

# Canada

## Contacts

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## 1. Types of tax

While there are no estate taxes in Canada, there is a deemed disposition of all capital property owned by an individual at the time of death. In general, this disposition is deemed to take place at the fair market value (FMV) immediately prior to death. It usually results in the recognition of some amount of gain or loss and is included in computing income in the year of death. In all cases, the estate or the beneficiaries, as the case may be, will acquire the property at a cost equal to the deceased's proceeds from the deemed disposition. Additionally, the FMV of any registered retirement savings plan (RRSP) or registered retirement income fund (RRIF) is fully taxable in the year of death unless it is bequeathed to the individual's spouse or a dependent minor child.

Because the deemed disposition of capital property can result in significant tax liabilities, the Canadian Tax Act provides relief in some circumstances. For example, there are exceptions for transfers to spouses and certain transfers of farm and/or fishing property to children. These are discussed below.

### 1.1 Inheritance tax

There are no inheritance taxes in Canada.

### 1.2 Gift and endowment tax

Neither Canada nor its provinces have a separate gift or endowment tax regime. However, a disposition at FMV will arise when any property is gifted by a Canadian resident. In the case of Canadian residents, the deemed disposition rules apply to any property that is gifted. There are exceptions for transfers during their lifetimes to a spouse or qualified spouse trusts as discussed below, and special trusts created by an individual who is more than 65 years old for the benefit of themselves (an alter ego trust) or themselves and their spouse (a joint partner trust). For nonresidents, the rules will apply to gifts of taxable Canadian property, as defined in the next section.



### 1.3 Real estate transfer tax

Several provinces levy a tax on the transfer of real property, referred to as either a land transfer tax or real property transfer tax. For tax purposes, real property generally includes land, buildings or structures on land and any rights or interests in land. As a general rule, the tax applies to the property's FMV, which is normally based on the value of the consideration or sale price. Tax is paid when a person registers a transfer of land at a provincial land title office.

Provinces levying the tax generally exempt certain transactions from the tax. Some of the more commonly exempted transactions include:

- Transfers where the value of the land does not exceed a minimum threshold
- Transfers for nominal consideration
- Transfers between family members
- Transfers of farmland

In addition, many provinces provide an exemption for first-time home buyers.

The table below summarizes the land transfer tax rates by province and territory.

Province or territory	Tax or duty	Statute
Alberta	There is no land transfer tax; however, registration fees may apply.	N/A
British Columbia	<p>Total of:</p> <ul style="list-style-type: none"> <li>▸ 1% of the first C\$200,000 of the taxable transaction's FMV</li> <li>▸ 2% of the land's FMV over C\$200,000</li> <li>▸ 3% of the land's FMV over C\$2,000,000</li> <li>▸ 5% on the land's FMV over C\$3,000,000</li> </ul> <p>An additional 20% on transfers to foreign entities of residential property located in Greater Vancouver Regional District, the Capital Regional District, Fraser Valley Regional District, Regional District of the Central Okanagan and Regional District of Nanaimo</p>	Property Transfer Tax Act
Manitoba	<p>Total of:</p> <ul style="list-style-type: none"> <li>▸ 0.5% of the land's FMV over C\$30,000 to C\$90,000</li> <li>▸ 1% of the land's FMV over C\$90,000 to C\$150,000</li> <li>▸ 1.5% of the land's FMV over C\$150,000 to C\$200,000</li> <li>▸ 2% of the land's FMV over C\$200,000</li> </ul>	Part III (Land Transfer Tax) of The Tax Administration and Miscellaneous Taxes Act
New Brunswick	<p>1% of the greater of:</p> <ul style="list-style-type: none"> <li>▸ Consideration for the transfer</li> <li>▸ Real property's assessed value</li> </ul>	Real Property Transfer Tax Act



Province or territory	Tax or duty	Statute
Newfoundland and Labrador	There is no land transfer tax; however, registration fees may apply.	N/A
Northwest Territories	There is no land transfer tax; however, registration fees may apply.	N/A
Nova Scotia	The tax is determined by each municipality and applied to the sale price of every property that is transferred by deed with the maximum being 1.5% of the value of the property transferred.	Part V (Deed Transfers) of the Municipal Government Act
Nunavut	There is no land transfer tax; however, registration fees may apply.	N/A
Ontario	<p>Total of:</p> <ul style="list-style-type: none"> <li>▶ 0.5% of the value of the conveyance's consideration up to and including C\$55,000</li> <li>▶ 1% of the value of the conveyance's consideration exceeding C\$55,000 up to and including C\$250,000</li> <li>▶ 1.5% of the value of the conveyance's consideration exceeding C\$250,000</li> <li>▶ 2% of the value of the conveyance's consideration exceeding C\$400,000</li> <li>▶ 2.5% of the value of the conveyance's consideration exceeding C\$2 million (only where the conveyance of land contains at least one and not more than two single-family residences)</li> </ul> <p>The City of Toronto also levies a municipal land transfer tax at the same rates as the province.</p> <p>An additional 15% tax is levied on transfers to foreign entities of residential property located in the Golden Horseshoe Region of Southern Ontario.</p>	Land Transfer Tax Act
Prince Edward Island	<p>1% of the greater of:</p> <ul style="list-style-type: none"> <li>▶ Consideration for the transfer</li> <li>▶ Real property's assessed value</li> </ul> <p>Land transfer tax is not applied when the greater of the consideration or assessed value does not exceed C\$30,000.</p>	Real Property Transfer Tax Act



Province or territory	Tax or duty	Statute
Quebec	<p>Total of:</p> <ul style="list-style-type: none"> <li>▶ 0.5% of the basis of imposition up to and including C\$50,000</li> <li>▶ 1% of the basis of imposition exceeding C\$50,000 up to and including C\$250,000</li> <li>▶ 1.5% of the value of the basis of imposition exceeding C\$250,000</li> </ul> <p>The basis of imposition being the greater of:</p> <ul style="list-style-type: none"> <li>▶ Consideration furnished for the transfer</li> <li>▶ Consideration stipulated for the transfer</li> <li>▶ The immovable's market value at the time of the transfer</li> <li>▶ The City of Montreal levies a municipal land transfer tax at same rates as the province up to basis of imposition of C\$500,000 and 2% for value exceeding C\$500,000 up to and including C\$1,000,000 plus 2.5% on basis of imposition exceeding C\$1,000,000</li> </ul>	An Act Respecting Duties on Transfers of Immovables
Saskatchewan	There is no land transfer tax; however, registration fees may apply.	N/A
Yukon	There is no land transfer tax; however, registration fees may apply.	N/A

## 1.4 Transfer duty

The only transfer taxes in Canada are on real estate as noted above.

## 1.5 Net wealth tax

Canada does not have a net wealth tax.

# 2. Who is liable?

The taxation of individuals in Canada is determined by residence. The deemed disposition at death applies to the worldwide assets of all Canadian residents at the time of death. Nonresidents may also be liable for tax at the time of death if they own taxable Canadian property.

## 2.1 Residency

### Canadian residents

The Canadian courts have developed various principles to determine whether a person is a Canadian resident. The following considerations are used for determination:

- ▶ The amount of time spent by a person in Canada
- ▶ The motives or reasons for a person being present in or absent from Canada during the year
- ▶ Whether the person maintains a dwelling in Canada





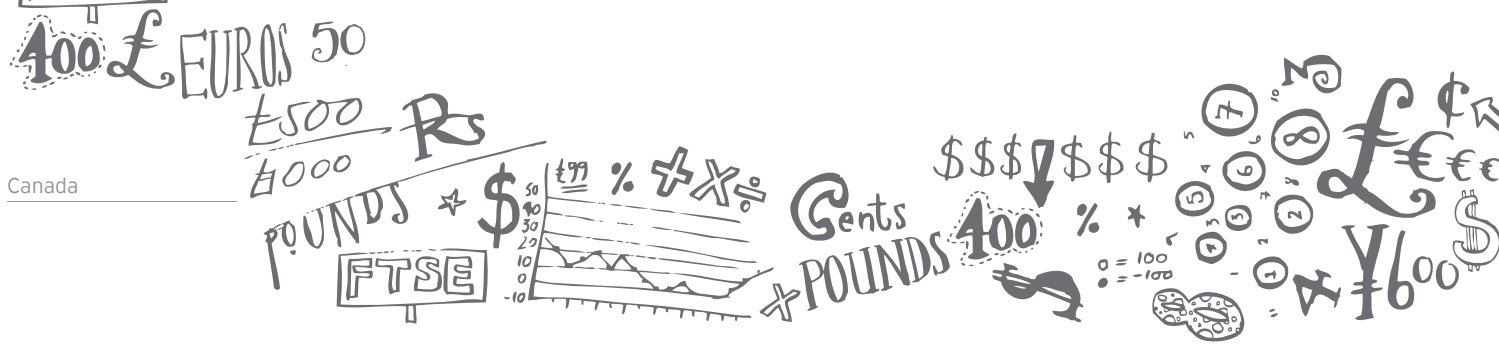


- ▶ The terms of the trust must note that the spouse of the deceased is exclusively entitled to all of the income generated by the property in the trust during the spouse's lifetime.
- ▶ The terms of the trust must note that no one other than the spouse is entitled to either income or capital of the trust while the spouse beneficiary is alive.









Trusts are deemed to dispose of capital properties at FMV at certain specified times. In most cases, a trust will be deemed to dispose of its capital properties on the 21st anniversary of the date on which the trust was originally settled.



### 10.3 Forced heirship

See comments below with respect to matrimonial regimes, as Canada does not have compulsory succession rules or forced heirship other than the statutory rules for intestacy.

### 10.4 Matrimonial regimes and civil partnerships

Matrimonial regimes in Canada are governed by provincial law. Among Canadian provinces, there exists a broad spectrum of rights of dependents upon death. In some provinces, the rights of a surviving spouse or other dependents are so secure as to call the laws “forced heirship” laws. For example, Ontario’s Family Law Act provides that a surviving spouse is absolutely entitled to half of the difference between the net family property of the deceased spouse and the net family property of the surviving spouse, if the former is greater. Spouses are able to contract out of these statutory rights to an equalization or division of family assets if they wish to do so.

There are other classes of people, besides spouses, who may make a claim that they should receive a greater share of the deceased’s estate than was left to them in the will. Most Canadian provinces have legislation that allows dependents to claim the support and maintenance that the testator or testatrix was under a duty to provide for them, and failed to provide for them in the will. In general, this legislation gives the courts discretion to determine whether the individual is a dependent, whether adequate provision for support was made and on what terms and how much he or she should receive from the estate.

### 10.5 Intestacy

A will is a legal document that regulates an individual’s estate after death. Canadian provinces will normally accept the formal validity of a will drawn under the laws of the deceased’s place of residence at the time of making the will or at death. Whether the deceased had the personal legal capacity to make, the dispositions in the will is generally governed by the law of the deceased’s residence.

If there is no valid will at death, then the deceased’s estate passes under predetermined rules known as intestate succession.

The intestacy rules are different depending on the province or territory in which the person was resident at his or her death. Generally, the laws of intestacy for the province of Ontario state that if the deceased had a spouse and no children, the spouse is entitled to receive the entire estate. The following table summarizes the intestacy rules for the province of Ontario. Other provinces have similar, but not identical, rules.

Survivor	Distribution
If a spouse	All to the spouse
If a spouse and one child	Preferential share (C\$200,000) to the spouse, remainder split equally between the spouse and the child
If a spouse and two or more children	Preferential share (C\$200,000) to the spouse plus one-third of remainder, two-thirds divided between children
If no spouse and one or more children alive	Children share equally: if one child is deceased but has children, those children get their parents’ share equally (representation)
If no spouse and no children, but grandchildren	Grandchildren share equally regardless; no representation



## 10.6 Probate tax

The following table shows the maximum rates applicable in the various provinces and territories:

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Province/territory	Fee/tax
Nunavut	C\$400, where the property's value exceeds C\$250,000
Ontario	C\$250 + C\$15 per C\$1,000 or portion thereof by which the estate's value exceeds C\$50,000
Prince Edward Island	C\$400 + C\$4 per C\$1,000 or portion thereof by which the estate's value exceeds C\$100,000
Quebec	No probate
Saskatchewan	C\$7 per C\$1,000 of the estate's value or portion thereof
Yukon	C\$140, where the estate's value exceeds C\$25,000

## 11. Estate tax treaties

Canada does not have any tax treaties dealing only with the taxation of estates. However, many provisions of its treaties will have an impact on estate planning. For example, most of Canada's international tax treaties prevent Canada from taxing gains on any property other than immovable property or property associated with a permanent establishment in Canada. For these purposes, immovable property is typically defined as real property or an interest therein, although particular tax treaties may provide expanded definitions. In addition, most tax treaties allow a country to tax gains on the disposition of an indirect interest in immovable property located in its jurisdiction. For example, under most treaties, the shares of a company or an interest in a partnership, trust or estate whose value is derived principally from immovable property will be exposed to tax in the jurisdiction in which that property is located. For these purposes, an entity is considered to derive its value principally from immovable property if that property represents more than 50% of the total FMV of the enterprise.

While Canada has no estate tax and no separate estate tax treaty with the United States, the Canada-US income tax treaty includes provisions for the application of the US estate tax to estates of Canadian citizens who are not US residents at death.