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## Eligible Funeral Arrangements

An eligible funeral arrangement (“EFA”) is an arrangement established and maintained by a qualifying person, such as a licensed funeral director or cemetery operator, for the sole purpose of **fund-ing funeral or cemetery services** for one or more individuals. Contributions under an arrangement may go into a cemetery care trust, which is a trust established for the care and maintenance of a cemetery. An EFA must have one or more custodians, each of whom was resident in Canada when the arrangement was established. A custodian could be either a trustee of a trust governed by the arrangement or, if no trust is involved, a qualifying person.

**Contributions** under an EFA are generally **not deductible** in computing income. However, **income** (e.g., interest on contributions) that accumulates

in an EFA is **not included** in the income of the contributor while it accumulates. If the income accumulates in a trust governed by the EFA or in a cemetery care trust, the trust’s taxable income is exempt from Part I income tax.

For purposes of determining whether an arrangement qualifies as an EFA, there is a **limit on the amount of contributions** that can be made:

- \$15,000 if the arrangement covers only funeral services for the individual;
- \$20,000 if it covers only cemetery services for the individual; and
- \$35,000 if it covers both.

**No part** of any arrangement qualifies as an EFA from the point in time when the individual’s relevant **contribution limit is exceeded**.

If an arrangement does not qualify or ceases to qualify as an EFA, income (e.g., interest) on contributions that accumulates under the arrangement could be included, for example, in the income of a contributor or a trust governed by the arrangement as it accumulates. However, income earned in a cemetery care trust is still exempt from Part I tax even if the arrangement under which contributions are made to the cemetery care trust is not an EFA.

### What Are Funeral Services and Cemetery Services?

Funeral services for an individual means property and services—other than cemetery services—directly related to funeral arrangements in Canada in consequence of the individual's death and include:

- the care and embalming of the deceased;
- a casket for the deceased;
- services or supplies provided in connection with the funeral rite for the deceased; and
- the transportation of the deceased (which can include transportation of the deceased from a place outside Canada to a place in Canada).

Cemetery services mean property (including interment vaults, markers, flowers, liners, urns, shrubs, and wreaths) and services directly related to cemetery arrangements in Canada in consequence of the individual's death, including property and services to be funded out of a cemetery care trust.

### Types of Contributions That Can Be Made

All contributions made under the arrangement must be solely for the purpose of funding funeral or cemetery services for one or more individuals, and such services are to be provided by a qualifying person. There is no requirement that contributions to an EFA must be made by that individual—

the contribution can be made by the individual or by some other person.

One or more of the following types of contributions can be made under an EFA:

- contributions for the pre-payment of the cost of funeral services;
- contributions for the pre-payment of the cost of cemetery services; and
- contributions to a cemetery care trust, which is a trust established for the care and maintenance of a cemetery.

The following payments (other than any portion of those payments contributed to a cemetery care trust) are considered to be made under a separate arrangement that is **not** an EFA:

- any payment made as consideration for the **immediate** acquisition of a right to burial in or on property that is set apart or used as a place for the burial of human remains; or
- any payment made as consideration for the **immediate** acquisition of any interest in a building or structure for the permanent placement of human remains.

### Tax Treatment of Income Held in an EFA

Income earned under an EFA is not included in income. Furthermore, no tax under Part I of the *Income Tax Act* is payable on the taxable income of a trust for the period throughout which it is:

- a trust governed by an EFA; or
- a cemetery care trust.

Accordingly, a T3 *Trust Income Tax and Information Return* does not need to be filed for a trust governed by an EFA or for a cemetery care trust.

### Tax Treatment of Contributions

Regardless of whether or not an arrangement to fund funeral or cemetery services is an EFA, con-

tributions to the arrangement are generally not deductible in computing the income of either the contributor or another person. However, if an employer makes contributions to the arrangement on behalf of an employee, the employer's contributions are generally an employee benefit the amount of which is deductible by the employer and included in the income of the employee. If, on the other hand, a corporation makes contributions on behalf of a shareholder, the amount of the contributions is generally included in the shareholder's income as a shareholder benefit, but such amount is not deductible in computing the corporation's income.

### What Is a "Relevant Contribution"?

A relevant contribution for an individual under a particular arrangement can be either a type (a) contribution, which is made **directly** to the arrangement, or a type (b) contribution, which is a contribution made by means of a **transfer** from another arrangement that was an EFA of an amount that was contributed directly to that other arrangement.

### Income Earned in an Arrangement Is Not Included in Relevant Contributions

Since income earned under an arrangement is not an amount contributed under the arrangement, such income is **not included** in relevant contributions. It is only the total amount of relevant contributions for an individual—and **not the total amount** held in an arrangement including accumulated income—that is used to determine whether the applicable relevant contribution limit for the individual has been exceeded. Similarly, when an amount held in an EFA is **transferred** to another arrangement as a contribution under that other arrangement, any accumulated income included in the amount transferred is **not included** in the amount determined—such accumulated income is **not counted as a relevant contribution** under the other arrangement.

### Transfer of Funds in an EFA to Another Arrangement

If an amount held in an EFA ("first arrangement") is transferred directly by the custodian of that arrangement to the custodian of another arrangement ("second arrangement") as a contribution under the second arrangement for the provision of funeral or cemetery services for the individual, the following occurs:

- Such transfer does **not** result in an income inclusion in respect of a distribution out of the first arrangement; and
- The amount transferred from the first arrangement—other than the portion of that amount that represents income (e.g., interest) that accumulated in the first arrangement—becomes a **relevant contribution** for the individual under the second arrangement.

If, however, instead of a direct custodian-to-custodian transfer as described above, the amount held in the first arrangement is distributed to a recipient (e.g., a contributor under the first arrangement) and the recipient then contributes the amount to the second arrangement, the following should be noted:

- The distribution from the first arrangement generally results in an amount being included in the recipient's income. This is the case even if the recipient contributes the entire amount received from the first arrangement to the second arrangement.
- The entire amount contributed to the second arrangement, including the portion of that amount that represents income that accumulated in the first arrangement, becomes a relevant contribution under the second arrangement. This is because the amount contributed to the second arrangement was not by means of a transfer from an EFA.

## An Income Inclusion Occurs When Funds Are Distributed From an EFA

If an amount is distributed from an EFA otherwise than as payment for the provision of funeral or cemetery services for an individual,<sup>1</sup> the person who receives the amount is generally required to include an amount in income.<sup>2</sup> To be taxable, the amount must be paid from the balance held under the arrangement for an individual. The amount to be included in the recipient's income is the **lesser** of the following two amounts:

- (a) the amount actually distributed to the recipient out of the balance held for the individual under the arrangement; and
- (b) the amount determined by the formula,

$$A + B - C$$

Where,

**A** is the balance held for the individual under the arrangement (not counting the value of property held in a cemetery care trust) immediately before the distribution to the recipient.

**B** is the total of all amounts paid out of the arrangement (before the distribution to the recipient) for the provision of funeral or cemetery services for the individual (not counting cemetery services funded by property held in a cemetery care trust).

**C** is the total of the relevant contributions (except contributions to a cemetery care trust) for the individual under the arrangement immediately before the distribution to the recipient.

The amount determined in (b) essentially represents income, such as interest, that has been earned in the arrangement (other than in a cemetery care trust) for the individual. No more than the amount of such income can be included in the income of the recipient. If any amount in excess of such income is distributed, it essentially represents a non-taxable refund of relevant contributions.<sup>3</sup>

<sup>1</sup> A distribution would typically occur because the arrangement is cancelled or because not all the funds held under the arrangement are needed to pay for the funeral or cemetery services.

<sup>2</sup> If a custodian under an EFA pays an amount to a non-resident person, the custodian must withhold and remit Part XIII tax.

<sup>3</sup> If the recipient of an amount to be included in income is not a contributor under the arrangement, the amount might still be deemed to be the income of a contributor because of an income attribution rule.