Amounts related to covenants made in the context of an office or employment are generally included in income on a "received basis". In this regard, any amount receivable by an employee (that is not part of a salary deferral arrangement) in respect of an RC granted more than 36 months before the end of a particular year is deemed to have been received by that employee in the taxation year.[75]

[¶2115] Premium for Group Term Life Insurance

An employee must include in income premiums paid by his or her employer under a group term life insurance policy of which the employee is insured.[76] The amount to be included is prescribed by regulations. In general terms, premiums paid in respect of the year are included in income in that year, with a special provision which includes the full amount of "lump-sum premiums", even though such premiums relate to periods in future years.

The amount of the taxable benefit is based on the full amount of insurance coverage. The average cost of insurance is determined separately for each group of employees or former employees for whom a separate premium rate is established under the policy. Sales tax in respect of premiums is expressly included as part of the taxable benefit.

[¶2120] Employment at Special Work Site or Remote Location

A taxpayer who is required to live at a special work site or remote location by virtue of his or her office or employment is not required to include in income the value of board, lodging, and transportation, or any allowance paid by the employer in respect thereof, if the following conditions are fulfilled:[77]

(1) The taxpayer must be employed at a special work site or remote location where duties of a temporary nature are performed.

(2) The employee must have a permanent residence at another location to which the employee could not reasonably be expected to return on a daily basis due to the distance between locations.

(3) If the employee is not at a special work site, he or she must be at a location which is so remote from any established community that the employee would not reasonably be expected to establish and maintain a self-contained domestic establishment at that location.

(4) The board and lodging, the transportation, or the allowances therefore must have been received by the taxpayer in respect of a period of absence of not less than 36 hours from the taxpayer's ordinary place of residence.

See page ii for explanation of footnotes.

[75] Sec. 6(3.1).
[76] CCH ¶2500; Sec. 6(4).
[77] CCH ¶2600; Sec. 6(6).

(5) The amounts received for transportation, or an allowance for transportation, must be for travelling between:

(a) the employee's principal residence and the special work site; or

(b) the remote location and a location in Canada or a location in the country in which the employee is employed;

for the period during which the taxpayer received board and lodging benefits.

(6) The exemption will apply to the value of transportation, or an allowance therefor, only in respect of a period during which the taxpayer received from the employer board and lodging or a reasonable allowance.

(7) The allowance must not be in excess of a "reasonable amount". It is understood that transportation allowances should not be in excess of what is the fare for any acceptable and normal form of transportation.

A special deduction is available with respect to certain housing and travel benefits for employees living in the north and other prescribed areas.

[¶2130] Interest-Free, Low-Interest and Forgiven Loans

In certain circumstances an individual may have a benefit included in income by virtue of the fact that a person or partnership obtained an interest-free or low-interest loan or other indebtedness by virtue of a previous, current, or intended office or employment of the individual[78] (see ¶3117). In the case of an interest-free loan or below-market loan received by an employee because of or as a consequence of his employment or intended employment, a deemed benefit will normally arise and will be included in employment income to the extent that the prescribed rate of interest is not paid by the employee on the loan.[79] Essentially, the benefit is measured as the difference between the amount of interest for the year that would be payable on the indebtedness if interest thereon was calculated at the prescribed rates (see ¶475) in effect from time to time during the year, and the amount of interest actually paid by the taxpayer in the year or within 30 days after the end of the year. In response to a decision of the Federal Court of Appeal[80] that an employer-provided housing loan was received by the employee for the purpose of purchasing the new home and not because of or as a consequence of the employee's employment, a deemed interest benefit provision has been added. A loan is deemed to have been received because of or as a consequence of the employee's employment if it is reasonable to conclude that, but for an individual's previous, current, or intended office or employment, the terms of the loan would have been different or the loan would not have been received.[81] Note that the deemed interest benefit on up to $25,000 of the principal amount of a "home relocation loan" is

See page ii for explanation of footnotes.

[78] CCH ¶9896; Sec. 80.4; Interp. Bul. IT-421R2.
[79] CCH ¶2660; Sec. 6(9).
[80] Siwik, 97 DTC 5444.
[81] CCH ¶9896a; Sec. 80.4(1.1).

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Accordingly, the terminal losses, recapture, and capital gains arising from the disposition on death of depreciable capital property will, as for other capital property, be determined on the basis of proceeds of disposition that are equal to fair market value. However, separate rules apply where the amount of a deceased taxpayer's proceeds of disposition are re-determined under the provisions respecting the reduction of a terminal loss in the case of the disposition of a building and land.[338] The amount by which the deceased taxpayer's capital cost of the building exceeds the deceased taxpayer's proceeds of disposition, rather than the cost of the building to the person acquiring it, is deemed to have been deducted by the person acquiring the building as capital cost allowance on the building in computing income for previous taxation years. Finally, the cost to the person of the land is deemed to be the amount that was the deceased taxpayer's proceeds of disposition in respect of the land.

Example:

A taxpayer owns, immediately before death, a building and contiguous land that is used for income earning purposes.

The relevant values are:

	ACB/CC	UCC	FMV	CG	Terminal Loss
Land	$ 20,000	n/a	$ 50,000	$ 30,000	n/a
Building	$100,000	$20,000	nil	—	$20,000

Due to reallocation of the proceeds of disposition between the land and building, the land's proceeds of disposition are reduced by $20,000 (the amount of the deceased taxpayer's terminal loss otherwise determined) and the building's proceeds of disposition are increased by an equivalent amount. Thus the proceeds of disposition of the building will be $20,000 and of the land $30,000, producing a capital gain of $10,000 and a terminal loss of nil, respectively.

The person acquiring the property will be considered to have acquired the land at a cost of $30,000, rather than $50,000. Moreover, the building will be deemed to have been acquired by that person at a capital cost of $100,000, rather than nil and the person will be treated as having claimed capital cost allowance of $80,000, rather than $100,000, in previous years.

For the election to pay tax over a period of 10 years, see ¶12,240.

[¶2580] Transfer or Distribution to Spouse/Common-Law Partner or Trust

The rules described above in ¶2575 relative to depreciable and other capital property of a deceased taxpayer, including an interest in a partnership, do not apply to property transferred to the taxpayer's spouse or common-law partner or a trust created by the taxpayer for their benefit, commonly referred to as a "spousal or partner trust".[339]

Instead, the deceased is deemed to have disposed of each such property immediately prior to death for special proceeds of disposition. Where a particular property was depreciable property of a prescribed class, the proceeds of disposition are deemed to be that portion of the undepreciated capital cost of all properties in the class that the fair market value of the particular property is of the fair market value of all properties in the class. Where a particular property is not depreciable property of a prescribed class, the proceeds of disposition are the adjusted cost base to the deceased immediately before death. The spouse, common-law partner, or the trust receiving the property takes it at a cost equal to these proceeds of disposition. See also ¶4015.

The result of the foregoing is that the deceased realizes no capital gain, capital loss, recapture, or terminal loss on death. The advantage or liability of this is passed on to the spouse, common-law partner, or trust created for their benefit and figures in computing the spouse's, common-law partner's, or trust's income on ultimate disposition of the properties. However, an election may be made by the legal representatives of the deceased so that the "rollover" provisions do not apply with respect to specified property, and consequently, the rules with respect to depreciable and other capital property will apply.[340] See ¶2555.

With respect to depreciable property of a prescribed class, a deceased taxpayer's proceeds of disposition are equal to the lesser of the "capital cost" and the "cost amount" to the taxpayer of the property immediately before the taxpayer's death.[341]

Special provisions apply for the election respecting a taxpayer's "net income stabilization account" acquired under the *Farm Income Protection Act*.[342]

For the above rules to apply, the deceased and the deceased's spouse or common-law partner must have been resident in Canada immediately before the death of the deceased, and the spouse's or common-law partner's trust must be resident in Canada immediately after the time the property vested indefeasibly in the trust. The property in question must vest indefeasibly in the spouse or common-law partner or the trust created for their benefit within 36 months after death. The vesting period can be extended where the legal representative applies in writing to the Minister within the 36-month period and the Minister considers that an extension is reasonable in the circumstances.

A trust is considered to be created by a taxpayer's will if the trust is created under the terms of the taxpayer's will or by a court order in relation

See page ii for explanation of footnotes.

[338] CCH ¶9260; Sec. 70(5)(d).

[339] CCH ¶9270; Sec. 70(6); Interp. Bul. IT-305R4.

[340] CCH ¶9274; Sec. 70(6.2).

[341] CCH ¶9270; Sec. 70(6)(d).

[342] CCH ¶9273, ¶9274; Sec. 70(6.1), 70(6.2).

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business or not (which is a prerequisite to deducting farming losses from other income).

Gunn is the third generation of authority (2006 to present) to the extent that the Federal Court of Appeal in this case built on the principles outlined in *Moldowan* (those principles that have survived) and *Stewart*, which resulted in the development of direct modern tests to be employed to determine if the "combination question" applies to a given set of facts. In *Gunn*, the Federal Court of Appeal developed three questions or factual requirements for which a taxpayer must provide sufficient evidence to a court which, if accepted by the court, will result in the taxpayer being successful in answering the combination question in the affirmative (meaning that the deduction of farming losses will not be restricted).[527] The three requirements to be met in order to be able to deduct all farming losses are:

(1) The taxpayer has invested significant capital in a farming enterprise.

(2) The taxpayer spends virtually all of his or her working time on a combination of farming and the other principal income-earning activity.

(3) The taxpayer's day-to-day activities are a combination of farming and the other income-earning activity, and the time spent on each is significant.

Gunn has been followed or considered in the following cases, all of which were decided in favour of the taxpayer: where a doctor had a large scale farming operation including horse breeding, organic crops, and cattle;[528] where a dentist husband and lawyer wife operated a horse breeding and emu business;[529] where an engineer operated a cattle, lamb, goat, and turkey farm;[530] where a police officer operated a cattle farm;[531] and most recently, where a lawyer operated a horse breeding and racing business.[532]

This last case, *Craig*, later went on to the Supreme Court in 2012, and in a unanimous decision[533] the Supreme Court did somewhat overturn its own earlier decision in *Moldowan* in the way that case interpreted the combination test, in favour of the lower court approach used in *Gunn*. The combination question should only require an examination of the cumulative effect of the aggregate of capital invested in, time spent in, and income derived from farming and the second source of income, considered in light of the taxpayer's ordinary mode of living and farming history. If these factors show that a taxpayer places significant emphasis on both farming and non-farming sources of income, there is no reason that such a combination should not constitute a chief source of income.

See page ii for explanation of footnotes.

[527] Gunn, 2006 DTC 6544.
[528] Stackhouse, 2007 DTC 620.
[529] Loyens, 2008 DTC 4698.
[530] Johnson, 2009 DTC 1245.
[531] Scharfe, 2010 DTC 1078.
[532] Craig, 2011 DTC 5047.
[533] Craig, 2012 DTC 5115

In response to the Supreme Court of Canada decision in *Craig*, the 2013 Budget introduced amendments to ensure that the restricted farm loss provisions apply in situations where another source of income is greater than income from farming, thereby codifying the decision originally determined in *Moldowan*. This change applies to taxation years ending after March 20, 2013.

The Act contains provisions for the carryback and carryforward of all or a part of a taxpayer's restricted farm losses.[534] See ¶3396.

[¶3582] Clearing or Levelling Land and Laying Tile Drainage

Amounts paid by a taxpayer in the year for clearing or levelling land, or for laying tile drainage, for the purpose of carrying on a farming business are deductible.[535] The taxpayer must be engaged in the business of farming and, to be deductible, the expenditure must be made for the purpose of carrying on such a business.

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[¶3588] Feedlot Operation — When Considered Farming

A "feedlot" is considered to be a confined space where livestock are fed a concentrated diet for the purposes of producing a marketable animal.

Whether or not a feedlot operator is raising livestock and consequently would be considered to be farming is always a question of fact. To be considered to be farming, a feedlot operator must make an appreciable contribution to the growth and maturity of the livestock. In the case of a feedlot operation for cattle, appreciable contribution to the growth and maturity of the livestock would be considered to have been made if the animals are held in the feedlot for an average of at least 60 days or gain an average of at least 90 kilograms in weight. A feedlot operator may own all, some, or none of the livestock on the feedlot and may grow or purchase the feed used in the operation.

The following operations are not considered to be making an appreciable contribution to the growth and maturity of the livestock and are not considered to be farming:

(a) acting as agent or broker for the sale of livestock;

(b) buying livestock for resale as soon as a favourable opportunity presents itself; or

(c) assembling and preparing livestock for shipment.

See page ii for explanation of footnotes.

[534] CCH ¶16,003; Sec. 111.
[535] CCH ¶5650; Sec. 30; Interp. Bul. IT-485.

(2) compensation for property that has been:

(a) unlawfully taken;

(b) destroyed, including any insurance proceeds;

(c) taken under statutory authority, including the sale price of property sold to a person by whom notice of an intention to take under statutory authority was given;[93]

(d) injuriously affected; or

(e) damaged, including insurance proceeds for property damage unless the compensation or insurance has, within a reasonable time, been used to repair the damage;

(3) the amount by which a taxpayer's liability to a mortgagee or hypothecary creditor is reduced as the result of the sale of the mortgaged or hypothecated property under a provision of the mortgage or hypothec, plus any amount received by the taxpayer from the proceeds of the sale;

(4) any amount included as a result of the extinguishment of a debt resulting from foreclosure of a mortgage or hypothecary claim or repossession of property sold under a conditional sales contract;[94]

(5) in the case of a share, the amount deemed in certain circumstances not to be a dividend on that share.[95] On a winding-up, a portion of the winding-up dividend not exceeding the pre-1972 capital surplus on hand to the corporation is deemed not to be a dividend.

The following amounts, however, are not included in proceeds of disposition:

(1) any amount which would otherwise be proceeds of disposition of a share to the extent that the amount received is deemed to be a dividend such as in a winding-up distribution or redemption,[96] except to the extent that the dividend is deemed to be proceeds of disposition by paragraph 55(2)(*b*), or is deemed not to be a dividend by subparagraph 88(2)(*b*)(ii) (see (5) above);

(2) any amount that would otherwise be proceeds of disposition to the extent that such amount is deemed to be a dividend in a non-arm's length sale of shares.[97] There is a deemed dividend when there is a non-arm's length transfer of shares by a resident individual or trust and the consideration received on the transfer exceeds both the paid-up capital and the adjusted cost base of the shares transferred. A dividend is deemed to have been paid to a non-resident when that non-resident transfers shares of one

See page ii for explanation of footnotes.

[93] E.R. Fisher Ltd., 86 DTC 6364, Sani Sport Inc., 90 DTC 6230, Shaw, 93 DTC 5121, Langlois, 94 DTC 1597.

[94] Brill et al., 96 DTC 6572.

[95] CCH ¶11,170; Sec. 88(2)(*b*).

[96] CCH ¶7983, ¶10,240, ¶10,280; Sec. 55(2), 84(2), 84(3).

[97] CCH ¶10,384, ¶26,270; Sec. 84.1, 212.1.

Canadian corporation to another Canadian corporation in exchange for non-share consideration in excess of the paid-up capital of the shares transferred, if both corporations are subject to a certain specified degree of common control.

In *Daishowa*,[98] an assumption of future costs was determined to constitute part of the proceeds of disposition on the sale of a business. The case involved the taxpayer's sale of two timber mill businesses, each of which included timber rights and a corresponding reforestation obligation. The purchaser's assumption of the reforestation obligation was included in the proceeds of disposition. This case went to the Supreme Court of Canada in 2013[99] where, in a unanimous decision, it ruled to wholly exclude the purchaser-assumed reforestation obligation amounts from the taxpayer's proceeds of disposition. In its reasons for judgment, the SCC found that "the obligations — much like needed repairs to property — are a future cost embedded in the forest tenure that serves to depress the tenure's value at the time of sale".

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[¶5080] Meaning of "Adjusted Cost Base"

"Adjusted cost base" (ACB) is defined[100] to mean the capital cost of depreciable property and, for property other than depreciable property, the cost to the taxpayer of the property with specified adjustments. The adjustments may not reduce the adjusted cost base of a property at the time of disposition to less than zero. If the property involved is property that has been reacquired after a previous disposition, adjustments that were required to be made to the property before the reacquisition will not be made to the property after it is reacquired. There is also provision for a deemed gain when amounts to be deducted from the adjusted cost base exceed the cost plus the amounts to be added to the adjusted base. See ¶5175.[101]

"Cost" means the price the taxpayer gave up in order to get the asset and does not include any expense the taxpayer may have incurred in order to put himself or herself in a position to pay that price or to keep the property afterwards.[102]

[¶5085] Meaning of "Principal Residence"

"Principal residence" means a housing unit, including a leasehold interest therein, and also extends to a share of the capital stock of a co-operative housing corporation.[103] In order to qualify as a principal residence, the residence must be ordinarily inhabited in the year by the taxpayer, by the

See page ii for explanation of footnotes.

[98] Daishowa-Marubeni International Ltd., 2011 DTC 5157.

[99] Daishowa-Marubeni International Ltd., 2013 DTC 5085.

[100] CCH ¶7850, ¶29,280; Sec. 54 "adjusted cost base"; ITAR 26(5).

[101] CCH ¶6440; Sec. 40(3).

[102] Stirling, 85 DTC 5199, Bodrug Estate, 91 DTC 5621, Jensen, 86 DTC 1505.

[103] CCH ¶7851; Sec. 54 "principal residence"; Income Tax Folio S1-F3-C2.

interest, since the taxpayer is actually disposing of the remainder interest and is deemed to dispose of the life interest.[392] This provision does not apply to a transfer of a remainder interest in farm or fishing property left to a child which is otherwise eligible for the tax-deferred rollover (see ¶2545). It also does not apply where the remainder interest is disposed of to any charity or donee described in the definition of "total charitable gifts" or "total Crown gifts".[393] See ¶8150 and ¶8185.

When the life estate is terminated due to the death of the individual on whose life it is based, the holder of the life estate is deemed to have disposed of it just prior to death for proceeds equal to its adjusted cost base. Accordingly, there will be no capital gain or loss to the life interest holder when the interest expires. After the death, if the holder of the life estate and the person holding the remainder interest were not dealing at arm's length, there is an addition to the adjusted cost base of the real property. The amount added to the adjusted cost base is the lesser of:

(a) the adjusted cost base of the life estate immediately before death, and

(b) the amount, if any, by which the fair market value of the real property, immediately after the death, exceeds the adjusted cost base of the remainder interest immediately before the death.[394]

[¶5354] Synthetic Dispositions

New rules were introduced effective March 21, 2013 designed to thwart the deferral of tax by entering into synthetic dispositions. Generally, where a taxpayer owns property and enters into a synthetic disposition, they are deemed to have disposed of the property for proceeds equal to the fair market value and to have immediately reacquired the property at the same fair market value.[395]

There are a number of specified exceptions to the above rule.[396] It does not apply:

- unless the deemed disposition would result in the realization of a capital gain or income inclusion;
- in respect of mark-to-market property;
- to leases of tangible property;
- exchanges of property under section 51; or
- if the property is otherwise actually disposed of within one year.

See page ii for explanation of footnotes.

[392] CCH ¶6668; Sec. 43.1(1).

[393] CCH ¶18,330, ¶18,330a; Sec. 118.1(1) "total charitable gifts", 118.1(1) "total Crown gifts".

[394] CCH ¶6669; Sec. 43.1(2).

[395] Sec. 80.6(1).

[396] Sec. 80.6(2).

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[¶5355] Exchanges and Replacement of Property

[¶5357] Deferral of Capital Gain When Property Is Replaced

When capital property (other than shares) is disposed of involuntarily or when real property is used in the course of a business and then disposed of a taxpayer may elect to defer recognition of a capital gain if the former property is replaced within specified time limits with a similar property used in the same or a similar business.[397] A similar election is available under the capital cost allowance provisions[398] (¶4460) in respect of any recapture of capital cost allowance arising from the same disposition. An election under either of these provisions is deemed also to be an election under the other.

Involuntary dispositions. The election is available with respect to capital property (other than shares) where the proceeds arise as a result of certain involuntary dispositions. In order to qualify for the election, a replacement property must be acquired before the end of the second taxation year following the year in which the proceeds of disposition become receivable. To accommodate short taxation years, the specified time frame to acquire a replacement property and defer tax on capital gains was adjusted in technical amendments that were enacted on June 26, 2013. In the case of involuntary dispositions occurring in taxation years ending after December 19, 2000, the replacement property must be acquired before the later of the end of the second taxation year following the year of disposition and 24 months after the end of the taxation year of disposition.

The type of proceeds receivable on involuntary dispositions are: compensation for stolen property, compensation for property destroyed (including insurance proceeds) and compensation for property expropriated (or the sale price of property sold to an expropriating authority after notice of expropriation is given).[399] Special rules are provided for determining the time of disposition of capital property that has been stolen, destroyed, or expropriated and the time when the proceeds of disposition are considered to have become receivable. In general, these rules recognize that on dispositions of this kind the proceeds seldom are received or even determined until some considerable time after the taxpayer ceases to have the use of his or her property. The disposition is deemed to have taken place and the proceeds are deemed to have become receivable on the earliest of five specified days:[400]

(a) the day on which the taxpayer agrees to the *full* compensation for the stolen, destroyed, or expropriated property; if the taxpayer agrees

See page ii for explanation of footnotes.

[397] CCH ¶6700–¶6713; Sec. 44(1)–44(5); Interp. Bul. IT-259R4.

[398] CCH ¶4513; Sec. 13(4).

[399] CCH ¶7852; Sec. 54 "proceeds of disposition".

[400] CCH ¶6704; Sec. 44(2).

Pension income receipts that would otherwise qualify for the credit are excluded if the payments are exempt income (for example, foreign pension income which is protected by treaty). This prevents a double benefit being obtained for the same payment. A similar exclusion applies to the portion of any receipt that would otherwise qualify as pension income that is specifically deductible under some other provision of the Act. For example, any amount of superannuation benefits, retiring allowances, and RRSP refund of premiums transferred into an RRSP would not qualify as pension income or qualified pension income.

If the individual has not reached the age of 65 before the end of the year, the pension credit he or she is entitled to deduct is determined by multiplying the appropriate percentage of 15% by the lesser of $2,000 and the individual's "qualified pension income" received in the year.[85]

Commentary on Legislative Proposals (Sept. 16, 2016)

Note: When Legislative Proposals, September 16, 2016, achieves Royal Assent, the commentary will be modified to read:

If the individual has not reached the age of 65 before the end of the year, the pension credit he or she is entitled to deduct is determined by multiplying the appropriate percentage of 15% by the lesser of (i) $2,000 and (ii) the total of the individual's "qualified pension income" received in the year and, for 2015 and subsequent taxation years, the total of all amounts received by the individual in the year on account of a RISB payable to the individual under the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*.

Qualified pension income is a more limited category than pension income.[86] It is restricted to superannuation or pension benefits of the type described in (a) above and to receipts of the type described in (b) to (i) above, provided the latter receipts arise as a result of the death of the taxpayer's spouse or common-law partner.[87]

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[¶8111] Canada Employment Credit

An individual with earned office or employment income during the year may claim a Canada employment credit. The credit is non-refundable and calculated at the appropriate percentage of 15% on the lesser of: (i) the total office or employment income, including amounts received under the *Wage Earner Protection Program Act*; and (ii) the indexed value of $1,000 (i.e., $1,161 in 2016).[88] The purpose of this credit is to recognize various work-related expenses which are incurred by employees but not deductible from their income.

See page ii for explanation of footnotes.

[85] CCH ¶18,304; Sec. 118(3).
[86] CCH ¶18,316; Sec. 118(7).
[87] CCH ¶28,377; Sec. 252(3).
[88] CCH ¶18,321; Sec. 118(10).

[¶8112] Transit Pass Credit

An individual can claim the cost of monthly public transit passes or passes of longer duration such as an annual pass for travel within Canada on public transit. These passes must permit unlimited travel on local buses, streetcars, subways, commuter trains or buses, and local ferries.[89] The cost of shorter duration passes can also be claimed if each pass entitles the individual to unlimited travel for an uninterrupted period of at least five days and the individual purchases enough of these passes so that he or she is entitled to unlimited travel for at least 20 days in any 28-day period. The cost of electronic payment cards when used to make at least 32 one-way trips during an uninterrupted period not exceeding 31 days also qualifies for the credit.[90]

To qualify for the credit, public transit passes must be attributable to the use of public transit by the individual, his spouse or common-law partner, and his or her children (or those of his or her spouse or common-law partner) who are under 19 years of age at the end of the year.[91]

The credit is equal to the appropriate percentage of 15% of the eligible amounts paid for the year. Such amounts are reduced by a reimbursement, allowance, or any other form of assistance an individual receives in respect of the cost of an eligible public transit pass or eligible electronic payment card (other than amounts included in computing that individual's income that are not deductible in computing taxable income).[92]

In situations where more than one person is eligible to claim the credit with respect to a particular pass or electronic payment card, the credit must be divided between the eligible individuals, and must not exceed the maximum amount that one individual could deduct. If the individuals cannot agree on how to divide the credit, the Minister may arbitrarily assign amounts to the parties in question.[93]

[¶8113] Non-Refundable Child Fitness Tax Credit

Before 2014, an individual was entitled to claim a basic non-refundable child fitness tax credit on up to $500 of eligible fitness expenses paid with respect to each qualifying child registered in a prescribed program of physical activity. Effective for 2014, the maximum limit was increased to $1,000.[94]

Effective for 2015, the non-refundable credit becomes refundable. For more details, see ¶8245.[95]

The calculations and considerations below are generally valid for both the refundable and non-refundable credits.

See page ii for explanation of footnotes.

[89] CCH ¶18,326b; Sec. 118.02(1) "public commuter transit services".
[90] CCH ¶18,326a; Sec. 118.02(1) "eligible electronic payment card".
[91] CCH ¶18,326d; Sec. 118.02(1) "qualifying relation".
[92] CCH ¶18,326e; Sec. 118.02(2).
[93] CCH ¶18,326f; Sec. 118.02(3).
[94] CCH ¶18,329d; Sec. 118.03(2).
[95] Sec. 122.8

trusts (with a few exceptions) will be subject to flat-top taxation. The two notable exceptions to this amendment are gradated rate estates and qualified disability trusts. For further information, see ¶7307.[371]

[¶8395] Manufacturing and Processing Profits

[¶8400] Calculation of Credit on Manufacturing and Processing Profits

Corporations are taxed at a reduced rate on their Canadian manufacturing and processing profits. The Canadian manufacturing and processing profits credit is not available in respect of income that is eligible for the small business deduction. The rate set for the manufacturing and processing tax credit has fluctuated over the years. The rate has been 7% since 1994 but, beginning in 2008, increased to be equal to the "general rate reduction percentage" (see ¶8475). This means that the rate is 8.5% for 2008, 9% for 2009, 10% for 2010, 11.5% for 2011, and 13% for 2012 and subsequent taxation years, subject to proration for non-calendar years.[372]

Currently, the manufacturing and processing tax credit (on income not subject to the small business deduction) is the "general rate reduction percentage" for the year multiplied by the lesser of:

(a) the amount by which Canadian manufacturing and processing profits exceed income subject to the small business credit; and

(b) the amount by which taxable income exceeds the aggregate of

(i) income subject to the small business credit;

(ii) $^{10}/_{4}$ of the amount of the foreign tax credit on business income deducted for the year (see ¶8565). (For 2001 and subsequent taxation years, the amount is determined excluding the effect of the special CCPC rate reduction (discussed at ¶8475)); and

(iii) where the corporation was a Canadian-controlled private corporation throughout the year, its "aggregate investment income" for the year as defined in ¶9027.

The manufacturing and processing profits deduction is now available to corporations that generate electrical energy for sale or produce steam for sale.[373]

Manufacturing or processing does not include the following activities:[374]

(a) farming or fishing;

(b) logging;

See page ii for explanation of footnotes.

[371] Sec. 122(1)

[372] CCH ¶19,635; Sec. 125.1(1).

[373] CCH ¶19,637; Sec. 125.1(2).

[374] CCH ¶19,641; Sec. 125.1(3) "manufacturing or processing"; Interp. Bul. IT-411R.

(c) construction;

(d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation of petroleum or natural gas;

(e) extracting minerals from a mineral resource;

(f) processing ore (other than iron ore or tar sands ore) from a mineral resource located in Canada to any stage not beyond the prime metal stage or its equivalent;

(g) processing iron ore from a mineral resource located in Canada to any stage not beyond the pellet stage or its equivalent;

(h) processing tar sands ore from a mineral resource located in Canada to any stage not beyond the crude oil stage or its equivalent;

(i) producing industrial minerals;

(j) producing or processing electrical energy or steam for sale;

(k) processing natural gas as part of a business of selling or distributing gas in the course of operating a public utility;

(l) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent;

(m) Canadian field processing (defined in ¶4210); or

(n) manufacturing and processing where less than 10% of the gross revenue from active business carried on in Canada is from the selling or leasing of goods manufactured or processed in Canada, and from manufacturing and processing in Canada of goods for sale or lease by others (including the taxpayer's share of any such revenues earned by a partnership).

A taxpayer's assembly of kits containing automobile and truck parts for export to offshore vehicle manufacturers constituted "processing".[375] The taxpayer was held to be engaged in manufacturing, since it manufactured the parts it needed to repair hydraulic components. It was unrealistic to split its activities into a true manufacturing component (i.e., the manufacture of parts specified by a customer) and a repair component.[376] The corporate taxpayer's business consisted primarily of applying rubber covers to roll cores for pulp and paper industry mills. The business was held to be "manufacturing and processing" its goods "for sale". It was replacing the rubber covers (considered to be specially manufactured products) and selling them to the customer.[377] In addition to providing services related to the drilling of oil and gas wells, the taxpayer provided a related specialized product. The

See page ii for explanation of footnotes.

[375] TDS Group Limited, 2005 DTC 786.

[376] Coopers & Lybrand, 92 DTC 6452.

[377] Stowe-Woodward Inc., 92 DTC 6149.

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The gross-up amount applied to the corporation's foreign non-business income tax credit amount included in the calculation in (ii) is equal to:

$100/[35 + 3^{2}/_{3} \times (A/B)]$

Where:

A = the number of days in the taxation year that are after 2015; and

B = the total number of days in the taxation year.

From this total, the corporation deducts its dividend refund for its preceding taxation year. The remainder, if any, is the corporation's refundable divided tax on hand (RDTOH).

Where a tax return reporting Part IV tax payable is not filed within the required three-year limit, the Minister is not entitled to reduce the taxpayer's RDTOH balance in the following taxation year by the amount of the statute-barred dividend tax refund.[42]

[¶9030] Anti-Avoidance Rule

An anti-avoidance rule will stop certain transactions under which a dividend refund was generated without any tax being paid at the shareholder level. This could happen, for instance, if the recipient of the dividend had accumulated tax losses. This kind of abuse will be countered by deeming a dividend not to be a taxable dividend, and therefore denying the dividend refund to the dividend-paying corporation if the dividend was paid in a transaction (or series of transactions), one of the main purposes of which was to obtain the dividend refund.[43]

[¶9033] Bankrupt Corporations

No dividend refund may be obtained in respect of a taxable dividend paid to a controlling shareholder if that controlling shareholder was, at any time in the taxation year of the corporation paying the dividend, a bankrupt.[44]

[¶9036] Procedure for Dividend Refund

When a corporation files its return for a taxation year, within three years after the end of that year, the Minister may refund to the corporation as a dividend refund, the lesser of:

(a) 38⅓% of taxable dividends paid by the corporation in the taxation year, at a time when the corporation was a private corporation, and

(b) the corporation's refundable dividend tax on hand as at the end of the year.[45]

For taxation years that end before 2016 the rate in (a) was 33⅓%. Where a corporation's taxation year ended after 2015 and began before 2016.

See page ii for explanation of footnotes.

[42] Tawa Developments Inc., 2011 DTC 1324 (TCC).

[43] CCH ¶20,040a; Sec. 129(1.2).

[44] CCH ¶20,040; Sec. 129(1.1).

[45] CCH ¶20,039, ¶20,041; Sec. 129(1), 129(2).

the percentage used in (a) is prorated using the following formula for that year:

$33^{1}/_{3}\% + 5\% \times (A/B)$

where:

A = the number of days in the taxation year that are after 2015; and

B = the total number of days in the taxation year.

The Minister may make the refund without any application for refund having been made by the corporation. If an automatic refund is not made, the Minister must make a refund if the corporation makes an application for it within prescribed reassessment periods.[46]

Instead of making a dividend refund, the Minister may apply the refundable amount to the corporation's other tax liabilities. The Minister must notify the corporation that this has been done. In most cases, the dividend refund earned through the payment of taxable dividends will be used to offset taxes otherwise payable by the corporation as shown in its return for the year.[47]

If the return is not filed within three years of the end of the year in which the dividend is paid, the dividend refund cannot be paid or credited by the Minister, but, as noted above, the corporation's RDTOH balance is similarly not reduced.

[¶9039] "Aggregate Investment Income" and "Foreign Investment Income" Defined

A corporation's aggregate investment income for a taxation year is defined as the amount by which the total of the first three items outlined below exceeds the fourth (the result cannot be negative).[48]

(1) The "eligible portion" of its taxable capital gains in excess of the total of the "eligible portion" of its allowable capital losses for the year and the corporation's net capital losses carried over from other years and deducted in the year. This amount cannot be negative.

(2) The corporation's income from property for the year, excluding exempt income, dividend income which the corporation can deduct in computing its taxable income, receipts from a NISA Fund No. 2, and certain trust income which is otherwise deemed to be property income. The dividend exclusion will remove from aggregate investment income dividends received from Canadian corporations and most dividends received from foreign affiliates, but will not exclude portfolio dividends from foreign corporations.

(3) The corporation's income for the year from a "specified investment business" carried on by it in Canada (not including any income from a source outside of Canada).

minus:

See page ii for explanation of footnotes.

[46] CCH ¶20,049; Sec. 152(4).

[47] CCH ¶20,049; Sec. 129(2).

[48] CCH ¶20,056; Sec. 129(4) "aggregate investment income".

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[¶10,393] Home Buyers' Plan

[¶10,393a] Characteristics

The Home Buyers' Plan allows an individual to borrow up to $25,000 of money previously contributed to an RRSP to acquire a home in Canada to be used as the individual's principal residence. Each individual can withdraw up to $25,000 from any combination of plans of which he or she is the annuitant, so that a married couple, for example, could withdraw up to $25,000 each if they each have that much in their own RRSPs for the purchase of a jointly owned house. Common-law partners can similarly do this and any group of related or unrelated individuals, provided they can agree on the intricacies of collective home ownership. If one spouse/common-law partner's plan is a spousal or common-law partner plan RRSP to which all contributions have been made by the other spouse/common-law partner, withdrawals under the Home Buyers' Plan can be made from the spousal or common-law partner plan by the annuitant spouse/common-law partner and will not be included in the contributing spouse/common-law partner's income, unless for some reason they prove to be unqualified and would otherwise be included in the annuitant's spouse/common-law partner's income.[110]

The money withdrawn under the Home Buyers' Plan is, in effect, a interest-free loan from the individual's RRSP. It must be repaid in annual instalments over a 15-year period, commencing with the second year following the withdrawal.[111] As with ordinary RRSP contributions, individuals are in fact given 60 days following the year end to make a repayment. Thus, if an individual withdraws funds under the Home Buyers' Plan in 2016, he or she must commence repayments by March 1, 2019.

Once an individual has repaid all the funds withdrawn for a prior home purchase, he or she may use the Plan again, commencing with the year following the final repayment. This does not, however, waive the five-year rule below.

Although the Plan was essentially intended for first-time home buyers, the government has recognized that such a rule would be unfair in a variety of situations. It has therefore chosen a five-year period of non-ownership as the test to ensure that current or recent homeowners cannot use the Home Buyers' Plan. However, the five-year rule will be waived where a person who qualifies for the disability credit (or a related individual) buys a home which is more accessible for, or better suited to, the care of the disabled person.[112]

See page ii for explanation of footnotes.

[110] CCH ¶21,365ib, ¶21,372; Sec. 146.01(1) "regular eligible amount", 146.01(2).

[111] CCH ¶21,374, ¶21,375; Sec. 146.01(3), 146.01(4).

[112] CCH ¶21,365ja, ¶21,365jb; Sec. 146.01(1) "specified disabled person", 146.01(1) "supplemental eligible amount".

[¶10,393b] Limitations on Ordinary RRSP Contributions

If an individual withdraws RRSP funds under the Home Buyers' Plan, he or she will not be allowed to deduct any ordinary RRSP contributions made less than 90 days before the withdrawal to the extent that the contribution is greater than his or her RRSP balance after the withdrawal.[113]

Example:

Jennifer had $20,000 in her RRSP at the beginning of the calendar year and $10,000 in cash. She was entitled to put another $10,000 into her RRSP before March 1, and in fact used the cash to pay this amount as an RRSP contribution on February 15. She now has $30,000 in her RRSP. On March 31, her RRSP was credited with a further $750 earnings in respect of preceding years. On May 1 (i.e., less than 90 days after the contribution payment on February 15) she withdrew $25,000 under the Home Buyers' Plan, leaving a balance of $5,750. Her RRSP balance immediately after the withdrawal is $5,750 and her contribution within the 90-day period was $10,000, a difference of $4,250. This amount is disallowed as an RRSP deduction. In effect, Jennifer has been allowed to withdraw the $20,000 that was on hand originally, plus all earnings in the plan (whether on old or new money), but she has not been allowed to contribute funds within the 90-day period and both deduct them and withdraw them.

Jennifer could withdraw $20,750 without penalty. She could also withdraw the $20,750 on May 1 and, if she had not acquired her home within the 30 days preceding the 90th day after February 15 (i.e., she had not acquired her home within 30 days preceding May 16), she could now withdraw the remaining $4,250 and use it to further pay down her home cost. The 30-day rule is one of the limitations on Home Buyers' Plan withdrawals (see Rule (3) at ¶10,395).

The same rules apply to funds Jennifer's spouse or common-law partner withdraws from a spousal or common-law partner plan.[114]

If Jennifer contributes funds to her spouse or common-law partner plan and her spouse or common-law partner withdraws the funds under the Home Buyers' Plan within 90 days of her contribution, Jennifer will not be allowed to deduct her RRSP contribution to the extent that the contribution is greater than her spouse's or common-law partner's RRSP balance after the withdrawal.

The denial of a deduction for an RRSP contribution applies only to "ordinary" contributions. That is, it does not apply to contributions made and deducted under the rollover rules which permit special RRSP contributions for retirement allowances, termination payments, refunds of premiums received on the death of a spouse/common-law partner, or, in some cases, a parent, and direct transfer of funds between RRSPs or from other pension plans to RRSPs.

[¶10,395] Qualifying Withdrawals for a Qualifying Home

Each individual may withdraw funds under the Home Buyers' Plan from one or more RRSPs of which the individual is the annuitant, so long as the total of funds withdrawn does not exceed $25,000.[115] The funds need not be withdrawn at the same time, but all withdrawals must be received in the

See page ii for explanation of footnotes.

[113] CCH ¶21,249; Sec. 146(5).

[114] CCH ¶21,262; Sec. 146(5.1).

[115] CCH ¶21,365ib; Sec. 146.01(1) "regular eligible amount".

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late or "bank" certain discretionary tax deductions in years in which it is exempt from tax on all or part of its taxable income.[40]

[¶11,574] Non-Profit Corporation for Scientific Research and Experimental Development

[¶11,575] Tax Exemption

A non-profit corporation for scientific research and experimental development is exempt from income tax if it meets the following conditions:[41]

(1) The corporation must be constituted exclusively for carrying on or promoting scientific research and experimental development.

(2) No part of the corporation's income can be payable to or otherwise available for the personal benefit of any proprietor, member, or shareholder.

(3) The corporation must not have acquired control of any other corporation. A corporation is controlled by another corporation for these purposes if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to the other corporation or to the other corporation and persons with whom the other corporation does not deal at arm's length. However, a corporation is deemed for such purposes not to have acquired control of a corporation if it has not purchased or otherwise acquired for consideration any of the shares in the capital stock of that corporation.

(4) The corporation must not carry on any business during the period for which exemption is claimed.

(5) The corporation must, in each period for which it claims exemption, have expended amounts in Canada each of which is (a) an expenditure on scientific research and experimental development directly undertaken by it or on its behalf; or (b) a payment to an approved association, university, college, research institution, or other similar institution to be used for scientific research and experimental development, the aggregate of which is not less than 90% of the corporation's gross revenue for the period minus any penalties and interest payable for failing to file an information return.

[¶11,576] Deductions and Election

The aggregate of the amounts expended on scientific research and experimental development in the manner described above must not be less than 90% of the corporation's gross revenue for the period minus any penalties and interest payable for failing to file an information return (see

See page ii for explanation of footnotes.

[40] CCH ¶21,826; Sec. 149(4.3).

[41] CCH ¶21,775, ¶21,859; Sec. 149(1)(j), 149(7.1), 149(8).

¶11,578). However, in computing gross revenue for a taxation year, a corporation may deduct an amount not exceeding its gross revenue for the taxation year, but must include any amount deducted for the preceding taxation year.[42]

The net result of these provisions is to permit a corporation to accumulate and keep on hand as a reserve an amount up to its gross revenue for the preceding year. In addition, the corporation may accumulate an amount each year in respect of the 10% of its income for the period which it is not required to distribute. Since the corporation must expend the relevant amount in the period, it will be necessary for it to make the expenditure on the basis of an estimate of its gross revenue for the period.

[¶11,577] Gifts as Income

There must be included in computing the income of a non-profit corporation for scientific research and experimental development and in determining its gross revenue, all gifts received by it and all amounts contributed to it that are used for scientific research and experimental development. Thus, the value of such gifts or contributions must be taken into account in determining the amount that the corporation must distribute during the period in order to qualify for exemption.[43]

In computing the part, if any, of any income of a non-profit scientific research and experimental development corporation that is payable to, or otherwise available for, the personal benefit of any person, income excludes capital gains and losses.[44]

[¶11,578] Information Returns

A non-profit scientific research and experimental development corporation must file a prescribed form containing prescribed information by its income tax return filing-due date for the year.[45] The filing-due date for a corporation is six months from the end of its taxation year. Failure to file will attract a penalty equal to the greater of 2% of the corporation's taxable income for the year and $500 for each month (up to 12) that the form is late.[46]

[¶11,579] Acquisition of Control

For the purposes of the exemption from taxation for a non-profit scientific research and experimental development corporation, a corporation is considered to be controlled by another if more than 50% of its issued capital with voting rights belongs to another corporation or to the other corporation and persons with whom it does not deal at arm's length. How-

See page ii for explanation of footnotes.

[42] CCH ¶21,865; Sec. 149(9).

[43] CCH ¶21,859; Sec. 149(8).

[44] CCH ¶21,811; Sec. 149(2).

[45] CCH ¶21,844; Sec. 149(7).

[46] CCH ¶21,845; Sec. 149(7.1).

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penalty of $100. The Minister may waive all or part of this penalty in the case of an individual.[38]

[¶12,060] Tax Rulings

There may be uncertainty as to the tax consequences of certain proposed business transactions. Upon request, the CRA will give advance tax rulings to taxpayers.[39] Rulings of general interest are published by the CRA in a series of "Tax Rulings".

[¶12,065] Assessments

[¶12,070] Basic Procedure for Assessments

The Minister is required to examine, with all due dispatch, *each* return and to assess tax for the taxation year, plus interest and penalties, if any.[40] Thus, although a taxpayer had not resided in Canada in 2012 and 2013, the Minister was still required to examine the returns she had filed for those years.[41]

The Minister is also required to determine the amount of refund, if any, that may be available to the taxpayer for the year out of specified refundable tax accounts. It should be noted that the Federal Court of Appeal held that, although the minister's assessment of a taxpayer's returns had not been made "with all due dispatch", the taxpayer's tax liability was not affected by the fact that no assessment had been made.[42]

The requirement that the Minister examine the taxpayer's return and determine the amount of any refund or tax owing and the requirement that the Minister send a notice of assessment does not apply to determinations of disability tax credit eligibility (see ¶12,072), loss determinations, NIL GST Credits,[43] and determinations pursuant to the General Anti-Avoidance Rule (see ¶12,071).[44]

While an assessment has been held to include a "nil" assessment,[45] it has also been held that a taxpayer has no right of appeal against a nil assessment, since no tax is payable.[46] The lack of jurisdiction of the Tax Court of Canada to hear an appeal from a nil assessment was held to apply even when the question at issue relates to the CRA's determination of an individual's disability tax credit (DTC) eligibility and, as a consequence, the individual's entitlement to be named as a beneficiary under a registered disability savings plan.[47] However, see ¶12,072 for the new procedure of determination of disability tax credit eligibility.

"Assessment" is defined to include a reassessment.[48]

See page ii for explanation of footnotes.

[38] CCH ¶22,858; Sec. 162(5).
[39] Inf. Cir. 70-6R7.
[40] CCH ¶22,180, ¶22,190; Sec. 152(1), 152(2).
[41] Schatten, 96 DTC 6102.
[42] Ginsberg, 96 DTC 6372.
[43] Applicable to 2014 and subsequent tax years.
[44] CCH ¶22,182; Sec. 152(1.2).
[45] Anjulin Farms Ltd., 61 DTC 1182.
[46] Newfoundland Minerals Ltd., 69 DTC 5432.
[47] Tozzi, 2010 DTC 1374.
[48] CCH ¶28,018; Sec. 248(1) "assessment".

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Despite a taxpayer's claim of having been subjected to undue duress, the taxpayer, who had waived his right of appeal and signed both an agreement and documents accepting several reassessments in order to avoid prosecution for tax evasion, was held to be liable for his actions, and the appeal was dismissed.[49]

[¶12,071] Determination of Loss for a Year and Determination Pursuant to GAAR

A taxpayer may, at his or her option, request that the Minister determine the amount of the taxpayer's non-capital, net capital, restricted farm, farm, or limited partnership loss for a year if the Minister ascertains that the amount of the taxpayer's loss is different from the amount (if any) reported by the taxpayer in his return of income for the year.[50] It should be noted that it is only the taxpayer that can initiate the determination, but it is not clear how the taxpayer is to know that the Minister has ascertained the amount of the loss to be different from that reported in the taxpayer's return of income. Once the taxpayer requests the determination to be made, the Minister is required to make the determination with all due dispatch and send a notice of the determination to the person by whom the return was filed.

When the taxpayer is aware that the Minister disagrees with the calculation of the loss as reported, the taxpayer has two alternatives. He or she may request that the Minister determine the amount of the loss immediately pursuant to the above procedure, or he or she may decide that it is preferable to raise the matter in the taxation year in which he or she claims the loss against other income.

It should be noted that there does not appear to be any maximum time period within which the taxpayer must exercise his or her right to request a determination. However, once a determination is made, the time limitations governing objections and appeals in respect of assessments also apply to the determination.

The Minister may also determine an amount as a consequence of applying the general anti-avoidance rule (GAAR) (see ¶15,307).[51] Pursuant to GAAR, where a transaction is an avoidance transaction, the tax consequences are to be determined as is reasonable in the circumstances to deny a tax benefit, "tax consequences" meaning the amount of income, taxable income, taxable income earned in Canada, tax or other amount payable by, or refundable to, the taxpayer, or any other amount relevant to computing such amounts. Therefore, amounts that can be determined pursuant to GAAR include amounts such as the adjusted cost base of a property, the paid-up capital of a share, or the undepreciated capital cost of a class of property.

Where the Minister determines such amounts, he has two alternatives. He may determine the amount immediately pursuant to the above procedure, or he may decide that it is preferable to assess the taxpayer later

See page ii for explanation of footnotes.

[49] Smerchanski, 76 DTC 6247.
[50] CCH ¶22,181; Sec. 152(1.1).
[51] CCH ¶22,181a; Sec. 152(1.11).

(2) The third separate dividend is the remainder of the original dividend and it is deemed to have been a taxable dividend.

The election must be made in the prescribed manner not later than 90 days after the sending of the notice of assessment in respect of the penalty tax. For example, a corporation may compute the balance in its capital dividend account based on the assumption that a particular transaction resulted in a capital gain rather than business income. On this basis, the corporation elected to distribute a capital dividend. Later, on reassessment, it is determined that the gain on the transaction was business income and an amount must be removed from the capital dividend account. This could make the dividend paid exceed the reassessed balance in the capital dividend account. The election will allow the corporation to avoid the penalty tax by separating the dividend paid into a part that does not exceed the balance in the capital dividend account and a part than can be considered as a taxable dividend.

The election is not valid unless:

(1) it is made with the concurrence of all the shareholders who received or were entitled to receive the dividend and whose addresses were known to the corporation; and

(2) it is made within 30 months of the day on which the dividend became payable or all of the shareholders who received or were entitled to receive any part of the dividend in question concurred with the election.

Note that all the shareholders who received or were entitled to receive a portion of the dividend must concur even though they may not be shareholders at the time the election is made.

The election must be made by filing with the Minister in duplicate:[49]

(1) a letter signed on behalf of the corporation stating that the corporation elects in respect of a particular dividend;

(2) a certified copy of a resolution by the directors or the authorization of the other persons legally entitled to administer the affairs of the corporation authorizing the election to be made;

(3) a certified copy of the declaration by the directors or other persons legally entitled to administer the affairs of the corporation that the election is made with the concurrence of all shareholders who received or were entitled to receive all or any portion of the dividend and whose addresses were known to the corporation;

(4) a schedule showing:

(a) the date of the assessment of tax under Part III,

(b) the amount and date of the dividend, and

See page ii for explanation of footnotes.

[49] CCH ¶24,323; Reg. 2106.

(c) the manner in which the amount of the particular dividend is to be divided up as a result of the election; and

(5) any retroactive election in respect of a part of the particular dividend.

[¶13,122] Joint and Several Liability from Excessive Elections

Every person who receives a dividend in respect of which an election to pay a special tax-free dividend has been made will be jointly and severally liable with the corporation to pay the proportion of the Part III tax that the amount of the dividend received by the person is of the full amount of the dividend.[50]

Where a corporation and another person have become jointly and severally liable to pay part or all of the corporation's Part III tax, a payment by the other person on account of the liability will, to the extent of the payment, discharge his or her joint liability. However, a payment by the corporation on account of its liability will discharge the other person's liability only to the extent of that proportion of the payment (in excess of any other liability of the corporation) that the amount of the dividend received by the other person is of the total amount of the dividend.[51]

[¶13,123] Tax, Interest, Penalties, Returns, Assessments, etc.

The Minister issues an assessment after examining with all due dispatch an election to pay a special tax-free dividend. Where the Minister has assessed penalty taxes for excessive elections, the corporation is required to pay the tax and penalties due under the assessment "forthwith", a term which presumably means immediately upon receipt of the notice of assessment. Interest at a prescribed rate per annum on unpaid tax and penalties will accrue from the day of the election. The general provisions of Part I relating to assessments, penalties, refunds, objections, and appeals are made applicable.[52]

[¶13,125] Additional Tax on Excessive Eligible Dividend Designations (Part III.1)

[¶13,127] Liability for Tax

Part III.1 imposes a penalty tax where a corporation has made an excessive dividend designation in respect of dividends paid by it after 2005. There is no corresponding additional tax or penalty imposed on a recipient of eligible dividends. Rather, since the corporation bears the onus of properly designating dividends as being eligible dividends, only the corporation

See page ii for explanation of footnotes.

[50] CCH ¶24,337; Sec. 185(4).
[51] CCH ¶24,342; Sec. 185(6).
[52] CCH ¶22,904, ¶24,330; Sec. 185; Reg. 4300.

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sponsoring government will be responsible for submitting the refundable tax.

The balance in the government account established for a prescribed plan or arrangement is considered to be cash.

[¶13,573] Transfers

Lump-sum amounts may be transferred directly from one RCA to another RCA on a tax-neutral basis.[275] This means that there is no inclusion required, or deduction permitted in computing Part I income. The transferred amount will not be subject to withholding when it is paid out of the transferor plan or when it is paid into the transferee plan.

For the purposes of Part XI.3 tax, an amount so transferred is considered to be a distribution from the transferor plan and a contribution to the transferee plan with the result that the tax liability is transferred from the transferor plan to the transferee plan.

This rollover is not available where the transferee plan has a non-resident custodian or is a foreign plan deemed to be an RCA in respect of Canadian residents participating in the plan (see ¶13,570).

[¶13,575] Tax on Prohibited Investments and Advantages

Beginning March 29, 2012, new anti-avoidance rules in Part XI.3 prevent the use of schemes that seek to take advantage of the features of the RCA rules to obtain unintended tax benefits. These rules are very similar to those applicable to RRSPs and RRIFs in Part XI.01.

As a result of these new anti-avoidance rules in Part XI.3, the custodian of an RCA is required to pay a tax equal to:

- 50% of the fair market value of a prohibited investment acquired or held by the RCA; and
- the fair market value of any advantage obtained by a specified beneficiary of the RCA or a person who does not deal at arm's length with the specified beneficiary.

An RCA's specified beneficiary refers to an individual who has an interest or right in the RCA and who has a significant interest (at least 10%) in an employer sponsoring the plan. A specified beneficiary of an RCA that participates in acquiring or holding a prohibited investment, or in extending an advantage, in respect of the RCA, will be jointly liable, to the extent of their participation, for the tax in respect of the prohibited investment or the tax in respect of the advantage.

See page ii for explanation of footnotes.

[275] CCH ¶25,776c; Sec. 207.6(7).

The tax on prohibited investments will be refundable if the RCA disposes of the prohibited investment by the end of the year following the year in which it was acquired (or any such later time as the Minister considers reasonable) unless any of the persons liable for the tax knew or ought to have known that the investment was a prohibited investment.

[¶13,576] Returns and Payment of Tax

The custodian must file a return in respect of the RCA trust and pay any refundable tax owing within 90 days of the end of the year.[276] Various administrative provisions of Part I apply to the tax imposed under Part XI.3.

[¶13,577] Tax on Excessive Employer Contributions to EPSPs (Part XI.4)

[¶13,578] Overview

An employees' profit sharing plan (EPSP) is an arrangement that allows an employer to share business profits with all or a designated group of employees. Under an EPSP, amounts are paid to a trustee to be held and invested for the benefit of the employees who are beneficiaries under the plan. Each year, the trustee is required to allocate to such beneficiaries all employer contributions, profits from trust property, capital gains and losses, and certain amounts in respect of forfeitures. These allocated amounts, with certain exceptions, are included in computing the taxable income of the beneficiaries for the year in which they are allocated and are not subject to tax when actually received by the beneficiaries. There were concerns that EPSPs were used more and more by some business owners to direct profits to their families in such a way as to reduce or defer the payment of tax. To address these concerns and discourage excessive employer contributions to "specified employees", a penalty tax under Part XI.4 was introduced.

[¶13,579] Tax on Excess EPSP Amount

After March 28, 2009, whenever employer contributions allocated to specified employees exceed a certain threshold (the "excess EPSP amount"), such employees are required to pay tax on the excess amount. However, these changes will not apply to amounts paid before 2013 to an EPSP pursuant to a legal obligation arising under a written agreement or arrangement entered into before March 29, 2012. Specified employees are employees who have a significant equity interest (at least 10%) in their employer or who do not deal at arm's length with their employer.

In general terms, the excess EPSP amount is the portion of employer contributions to an EPSP that are allocated for the year to specified employees that exceeds 20% of the specified employee's total income for the year

See page ii for explanation of footnotes.

[276] CCH ¶25,781; Sec. 207.7(3).

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potential problem with remissions. The extent of the director's business knowledge and experience should also be considered.[73]

If a director pays an amount in respect of a corporation's failure to deduct, withhold, remit, and pay tax, this debt against the corporation may be proved in dissolution, liquidation, or bankruptcy proceedings. In such a case, the director is given the same preference as the Crown would have been entitled to, if the amount owed by the corporation had remained unpaid.[74]

A director who has satisfied a claim is entitled to contribution from his or her fellow directors who were liable for the claim.[75]

[¶15,090] Assessment

An assessment may be issued by the Minister to:

(a) any person for any amount payable by that person that has not been withheld or deducted as a non-resident tax;

(b) any person for any penalty or liability for failure to withhold tax or remit tax withheld;

(c) any person for failure to comply with requirements in garnishment proceedings;

(d) any person or partnership for failure to comply with the reporting requirements in respect of tax shelters; and

(e) a corporation's directors for the amount of tax that the corporation was required to deduct, withhold, or remit, together with interest and penalties.[76]

The Minister may also assess any person resident in Canada for any amount payable under Part XII.5 (recovery of labour-sponsored funds tax credit).[77]

Upon the Minister's sending a notice of assessment to the person or partnership involved, the appeal procedures become applicable.[78]

[¶15,092] Joint and Several Liability re Contributions to RCA

A person who has failed to withhold tax from a contribution to a retirement compensation arrangement (RCA) is liable to a penalty and is required to pay interest on the tax that was not withheld. In addition, the person is liable to pay the Crown an amount equal to the contribution. A person who withholds tax from an RCA contribution, but does not remit the tax, is liable to a penalty, is required to pay interest on the amount withheld, and is required to pay as tax the amount withheld. See ¶15,080.

See page ii for explanation of footnotes.

[73] Soper, 97 DTC 5407.
[74] CCH ¶27,320; Sec. 227.1(6).
[75] CCH ¶27,315–¶27,328a; Sec. 227.1(1)–227.1(7); Inf. Cir. 89-2R3.
[76] CCH ¶27,286; Sec. 227(10).
[77] CCH ¶27,286a; Sec. 227(10.01).
[78] CCH ¶27,287; Sec. 227(10.1).

Where the person who has failed to withhold or remit is a non-resident and the contribution to an RCA was made on behalf of employees or former employees of an employer with whom the non-resident does not deal at arm's length, the employer is jointly and severally or solidarily liable with the non-resident to pay any amounts of penalty, interest, and other amounts described above.[79] This rule would apply, for example, where a foreign parent corporation makes contributions to a foreign pension plan in respect of the Canadian resident employees of its Canadian subsidiary and the rules described in ¶13,570 apply to deem the contributions to be paid to an RCA. If the foreign parent fails to withhold RCA tax from the contributions, the Canadian subsidiary will be jointly liable for any interest, penalties, and other amounts payable by the foreign parent in respect of the failure.

[¶15,095] Application of Withholding Provisions to Crown

Provisions requiring a person to deduct or withhold an amount in respect of taxes from amounts payable to a taxpayer are applicable to the Government of Canada, a province, or territory.[80]

[¶15,100] Minister's Receipt Discharges Debtor

A person who withholds or deducts tax as required and obtains a receipt from the Minister on remitting tax to the Receiver General will be under no further liability to the person from whom the tax is deducted.[81] A receipt of the Minister can be produced in court and will constitute a valid defence against any action by the creditor for the amount withheld.

[¶15,105] Special Taxes and Exempt Corporations

The payment of special taxes under Parts IV, IV.1, VI, and VI.1 is not applicable to non-profit corporations which are exempt from tax.[82] For special taxes under Parts IV, IV.1, VI, and VI.1, see Chapter XII; for exempt corporations, see Chapter X.

[¶15,110] Partnerships and Provincial or Municipal Corporations

Certain payments made by a partnership are deemed to be made by a resident of Canada and amounts paid to a partnership which is not composed entirely of residents of Canada are deemed to be paid to a non-resident. The collection provisions apply to any tax that has been deducted or withheld from such payments.[83] A corporation that would, but for a provision of an *Appropriation Act*, be exempt from tax because it is a corporation, 100% or, in some instances, 90%, of the shares of which (according to the ownership test described at ¶11,200) are owned by the Government of Canada, a province, or a territory or by one or more municipalities in

See page ii for explanation of footnotes.

[79] CCH ¶27,288; Sec. 227(10.2).
[80] CCH ¶27,290; Sec. 227(11).
[81] CCH ¶27,298; Sec. 227(13).
[82] CCH ¶27,302; Sec. 227(14).
[83] CCH ¶26,243, ¶27,305; Sec. 212(13.1), 227(15).

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It should be noted that, because the income allocated retains its character as pension income in the hands of the transferee, subject to limitations re the transferee's age, it will be eligible for the pension credit provided for in subsection 118(3). Remember that, for each individual, there is a $2,000 maximum to this tax credit. Other credits that may be affected by a change in income levels resulting from pension splitting include the spouse credit provided in subsection 118(1) and the age credit provided for in subsection 118(2). Likewise, splitting pension income may allow a pensioner access to Old Age Security Benefits that would otherwise be subject to the "clawback" tax imposed by section 180.2. On the other hand, benefits and tax credits calculated based on the total of the net incomes of both spouses or common-law partners — such as the Goods and Services Tax/Harmonized Sales Tax credit, Canada Child Benefit, and related provincial or territorial benefits — will not be affected by pension splitting.

[¶17,080] Tax Planning the Will

[¶17,085] Introduction

It is generally recognized that everyone should make a will; it is, however, not always recognized that doing so can often be the occasion for some fruitful tax planning.

[¶17,090] The Importance of the Spouse as Beneficiary

To the extent that assets have appreciated in value — that is, so that there is untaxed capital gains — these assets should generally be left to the spouse, or a qualifying spouse trust. That way, the property "rolls over" to the spouse (or spouse trust) without immediate tax. Otherwise, the assets will usually be treated as if they had been liquidated at current market values (an exception arises where qualifying farm property passes to children, grandchildren, and so on).

To obtain tax deferral benefits on transfers to a spouse or common-law partner trust, the property transferred or distributed must indefeasibly vest in the trust within 36 months of the death of the person and the trust must be resident in Canada immediately after the vesting. A trust will be considered a valid spouse or common-law partner trust if it is created by the deceased's will, or by court order. The longer the lapse of time between the death of the transferor-spouse and the death of the beneficiary-spouse, the greater the tax advantage to be derived — whether the transfer is made directly to the surviving spouse, or to a spousal trust, the deemed disposition will be deferred until the death of the surviving spouse.

Obvious candidates for the rollover include real estate, shares of a corporation, investments that have gone up in value, and so on. Accordingly, to defer "death tax", shares of a family business are usually left to a spouse, or more likely, a spouse trust. However, there can be tax exposure even if the

asset has not actually appreciated in value. An example of this would be a rental or other property on which depreciation claims have been made. Also, many older tax-shelter investments, even if virtually worthless, may attract tax if they are in what is known as a "negative cost base" position; generally, where the personal cost of an investment is less than the overall tax losses claimed and cash or other distributions from the partnership. If so, these too should be left to the spouse.

Note that a second home owned after 1981 is not covered by the principal residence exemption, so that if this is not left to a spouse, there could be capital gains tax on its appreciation as well.

If qualifying small business corporation shares (or farm or fishing property) eligible for the capital gains exemption are held (including the enhanced exemption available for gains on dispositions of qualified farm or fishing property after April 20, 2015), a number of options will be available. If the exemption is available, the individual will generally want to use it up by the time he or she passes away. This can be done even if the shares are left to a spouse, because of a special rule that allows an individual to "elect into" a capital gain on a property-by-property basis (e.g., one or more shares of a corporation). Also, the surviving spouse is potentially eligible for his or her own capital gains exemption. If it is expected that, after death, there will be future appreciation in the shares that will more than deplete the surviving spouse's capital gains exemption, it may be a good idea to leave at least some shares to children (or grandchildren), if it is intended that they remain within the family. This could be done before death through an estate freeze reorganization, to meet the family's financial needs.

[¶17,095] The Principal Residence Exemption

Consideration should be given to leaving a residence to a beneficiary who will be eligible to claim the principal residence exemption on it. Remember, married couples, together with unmarried children under the age of 18, are generally entitled to only one principal residence exemption among them. However, the principal residence exemption might be maximized, for example, by leaving the residence to an adult child who does not already have a principal residence.

[¶17,100] Bequests of Farm or Fishing Property

Special rules apply to farm or fishing property passing to a beneficiary who is a child, grandchild, or great-grandchild of a deceased person. See ¶4375.

[¶17,105] Flow-Through Shares

Flow-through shares are a financing vehicle used in the oil and gas and mining industries and are issued by companies that need cash but do not need tax deductions. Instead, the investors in these issues receive the tax

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