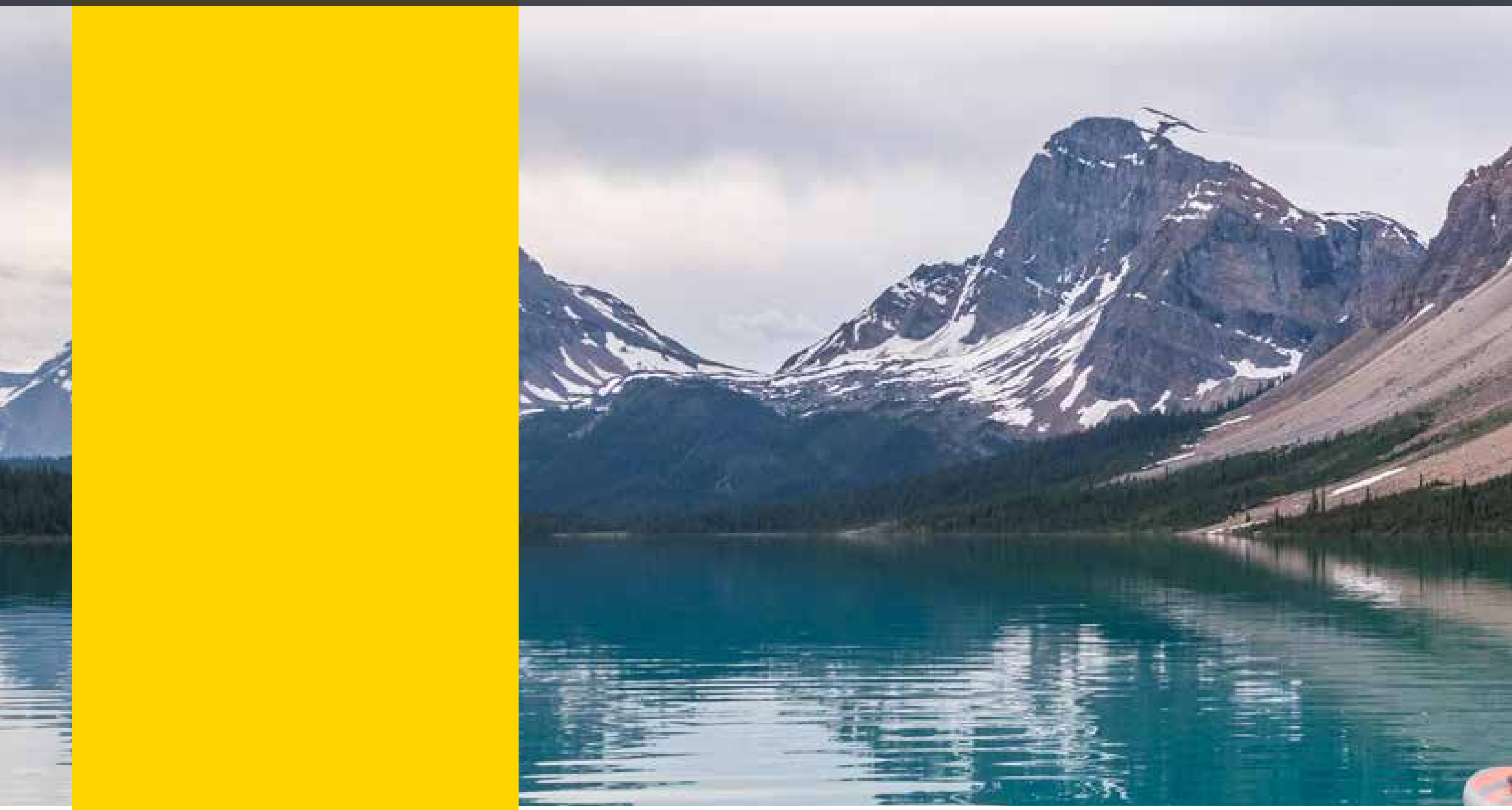
Canada



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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, common-law partner or a dependent child or grandchild by reason of physical or mental infirmity.

Because the deemed disposition of capital property can result in significant tax liabilities, the Canadian Income 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, common-law partner 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 or common-law partner (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 generally paid when a person registers a transfer of land at a provincial land title office, although some provinces also impose tax on unregistered transfers of a beneficial interest in real property.

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 2024 land transfer tax rates by province and territory.

Province or territory	Tax or duty (CAD)[1]	Statute
Alberta	There is no land transfer tax; however, registration fees may apply.	N/A
British Columbia	Total of: 1% of the first CAD200,000 of the taxable transaction's FMV 2% of the land's FMV over CAD200,000 3% of the land's FMV over CAD2 million 5% of the land's FMV over CAD3 million if the property is residential (prorated for mixed-use property)[2] An additional 20% on transfers to foreign entities of residential property located in the Metro Vancouver Regional District, Capital Regional District, Fraser Valley Regional District, Regional District of the Central Okanagan and Regional District of Nanaimo	Property Transfer Tax Act
Manitoba	Total of: 0.5% of the land's FMV over CAD30,000 to CAD90,000 1% of the land's FMV over CAD90,000 to CAD150,000 1.5% of the land's FMV over CAD150,000 to CAD200,000 2% of the land's FMV over CAD200,000	Part III (Land Transfer Tax) of The Tax Administration and Miscellaneous Taxes Act
New Brunswick	1% of the greater of: Consideration for the transfer Real property's assessed value	Real Property Transfer Tax Act
Newfoundland and Labrador	There is no land transfer tax; however, registration fees may apply.	N/A

[1] The rates and other information shown are current as of 1 February 2024.

[2] Effective 1 January 2024, the tax rate is 3% on purchases of new qualifying purpose-built rental buildings applied to the FMV of the residential component of a taxable transaction that exceeds CAD3 million.

Province or territory	Tax or duty (CAD)[1]	Statute
Northwest Territories	Registration fees calculated as follows: If land's FMV does not exceed CAD1 million, CAD2.00 for each CAD1,000 of value or part thereof If land's FMV exceeds CAD1 million, CAD2,000 plus CAD1.50 for each CAD1,000 of value or part thereof exceeding CAD1 million	Land Titles Act
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. The province also imposes a 5% provincial deed transfer tax on residential property purchased by nonresidents of Nova Scotia, effective 1 April 2022.[3]	Part V (Deed Transfers) of the Municipal Government Act Nonresident Deed Transfer and Property Taxes Act
Nunavut	Registration fees calculated as follows: If land's FMV does not exceed CAD1 million, CAD1.50 for each CAD1,000 of value or part thereof If land's FMV exceeds CAD1 million, CAD1,500 plus CAD1 for each CAD1,000 of value or part thereof exceeding CAD1 million	Land Titles Act
Ontario	Total of: 0.5% of the value of the conveyance's consideration up to and including CAD55,000 1% of the value of the conveyance's consideration exceeding CAD55,000 up to and including CAD250,000 1.5% of the value of the conveyance's consideration exceeding CAD250,000 up to and including CAD400,000 2% of the value of the conveyance's consideration exceeding CAD400,000 2.5% of the value of the conveyance's consideration exceeding CAD2 million (only where the conveyance of land contains at least one and not more than two single-family residences) The city of Toronto also levies a municipal land transfer tax at the same rates as the province. However, Toronto has approved additional brackets for high-value residential properties where the conveyance of land contains at least one and not more than two single-family residences. For transfers registered on or after 1 January 2024, the additional brackets are: 3.5% of the conveyance's consideration exceeding CAD3 million up to and including CAD 4 million 4.5% of the conveyance's consideration exceeding CAD4 million up to and including CAD5 million 5.5% of the conveyance's consideration exceeding CAD5 million up to and including CAD10 million 6.5% of the conveyance's consideration exceeding CAD10 million up to and including CAD20 million 7.5% of the conveyance's consideration exceeding CAD20 million An additional 25% tax is levied on transfers of residential property to foreign entities.[4]	Land Transfer Tax Act

[3] Specifically, a person that tenders for registration a deed in respect of residential property that grants an ownership interest of greater than 50% to one or more nonresidents of Nova Scotia is required to pay a 5% deed transfer tax on the property's sale price or assessed value, whichever is greater, subject to certain exceptions.

[4] Ontario increased the nonresident speculation tax (NRST) rate from 20% to 25%, applicable to binding agreements of purchase and sale entered into on or after 25 October 2022. Prior to 30 March 2022, the NRST rate was 15% and applied only to purchases of residential property located in the Greater Golden Horseshoe Region of southern Ontario. Effective that date, Ontario increased the tax rate to 20% and extended the NRST to apply to purchases or acquisitions of residential property anywhere in the province.

Province or territory	Tax or duty (CAD)[1]	Statute
Prince Edward Island	1% of the greater of: Consideration for the transfer Real property's assessed value Land transfer tax is not applied when the greater of the consideration or assessed value does not exceed CAD30,000.	Real Property Transfer Tax Act
Quebec	Total of: 0.5% of the basis of imposition up to and including CAD58,900 1% of the basis of imposition exceeding CAD58,900 up to and including CAD294,600 1.5% of the value of the basis of imposition exceeding CAD294,600 The basis of imposition being the greater of: Consideration furnished for the transfer Consideration stipulated for the transfer The immovable's market value at the time of the transfer A municipality may also adopt a by law to set a higher rate for any part of the basis of imposition that exceeds CAD500,000. This rate may not exceed 3%, except for the City of Montreal. The city of Montreal levies a municipal land transfer tax for which brackets are modified annually. For transfers registered on or after 1 January 2024, the tax is the total of: 0.5% of the basis of imposition up to and including CAD58,900 1% of the basis of imposition exceeding CAD58,900 up to and including CAD294,600 1.5% of the basis of imposition exceeding CAD294,600 up to and including CAD552,300 2% of the basis of imposition exceeding CAD552,300 up to and including CAD1,104,700 2.5% of the basis of imposition exceeding CAD1,104,700 up to and including CAD2,136,500 3.5% of the basis of imposition exceeding CAD2,136,500 up to and including CAD3,113,000 4% of the basis of imposition exceeding CAD3,113,000 The basis of imposition is the same as for the Quebec land transfer tax.	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.

1.6 Housing

An annual 1% underused housing tax applies to the taxable value of vacant or underused residential property that is directly or indirectly owned by nonresident, non-Canadians (e.g., individuals who are neither Canadian citizens nor permanent residents of Canada, or corporations that are incorporated outside of Canada), effective 1 January 2022. Various exceptions apply.[5] The stated purpose for the underused housing tax is to ensure that nonresident owners who are using Canada as a place to passively store their wealth in housing pay their fair share. Taxable value for a calendar year, for purposes of this tax, is defined as the greater of (1) the property's assessed value for property tax purposes or (2) the property's most recent sale price on or before 31 December of the calendar year. An owner can also elect to use the property's fair market value as the tax base, as determined at any time on or after 1 January of the calendar year and on or before 30 April of the following calendar year. A return for a calendar year must be filed for each residential property and is due on or before 30 April of the following calendar year. Failure to file a return as and when required may result in the imposition of significant penalties. However, the Canada Revenue Agency has administratively waived penalties and interest for the 2022 calendar year for any late-filed returns and late payments of underused housing tax owing, provided the 2022 returns are filed and tax payments are made by 30 April 2024.

Effective 1 January 2023, individuals who are neither citizens nor permanent residents of Canada will not be able to purchase a residential property in Canada for a two-year period. The two-year ban also applies to private corporations that are based in Canada but controlled by non-Canadians. Certain exceptions apply. Noncompliance with the two-year ban could result in a fine of CAD10,000 and a requirement to sell the purchased property.

2. Who is liable?

The taxation of individuals in Canada is determined by residence. Canadian residents are subject to tax on their worldwide income. Likewise, 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. In applying these principles, the Canada Revenue Agency (CRA) will typically consider the following factors:

- Whether the person maintains a dwelling place (or places) in Canada
- The amount of time spent by a person in Canada
- Employment in Canada or other economic ties
- Landed immigrant status or appropriate work permits in Canada
- The motives or reasons for a person being present in or absent from Canada during the year
- The person's origin and background
- The person's general mode or routine of life
- Whether the person has provincial health coverage
- The possession of a Canadian driver's license or the registration of a vehicle in Canada

[5] Certain categories of owners are exempt from paying the underused housing tax but must still file an annual return for each residential property owned ("affected owners" eligible for an exemption), while other categories of owners are exempt from both the tax and the filing requirements ("excluded owners").

- The possession of a Canadian passport
- Other connections the person has with Canada, such as ownership of property, membership in clubs and presence of relatives

A person may be a resident of more than one country during the same period of time. Where an individual is considered to be a resident of Canada and also a resident of a treaty country, the applicable treaty will normally determine the country of residence under the "tiebreaker" rules.

In addition to the judicially developed tests, statutory tests may deem a person to be a Canadian resident. The key rule is that a person is deemed to be a resident for any tax year in which he or she spends 183 or more days in Canada.

Nonresidents who hold taxable Canadian property

The Income Tax Act establishes procedures for collecting tax from nonresidents on the disposition of taxable Canadian property.

In general, the definition of taxable Canadian property will limit the taxation of capital gains realized by nonresidents to direct and indirect interests in Canadian real estate, Canadian resource properties or timber resource properties (the specified assets). It should be noted that while the rules are very similar to the rules in the United States, there is a significant difference in that the shares of any corporation, even if it is nonresident, will be considered taxable Canadian property if more than 50% of the FMV of the shares was derived, directly or indirectly, from the specified assets at any time during the prior 60 months.

A nonresident disposing of taxable Canadian property must obtain a certificate of compliance and furnish acceptable security (normally 25% of the expected gain on account of any potential Canadian income tax liability arising on the disposition of a taxable Canadian property). These rules do not apply to a deemed disposition at death. However, the executor, acting on behalf of a nonresident decedent, must file an income tax return for the year of death and pay any tax that may be necessary on the deemed disposition.

2.2 Domicile

Canada only taxes individuals based on residency and does not consider the domicile of taxpayers for the calculation of tax.

3. Rates

Canadian maximum personal marginal income tax rates — 2024[6]				
	Ordinary income (%)[7]	Eligible dividends (%)[8]	Ordinary dividends (%)[4]	Capital gains (%)
Alberta	48.00	34.31	42.30	24.00
British Columbia	53.50	36.54	48.89	26.75
Manitoba	50.40	37.78	46.67	25.20

6 The rates shown are the 2024 maximum combined federal and provincial marginal tax rates, including surtaxes where applicable, based on known rates as of 1 February 2024.

7 Ordinary income includes such items as salary, interest, business income and income from other sources, but excludes Canadian dividends and capital gains.

8 The rates apply to the actual amount of taxable dividends received in the year. Eligible dividends are those paid by public corporations and private companies out of earnings that have been taxed at the general corporate tax rate (the dividend must be designated by the payer corporation as an eligible dividend).

Canadian maximum personal marginal income tax rates — 2024[6]				
	Ordinary income (%)[7]	Eligible dividends (%)[8]	Ordinary dividends (%)[4]	Capital gains (%)
New Brunswick	52.50	32.40	46.83	26.25
Newfoundland and Labrador	54.80	46.20	48.96	27.40
Northwest Territories	47.05	28.33	36.82	23.53
Nova Scotia	54.00	41.58	48.27	27.00
Nunavut	44.50	33.08	37.79	22.25
Ontario	53.53	39.34	47.74	26.76
Prince Edward Island	51.75	36.20	47.63	25.88
Quebec	53.31	40.11	48.70	26.65
Saskatchewan	47.50	29.64	40.86	23.75
Yukon	48.00	28.92	44.05	24.00

	Rate	Bracket (CAD)
Nonresidents	22.20%	0
	30.34%	CAD55,868
	38.48%	CAD111,734
	42.92%	CAD173,206
	48.84%	CAD246,753

4. Exemptions and reliefs

Transfers to a spouse or qualifying spouse trust

In certain family situations, taxation resulting from the deemed disposition at death can be deferred either totally or partially. If the property is transferred to the Canadian resident spouse of the testator or to a qualifying spouse trust, there is total deferral. For these purposes, a spouse would include a common-law partner of either the opposite or same sex. The spouse or spouse trust acquires the property at the deceased's cost, and any gain is deferred until the spouse or spouse trust disposes of it or until the death of the spouse. Any income from the property or any gain upon its ultimate disposition will be taxed in the hands of the transferee. For a trust to be considered a qualifying spouse trust and eligible for the deferral of capital gains tax (CGT), the following criteria must be met:

- The deceased transferor must have been a resident in Canada at the time of death.
- The trust must be a resident in Canada when the property vests in the trust (spouse beneficiary could be nonresident).
- The trust must be created in the deceased's will.
- The terms of the trust must provide 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 provide that no one other than the spouse is entitled to either income or capital of the trust while the spouse beneficiary is alive.

Capital gains exemption

Where the deceased owns shares of a qualifying small business corporation (QSBC) or qualified farm and/or fishing property, CGT will be reduced if the deceased's CAD1,016,836 lifetime capital gains exemption can be claimed on the terminal return. This will depend on whether all or a portion of this exemption remains unclaimed at death and whether the shares of the QSBC or farm and/or fishing property qualify for the exemption. Where shares of a QSBC or farm and/or fishing property are left to a surviving spouse, the personal representative may choose to elect out of the automatic rollover to realize a portion of the capital gain that can be sheltered by the deceased's available exemption.

Note that the application of this exemption is fairly limited in scope:

- It is not available to nonresidents.
- To qualify as shares of a QSBC, the corporation must be a Canadian-controlled private corporation and must meet certain tests with respect to the use of its assets in Canada, and the shareholder must meet a holding-period test.

Using capital losses

In most cases, net capital losses can be used to offset net capital gains only. However, there is a relieving provision whereby net capital losses incurred on a deemed disposition at death can be applied to reduce income from any source in the year of death or the preceding year. This provision also applies to any net capital losses carried forward from previous years (to the extent that they exceed amounts previously claimed as capital gains exemption by the deceased) and net capital gains realized in the year of death.

In addition to a capital gain or loss, the disposition of depreciable property on the death of the testator may give rise to recapture of depreciation or terminal losses. For each item of depreciable property, the testator is deemed on death to receive proceeds equal to FMV. When the deemed proceeds exceed the undepreciated capital cost of the property, there will generally be a recapture of depreciation. This recapture must be included as part of the income of the testator in his or her terminal year's return. On the other hand, when the undepreciated capital cost of the property exceeds the deemed proceeds, a terminal loss will occur. In this case, the terminal loss can be deducted from income in the terminal year's return.

Transfer of farm and/or fishing property to children or grandchildren

If the property to be transferred during the lifetime or under the will is a farm and/or fishing property, an interest in a farm and/or fishing partnership or shares in a farm and/or fishing corporation, there can be a complete deferral of tax liability if the property is being transferred to the children or the grandchildren of the deceased and certain conditions regarding the use of the farm and/or fishing property are met. As the personal representative can elect to transfer the property to a child at any value between cost and FMV, it is possible to elect to realize sufficient gain to use the remaining capital gains exemption so that the child will have a higher cost for his or her future disposition. It is also possible to have a tax-deferred rollover back to a parent if the child predeceases their parent and had previously received the farm and/or fishing property on a tax-deferred basis.

5. Filing procedures

Canada taxes income as earned on the calendar-year basis. The personal representative will be responsible for filing one or more of the following returns:

- Prior year return: If an individual dies between 1 January and the usual filing date for the preceding year, he or she will often not have filed his or her tax return for the preceding year. In this situation, the filing deadline for the preceding year is the later of six months after the date of death, or the normal due date of the return (30 April or, if the individual or their spouse or common-law partner had business income, 15 June[9]).

[9] Because 15 June 2024 is a Saturday, a return that is due on this date is considered filed on time if it is filed no later than 17 June 2024 (on the following Monday).

- Terminal return — year of death: The return for the year of death, also referred to as the terminal return, will be due on 30 April of the subsequent year or, if the deceased or their spouse or common-law partner had business income, 15 June of the subsequent year. However, if the death occurs between 1 November and 31 December of the current year the deceased taxpayer's representative has until the later of the normal filing date or six months after the date of death to file the current year's return.
- Elective return — rights or things: If the deceased had any "rights or things" at death, these may be included in a separate tax return with a separate set of graduated tax rates. Rights or things generally mean amounts of income that were not paid at the time of death and that, had the person not died, would have been included in the person's income for the year in which they were paid. Examples include such items as matured but unclipped bond coupons, dividends declared but unpaid and unpaid compensation. This special return is due the later of one year from the date of death or 90 days after the mailing date of the notice of assessment of the final return.

In terms of planning, there are two basic reasons for filing as many tax returns as possible. The first relates to the fact that the income tax rates are progressive and income starts at zero in each return. If multiple returns are not filed, there may be amounts taxed at higher rates than would have been the case if multiple returns had been filed.

The second advantage of filing multiple returns is that some personal tax credits can be deducted in each return. This could reduce the deceased taxpayer's estate's total tax liability.

Date for payment of tax

Generally, tax is due when the relevant returns are required to be filed. However, where the deceased individual is deemed to have disposed of capital property, resource property, land inventory or was entitled to a right or thing at death, the executor can elect to defer payment of a portion of the tax arising on such deemed dispositions or rights or things. Provided that acceptable security is posted with the Canada Revenue Agency (CRA), the tax may be paid in as many as 10 equal annual installments, with the first payment due on the balance due date for the return. Each subsequent payment is due on the anniversary of the balance due date. Interest, calculated using the prescribed rate in effect plus 4%[10], will apply to the outstanding amount, commencing at the balance due date until the full amount of the tax is paid. The accrued interest must also be paid at the due date for each installment.

6. Assessments and valuations

The CRA has not altered its official policy with respect to valuation issues since the issuance of IC 89-3, Policy Statement on Business Equity Valuations, in 1989, which defines FMV as:

"The highest price, expressed in terms of money or money's worth, obtainable in an open market between knowledgeable, informed and prudent parties acting at arm's length, neither party being under any compulsion to transact."

7. Trusts, foundations and private purpose funds

From an estate planning point of view, trusts are often used as a means of making lifetime gifts to enable the donor to place constraints on the donee. Property will normally be gifted at a time when it does not attract a tax liability, and any growth in value of assets held by the trust is outside of the donor's estate.

For example, inter vivos trusts are commonly used to hold participating shares of a holding company established as part of an estate freezing plan so that the growth in the value of the business or investments transferred to the company will accrue to the next generation. The transferor may be one of the trustees and, consequently, will be in a position to influence if and when distributions from the trust will be made.

[10] In 2023, the prescribed rate in effect was 4% for the first quarter of the calendar year, and 5% for the second, third and fourth quarters of the year. The prescribed rate increased to 6% for the first quarter of 2024.

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.

Generally, in situations in which the beneficiaries of a trust are residents of Canada, planning can be implemented that results in a deferral of CGT that the trust would otherwise pay as a result of the application of the 21-year deemed disposition rule. That planning often involves transferring the assets of the trust to its beneficiaries at the adjusted cost base amounts of the assets. The beneficiaries then pay CGT when they ultimately dispose of the assets that they have acquired from the trust.

Most capital properties cannot be distributed by a trust to beneficiaries on a tax-deferred basis if the beneficiaries are nonresidents of Canada.

8. Grants

If an individual has paid into the Canada Pension Plan during their lifetime, their estate may file a claim to recover up to CAD2,500 of the cost of the funeral. This "death benefit" is taxable to the recipient and not reported on the final tax return of the decedent.

9. Life insurance

The receipt of life insurance proceeds is not taxable in Canada but could be subject to probate if the estate is named as the beneficiary of the insurance policy.

If a private company is the beneficiary of a life insurance policy, the insurance proceeds (net of the adjusted cost basis of the policy if the company is the owner of the policy) is added to the company's capital dividend account and a tax-free capital dividend can be paid to any Canadian resident shareholder. A capital dividend paid to a nonresident would be subject to the nonresident withholding tax applicable for taxable dividends.

10. Civil law on succession

Most of the Canadian legal system has its foundation in the British common law system, but Quebec still has a civil law system for issues of private law.

10.1 Estate planning

Estate planning in Canada can include implementing an estate freeze either by gifting assets directly to the next generation (resulting in a deemed disposition at fair market value) or by transferring the assets to a holding company on a tax-deferred basis by taking back fixed value preferred shares and having the next generation subscribe for the future growth shares, either directly or through a discretionary family trust for their benefit (see discussion above). An estate freeze using a family trust can also have the benefit of allowing the family access to multiple lifetime capital gains exemptions provided the trust holds and disposes of shares of a QSBC and the trustees allocate the taxable portion of the gain to the beneficiaries so they can use their respective capital gains exemptions. Amended rules, effective for 2018 and later taxation years, curtail the ability to income split with family members who become shareholders, directly or indirectly, of a holding company, but an estate freeze can still be implemented to manage the tax liability on death of the freezor.

10.2 Succession

This is not applicable to individuals in Canada.

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 spouses and dependents upon death. 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 had a duty to provide for them, but 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 (CAD350,000) to the spouse, remainder split equally between the spouse and the child
If a spouse and two or more children	Preferential share (CAD350,000) to the spouse plus one-third of remainder, two-thirds divided equally between children

Survivor	Distribution
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
If none of the above and a parent is alive	Parents share equally, or if only one parent, parent gets estate absolutely
If none of the above and at least one surviving brother or sister	Brothers and sisters share equally with representation
If none of the above and at least one niece or nephew	Nieces and nephews share equally with no representation
If none of the above and next of kin	Next of kin of equal degree of consanguinity to the intestate equally without representation; degrees of kindred shall be computed by counting upward from the deceased to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree
If none of the above	His Majesty the King (escheat to the Crown)

10.6 Probate tax

Most of the Canadian provinces levy some form of probate fees/taxes based on the gross value of the estate. These fees/taxes are generally payable by the estate of a decedent immediately upon issuance of an estate certificate (or letters of probate). These documents generally authenticate the appointment of the personal representatives of an estate for third parties.

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

Province/territory	Fee/tax (CAD)[11]
Alberta	525, where property's net value exceeds 250,000
British Columbia	350 + 14 for every 1,000 or portion thereof by which the estate's value exceeds 50,000
Manitoba	No probate (probate was eliminated effective 6 November 2020)
New Brunswick	5 per 1,000 or portion thereof by which the estate's value exceeds 20,000
Newfoundland and Labrador	60 + 0.60 for every additional 100 of the estate's value over 1,000
Northwest Territories	435, where the property's value exceeds 250,000
Nova Scotia	1,002.65 + 16.95 for every 1,000 or portion thereof by which the estate's assets exceed 100,000

11 The rates shown are current as of 1 December 2023.

Province/territory	Fee/tax (CAD)[11]
Nunavut	425, where the property's value exceeds 250,000
Ontario	15 per 1,000 or portion thereof by which the estate's value exceeds 50,000
Prince Edward Island	400 + 4 per 1,000 or portion thereof by which the estate's value exceeds 100,000
Quebec	No probate
Saskatchewan	7 per 1,000 of the estate's value or portion thereof
Yukon	140, where the estate's value exceeds 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 entity.

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.