need to reduce the federal income tax of the deceased person to zero (on all returns filed for the deceased person).

You can transfer the following credits:

- age amount
- pension income amount
- disability amount
- tuition fees and education amount

See Schedule 2, *Amounts Transferred from Spouse*, which is included in the General tax return package.

Line 330 — Medical expenses

The deceased person is entitled to medical expenses that are more than $1,570 or 3% of his or her net income (line 236), whichever is less. The expenses may be for any 24-month period, including the date of death, as long as they were not previously claimed. To make such a claim, complete Schedule 4, *Medical Expenses*, in the General tax return package. Attach the schedule and all receipts to the return.

For more details on eligible medical expenses, see Interpretation Bulletin IT-519, *Medical Expense and Disability Tax Credits.*

Line 340 — Charitable donations

You can claim an amount for all charitable donations made in the current year and in the five immediately preceding years, as long as the donations were not claimed before. If the claim includes amounts carried forward from previous years, attach a note to the return indicating the year in which these donations were made, and the amount carried forward.

You can claim in the immediately preceding year any charitable donations the deceased person made in the year of death, as long as you do not claim them again in the year of death. You can claim bequests specified in the deceased person's will that are made to registered charities in the year of death, if the amounts you claim are supported by proper receipts. For more details, see the section called "Charitable donations or gifts by will" on page 20 in Chapter 5.

The most you can claim on the deceased person's return is 20% of the net income (line 236) for the year in question. You have to send official receipts with the return. See line 340 in the *General Tax Guide* for details.

Line 342 — Gifts to Canada or to a province

You can claim an amount for gifts made to Canada, a province, or to an institution in Canada for property certified by the Canadian Cultural Property Export Review Board.

See the section called "Charitable donations or gifts by will" on page 20 in Chapter 5 for more details.

"Step 5 — Summary of tax and credits"

You will find the tables you need to calculate the taxes payable by the deceased person in the *General Tax Guide.* If the deceased person's income is too high to use the tables, you have to complete Schedule 1, *Detailed Tax Calculation.*

All items described under the heading "Step 5 — Summary of tax and credits" in the *General Tax Guide* apply to the year of death.

Note

Minimum tax does not apply to a person in the year of death. If the deceased person paid minimum tax in 1986, 1987, 1988, 1989, or 1990, you may be able to deduct part of that tax from the 1991 taxes payable. To calculate this claim, complete Part VIII of Form T691, *Calculation of Minimum Tax*, and attach the completed form to the deceased person's return.

Provincial or territorial tax credits

A number of provinces have tax credit systems that work through the personal income tax system. In some cases, the deceased person may be entitled to one of these tax credits calculated on the provincial or territorial tax credit form included with the General tax return package.

Goods and services tax credit (GSTC)

If a person died in 1991, that person is not eligible for a GST credit based on the 1991 taxation year. Therefore, you should not file a GSTC application form with the deceased person's 1991 return.

If a **single** person has applied for the credit and dies **before** the month in which we are sending out payments, we cannot issue any more payments in that person's name or to that person's estate.

If a **single** person has applied for the credit and dies **during** the month we are sending out payments, the cheque we send out has to be returned to the taxation centre where the person filed his or her return. We will then send the payment to the person's estate.

If a person dies after claiming the GST credit for him or herself **and** for a spouse or other supporting person, the spouse or other supporting person may file to claim the rest of the payments. To claim the payments, that person has to send us a GST credit application form completed using the same information that the deceased person had sent to us. The person making the claim will also have to send us a completed tax return if he or she has not already filed one.

Example

Ron claimed his wife, Suzanne, on his 1990 GST credit application. He was entitled to receive quarterly payments of $95 in July 1991, October 1991, January 1992, and April 1992. However, Ron died in September 1991. To claim the rest of the payments, Suzanne will have to fill out a 1990 GST credit application in her name showing the same information that Ron included on his form. She will then send it to the taxation centre along with a copy of Ron's death certificate. Since she has already filed a 1990 tax return, she will not need to include one with her application. Once we have processed Suzanne's application, we will send her the remaining three payments of $95.

Note

If we send out GST credit payments after a person dies because we are unaware of the death, these payments will have to be returned to the taxation centre where the deceased person filed his or her return.

Chapter 2
Elective returns

Rights or things

At the time of death, the deceased person may have had "rights or things." Rights or things are unpaid amounts that would have been included in income when they were realized or disposed of, had the taxpayer not died. You have to include the value of these amounts at the time of death in the deceased person's income for the year of death.

Items that are rights or things

If any of the following **employment** amounts are owed to the deceased person on the date of death and relate to a pay period that was completed before the date of death, they are considered rights or things:

- salary or wages;
- commissions; and
- vacation pay.

The following amounts are also rights or things:

- uncashed matured bond coupons at the time of death;
- any other bond interest accrued before the most recent interest payment date and not reported in previous taxation years;
- harvested farm crops;
- livestock on hand (minus the basic herd);
- supplies on hand, inventory, and accounts receivable of a taxpayer who reported using the cash method; and
- dividends declared before the date of death and still unpaid at the date of death.

The following items are **not** rights or things:

- bond interest accrued between the most recent interest payment date before the person died and the date of death;

- eligible capital property (see page 17 for more details);
- resource properties;
- land in the business inventory of the deceased person; and
- income from an income-averaging annuity contract.

If you need more details, see Interpretation Bulletins IT-210, *Income of Deceased Persons — Periodic Payments*, IT-212, *Income of Deceased Persons — Rights or Things*, IT-234, *Income of Deceased Persons — Farm Crops*, IT-427, *Livestock of Farmers*, and Information Circular 86-6, *Basic Herds*.

As the deceased person's legal representative, you can elect to file a separate return and include only the value of rights or things as income. You will find details on the filing deadline for this return at the beginning of this guide under "Filing returns."

If you make this election, income amounts you reported on this return should not be reported on the ordinary return. Prepare the separate return as if it is the return of another person. See the section called "Allowable deductions and non-refundable tax credit amounts for elective returns" in this chapter for a list of allowable deductions and non-refundable tax credits.

Note

You can revoke this election by filing a written *Notice of Revocation*, signed by you as the deceased person's legal representative, within one year of the date of death or within 90 days of the mailing of any *Notice of Assessment* for the year of death, whichever is later.

You can transfer to the beneficiary rights or things that you would otherwise include in the deceased person's income, as long as you transfer them within the time limit for filing a separate right or thing return. Do not include in the deceased person's income the value of the rights or things that you transferred to the beneficiary. The amount you include in the income of the beneficiary when the right or thing was realized or disposed of is the proceeds eventually received for the right or thing, **minus** both of the following amounts:

- its cost to the deceased (as long as it was not deducted when calculating the deceased's income in any previous taxation year); and
- any expenses the beneficiary incurred to acquire the property.

Allowable deductions and non-refundable tax credits for elective returns

As we indicated at the beginning of this guide under "Filing returns," you can file up to four separate income tax returns for the deceased in the year of death. We have listed below the credits and deductions you can claim on these returns.

You can claim the following non-refundable tax credits on the ordinary return and on **each** of the elective returns:

- basic personal amount
- age amount
- married amount
- amounts for dependent children
- additional personal amounts

You can split certain non-refundable tax credits and claim them on **any** of the returns, regardless of the type of income you report on the return. However, the total you claim for each credit cannot be more than the credit you could claim if you were only filing the ordinary return with all the income reported on it. These credits are the following:

- disability amount for the deceased person
- disability amount for a dependant other than a spouse
- tuition fees and education amount for the deceased person
- tuition fees and education amount transferred from a child
- medical expenses
- charitable donations
- gifts to Canada or a province

Medical expenses are reduced by $1,570 or 3% of the total net income you report on **all** returns, whichever amount is less. You can claim them on any one of the returns for the year of death.

Charitable donations you claim on any return cannot be more than 20% of the net income you report on **that** return.

You can only claim the following deductions and non-refundable tax credits on those returns on which you report the related income:

- Canada or Québec Pension Plan contributions
- Unemployment Insurance premiums
- pension income amount
- employee home relocation loan deduction
- stock option and shares deduction
- social benefits repayment
- vow of perpetual poverty deduction

You can only claim the following deductions and credits on the deceased person's ordinary return, since they do not apply to any of the elective returns. These include the following:

- amounts transferred from spouse
- capital gains deduction
- child care expenses
- losses from other years
- northern residents deductions
- withdrawals from the accumulated-averaging amount
- child tax credit
- refund of investment tax credit

Chapter 3
Deemed disposition of capital property at death

To help you understand certain terms we use in this chapter, we have provided the following definitions.

Capital property — This is any depreciable property; and any other property of value, which if disposed of results in a capital gain or loss. Some common types of capital property include a cottage, home, stocks and bonds, land, and buildings.

Deemed acquisition — This term is used when the taxpayer is considered to have acquired a property, even though a transaction did not actually take place.

Deemed disposition — This term is used when the taxpayer is considered to have disposed of property, even though a transaction did not actually take place.

Deemed proceeds of disposition — This term is used when the taxpayer is considered to have received an amount for property, even though no funds were actually received.

Depreciable property — This is usually capital property that may deteriorate or become obsolete as time goes by. You can deduct part of the cost of the property each year until you have eventually claimed the entire cost of the property as a deduction. Each yearly deduction is known as a capital cost allowance (CCA).

Fair market value (FMV) — This is the highest price, in terms of dollars, that you can get for your property in an open and unrestricted market. You and the person who buys the property have to be acting at arm's length, and neither one of you should feel forced to buy or sell.

General information

The deceased person is considered to have disposed of all capital property immediately before death. This means that, even though there was no actual sale of capital property, the property is considered to have been disposed of just before death. Such dispositions may result in:

- a taxable capital gain; or
- an allowable capital loss; and
- in the case of depreciable properties used to earn income, a recapture of capital cost allowance (CCA), or a terminal loss.

To determine the capital gain or loss on the disposition of the property, as well as any recapture of CCA or terminal loss, you have to use four relevant amounts. These four amounts are as follows:

- **The capital cost of the property**

  For depreciable property, the capital cost usually means the actual cost, **plus** the cost of additions and improvements, **minus** any grant or financial assistance received or receivable from a government, municipality, or other public agency for the purchase of that property. For other capital property, you need the adjusted cost base. The adjusted cost base usually means the actual cost, **plus** additional costs, **minus** deductions provided in subsections 53(1) and (2) of the *Income Tax Act*.

- **The undepreciated capital cost (UCC)**

  This amount is generally the capital cost of depreciable property in a prescribed class, **minus** the sum of any disposals (i.e., proceeds of disposition or capital cost, whichever is less) in that class, and any CCA previously claimed.

- **The Valuation Day (V-Day) value**

  This is the fair market value (FMV) of the property on V-Day. The V-Day value is important only for property acquired before January 1, 1972. For publicly traded shares, the V-Day is December 22, 1971. For all other assets, it is December 31, 1971. If the deceased person did not previously make the V-Day election, as the legal representative, you can do so when you file the ordinary return.

- **The proceeds of disposition**

  This is the amount that we consider to have been received by the deceased person at the time of death. For depreciable property, the proceeds of disposition amount is half-way between the FMV and the UCC of that property. For other capital property, the proceeds of disposition amount is equal to the FMV of the property at the time of death.

For the 1991 taxation year, the taxable part of a capital gain and the allowable part of a capital loss is **three-quarters (3/4)**. If the allowable capital losses incurred are more than the taxable capital gains, see Chapter 4 on page 17. If you need information on the capital gains deduction, see the *Capital Gains Tax Guide*.

You **cannot** claim CCA on depreciable property for the financial period ending on the date of death.

Note
For certain passenger vehicles, you do not need to include a recapture of capital cost allowance in income, and you cannot deduct a terminal loss from income. See Chapter 5 in the *Business and Professional Income Tax Guide* for more information.

Under proposed legislation, we may be able to allow you, as the legal representative, to make a late or amended election, or to revoke an original election for taxation years back to 1985. The *Income Tax Regulations* will list those elections that qualify for this treatment. However, the estate may be liable to a penalty for late, amended, or revoked elections.

Depreciable property of a prescribed class

Depreciable property of a prescribed class is depreciable property that fits within the description of a class, for CCA purposes, in Part XI of the *Income Tax Regulations*.

Deceased's deemed disposition

All depreciable property of a prescribed class that the deceased person owned at the time of death is considered to have been disposed of immediately before death. The deceased person is considered to have received proceeds of

an amount that is half-way between the property's fair market value and its undepreciated capital cost at the time of death.

Example

Undepreciated capital cost (UCC) at death . . . $ 30,000
Fair market value (FMV) at death . . . .$ 42,000
Deemed proceeds of disposition:

$$= \frac{\text{FMV} + \text{UCC}}{2}$$

$$= \frac{\$42{,}000 + \$30{,}000}{2}$$

$$= \$36{,}000$$

Form T2086, *Capital Dispositions Supplementary Schedule re: Depreciable Property upon the Death of a Taxpayer,* may help you. You will find a copy of the form in this guide.

If the deemed proceeds of disposition are more than the capital cost, a capital gain will result. Three-quarters (3/4) of the capital gain is the taxable capital gain. You have to report the taxable capital gain on the ordinary return of the deceased person. If the deemed proceeds of disposition are less than the capital cost and the UCC, then you can claim a terminal loss. The disposition may also produce a recapture of CCA claimed in previous years. You also include any recapture as income on the ordinary return. If you need more information on recapture of CCA and terminal loss, see IT-478, *Capital Cost Allowance — Recapture and Terminal Loss.*

Beneficiary's deemed cost

The cost of depreciable property to a beneficiary (other than a spouse or spouse trust) is generally considered to be equal to:

$$\frac{\text{FMV of the particular depreciable property immediately before death}}{\text{FMV of all depreciable property of that prescribed class at time of death}} \times \begin{array}{c}\text{Amount of the proceeds deemed to have been received by the deceased for all depreciable property of that prescribed class}\end{array}$$

If this calculation results in a cost that is less than the capital cost to the deceased person, the capital cost to the beneficiary will be an amount equal to the capital cost to the deceased. We consider the excess as having been allowed as CCA to the beneficiary. This method of determining the capital cost is used only for the purposes of calculating CCA recapture and terminal loss, and not for the purposes of the capital gains provisions.

The effect of the above is that terminal losses and the recapture of CCA are reduced for the deceased person below what they would have been if the property was disposed of at its FMV during the life of the deceased. These reductions are passed on to the beneficiary if they can be realized when the property is actually disposed of.

Transfer to spouse or spouse trust

If depreciable property of a prescribed class is transferred to the spouse or a spouse trust, the deceased is considered to have disposed of the property, and the spouse or spouse trust to have acquired it at a cost equal to:

$$\frac{\text{FMV of the particular property immediately before death}}{\text{FMV of all property of that prescribed class immediately before death}} \times \begin{array}{c}\text{UCC of the deceased of all property of that class immediately before death}\end{array}$$

The property is generally transferred or "rolled over" to the spouse or spouse trust without giving rise to any recapture of CCA, terminal loss, or capital gain for the deceased person. The spouse or spouse trust calculates future CCA claims based on the UCC of the property to the deceased, as indicated in the previous calculation.

If the property's cost, as previously calculated, to the spouse or spouse trust is less than the capital cost to the deceased, the cost to the spouse or spouse trust is considered to be equal to the capital cost to the deceased person. We cônsider the excess as having been allowed as CCA to the spouse or spouse trust. This method of determining the capital cost is used only for the purposes of calculating CCA recapture and terminal loss, and not for the purposes of the capital gains provisions.

The effect of the above is that any accrued capital gains, recapture of CCA, and terminal losses are generally carried forward until the time the property is actually disposed of by the spouse or spouse trust or until the death of the spouse, whichever comes first.

As the legal representative, you can elect not to apply the rollover provisions. Instead, you can use the disposition rules explained under the "Deceased's deemed disposition" and "Beneficiary's deemed cost" sections as previously described. For more details, see Interpretation Bulletin IT-305, *Establishment of Testamentary Spouse Trust.*

Depreciable farm property of a deceased person that is transferred to his or her child can also be rolled over at a value equal to its UCC. See the section called "Farm property" on page 16.

Transitional rules

Certain transitional rules provide for an adjustment to the deemed proceeds of disposition to prevent taxing any capital gain that accrued on property before December 31, 1971 (V-Day). For these rules to apply:

- the deceased person has to have owned the depreciable property on V-Day;
- the capital cost of the property to the deceased person was less than the FMV on V-Day; and
- the capital cost to the deceased person was less than the proceeds of disposition, as determined under the section "Deceased's deemed disposition" in this chapter.

The transitional rules specify that we will consider the taxpayer's proceeds of disposition of the property to be an amount equal to the total of:

- the capital cost of the property to the deceased; **plus**
- the amount, if any, by which the deceased's proceeds of disposition (as determined under the section "Deceased's deemed disposition" at the beginning of this chapter), is more than the FMV of the property on V-Day.

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Rev. 91

Capital Dispositions Supplementary Schedule

Re: Depreciable Property Upon the Death of a Taxpayer

(This form, when completed, should be retained in your permanent records.)

- Where in a taxation year a taxpayer dies the following rule in subsection 70(5) of the Income Tax Act applies:
  The deceased taxpayer is deemed to have disposed, immediately before his/her death, of all his/her depreciable property of a prescribed class for proceeds of disposition equal to the average (arithmetic mean) of the undepreciated capital cost of the class and the fair market value of the property in the class at that time.
- For depreciable property, such as a building or an asset acquired for the purpose of producing income, a capital gain can *only* arise where the proceeds of disposition exceed the greater of the capital cost and the fair market value on 31st December, 1971

A. Particulars of Deemed Dispositions

Description of Property	(1) Date of Acquisition	(2) Deemed Proceeds	(3) Adjusted Cost Base	(4) Gain only (Col. (2) less (3))

Note: Relate the above dates to Column (1) of the "Summary of Dispositions of Capital Property". Transfer all remaining entries to the relevant columns under "Other Securities and Properties" – "Real Estate".

B. Calculation of Deemed Proceeds

(a) Depreciable Property acquired prior to 1972
In calculating the proceeds relating to the deemed disposition of depreciable property acquired prior to 1972, two separate steps may be required depending on the circumstances.

Step No. 1 – Apply rules contained in subsection 70(5) of the Income Tax Act.

Description of Class of Property	(1) Undepreciated Capital Cost of Class (at date of death)	(2) Fair Market Value of Class (at date of death)	(3) Deemed Proceeds $\left(\frac{\text{Col. (1) plus (2)}}{2}\right)$
			*
			*
			*
			*
			*

* Transfer to A, Col. (2) if Step No. 2 is not applicable.

Step No. 2 – Apply rules contained in ITAR 20(1)

Where the capital cost of depreciable property of a prescribed class acquired before 1972 is less than the fair market value of the property on Valuation Day and less than the deemed proceeds calculated in Step No. 1 above, Step No. 2 is applicable. In such instances, the proceeds of disposition of the property are deemed to be an amount equal to the capital cost plus the amount, if any, by which the deemed proceeds calculated in Step No. 1 exceed the fair market value of the property on Valuation Day.

Description of Class of Property	(1) Capital Cost of Class as at 31st Dec. 1971	(2) Additions and Improvements Since 31st Dec. 1971	(3) Total Capital Cost (Col. (1) plus (2))	(4) Deemed Proceeds (Step No. 1)	(5) Valuation Day Value	(6) Excess Only (Col. (4) less (5))	(7) Deemed Proceeds (Col. (3) plus (6))
							*
							*
							*
							*
							*

* Transfer to A, Col. (2).

Continued on reverse

(b) Depreciable Property acquired after 1971

In calculating the proceeds relating to the deemed disposition of depreciable property acquired after 1971, only one step is required. This step involves the application of rules contained in subsection 70(5) of the Income Tax Act.

Description of Class of Property	(1) Undepreciated Capital Cost of Class (at date of death)	(2) Fair Market Value of Class (at date of death)	(3) Deemed Proceeds $\left(\frac{\text{Col. (1) plus (2)}}{2}\right)$
			*
			*
			*
			*
			*

* Transfer to A, Col. (2).

C. Adjusted Cost Base

The adjusted cost base of any depreciable property is the capital cost of the property as of that time.

Example

Mr. Williams died in June 1991. On the day he died, he owned depreciable property that he had purchased in 1966 for $74,000. The FMV of the property on V-Day is $80,000, and the FMV of the property on the date of death is $100,000. The UCC of the property is $66,000.

Deemed proceeds of disposition as determined under "Deceased's deemed disposition" in this chapter:

$$\frac{(\$100{,}000 + \$66{,}000)}{2} = \$83{,}000$$

The adjusted deemed proceeds of disposition calculated using the transitional rules equals $77,000 ($74,000 + ($83,000 - $80,000)).

Deemed proceeds of disposition	$ 77,000
Minus: capital cost	74,000
Capital gain	$ 3,000
Taxable capital gain ($3,000 x 3/4)	$ 2,250

To calculate the recapture of capital cost allowance, take the lesser of:

- the adjusted deemed proceeds of disposition of $77,000; and
- the capital cost of $74,000

the capital cost of $74,000	$ 74,000
Minus: Undepreciated capital cost	$ 66,000
Recapture of capital cost allowance	$ 8,000

Therefore, you have to report a taxable capital gain of $2,250 on Mr. Williams' Schedule 3, *Summary of Dispositions of Capital Property in 1991.* Also, report a recapture of $8,000 on his return. You can complete these calculations on Form T2086, *Capital Dispositions Supplementary Schedule re: Depreciable Property upon the Death of a Taxpayer.*

The deceased person may have had more than one capital property. For information on the deemed disposition of more than one property, see the Special Release dated September 13, 1982 of Interpretation Bulletin IT-217, *Capital Property Owned on December 31, 1971 — Depreciable Property.*

The depreciable property owned on December 31, 1971 may have been transferred to a spouse or spouse trust. In this situation, the transitional rules do **not** apply when you determine the proceeds of disposition for the deceased and the acquisition cost to the spouse or spouse trust.

You should follow the instructions for "Transfer to spouse or spouse trust" in such cases. For transfers of depreciable farm property to the deceased person's child, follow the calculation under "Farm property" on page 16. When the spouse, spouse trust, or child eventually dispose of the property, the transitional rules could apply as if the spouse, spouse trust, or child had acquired the property before 1972 and owned it from December 31, 1971 until the date of disposition.

Other capital property

Other capital property (e.g., shares of a corporation) is considered to be disposed of at its fair market value (FMV) on the date of death. The cost of the property to the beneficiary is considered to be equal to the deemed proceeds of disposition.

If farm property is passed to a child because of death, calculate the proceeds as explained under "Farm property" on page 16.

Note

If qualified small business corporation shares were disposed of after June 17, 1987 and resulted in a net taxable capital gain in the year of death or in a preceding year, you can claim the upper limit of the capital gains deduction. See the *Capital Gains Tax Guide* for information on how to calculate this deduction.

Transfer to spouse or spouse trust

When capital property is transferred to the spouse or a spouse trust, the deemed proceeds of disposition are equal to the adjusted cost base of the deceased person immediately before death. Accordingly, the spouse or spouse trust is considered to have received the property at this adjusted cost base.

Note

As the legal representative, you can elect not to apply this rule. If this is the case, follow the usual rules for FMV dispositions. See Interpretation Bulletin IT-305, *Establishment of Testamentary Spouse Trust.*

Under proposed legislation, when transferred property is an interest in a partnership other than an interest to which subsection 100(3) of the Act applies, we will treat the deceased person as not having disposed of the interest before his or her death. We will effectively treat the spouse or the spouse trust as having acquired the interest for an amount equal to the adjusted cost base of the deceased. This rule will apply to transfers, distributions, and acquisitions that occur after January 15, 1987.

Transitional rules

The deceased person may have owned capital property (other than depreciable property or a partnership interest) on December 31, 1971. You can use the "median rule" to calculate the cost of the property unless you elect to establish the cost for all such property at the FMV on V-Day value. To use the median rule, you need to know the actual cost of the property, the FMV of the property on V-Day, and the proceeds of disposition. The cost of the property is considered to be the median of these three amounts.

However, if the deceased person had disposed of any such property before the date of death, and you selected either one of the valuation methods, the legal representative has to follow the same method for all deemed dispositions of such property in the year of death. See Interpretation Bulletins IT-84, *Capital Property Owned on December 31, 1971 — Median Rule (Tax-Free Zone)* and IT-139, *Capital Property Owned on December 31, 1971 — Fair Market Value* for more details on the median rule and the FMV methods.

You have to report any capital gains and claim any capital losses arising from the deemed disposition of this type of other capital property on the ordinary return. See the *Capital Gains Tax Guide* for details on the capital gains deduction.

For details on claiming capital losses, see Chapter 4 on page 17.

Farm property

Transfer to a child

A family farm (depreciable property and land) can be transferred to a child when a taxpayer dies. If farm property is transferred to a child, you do not handle the deemed disposition the same as other deemed dispositions if:

- the property is located in Canada and was used in the business of farming by the taxpayer, the spouse, or any of the taxpayer's children immediately before the taxpayer's death;
- the child was resident in Canada immediately before the taxpayer's death; and
- you can show that the property became vested indefeasibly in that child within 36 months of the death. If you need more time to prove that vesting occurred, you can ask for an extension by writing to the Minister. You have to make this request within 36 months of the date of death. For more details, see Interpretation Bulletin IT-449, *Meaning of "Vested Indefeasibly."*

The definition of **child** includes:

- a grandchild;
- a great-grandchild;
- a child of the taxpayer's spouse;
- a spouse of the taxpayer's child;
- an adopted child of the taxpayer;
- a person of whom the taxpayer is the natural parent whether the person was born within or outside a marriage; and
- a person who, at any time while he or she was under 19 years old, was in the deceased person's custody and control, in law or in fact, and was wholly dependent on the deceased for support.

For purposes of the transfer rules, the taxpayer's relationship with the child has to have existed at the time of the transfer.

You have to calculate the proceeds of the farm property's deemed disposition as follows:

(a) for depreciable property of a prescribed class:

$$\frac{\text{FMV of the particular property immediately before death}}{\text{FMV of all property of that prescribed class immediately before death}} \times \text{UCC to the taxpayer of all property of that prescribed class immediately before death}$$

(b) for land:

the adjusted cost base of the property to the taxpayer immediately before death.

As a result of this calculation, no capital gain, capital loss, terminal loss, or recapture of CCA generally arises for the deceased person. We consider the cost of the property to the child to be an amount equal to the deemed proceeds of disposition for the deceased person.

If the child is considered to have acquired a depreciable property of a prescribed class at a cost that is less than the capital cost of the property for the deceased, the cost for the child is considered to be equal to the capital cost for the deceased person. The excess is considered to have been allowed as CCA to the child.

You can replace these rollover provisions with alternative rules. Under the alternative rules, you can transfer the properties at any amount elected. However, the amount is subject to certain restrictions. For depreciable property, the elected amount has to be between the UCC and the FMV. If there is more than one property in a class, you allocate the UCC to each property concerned according to the formula used in (a) above. In the case of land, the elected amount has to be between the adjusted cost base and the FMV immediately before the taxpayer's death. If you want to transfer the farm property using the alternative rules, file the election with the deceased person's ordinary return.

This election and rules on land also apply when a share of the capital stock of a family farm corporation or an interest in a family farm partnership has been transferred to the deceased person's child.

Under proposed legislation, when transferred property is an interest in a family farm partnership, we consider the deceased person as not having disposed of the property because of death. Generally, we treat the child as having acquired the interest (property) for an amount equal to the adjusted cost base to the deceased taxpayer. This rule will apply to partnership interests, other than those to which subsection 100(3) of the Act applies, and will apply to transfers, distributions, and acquisitions that have occurred after January 15, 1987.

Transfer to spouse trust

Farm property located in Canada could be transferred to a spouse trust created by a will, or under an inter vivos transfer, first for the benefit of the spouse and, when the spouse dies, for the benefit of the child or children of the deceased person. If this is the case, the property is considered to have been disposed of by the spouse trust and acquired by the child at its UCC or adjusted cost base to the trust. It may be that the child, who has received farm property either directly on the death of the taxpayer or on the death of the taxpayer's spouse through an intervening testamentary or inter vivos spouse trust, dies before the parent. In this situation, you can distribute such property to the parent in the manner we indicated in the above paragraphs.

The definition of **parent** includes:

- a person who is a parent of the taxpayer, whether the taxpayer was born within or outside the marriage;
- the taxpayer's mother-in-law and father-in-law;
- a person who has custody and control of the taxpayer, or had custody and control before the taxpayer reached 19 years old and on whom the taxpayer is wholly dependent for support; and
- a person who, in law or in fact, had adopted the taxpayer.

If you need more information on this subject, contact your district office. You can also see Interpretation Bulletin IT-349, *Intergenerational Transfers of Farm Property on Death.*

Eligible capital property

This type of property consists of goodwill and other "nothings" acquired after 1971 to produce income from a business. When an eligible capital property of the deceased person is **acquired by a person other than a spouse or by a controlled corporation** that carries on the business of the deceased, we consider the eligible capital property as having been disposed of immediately before death.

The property will be disposed of for an amount equal to four-thirds (4/3) of the cumulative eligible capital. As a result of the deemed disposition, no amount is included in the income of the deceased. Since there is a zero balance in the cumulative eligible capital account of the deceased, the deduction that we normally allow when a taxpayer no longer carries on a business does not apply.

Under proposed legislation, the disposition of the property will be computed as follows:

$$\frac{4}{3} \times \text{the cumulative eligible capital of the deceased person} \times \frac{\text{the FMV of the eligible capital property immediately before death}}{\text{the FMV of all of the eligible capital property in respect of the business immediately before death}}$$

If the **spouse or the controlled corporation carries on the deceased person's business**, the value of eligible capital property for the beneficiary is the same amount as the cumulative eligible capital of the deceased on the date of death. Because of the business transfer, you do not include any amount in the income of the deceased for the eligible capital property that the deceased person had at the time of death.

Under proposed legislation, such transfer is possible when the deceased's spouse or a corporation controlled by the deceased person carries on the business and acquires all of the property that was eligible capital property and had value.

If the eligible capital property is **not transferred to any person** when the individual dies, the deceased person is considered to have stopped carrying on the business at the time of death. In this situation, a deduction of the cumulative eligible capital account that is normally allowed when an individual no longer carries on a business will apply on the date of death.

If you need more information, see Chapter 6 in the *Business and Professional Income Tax Guide*, and Interpretation Bulletin IT-344, *Eligible Capital Property — Deceased Persons.*

Resource property or land inventory

If an individual holds Canadian- or foreign-resource property or holds land in the inventory of a business at the time of death, special rules apply to the deemed disposition of this property. See Interpretation Bulletin IT-329, *Income of Deceased Persons — Resource Properties*, for more details.

Chapter 4
Net capital losses

Net capital losses in the year of death

A capital loss can be incurred in the year of death because of a disposition (including a deemed disposition) of capital property (other than depreciable property) the person owned before death. This does not include most personal-use property such as a principal residence.

The allowable portion of capital losses in 1991 is three-quarters (3/4) of the capital loss. The taxable portion of capital gains is also three-quarters (3/4) of the capital gain. If the deceased's allowable capital losses in the year of death are more than the taxable capital gains in the same year, the difference between the two is the net capital loss. You can apply any net capital loss against the taxable capital gains of the three immediately preceding years (1990, 1989, and 1988). You have to reduce any remaining net capital losses by the lifetime capital gains deduction the deceased person has claimed to date. You can then apply the full balance of net capital losses to reduce other income in either the year of death or the immediately preceding year, or you can deduct part of it in each year.

You can decide not to apply the net capital loss or a part of it against the taxable capital gains of the three immediately preceding years. If this is the case, reduce the net capital loss not carried back by the lifetime capital gains deduction the deceased person has claimed to date. Then, you can apply the balance of the net capital loss to reduce other income in either the year of death or the immediately preceding year, or you can deduct part of it in each year.

The deductible portion of capital losses has increased since 1988. The taxable portion of capital gains has also increased by the same ratio. In 1988, the deductible portion of losses was increased from one-half (1/2) to two-thirds (2/3). It remained at two-thirds (2/3) for 1989. In 1990 and 1991, it was increased to three-quarters (3/4).

The amount of a 1991 net capital loss that you can carry back to 1990 is limited to the amount of taxable capital gains in 1990. Since the rates for 1988, 1989, and 1991 are different, when you carry back a 1991 net capital loss to 1989 or 1988 you have to adjust the 1991 capital loss by multiplying the amount by eight-ninths (8/9) to obtain the **adjusted net capital loss.**

If any balance of the **adjusted net capital loss** for the year of death remains after you apply the maximum amount deductible in 1989 or 1988, you have to readjust this amount to reflect the 1991 net capital loss ratio as follows:

- unapplied **adjusted net capital loss** for 1988 and 1989 X 9/8 = readjusted amount of net capital loss for 1991

If you have not already done so, you can then apply this readjusted amount of net capital loss to offset taxable capital gains in 1990. You can then apply the balance of the 1991 net capital loss against other income in the year of death, in

the preceding year, or both. The maximum deduction you can deduct from other income is determined as follows:

- balance of the 1991 net capital loss – lifetime capital gains deduction claimed to date by the deceased = the deductible amount against other income in the year of death, the preceding year, or both

Example

Mrs. Cormier died in 1991. She incurred a net capital loss of $1,800 during 1991. She reported a net taxable capital gain of $200 in 1990 and $300 in 1989. Therefore, her legal representative is asking that part of the net capital loss be carried back to 1990 and 1989, and applied against the taxable capital gains incurred in those years. Her lifetime capital gains deduction claimed to date is nil.

The maximum amount of Mrs. Cormier's 1991 net capital loss that you can apply against her net taxable capital gains in 1989 is the lesser of:

- $1,800 X 8/9 = $1,600 (**adjusted net capital loss**); and
- $300.

The maximum deductible amount is $300, which is the taxable capital gain for 1989.

$1,600	**adjusted net capital loss**
- 300	maximum you can apply to 1989
$1,300	unapplied **adjusted net capital loss**

To deduct Mrs. Cormier's unapplied 1991 net capital loss against taxable capital gains in 1990, you have to convert the $1,300 of unapplied adjusted net capital loss to the 1991 ratio as follows:

$1,300 x 9/8 = $1,463 (readjusted amount)

As the legal representative, you can carry back a maximum of $200 to 1990 to offset against the taxable capital gains in that year. You can then apply the balance of $1,263 ($1,463 - $200) to reduce other income in 1991 or 1990.

To request an adjustment to a return for the previous year, complete Form T1A, *Request for Loss Carry-Back*, which is available from any district office.

Note

The capital gains deduction you can claim for the year of death or the immediately previous year is reduced by any net capital losses that were deducted in those years.

Net capital losses before the year of death

The deceased person may have net capital losses that were incurred before the year of death but were not claimed in a previous year. To deduct capital losses of previous years against 1991 taxable capital gains, first convert them to the 1991 amount. You can do this by using the following adjustment factors:

- If you carry 1987 or previous-year net capital losses forward and apply them against net taxable capital gains in 1991, you first have to increase the loss by multiplying it by 3/2.
- If you carry net capital losses of 1988 or 1989 forward and apply them against net taxable capital gains in 1991, you first have to increase the loss by multiplying it by nine-eighths (9/8).

When you apply the 3/2 or 9/8 factor to the unapplied net capital loss, you get the adjusted net capital loss. For example, if the deceased person had 1988 or 1989 unapplied net capital losses, and you want to carry them forward to 1991, you would use the 9/8 factor in the following calculation:

unapplied net capital loss of previous years (1988 and 1989) X 9/8 = the **adjusted net capital loss** at the 1991 ratio.

You would then apply the **adjusted net capital loss** against net taxable capital gains in the year of death. Report either this amount or the net taxable gain in the year of death, whichever is less, on the deceased person's return.

Since the rates for 1990 and 1991 are the same, when you carry 1990 net capital losses to 1991, you do not need to make an adjustment.

After you apply the adjusted net capital loss against net taxable gains, there may still be some unapplied losses. If there is, readjust any remaining losses by multiplying the balance by the adjustment factor for the year in which the losses were incurred (2/3 if the net capital loss was incurred in 1987 or previous years, and 8/9 if the net capital loss was incurred in 1988 or 1989). Reduce this readjusted balance by the total capital gains deductions claimed to date, including the year of death, and apply any remaining amount to reduce taxable income in either the year of death, the immediately previous year, or part in each year. You determine the readjusted amount and the maximum deduction from other income as follows:

- unapplied **adjusted net capital loss** (1988 and 1989) X 8/9 = balance of the net capital loss of previous years
- balance of the net capital loss of previous years – lifetime capital gains deduction claimed to date, including the year of death = the amount deductible against other income in either the year of death, the preceding year, or both.

Example

Mr. Khan died in 1991. He had a 1988 unapplied net capital loss of $10,000. In 1991, he had a net taxable capital gain of $3,000. Mr. Khan claimed a total capital gains deduction of $4,000 in previous years.

The maximum amount of the previous-year net capital loss that you can apply against Mr. Khan's 1991 net taxable capital gains is one of the following, whichever is less:

- $10,000 X 9/8 = $11,250; and
- $3,000.

The maximum amount is $3,000, which is the net taxable capital gain in 1991.

$11,250	**adjusted net capital loss**
- 3,000	maximum to be applied in 1991
$ 8,250	unapplied **adjusted net capital loss**

The amount of the unapplied net capital loss that you can apply against Mr. Khan's other income in either 1991, 1990, or part on both returns, is calculated as follows:

- $8,250 X 8/9 = $7,334;
- $7,334 - $4,000 = $3,334 (amount that you can apply against his other income in the year of death, the preceding year, or both).

Example

Mr. O'Donnell died in 1991. He had a 1987 unapplied net capital loss of $180. In 1991, he had a net taxable capital gain of $300. Mr. O'Donnell claimed a total capital gains deduction of $50 in previous years.

The maximum amount of the 1987 net capital loss that you can apply against Mr. O'Donnell's 1991 net taxable capital gain is one of the following, whichever is less:

- $180 X 3/2 = $270; and
- $300.

The maximum amount is $270, which is the 1987 adjusted net capital loss.

$ 300	net taxable capital gains in 1991
- 270	maximum to be applied in 1991
$ 30	remaining net taxable capital gains in 1991

In this situation, you can apply Mr. O'Donnell's full net capital loss to reduce his net taxable capital gains.

If you need more information on losses, get the *Capital Gains Tax Guide* from any district office.

Note

The capital gains deduction you can claim for the year of death or for the immediately previous year is reduced by any net capital losses deducted in those years.

Chapter 5 Other information

Spouse trust

The terms of the deceased person's will create a spouse trust. We also consider a trust to be created by the terms of the will if it is created by an order of a court according to any law of a province that provides for the relief or support of dependants. The provisions of a spouse trust defer capital gains and losses, recapture of capital cost allowances, and terminal losses which pass to the spouse trust until the spouse trust disposes of the property, or until the spouse dies.

For a spouse trust to qualify as such, the spouse has to be entitled to receive **all of the income** of the trust that arises during the spouse's lifetime, and **no person except the spouse can receive or use any of the income or capital while the spouse is alive.** In addition, the following conditions have to be met if a transfer of property to a spouse trust is to be considered as a rollover:

- The deceased taxpayer was resident in Canada immediately before death.
- The trust must have been resident in Canada immediately after the property vested indefeasibly in the trust.
- You must show within 36 months of the date of death that the property has become vested indefeasibly in the spouse or spouse trust. If you need more time, you can request an extension by writing to the Minister. You have to make the request within 36 months of the date of death. See Interpretation Bulletin IT-449, *Meaning of "Vested Indefeasibly,"* for more information.

We will not recognize a trust as being a spouse trust if the spouse ceases to be entitled to receive all income of the trust after an event other than his or her death.

A trust can still qualify as a spouse trust even though the testamentary debts, including all income taxes of the deceased person, death taxes, and income taxes of the trust, are payable out of property that otherwise would form part of the trust. The legal representative can decide to appoint sufficient assets to cover payment of these testamentary debts by listing designated assets, the value of which is equal to or more than the testamentary debts, on the deceased person's return. The appointed property is not subject to the rollover provisions, but the trust qualifies as a spouse trust for the remaining property.

A spouse trust will not be disqualified if dividends, excluded from trust income because of section 83 of the *Income Tax Act*, are treated as capital receipts and are distributed after the spouse's death to beneficiaries other than the spouse. For more details, see Interpretation Bulletin IT-207, *"Tainted" Spouse Trusts.*

If a beneficiary renounces a will, or if no will exists, it is possible to rollover the property relating to this renunciation to a spouse trust. A renunciation is an outright refusal to accept the disposition of a will without specifying how the legal representative should distribute the disclaimed property. This disclaimer has to be made within the 36-month period we previously mentioned for indefeasible vesting of property. For more details on spouse trusts, see Interpretation Bulletin IT-305, *Establishment of Testamentary Spouse Trusts.*

Disposition of property by legal representative (subsection 164(6) of the *Income Tax Act*)

In the course of administering the estate of a deceased person, you may have, within the first taxation year of the estate:

- disposed of capital property of the estate that resulted in an excess of capital losses over capital gains; or
- disposed of all the depreciable property of a prescribed class of the estate that resulted in a terminal loss in that class at the end of the first taxation year of the estate.

In this situation, you can elect in a prescribed manner and within the prescribed time period to deem such losses or part of them to have been incurred by the deceased person in the year of death, rather than by the estate. However, the amount of the capital losses for which you can make this election cannot be more than the excess of capital losses over capital gains. If the disposition resulted in a terminal loss, the elected amount cannot be more than the trust's combined non-capital loss and the farm loss of the estate for its first taxation year calculated before the election was made. To make this election, you have to send us certain information, as outlined in Part X of the *Income Tax Regulations*. Contact your district office for details on what information we need.

You have to file this election and an amended return indicating "164(6) election" at the top of the return for the deceased for the year of death by the later of:

- the last day you have to file for the year of death; and
- the day you have to file the estate's return for its first taxation year.

The election and the amended return have no effect on any of the previous-year returns of the deceased person. The estate does not claim any of the elected losses. See the *T3 Guide and Trust Return* for filing requirements of T3 estate returns.

Charitable donations or gifts by will

When a deceased person has made, by will, a charitable donation, a gift to Canada or a province, or a cultural gift (supported by proper receipts), we consider the donation or gift as having been made by the taxpayer in the year of death.

The amount of charitable donations and gifts that you can claim on the return of the deceased is the total of:

- the lower of:
  - charitable donations made in the year as well as donations made in 1986 to 1990 which were not claimed before, and
  - 20% of the deceased person's net income from all returns filed for the year of death;
- total gifts to Canada or a province; and
- total cultural gifts certified by the Canadian Cultural Property Export Review Board.

Note

Unlike other donations, a claim for a credit for gifts to Canada or a province and cultural gifts is not limited to 20% of the person's net income.

The allowable amount of charitable donations is shown on line 340, and the gifts to Canada or a province plus cultural gifts is shown on line 342 of the deceased person's income tax return.

You then use the total amount of donations and gifts to calculate the non-refundable tax credit. Apply 17% to the first $250 of the total, and 29% to the amount that is more than $250. A donation may not be fully deductible in the year of death because it is more than the 20% limit, and the amount of gifts may not be fully deductible because the credit for the gifts is more than the deceased's tax payable for the year. If this is the case, you can ask us to adjust the deceased person's previous-year return to include the donations and gifts within the limits.

The charitable donation or gifts to Canada or a province can consist of capital property which, at the time of the donation, had a fair market value of more than the adjusted cost base to the deceased person. In such a situation, you can designate an amount, not more than the fair market value and not less than the adjusted cost base, as the amount of the gift or donation. We consider this amount to be the proceeds of disposition of the property to the deceased. You use this amount to calculate the charitable donations credit.

The charitable donation or gifts to Canada or a province may consist of a work of art created by the deceased person that is property in inventory. In this situation, you can designate the amount of the deemed proceeds of disposition of the work of art and use this amount to calculate the charitable donations credit. You can determine this amount by allocating an amount, not more than the fair market value and not less than the inventory value for tax purposes, for the work of art to the individual at the time of the donation. You have to support the claim with a proper receipt.

Under proposed legislation, artists who donate their work of art that was included in their inventory to a designated institution, either during their lifetime or as a bequest from their estate, may be entitled to a tax credit. The donation will not result in a profit or a loss for income tax purposes. The tax credit is based on the fair market value of the work, as determined by the Canadian Cultural Property Review Board. To qualify, the Board has to have declared the work of art as culturally significant.

For cultural gifts, you have to attach to the return the official receipt issued by the institution that received the gift. Cultural gifts are objects that the Board has determined meet all the criteria set out in the *Cultural Property Export and Import Act*.

If you need more information, see Interpretation Bulletins IT-297, *Gifts in Kind to Charity and Others*, IT-407R2, *Disposition of Canadian Cultural Property* (for 1987 and previous years), IT-407R3, *Disposition after 1987 of Canadian Cultural Property*, and the brochure called *Gifts in Kind*.

Income earned after death

As the legal representative of the estate, you have to report income that can be attributed to the period after death on a T3 trust return. You will find more information in the *T3 Guide and Trust Return*, which is available from any district office.

Payment of taxes

Generally, any tax owing is payable when the tax return is due. We will assess interest on any tax unpaid from the due date to the date it is actually paid.

For the year of death, you can elect to defer payment of part of the tax attributed to income from the value of rights or things at the date of death, and from deemed dispositions of capital property at death. To make this election, you have to pay the deferred tax in 10 equal consecutive annual instalments. We will charge interest at a prescribed rate. The first payment is due at the same time that you have to file the return. Make this election on Form T2075, *Election to Defer Payment of Income Tax, under Subsection 159(5) of the Income Tax Act by a Deceased Taxpayer's Legal Representative*. You have to send a copy of Form T2075 to the district office serving the area where the deceased person lived before his or her death. Send it no later than the date on which the first instalment is due.

Note

You have to furnish security that is acceptable to the Minister to guarantee payment of the deferred tax. To make security arrangements, contact the Collections Section of the district office serving the area where the deceased person lived before his or her death.

Clearance certificate

To avoid any personal liability for any unpaid taxes, interest, and penalties owed by the deceased person, every administrator or executor has to get a clearance certificate before distributing any property under his or her control.

We cannot issue a clearance certificate until all the required income tax returns have been filed and assessed, and all taxes, contributions to Canada Pension Plan, Unemployment Insurance premiums, interest, and penalties have been paid or secured. Therefore, you should not make a request for a clearance certificate until you have received the assessment notices for all the returns you filed for the deceased person.

Do not include the request with the income tax returns since returns are sent to a taxation centre for processing, while clearance certificates are issued by district offices.

Mail your written request for a clearance certificate to the Business Audit Section at the district office serving the area where you, the legal representative, are located. The request should identify:

- the name, address, and title (such as executor or administrator) of the person(s) requesting the certificate; and
- the full name, last address, social insurance number, and date of death of the deceased person.

You should also provide the following documents with the request:

- a copy of the will;
- a statement showing the assets of the estate on the date of death, together with the adjusted cost base and fair market value of the properties; and
- when there is no will, identity of the administrator and any details of the proposed distribution of the assets, including the names and addresses of the beneficiaries and their relationship to the deceased person.

The certificate covers all taxation years to the date of death. It does not include a clearance for any liability resulting from a trust that was or should have been established for the period after death. The *T3 Guide and Trust Return* contains more information about trusts. You can get it from any district office.

Under proposed legislation, the administrator or executor of the estate will have to apply for the clearance certificate using Form TX19, *Request for Clearance Certificate*. This form is available from your district office.

If you need more details about a request for a clearance certificate, see Information Circular 82-6, *Requesting Clearance Certificates for Estates and Trusts*, and Interpretation Bulletin IT-282, *Estate or Trust Distributions — Clearance Certificates*.

Common questions

Q. Are funeral expenses deductible?

A. No, funeral expenses are not deductible.

Q. What return do I have to complete and file for a deceased person: a General, a Special or a T3 trust return?

A. You have to complete a General or a Special return for the period from January 1 to the date of death. You also have to prepare a T3 return if the trust, established because of the individual's death, receives income.

Q. My father died in February. Do I have to wait until this year's return is published before I complete his return for the two months?

A. No. You can simply use last year's return and change the year in the top right-hand corner of the first page of the return. We will consider any change(s) in the *Income Tax Act* when we assess the return.

Q. Who should report the vacation pay and payment of accumulated sick leave?

A. Vacation pay is taxable income for the deceased person. The payment of accumulated sick leave is usually taxable income of the person who receives it (i.e., the estate or beneficiaries). However, accumulated sick leave paid after an employee dies may, in certain circumstances, be considered a death benefit. See line 130(D) in the *General Tax Guide*, for more details.

Q. Who should report death benefits paid by an employer?

A. Death benefits are taxable income of the person who receives them (i.e., the estate or beneficiaries).

However, you can exclude up to $10,000 of the benefits from income.

Q. How are capital gains and recovery of the capital cost allowance calculated?

A. We generally consider capital property as having been disposed of at death. A capital gain or recovery of the capital cost allowance, if any, is calculated as of the date of death. See Chapter 3 for an explanation of certain rules that apply to deemed dispositions.

Q. How do I determine personal tax credits for the year of death if the spouse and children received income both before and after the person's death?

A. You need to include income received during the entire calendar year by the person for whom the personal tax credit is claimed, whether it is the spouse, dependent children, or other dependants.

Q. The death benefit for a deceased person, issued by the Canada or Québec Pension Plan, is shown on information slip T4A(P). On what return for the year of death do I report this amount?

A. You should report the Canada and Québec Pension Plan death benefit shown in box 18 of a T4A(P) slip on the income tax return of the recipient. This could be the T3 return for the estate, or the General or Special return of the **beneficiary**. You should not report it on a General or Special return for the deceased. This amount is not eligible for the $10,000 death benefit exemption. Report all other amounts on a General or Special return for the deceased person.

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