

STEP Inside

NEWSLETTER OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS (CANADA)

Changes to the Taxation of Estates and Testamentary Trusts



Post Mortem Planning for Private Corporation Shares – Page 7
Whose Mistake? Part II – Page 11

ONTARIO'S NEW ESTATE INFORMATION RETURN

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The Ontario *Estate Administration Tax Act*, 1998 was amended as a result of the 2011 provincial budget to add audit, inspection, and assessment provisions and to impose a duty to provide “such information about the deceased person as may be prescribed” in applications for the appointment of an estate trustee. Originally, this amendment was to apply to applications made after January 1, 2013, but implementation was delayed.

The regulation (O. reg. 310/14) detailing the prescribed information was finally filed on December 22, 2014, and it is effective for applications for estate certificates made on or after January 1, 2015. The new form, called an estate information return, and a 13 page guide may be found at the Ontario Ministry of Finance website www.fin.gov.on.ca/en/tax/eat/.

The estate information return must be received by the ministry 90 calendar days after the estate certificate is issued. The guide indicates that the return may be delivered, sent by mail, or faxed to the Ministry of Finance at the listed Oshawa address. It also states that the return may be delivered in person to specified Service Ontario locations. It is unknown whether

receipts will be provided. Unlike the federal *Income Tax Act*, the *Estate Administration Tax Act*, 1998 provides no deemed date of receipt if the return is sent by first class mail. Accordingly, estate trustees must ensure that they meet the filing deadline. Failure to do so may produce penalties and lead to consequences respecting the reassessment limitation period.

The guide states that if the court issued a “Certificate of Appointment of Estate Trustee Limited to the Assets Referred to in the Will”, then only the assets referred to in such will are to be reported in the estate information return. The planning technique of multiple wills involves a primary will for the disposition of assets requiring probate and a secondary will for other assets. Only the primary will is probated using Form 74.4.1, “Application for Certificate of Appointment of Estate Trustee Limited to the Assets Referred to in the Will” and the court issues a limited grant of probate or technically, a “Certificate of Appointment of Estate Trustee Limited to the Assets Referred to in the Will”. Based on the guide, only the assets referred to in the primary will are reported on the estate information return.

Both the regulation and the estate information return contemplate disclosure of specific information on an asset-by-asset basis. For real property, the full address, actual value of encumbrances, assessment roll number, and property identifier number are required. For cash, a loan receivable, a security, a contract of insurance without a named beneficiary, a derivative, a partnership interest, or “any other investment,” a full description of the asset is required, including the type of asset, number of units held by the deceased, and particulars of the asset (such as its series or class). However,

if the last-described group of assets are held by an adviser or institution on behalf of the deceased, it is unnecessary to provide an asset-by-asset description; instead, it is sufficient to provide the name and contact information of the adviser or the institution, the account number, and the total value of the account. If the deceased owned an asset as a tenant-in-common, the percentage of the asset owned by the deceased and the total value of the asset must be disclosed; these amounts allow for a simple arithmetic calculation without any minority discount.

The regulation also dictates that the estate representative update information about the deceased's assets and file a revised return if any of this information is incorrect or incomplete. The revised return must contain a reason for updating the information and must be filed no later than 30 days after the estate representative becomes aware that the information is incorrect or incomplete. There is no requirement to file a revised return if the estate representative becomes aware of the incorrect or incomplete information after the fourth anniversary of the day that the tax became payable. Presumably this anniversary is measured from the day that the estate certificate is issued.

The fourth anniversary of the day that the tax becomes payable matches the end of the limitation period in section 4.5 of the *Estate Administration Tax Act, 1998*, during which the minister may assess or reassess the tax payable by the estate. The four-year reassessment limitation period was introduced by the 2011 provincial budget, and there are exceptions to it. The assessment or reassessment period remains open if the minister establishes a failure to comply with section 4.1 of the *Estate Administra-*

tion Tax Act, 1998 (the requirement to provide prescribed information about the deceased person in the prescribed time and manner). Given the amount of information regarding the deceased's assets that the regulation requires, omissions or errors may arise. It is not clear if a simple error or omission amounts to a failure to comply with section 4.1, thereby leaving the reassessment period open, or if the filing of an amended return cures the original error or omission for this purpose.

The assessment or reassessment period also remains open if the minister establishes that any person made a misrepresentation attributable to neglect, carelessness, or willful default in providing information about the estate or in omitting to provide information about the estate. Because there is similar language in the federal *Income Tax Act* in the context of an open reassessment period, related jurisprudence might provide guidance regarding the required standard. The cases show that an incorrect statement constitutes a misrepresentation, and the standard of care is that of a "wise and prudent person." In light of the detailed information that must be provided in the required return, estate representatives should beware of the possibility of an open-ended reassessment period.