Estate Trustees will want to be aware of new rules regarding estate administration tax (formerly called “probate fees”). As of January 1, 2015 Estate Trustees must now provide the Minister of Finance a breakdown of the fair market value of each substantial asset owned by the deceased as at the date of death as well as a detailed description of each asset. This is a much more onerous requirement than in the past, intended to ensure that the government can collect the full value of tax on a deceased’s assets.

Estate Trustees are now required to complete a document called an “Information Return” within 90 days of being issued a Certificate of Appointment of Estate Trustee (formerly called “letters probate”); or subsequently, within 30 days of discovering new information or an error.
The new rules allow the Minister of Finance to audit estates up to 4 years from the date the estate administration tax becomes payable and impose penalties where an Estate Trustee has misrepresented the value of assets or withheld information.

The main impact this has for Estate Trustees and beneficiaries of estates is cost. First, Estate Trustees will need to obtain valuations and appraisals of assets and provide supporting documentation. The additional time and expense to the estate, though necessary, will not be eagerly embraced by Estate Trustees or beneficiaries. Second, more accurate reporting of assets will likely mean more estate administration tax will be payable.

Currently, Estate Trustees can protect themselves from legal liability by obtaining a clearance certificate from Canada Revenue Agency (CRA) once all applicable income taxes have been paid for the estate. CRA cannot come back, after providing the clearance certificate, and attempt to collect an income tax liability from the estate. Similarly, going forward, Estate Trustees will be able to obtain a “comfort letter” from the Minister of Finance. It is uncertain what these letters will look like or how much protection from legal liability they will provide Estate Trustees. Presumably, these “comfort letters” will assure Estate Trustees and beneficiaries that no further estate administration tax will be payable by the estate.

Our firm regularly advises Estate Trustees in the administration of estates. We would be pleased to explain to you the changes that have come into force this year as part of the services we provide to our Estate Trustee clients.