

Canadian Taxes on death



Assumed Situation

- You are a Canadian who continues to file an annual tax return to CRA
- You wish to support a particular charity in Mexico by gifting property in either – or both – your Canadian Will and your Mexican Will
- Your gift of ‘property’ can be bank accounts, an investment portfolio (registered or non-registered), or real property
- Property can also be artwork or other collectible items of value
- You have a valid Canadian Will
- You have a valid Mexican Will for property owned in Mexico and your Canadian Will acknowledges your Mexican Will

Your Canadian Will

- In Canada you can have both a primary and a secondary Will and they cover your world-wide property unless there is an exclusion for a foreign property covered by a separate Will
- Your Mexican Will should cover *only* your property in Mexico
- A Canadian Will alone will not extend any Canadian tax benefits to property in Canada or Mexico that is donated to a Mexican charity
- If property is jointly owned these rules apply on the death of the joint owner
- I will speak only to taxes on death for property situated in Canada

Canadian taxes on death

- Unlike the USA, there is no estate tax or death tax in Canada
- There is also no inheritance tax
- Canada has Capital Gains Tax and Probate Fees
- The executor of your Will is responsible for filing a final (terminal) income tax return (T1) up to the date of death
- After the date of death, a trust is created, and the executor is responsible for filing a Trust Income Tax and Information Return (T3) for the estate
- The Trust fiscal year is for the next 12 months following date of death

Canadian taxes on death

- The executor has an option of filing up to four different T1 Terminal returns depending on circumstances – each with the basic personal exemption
- When a person dies, the CRA considers that the person has disposed of all capital property right before death. The CRA calls this a deemed disposition.
- Capital property is defined as any property that if sold would result in a capital gain or loss
- The deceased's principal residence is not a capital property
- There are tax benefits in Canada for bequeathing capital property to a *Qualified Donee*

What is a *Qualified Donee* ?

- Canada Revenue Agency (CRA) defines a *qualified donee* as a registered Canadian charity that can issue official donation receipts for gifts it receives from individuals and corporations.
- AMISTAD CANADA is a *qualified donee*
- A foreign charity that has received a gift from Her Majesty in right of Canada and is registered by CRA, can be a *qualified donee* for a specific period of time. Currently there are only three such foreign charities
- Most international charities will register a Canadian entity with CRA and become a *qualified donee* in order to support their foreign charitable works

If you have US source income

- This could be income from a business in the USA, rental from an income property in the USA, income from a trust or investment income for securities registered in the USA
- If you bequeathed a US based stock which cost you – say - \$10,000 but had a value of \$100,000 on date of death, the capital gain would be considered zero *if* bequeathed to a *qualified donee* in Canada.
- If this same stock was bequeathed to a foreign charity, the estate would have to report the capital gain of \$90,000
- There would be a foreign tax credit to offset any tax paid in the USA or Mexico as a result of this donation

Capital Gains Tax

- When property is 'deemed sold' on date of death it will be subject to a Capital Gains Tax in Canada
- Capital Gains Tax is paid on 50% of the deemed value on date of death less the property's adjusted cost base
- The amount of tax paid is approximately 25% of the gain
- This will not include property owned in Mexico provided you have a valid Mexican Will
- If you do not have a valid Mexican Will, your estate will be taxed as if the property was in Canada
- Your principal residence in Canada is excluded from this calculation

Provincial Probate Fees

- Also known as Estate Administration Tax
- Applicable on only the Primary Will and not the secondary Will
- By having a Will prepared in Mexico, you do not have to report Mexican owned property to CRA or the Ministry of Finance, in the list of assets at death
- Probate fees are paid to the Province (Ministry of Finance) in which the deceased resided and vary province to province
- This tax is progressive and is based on the total value of the deceased's estate in Canada (again, excluding property owned in Mexico – provided you have a valid Mexican Will)

Tax Advantages of leaving a gift to a charity in your Will

- Known by CRA as an ‘estate donation’
- In Canada, the beneficiary must be a *qualified donee*a Canadian organization that can issue receipts for donations
- AMISTAD CANADA is a *qualified donee* and therefore any donation bequeathed in your Canadian Will will extend tax benefits to the estate

Named beneficiary in a registered instrument

- A designation donation is when one names a beneficiary in a registered plan such as an RRSP, RRIF, LIF or TFSA
- Upon death of the donor, assets owned by the donor become assets owned by the estate and fair market value on the date of death is taxed to the deceased on the terminal return at the graduated rate
- Registered instruments with a named beneficiary are not included in the list of assets for Probate
- If AMISTAD CANADA is the named beneficiary on a registered instrument, 100% the proceeds of the instrument will be paid to Amistad Canada

Named beneficiary in a life insurance policy

- Generally, when a Canadian dies and has a life insurance policy with a named Canadian beneficiary, the policy pays out the face value to the beneficiary tax free and the estate is not taxed
- If AMISTAD CANADA is the named beneficiary on a Canadian life insurance policy, the executor will arrange for the proceeds to be paid directly to Amistad
- Non-registered investments with a life insurance company can name AMISTAD CANADA as a beneficiary and the face value would flow directly to Amistad and by-pass probate

Investment portfolios donated to AMISTAD CANADA

- When a Canadian estate donates an investment portfolio to a Canadian registered charity (a *qualified donee*) the estate does not have pay tax on any capital gain incurred at the time of death and the estate receives a donation receipt for the fair market value at the time the donation is made
- This is not the case when a Canadian estate donates a Canadian investment portfolio to a foreign beneficiary
- The estate in Canada will be taxed on the capital gain
- Note – rules may be different in the Province of Quebec

Disclaimer

- **Disclaimer:** The information provided in this document does not constitute legal, tax or accounting advice, but is designed to provide general information relating to the Canadian tax implications of estate donations to AMISTAD CANADA. The content is not a substitute for obtaining the advice of a competent professional, for example a licensed lawyer or attorney, law firm, accountant or financial adviser.