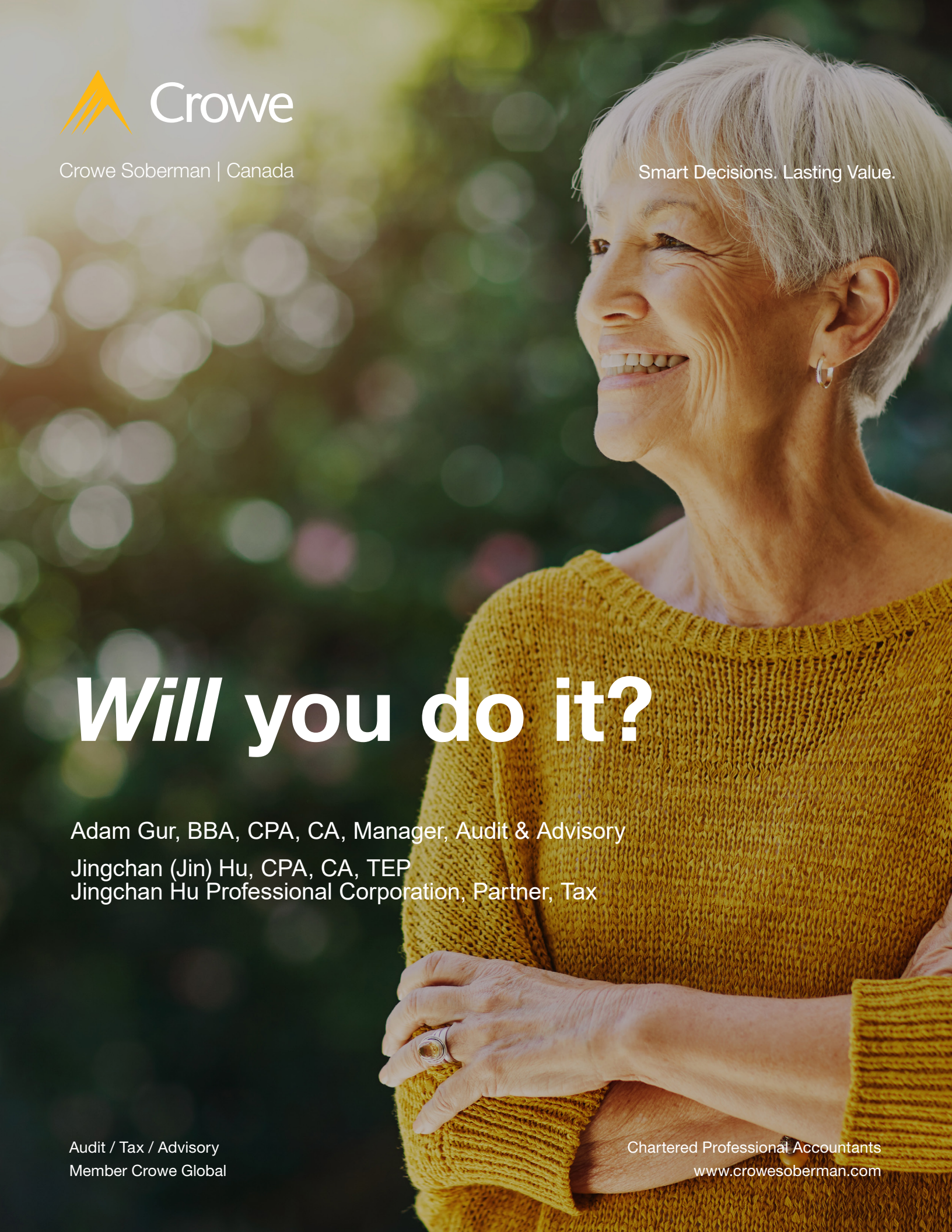
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We spend our lives working hard to build up assets and wealth that will be passed on to family, and often overlook the importance of preparing a will. **Wills and Estate Planning** are often implemented to protect one's assets, determine who will manage one's estate, avoid ambiguity regarding asset distribution, and to save time and money in the probate process.

A Will is a legal document that communicates the testator's wishes after their passing regarding the distribution of assets. A Will may also provide instructions for the care of minor children. All property owned by the testator at the time of death is referred to as an "*Estate*". When a person dies without a valid will, they are considered to have died "*intestate*". The distribution of the deceased's assets are dealt with according to the laws of the jurisdiction in which the Estate falls. For example, if an individual dies intestate in Ontario, Ontario's *Succession Law Reform Act* stipulates that, unless someone who is financially dependent on the deceased person makes a claim, the first $200,000 of the Estate is given to the deceased person's spouse. Anything over $200,000 is shared between the spouse and the descendants (e.g. children, grandchildren) according to a specific set of rules.

By drafting a Will, the testator can nominate an *executor* who is responsible for the administration of the Estate, such as paying the Estate's debts, file the required tax return(s), and carry out the testator's wishes set out in the will. However, before the executor is awarded the legal power to make decisions involving the Estate, he or she is required to obtain a grant of probate to administer the deceased's Estate.

Probate is the legal process required to validate a will and confirm the authority of the executor named in the will, to act on behalf of the estate. Probate involves a court supervised proceeding in which the authenticity of the will is accepted as the true last testament of the deceased. In the absence of a legal will, the probate process is prolonged, which may result in delays to the distribution of the Estate's assets and may result in higher probate fees depending on the assets owned by the estate. Generally, probate is required for property that is owned solely in the name of the deceased or a share of property owned as *tenants in common*. Most provinces in Canada charge a probate fee at the time that a will is probated. In Ontario, the probate fee, known as Estate Administration Tax **("EAT")**, is calculated on the total value of the estate. There are new rules effective for probate applications received on or after January 1, 2020 as follows:

- No EAT is payable if the value of the Estate is $50,000 or less; and
- For Estates valued over $50,000, the EAT is $15 for every $1,000 of value over $50,000.

However, not all assets of the deceased must be probated. Typically, those assets that are jointly owned and automatically become assets of the other joint owner(s) and registered assets with designated beneficiaries may be excluded from probate. Some of the common assets that may be excluded from probate include:

- Jointly owned real estate with a right of survivorship (joint tenants);
- Shares of and loans to private corporations that are covered by a secondary will (see below); and
- RRSPs, RRIFs, TFSAs with a designated beneficiary.

How can I minimize my Estate's Administration Tax?

A simple planning strategy Ontarians can implement to avoid paying EAT on assets that do not otherwise require probate is a Multiple Will Strategy. This strategy involves segregating assets that require probate from those that do not into separate wills. Typically, a "primary" will may govern the assets that require probate such as bank accounts, non-registered investment portfolios, and real estate (solely owned by the deceased). A "secondary" will may govern all the remaining assets that would not require probate such as shares of and loans to private corporations. Where this strategy is implemented, the executor will only need to probate the primary will and may avoid probate fees on the assets governed by the secondary will.

Table A below compares the EAT payable under a single and multiple will strategy. Based on the example, it is clear that a multiple will strategy could yield significant savings to the deceased person's estate.

Estate Assets	**Single Will**	**Multiple Wills**	
		Primary Will	Secondary Will
Non-registered investment accounts	$100,000	$100,000	-
Jewelry & personal effects	$50,000	-	$50,000
Private company shares	$5,000,000	-	$5,000,000
Gross estate	$6,650,000	$100,000	$5,050,000
Estate Administration Tax	**$99,000**	**$750**	**$-**

*Not held in joint tenancy

As aforementioned, private company shares can be excluded from probate, which provides an interesting planning opportunity when a multiple - will strategy is implemented. Assets that would normally require probate such as real estate and/or non-registered investments may be transferred to a bare trust corporation to hold legal title in trust for the transferor. In this example, the beneficial owner of the assets would not change, but legal title of the assets would be held by the private corporation and governed by a secondary will. These assets would then be dealt with under the secondary will and avoid probate and EAT.

It is prudent to seek appropriate legal and tax advice regarding the preparation of a will. If 2020 has taught us anything, it is the importance of being prepared for uncertain times and to be proactive instead of reactive to changes that may, inevitably arise.

This article has been prepared for the general information of our clients. Specific professional advice should be obtained prior to the implementation of any suggestion contained in this article. Please note that this publication should not be considered a substitute for personalized tax advice related to your particular situation.

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