

TABLE OF CONTENTS

<i>Foreword</i>	iii
<i>What's New</i>	xix

Chapter 1: Introductory Concepts

1.1	Introduction.....	1
1.2	Tax Systems Around the World	3
1.3	Income to Date of Death	4
1.4	Deemed Realization of Income	4
1.5	Deemed Disposition of Assets	5
1.6	The Will — Tax Significance.....	5
1.7	Intestacy — Tax Significance	6
1.8	Spousal Claims — Tax Significance	6
1.9	Jointly-Held Property.....	6
1.10	Special Assets.....	7
1.11	Charitable Donations.....	7
1.12	Special Rules & Elections.....	8
1.13	Insurance	8
1.14	Valuation Issues.....	8
1.15	Tax Filings, Payments & Assessments	9
1.16	Non-Residents	11
1.17	Foreign Assets	11
1.18	Post-Mortem Planning	12
1.19	Tax Issues of Estates.....	13
1.20	Estate Planning.....	13
1.21	Recommendations for Amendment	13
1.22	Arm's Length & Related	14
1.23	Is the Deceased Related to the Estate?	17
1.24	Acquisition of Control of a Corporation.....	18
1.25	Meaning of Spouse and Common-Law Partner	20
1.26	Missing Persons	21
1.27	Residence.....	22
1.28	Income Attribution Rules.....	23
1.29	Tax on Split Income (TOSI).....	23
1.30	About the CRA	26
1.31	Income Splitting.....	26

Chapter 2: Income in Year of Death

2.1	Introduction.....	28
2.2	Computation of Income	29
2.3	Periodic Income	31

Table of Contents

2.4	Rights or Things	33
2.5	Employment Income	34
	2.5.1 General Rules	34
	2.5.2 Taxable Benefits.....	37
	2.5.3 CRA Views.....	37
2.6	Interest Income	38
2.7	Dividends.....	39
2.8	Rental Income	40
2.9	Royalty Income	42
2.10	Business Income.....	42
2.11	Professional Income	43
2.12	Farming Income	43
2.13	Fishing Income	44
2.14	Pension Income.....	44
	2.14.1 General Rules	44
	2.14.2 CRA Views.....	45
2.15	Death Benefit.....	46
	2.15.1 General Rules	46
	2.15.2 CRA Views.....	46
2.16	Retirement Compensation Arrangement (“RCA”).....	48
2.17	Canada Pension Plan Payments, Old Age Security Payments	50
	2.17.1 General Rules	50
	2.17.2 CRA Views.....	51
2.18	Income from RRSPs/RRIFs, etc	52
2.19	Alimony.....	52
2.20	Income of a Partnership.....	53
	2.20.1 Basic Rules	53
	2.20.2 Cessation of Partnership	54
	2.20.3 Ceasing to be a Partner on Death	54
	2.20.4 Residual Interest in Partnership	57
	2.20.5 Summary	58
	2.20.6 Special Rule Income of Two Periods.....	59
	2.20.7 Other Partnership Issues	59
	2.20.8 TOSI and Partnerships.....	61
2.21	Employee Stock Options	61
	2.21.1 General Rule.....	61
	2.21.2 50 Per Cent Deduction.....	62
	2.21.3 Rules for Canadian-Controlled Private Corporation.....	63
	2.21.4 Deferral for Public Company Shares	63
	2.21.5 Summary of Rules	64
	2.21.6 Taxation on Death.....	65
2.22	Income from a Trust.....	68
2.23	Income — Averaging Annuity Contract	69

Table of Contents

2.24	Taxable Capital Gains/Allowable Capital Losses.....	70
2.25	Retiring Allowance	70
2.26	Flow-Through Shares.....	71
2.27	Shareholder Loan	71
2.28	Exempt Income.....	73
2.28.1	Foreign Income Exempt by Treaty.....	73
2.28.2	Disability and Other Exempt Payments.....	74
2.28.3	First Nations Persons.....	74
2.28.4	Social Assistance.....	75
2.29	Investment Tax Credit	75
2.30	Splitting of Pension Income	75
2.31	RRSP Deduction in Year of Death.....	75
2.32	Topics Discussed Elsewhere	76
2.32.1	Claiming of Reserves	76
2.32.2	RRSP, RRIF, RDSP, TFSA, RESP, and other Similar Plans.....	76
2.32.3	Capital Gains on Deemed Disposition.....	76
2.32.4	Foreign Income (“FAPI”).....	76
2.32.5	Insurance	76
2.32.6	Capital Dividend.....	76
2.32.7	Eligible and Ineligible Dividends	76
2.32.8	Capital Gains Exemption	77
2.32.9	Allowable Business Investment Loss.....	77
2.32.10	Debt Forgiveness	77
2.32.11	Other Matters	77
2.33	Summary Tables	77

Chapter 3: Income Deemed to Arise

3.1	Introduction.....	89
3.2	RRSP	90
3.2.1	General Rule.....	90
3.2.2	Refund of Premiums.....	90
3.2.3	Decrease in Value	92
3.2.4	Matured RRSP.....	92
3.3	Registered Retirement Income Fund (“RRIF”).....	95
3.3.1	Introduction.....	95
3.3.2	Rules Applicable at Death	96
3.4	Home Buyer’s Plan	96
3.5	Life Long Learning Plan.....	97
3.6	Registered Education Savings Plan (“RESP”)	98
3.7	Tax-Free Savings Account (“TFSA”).....	98
3.8	Registered Disability Savings Plan (“RDSP”).....	99
3.9	Deferred Profit-Sharing Plan (“DPSP”).....	100

Table of Contents

3.10	Registered Pension Plan (“RPP”).....	101
3.11	Employees’ Profit Sharing Plan (“EPSP”).....	101
3.12	Registered Supplementary Unemployment Benefit Plan (“RSUBP”).....	101
3.13	Reserves in the Year of Death	101
3.13.1	General Rules	101
3.13.2	Capital Gains Reserve.....	102
3.13.3	Land Inventory Reserve	102
3.13.4	Other Reserves.....	103
3.14	Stock Options	103
3.15	Unregistered Pension Plan.....	103
3.16	Individual Retirement Account (“IRA”)	104
3.17	Other U.S. Deferred Compensation Plans	104

Chapter 4: Deemed Disposition of Assets

4.1	Introduction.....	108
4.2	Deemed Sale of Property	109
4.3	Deemed Disposition of Capital Property	110
4.3.1	Capital Property other than Depreciable Property.....	110
4.3.2	Life Estates	111
4.3.3	Proceeds of Disposition.....	112
4.3.4	Cost of Property	112
4.3.5	Outlays and Expenses	114
4.3.6	Depreciable Property.....	115
4.3.7	Partnership Interest.....	118
4.3.8	Trust Interest	121
4.4	Goodwill.....	122
4.5	Resource Properties and Land Inventories of a Deceased Taxpayer.....	124
4.5.1	Resource Properties	124
4.5.2	Land Inventories.....	125
4.6	NISA at Death	125
4.7	Spousal Rollover.....	125
4.7.1	Conditions for Spousal Rollover	126
4.7.2	Transfer or Distribution as a Consequence of Death.....	126
4.7.3	Additional Conditions for Spousal or Common-Law Partner Trust	128
4.7.4	Untainting a “Tainted” Spousal or Common-Law Partner Trust	130
4.7.5	Automatic Spousal Rollover When Conditions Met.....	133
4.7.6	Election for Spousal Rollover Not to Apply	135
4.8	Attribution.....	137
4.9	Death of Spouse or Common-Law Partner	138

Table of Contents

4.10	Inter Vivos Spousal or Common-Law Partner Trust	141
4.11	Alter Ego and Joint Partner Trust.....	141
4.12	Vested Indefeasibly	142
4.13	Principal Residence	146
4.14	Small Business Corporation Shares	146
4.15	Farming and Fishing Properties	148
4.15.1	Special Rollover at Death	149
4.15.2	Conditions for the Transferee.....	149
4.15.3	Properties Eligible for the Rollover	149
4.15.4	Farming and Fishing Properties Held Directly by the Deceased or Left to a Spousal or Common-Law Partner Trust	149
4.15.5	Shares of the Capital Stock of a Family Farm or Fishing Corporation.....	151
4.15.6	Interest in a Family Farm or Fishing Partnership	152
4.15.7	Direct Transfer at Death.....	152
4.15.8	Transfer from a Spousal or Common-Law Partner Trust	153
4.15.9	Election for Rollover not to Apply	153
4.15.10	Lifetime Capital Gains Exemption	153
4.16	Personal Use Property.....	154
4.17	V-Day Value.....	155
4.17.1	Capital Property other than Depreciable Property.....	155
4.17.2	Depreciable Properties	155
4.18	Summary Table.....	156

Chapter 5: Wills

5.1	Introduction.....	159
5.2	Validity	160
5.3	Typical Layout and Example	160
5.4	General Comments	167
5.4.1	Graduated Rate Estate.....	168
5.5	Testamentary Expenses	169
5.6	Medical Expenses.....	169
5.7	Donations	170
5.8	Allocation of Assets	170
5.9	Spousal Rollover.....	170
5.10	Joint Tenancy versus Tenants-in-Common	172
5.11	Personal Effects	175
5.12	Terms of Trusts	175
5.13	Residue of the Estate	176
5.14	Death of a Beneficiary	176
5.15	Buy-Sell Arrangements.....	177

Table of Contents

5.16	Will Variations.....	179
5.17	Insurance	180
5.18	Conflicts of Law	180
5.19	Spousal Claims	181
5.20	Alter Ego and Joint Partner Trusts	181
5.21	Insurance Funded Trust.....	182
 <u>Chapter 6: Intestacy</u>		
6.1	Introduction.....	183
6.2	What is Intestacy?.....	183
6.3	Common Reasons for Intestacy	183
6.4	Administration of Intestate Estate.....	184
6.5	Income Tax Implications.....	185
 <u>Chapter 7: Spousal Claims</u>		
7.1	Introduction.....	187
7.2	Basis of Spousal Claim.....	187
7.3	Conflicts of Laws.....	188
7.4	Income Tax Implications.....	189
 <u>Chapter 8: Special Assets</u>		
8.1	Introduction.....	191
8.2	Principal Residence	192
8.2.1	General Rule.....	192
8.2.2	One Property	194
8.2.3	Multiple Properties — Disposition to Spouse or Common-Law Partner	195
8.2.4	Multiple Properties — Disposition to Trust for Spouse or Common-Law Partner	197
8.2.5	Multiple Properties — Disposition to Next Generation... ..	198
8.3	Qualified Small Business Corporation Shares	201
8.3.1	General Rule.....	201
8.3.2	Ownership Test.....	201
8.3.3	Conditions of the Corporation at Death	202
8.3.4	Conditions of the Corporation During the Holding Period	202
8.3.5	Conditions for the Individual.....	203
8.3.6	Alternative Minimum Tax.....	203
8.3.7	Planning with Capital Gains Exemption.....	204
8.4	Farming and Fishing Properties	204
8.4.1	Lifetime Capital Gains Exemption	204
8.4.2	Qualified Farm or Fishing Property	205
8.4.3	Rollover Provisions for Farming or Fishing	206

Table of Contents

8.5	Land Inventory	206
8.6	Partnership Interest	207
8.7	Trust Interest	208
8.8	Worthless Assets	208
8.9	Personal-Use Property	209
8.10	Resource Property	210
8.11	Loans Receivable	211

Chapter 9: Charitable Donations

9.1	Introduction	213
9.2	General Principles	214
9.2.1	Tax Credits for Individuals	214
9.2.2	Total Gifts	215
9.2.3	The Eligible Amount of the Gift	217
9.2.4	Proof of Gift	218
9.2.5	Donation in Kind	219
9.2.6	Special Relief for Capital Gains Tax	220
9.3	Special Tax Relief at Death	220
9.3.1	No 75 Per Cent Income Limitation	220
9.3.2	Carryback to Immediately Preceding Year	222
9.3.3	Donations Made by a 60-month Estate	222
9.4	Gift by Will	223
9.4.1	Intent to Gift	223
9.4.2	Stipulated Amount of Donation	224
9.5	Gifts of Capital Property	225
9.6	Gifts of Art	226
9.7	Direct Designation — Insurance Proceeds	228
9.8	Direct Designation — RRSPs, RRIFs, and TFSAs	229
9.9	Donation of Non-Qualifying Securities	229
9.10	Donation of Cultural and Ecological Property	231

Chapter 10: Special Rules and Elections

10.1	Introduction	235
10.2	Medical Expenses	235
10.3	Spousal Rollover	237
10.4	Election for Spousal Rollover not to Apply	237
10.5	Capital Losses	238
10.5.1	Superficial Loss Rules not Applicable	238
10.5.2	Application of Capital Losses	238
10.5.3	Reduction for Capital Gains Exemption	240
10.6	Alternative Minimum Tax	241
10.7	Debt Forgiveness Rules	241
10.7.1	Deceased as a Creditor	241

Table of Contents

10.7.2	Deceased as a Debtor	242
10.8	Special Elective Tax Returns	243
10.9	Rights or Things Return	246
10.10	Partnership Income	246
10.11	Graduated Rate Estate Income	246
10.12	Acquisition of Control	247
10.12.1	Exception to Acquisition of Control — Transfer to an Estate.....	247
10.12.2	Exception to Acquisition of Control — Transfer to Beneficiary	248
10.13	Instalments	248

Chapter 11: Insurance

11.1	Introduction.....	249
11.2	Types of Insurance Policies	249
11.3	Valuation of Corporate-Owned Life Insurance Policy	251
11.4	Definitions	252
11.5	Insurance Proceeds on Death	253
11.6	Common Insurance Structures	259
11.6.1	Corporate-Owned	260
11.6.2	Criss-Cross Arrangement	262
11.7	Capital Dividend Account.....	263
11.7.1	Components of Capital Dividend Account	263
11.7.2	Capital Gains Inclusion Rate	263
11.7.3	Sample Calculation	265
11.7.4	Excess Capital Dividend.....	266
11.7.5	Filing of Capital Dividend Election.....	266

Chapter 12: Valuation Issues

12.1	Introduction.....	269
12.2	Valuation of Personal Effects	271
12.3	Valuing Art, Antiques, Collectibles	271
12.4	Valuing Private Corporations.....	273
12.5	Valuing Real Estate	275
12.6	Other Valuation Issues	276
12.6.1	Trust Interest and Life Interest	276
12.6.2	Costs of Disposal.....	276
12.6.3	Voting Control Premiums	277
12.6.4	Personal Goodwill.....	278
12.6.5	Shareholder Loans	278
12.7	CRA Views.....	278

Table of Contents

Chapter 13: Tax Filings, Payments, Assessments

13.1	Introduction.....	283
13.2	Types of Returns	284
13.2.1	Rights or Things	285
13.2.2	Stub Period Income	286
13.2.3	Income Allocation from a Graduated Rate Estate.....	286
13.3	Filing Due Date.....	287
13.3.1	Individual Returns for the Deceased, and the Spouse or Common-Law Partner	287
13.3.2	Trust Returns for the Estate or a Testamentary Trust Created under a Will.....	289
13.4	Special Tax Filing Issues	290
13.4.1	Taxation Year.....	290
13.4.2	Proration of Income.....	290
13.4.3	Calculation of Capital Gains or Losses	290
13.4.4	Use of Tax Credits.....	291
13.4.5	Amendment to Prior Year Return.....	292
13.4.6	Capital Losses of the Graduated Rate Estate	292
13.5	Payment of Tax	293
13.5.1	Instalments	293
13.5.2	Balance-due Day and Payment Options	293
13.6	Assessment.....	294
13.7	Audit	295
13.8	Appeals.....	295
13.9	Common Problems	297
13.10	Voluntary Disclosures	300
13.11	Liability of Legal Representatives	303
13.12	Insolvent Estate	304

Chapter 14: Non-Residents

14.1	Introduction.....	305
14.2	Income to Date of Death	306
14.3	Deemed Disposition at Death	306
14.3.1	Taxable Canadian Property.....	306
14.3.2	Treaty Exemptions.....	307
14.4	Special Rules for Non-Residents	308
14.4.1	No Spousal Rollover.....	308
14.4.2	No Lifetime Capital Gains Exemption	308
14.4.3	CCPC Status.....	309
14.4.4	Capital Loss.....	309
14.4.5	Land Inventory and Resource Property.....	311
14.4.6	Business Assets	311
14.4.7	Certificate of Compliance.....	311

Table of Contents

14.4.8	Special Provisions Under the Canada-U.S. Tax Convention	312
14.5	Rental Real Estate	313
14.6	Former Canadian Resident	315
14.7	Stock Options	315
14.8	Registered Plans.....	316

Chapter 15: Foreign Assets

15.1	Introduction.....	319
15.2	Foreign Tax Issues	320
15.3	Canadian Income Tax Implications	320
15.4	U.S. Estate Tax.....	323
15.4.1	Introduction.....	323
15.4.2	U.S. Estate Tax — Non-Resident Alien (NRA)	325
15.5	Canada-U.S. Treaty	326
15.6	Single Purpose Corporation	327
15.7	Foreign Domicile	328
15.8	Foreign Corporations.....	328
15.8.1	Introduction.....	328
15.8.2	Foreign Affiliate	328
15.8.3	Controlled Foreign Affiliate	329
15.8.4	Implications at Death	330
15.8.5	Dividend Distributions.....	331
15.8.6	U.S. LLC.....	333
15.9	Non-Resident Trust	333

Chapter 16: Post-Mortem Tax Planning

16.1	Introduction.....	337
16.2	Overview of Planning Objectives	338
16.3	Allocation of Assets	339
16.4	Capital Losses of the Estate	341
16.4.1	Capital Property	341
16.4.2	Time of Disposition by Graduated Rate Estate	341
16.4.3	Canadian Private Corporation	342
16.4.4	Special Rules.....	345
16.4.5	Depreciable Property.....	346
16.4.6	Stock Options	347
16.4.7	Other Properties.....	348
16.4.8	Partnership	348
16.4.9	Foreign Corporation	350
16.4.10	Further Examples — Part Ownership.....	351
16.5	Step-Up Strategy.....	353
16.5.1	General Rule.....	353

Table of Contents

16.5.2	Step-Up Examples.....	354
16.6	Pipeline Strategy	358
16.6.1	Description and Example	358
16.6.2	Pipeline Strategy and Capital Gains Exemption	360
16.6.3	Pipeline Strategy and Non-residents	361
16.7	Combining the Strategies	362
16.8	Utilization of Capital Loss by Beneficiary, Estate or Spousal Trust.....	364
16.9	Stop-Loss Rules and Share Redemption on Death	366
16.10	Summary	369
16.11	Buy-Sell Agreements	371
16.12	Distributions to Beneficiaries	372
16.13	Post-Mortem Estate Freeze	373

Chapter 17: Taxation of Estates

17.1	Introduction.....	375
17.2	Creation of Testamentary Trust	375
17.3	Qualification as Testamentary Trust.....	377
17.4	Taxation of Testamentary Trusts	378
17.5	Cost of Assets Acquired by Estate or Testamentary Trusts	381
17.6	Estate or Trust Income and Distributions	382
17.7	Testamentary Spousal or Common-Law Partner Trusts	385
17.8	Distribution of Assets	386
17.9	21-Year Rule	387
17.10	U.S. Beneficiaries.....	387
17.11	Distributions to Non-Residents.....	388
17.12	Distributions in General.....	390
17.13	Withholding Tax.....	391
17.14	Other Matters	392
17.15	Alternative Minimum Tax.....	393
17.16	Tax Clearance.....	393

Chapter 18: Estate Planning Pre-Death

18.1	Introduction.....	395
18.2	Estate Planning Objectives	396
18.3	Estate Freeze	396
18.4	Donation Strategy.....	399
18.5	Spousal Rollover.....	399
18.6	Qualified Small Business Corporation	400
18.7	Insurance Strategies	401
18.8	RRSP/RRIF	401
18.9	Family Cottage	403
18.10	Family Debts	403

Table of Contents

<u>Chapter 19: Recommendations for Amendments</u>	
19.1	Introduction..... 405
19.2	Rights and Things..... 406
19.3	Partnership Taxation..... 406
19.4	Election for Deemed Disposition at Fair Market Value..... 406
19.5	Partnership Estate Freeze..... 406
19.6	Tax Filings — Estate 407
19.7	Tax Filing — Deceased Taxpayer..... 407
19.8	Change of Control Rules 407
19.9	Capital Loss Carryback 408
19.10	Step-Up Transactions..... 408
19.11	Payment of Tax 409
19.12	Unused Donations 409
19.13	Life Interests..... 409
19.14	Pipeline Method and Deemed Dividend 410
19.15	Executor Fees 410
19.16	Non-Taxable Components of Income..... 412
19.17	Graduated Rate Estate (“GRE”)..... 412
19.18	TOSI Rules..... 412
Appendix — Sample — Deceased Taxpayer Tax Return..... 413	
List of Resources 429	
Glossary of Terms 439	
Index 467	