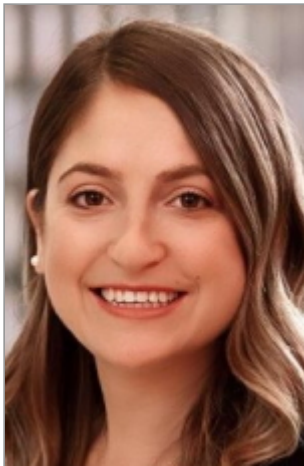


Wills, Trusts & Estates**Death and taxes: Executor's compliance responsibilities**By **Marly Peikes**

Marly Peikes

(February 23, 2022, 8:52 AM EST) -- Executors are generally responsible for income tax compliance for a deceased person and their estate, including preparing and filing all necessary tax returns in all relevant jurisdictions, paying any taxes owing and obtaining all tax clearances, if appropriate.

Canadian tax compliance

Under the Canadian *Income Tax Act*, executors are required to file the following Canadian income tax returns:

- returns for any taxation year prior to the year of death not previously filed;
- a final or what is referred to as the "terminal" return for the year of death covering the period from Jan. 1 to the date of death; and
- In certain cases, a T3 trust return covering income received on the estate assets from the date of death to either the end of the calendar year or within the first 12 months after death if the executors designate the estate as a Graduated Rate Estate.

For any year prior to death where the death occurred before the prior year's return due date, the tax return is due on the later of the date the return is otherwise due or six months after death.

The following due dates apply for the terminal return (unless the deceased was carrying on a business, in which case different deadlines apply):

- for deaths that occurred between Jan. 1 to Oct. 31 inclusive — April 30 of the year following death; or
- for deaths that occurred between Nov. 1 to Dec. 31 inclusive — six months after the date of death.

For estates (that are not Graduated Rate Estates) and trusts, including *inter vivos* and testamentary trusts, tax filings are due 90 days after Dec. 31, which is March 31 or March 30 if it's a leap year.

In order to obtain certain income tax benefits for the estate, it will be necessary to ensure that a Graduated Rate Estate designation is made for the estate in the estate's first income tax filing. An executor may choose the year-end for a Graduated Rate Estate, which can be any date within the first 12 months after the date of death, and the tax filing is due 90 days after the chosen year-end.

Foreign tax compliance: Spotlight on the U.S.

It's also important for executors to be aware of any foreign tax compliance and different filing due dates in different jurisdictions. U.S. tax compliance may be especially relevant to many Canadian citizens and residents. If the deceased was a U.S. person or had U.S. situs property, the executor

must consider whether there are any U.S. filing requirements.

For a U.S. person or for a non-U.S. person who owns U.S. situs property with a value exceeding US\$60,000, a U.S. estate tax return is required, whether or not U.S. estate tax is payable. U.S. situs property may include, for example, a U.S. vacation home or directly held U.S. securities (in a Canadian registered or non-registered account). The tax filing deadline is nine months following the date of death, although it is possible to obtain a six-month extension if requested before the nine-month deadline.

Personal liability of executors

Failing to file tax returns may result in interest and penalties. It may also result in personal liability if distributions are made without obtaining a tax clearance certificate (see Susannah Roth's case study on the 2019 Alberta case, *Muth Estate v. Liesch*, 2019 ABQB 922). It is important for an executor to be aware of his or her responsibilities in this regard, including the relevant requirements and timelines in each jurisdiction.

We have highlighted some of the primary tax compliance considerations for executors. Executors should seek professional advice from a tax adviser to assist with tax compliance for the estate, including filing tax returns, considering the Graduated Rate Estate designation and obtaining all tax clearances, among other matters.

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