as employment income since they were issued as compensation for past services.[14]

On the other hand, not all remuneration need be classified as wages or salary. A lawyer who was the president of an insurance company and who received from it a sum of money for legal work was held to have received the fees as a lawyer rather than as income from an office or employment.[15] Where one of two shareholders of a company was to receive 1/2 of the profit from a real estate transaction in exchange for performing the company duties of the other shareholder, her share of the profit was taxable as compensation for services rendered.[16] When a company president received 9 1/2 months' salary in lieu of reasonable notice of his termination, it was determined to be income, not damages for wrongful dismissal, and was taxable as such.[17]

Damages for wrongful dismissal from employment constitute income (see ¶2160). An amount received from an employer in consideration for the release from a contract of employment was income, not a capital indemnity, nor a retirement allowance.[18] If the employee's debt to the employer was cancelled and the cancelled debt was treated as severance pay by the employer, the amount was income to the employee and was a deductible expense of the employer.[19]

"Other remuneration" includes "gratuities" which includes such items as bonuses, tips, and honoraria.

Whether a payment made by an employer to his or her employee is an advance on account of future earnings or a *bona fide* loan is a question of fact. An advance on account of future earnings is properly included in the employee's income for the year in which it is received.[20] Where an employee who is taxed on an advance subsequently, on leaving employment, repays part or all of the outstanding balance, the amount so repaid is ordinarily deductible from income for the year of repayment. When the amount repaid exceeds the advances received in the year, the excess is deductible from the preceding year. Where a loan, as distinguished from an advance, is made to an employee, the amount so received should not be included in income. The employee should include in income for the year those amounts of earnings which are applied against the loan plus any other salary, wages, or commissions that are paid to the employee.

An employee who receives a loan from an employer which is subsequently forgiven will be deemed to have received a benefit from employment which must be included in income.[21] The value of the benefit is calculated as the amount of the loan or obligation forgiven. See also ¶2130 and ¶3117 concerning low-interest loans to employees.

See page ii for explanation of footnotes.

[14] Lockhart, 2008 DTC 3044.
[15] Biron, 62 DTC 20.
[16] Stenstrom, 63 DTC 479.
[17] Quance, 74 DTC 6210, Bye, 75 DTC 33.
[18] Choquette, 74 DTC 6563.
[19] S. de Waal et al., 75 DTC 127.
[20] Randall, 87 DTC 553.
[21] CCH ¶2689; Sec. 6(15).

A taxpayer received $389,700 upon termination of employment for cancellation of rights to receive a percentage of company profits during the term of his employment. The payment was determined to be income from employment in satisfaction of an agreement made during his employment.[22]

[¶2050] Employee or Independent Contractor

Income from an office or employment is determined by different rules than those applicable to determining income from a business or property. Differences arise as to the availability of deductions, the time of recognition of income, and the "taxation year". Therefore, it is of importance to a taxpayer to determine whether his or her income or some portion thereof is from an office or employment or from a business or property.

There may be difficult cases where it will be necessary to determine the answer as a matter of fact, having reference to the definitions referred to above and the common law as to whether the income in question is from an office or employment or from business carried on by the taxpayer as an independent contractor. For example, in some circumstances it may be difficult to determine whether a commission agent receives income from an office or employment or from a business carried on by himself or herself. A similar problem frequently arises with entertainers and musicians.[23]

Under the common law dealing with master and servant relationships, the general test to be applied is the nature and degree of control over the person alleged to be the employee. In addition to the control test, there are three other tests which courts have developed to ascertain whether a taxpayer is an employee or an independent contractor. These are:

(a) the integration test;

(b) the economic reality test; and

(c) the specific result test.

Under the integration test, distinction is made between a contract *of* service and a contract *for* service. In the former situation one is employed as part of the business and work is done as an integral part of the business. In the latter situation, the taxpayer's work, although done for the business, is not integrated into it but is only accessory to it, and therefore the taxpayer is an independent contractor. Using this test, part-time lecturers and teachers who do not appear to be under the direct control and supervision of the educational institution have been found to be employees.[24]

Under the economic reality test, the courts have determined that a person who is in business as an independent contractor runs the risk of financing equipment, supplying the help necessary to operate and administer

See page ii for explanation of footnotes.

[22] Markin, 96 DTC 6483.
[23] Interp. Bul. IT-525R (Consolidated).
[24] Rosen, 76 DTC 6274; Hecht, 80 DTC 1438.

the business, and having to ensure that there are sufficient clients to render the business economically viable. [25]

With respect to the specific result test, the courts again make a distinction between a contract *of* service and a contract *for* service, the former indicating an employer–employee relationship.

The courts have stressed the importance of examining the facts of the alleged employment relationship in detail rather than trying to establish a mechanistic test or series of tests.[26] In other words, the factors of control, chance of profit, risk of loss, and ownership of equipment do not constitute an exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.[27]

[¶2055] Board, Lodging and Other Employment Benefits

There is to be included in the income of a taxpayer for a taxation year from an office or employment the *value* of board, lodging, and other benefits of any kind whatsoever, received or enjoyed by the taxpayer (or any person related to the taxpayer) in the year in respect of, in the course of, or by virtue of an office or employment.[28]

Considering that "any kind" of economic advantage arising from a taxpayer's employer which renders his or her office of greater value to him or her requires income inclusion, the Tax Court of Canada has upheld Revenue Canada's assessment as a taxable benefit of a Christmas party at which the taxpayer and his or her guests were put up overnight at the Westin Hotel in Ottawa. The taxpayer was assessed a benefit of $200 for the party and another $100 for room charges.[29] This case attracted so much attention that Revenue Canada had to clarify that it will accept as a non-taxable privilege an employer-provided party if the cost per employee is reasonable in the circumstance. As a guideline, those events costing up to $100 per person will be considered to be non-taxable. Parties costing more than that will generally be considered to be beyond the "privilege" point and may result in taxable benefits.

Amounts included in income as board and lodging or other benefits include:

(a) the value of board and lodging;

(b) rent-free and low-rent housing;

(c) travel benefits;

See page ii for explanation of footnotes.

[25] Hauser, 78 DTC 1532; Alexander, 70 DTC 6006.
[26] Wiebe Door Services Ltd., 87 DTC 5025, Grimard, 2009 DTC 5056, O'Hara, 2009 DTC 1011.
[27] TBT Personnel Services Inc., 2011 UDTC 128, Integranuity Marketing Ltd., 2012 UDTC 1.
[28] CCH ¶2305; Sec. 6(1)(*a*); Income Tax Folio S2-F3-C2.
[29] Dunlap, 98 DTC 2053.

(d) gifts (including Christmas gifts);

(e) holiday trips;

(f) prizes and incentive awards;

(g) frequent-flyer programs;

(h) travelling expenses of employees' spouses or common-law partners;

(i) employee premiums under provincial hospitalization and medical care insurance plans;

(j) tuition fees;

(k) reimbursement for cost of tools;

(l) wage-loss replacement plans;

(m) interest-free and low-interest loans;

(n) financial counselling and income tax return preparation; and

(o) discounts on merchandise (see below).

The CRA's previous policy was to not tax employees on a benefit where their employer allowed them to buy merchandise at a discount, provided that the policy applied equally to all employees and the purchase price was not less than the employer's cost. However, Income Tax Folio S2-F3-C2, released on July 7, 2016, stated in paragraph 2.28 that the value of the discount is to be generally included in the employee's income, regardless of the purchase price, and that the value of the benefit is equal to the fair market value of the merchandise purchased less the amount paid by the employee. The Folio also stated that no amount is to be included in the employee's income if the discount is also available to the general public or to specific public groups. This is in direct conflict with what was previously stated in the "Discounts on merchandise and commissions from personal purchases" section on page 18 of the 2017 edition of CRA Guide T4130, Employers' Guide — Taxable Benefits and Allowances. In October 2017, the media questioned the Liberal government on this policy, protesting that this unfairly targets employees working in the retail and hospitality industry. As a result, the Folio was pulled and the federal government stated that the policy was under review. As of the date of this publication, this issue has not been resolved but the CRA has confirmed on its website that employers should continue to follow current practices consistent with the information included in CRA Guide T4130.

Amounts not included in income are: discount commissions on sales, subsidized meals where employees pay a reasonable amount, uniforms and special clothing, certain subsidized school services in remote areas, transportation to a job, recreational facilities, removal expenses, premiums under private health service plans, employer contribution under provincial hospitalization and medical care plans, transportation passes, certain reimbursed

[¶2060] Housing Loss Reimbursements and Other Employer-Provided Housing Subsidies

Any amount paid in respect of a housing loss (other than an eligible housing loss) to or on behalf of a taxpayer in respect of, in the course of, or because of an office or employment is deemed to be an employment benefit and is fully included in the taxpayer's income.[37] An eligible housing loss means a loss incurred on the disposition of a house in respect of an eligible relocation.[38] Generally, an "eligible relocation" means a relocation enabling the taxpayer to be employed at a location in Canada or to be a full-time student at a location of a post-secondary institution if: (i) both the taxpayer's old residence and new residence are in Canada, and (ii) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location.[39] Generally, only 1/2 of the amount in excess of $15,000 of employer-paid amounts in respect of eligible housing losses is treated as an employment benefit received by the taxpayer.[40] When the taxpayer's employment was terminated, he moved back to Ottawa and his employer purchased the house that he had built. The purchase price was the cost of construction, but was $91,870 above fair market value. The recouped loss of $91,870 was included in his income. It did not involve an "eligible relocation" to the extent that it resulted from the termination of his employment and did not occur to enable him to carry on business in Ottawa.[41]

An eligible housing loss need not be crystallized to be reimbursed. One may choose any particular time to determine the amount of the taxpayer's housing loss. A housing loss at any particular time in respect of a residence of a taxpayer is calculated as the amount by which the greater of:

(a) the adjusted cost base of the residence at that time to the taxpayer or to another person who does not deal at arm's length with the taxpayer; and

(b) the highest fair market value of the residence within the six-month period that ends at that time

exceeds:

(c) if the residence is disposed of by the taxpayer or the other person before the end of the first taxation year that begins after that time, the lesser of:

(i) the proceeds of disposition of the residence, and

(ii) the fair market value of the residence at that time, and

See page ii for explanation of footnotes.

[37] CCH ¶2697a; Sec. 6(19).
[38] CCH ¶2697d; Sec. 6(22).
[39] CCH ¶28,080; Sec. 248(1) "eligible relocation".
[40] CCH ¶2697b; Sec. 6(20).
[41] Thomas, 2007 DTC 5151.

(d) in any other case, the fair market value of the residence at that time.[42]

Example:

Paul purchases a home in 2011 in his hometown for $400,000 and begins work at a national corporation. In 2013, the land bordering Paul's home is rezoned to permit the development of an industrial park. In January 2017, Paul is offered a promotion on the condition that he relocates to a new community (11,000 kilometres from his hometown) by March 1, 2017. Paul has trouble selling his home because of the heavy industry that now surrounds the property; however, he eventually accepts an offer of $335,000 and completes the sale in August 2017. Paul's eligible housing loss therefore amounts to $65,000. His employer agrees to compensate Paul for any eligible housing loss he incurs on the sale of his property. Because of the size of the loss, the employer pays out the compensation in two payments: $30,000 in September 2017 and $35,000 in February 2018. Paul's taxable benefit in 2017 is $7,500 (one-half of the amount paid in 2017 that is more than $15,000). In 2018, Paul's taxable benefit is $17,500, calculated as follows:

- one half of the total amounts paid in 2017 and 2018 that is more than $15,000 (1/2 × [$65,000 - $15,000] = $25,000);

minus

- the amount included in income in 2017 ($7,500).

For greater certainty, any amount paid or the value of assistance provided by any person in respect of, in the course of, or because of an individual's office or employment in respect of the cost of, the financing of, the use of, or the right to use a residence is a taxable benefit received by the individual.[43] This provision includes virtually any employer-provided subsidy made to the employee to enable the employee to acquire or to use a residence, including interest subsidies on a mortgage, rent subsidies, payments on account of the purchase price of the home, and mortgage principal reimbursements.

[¶2065] Health and Welfare Trusts for Employees

Health and welfare benefits for employees are sometimes provided through a trust arrangement under which the trustees, usually with equal representation from the employer (or employers' group) and the employees (or their union), receive the contributions from the employer or employers' group to provide such health and welfare benefits as have been agreed to between the employer and the employees (or their union).

If the benefit programs adopted are limited to a group sickness or accident insurance plan, a private health services plan, a group term life insurance policy, or any combination thereof, and the arrangements meet certain conditions, the trust arrangement qualifies as a health and welfare trust.[44]

An employee does not receive or enjoy a benefit at the time the employer makes a contribution to a health and welfare trust. However, employer-

See page ii for explanation of footnotes.

[42] CCH ¶2697c; Sec. 6(21).
[43] CCH ¶2697e; Sec. 6(23).
[44] Income Tax Folio S2-F1-C1.

paid contributions to a group sickness and accident insurance plan for an employee's coverage are taxable to the employee to the extent that such contributions are not in respect of a wage loss replacement benefit payable on a periodic basis. See discussion at ¶2100.

[¶2070] Allowances — Personal or Living Expenses of Employees

Personal and living expenses are intended to be borne by the taxpayer. Therefore, where an employee receives an allowance for personal or living expenses, it is included in the taxpayer's income.[45] Personal or living expenses[46] include:

(a) the expenses of properties maintained by any person for the use or benefit of a taxpayer or any person connected with the taxpayer by blood relationship, marriage or common-law partnership, or adoption, but does not include properties maintained in connection with a business carried on for profit or with a reasonable expectation of profit;

(b) expenses, premiums, or other costs of a policy of insurance, annuity or similar contract, if the proceeds of the policy or contract are payable to or for the benefit of the taxpayer or a person connected with the taxpayer by blood relationship, marriage or common-law partnership, or adoption; and

(c) expenses of properties maintained by an estate or trust for the benefit of the taxpayer as one of the beneficiaries.

The Act excepts the following from the rule concerning the taxability of amounts received for personal or living expenses:

(a) travelling, personal, or living expense allowances expressly fixed in an Act of the Parliament of Canada or pursuant to the *Inquiries Act* (e.g., expense allowances paid to members of the House of Commons and Senate);

(b) special allowances for absence from Canada given to diplomatic representatives of Canada or members of the armed forces or of the overseas Canadian Forces school staff, or given under an international development assistance program;

(c) travelling and separation allowances paid to members of the armed forces under service regulations;

(d) representation or other special allowances received by an agent-general of a province for the period that he or she was in Ottawa as the agent-general of the province;

See page ii for explanation of footnotes.

[45] CCH ¶2322; Sec. 6(1)(*b*).

[46] CCH ¶28,199; Sec. 248(1) "personal or living expenses".

(e) travelling expenses received by an employee in connection with the selling of property or negotiating of contracts for the employer;

(f) reasonable allowances for travelling expenses (other than allowances for the use of a motor vehicle) received by an employee for travelling away from the municipality and metropolitan area where the employer's establishment at which the employee ordinarily worked was located, in the performance of the duties of the office or employment;

(g) reasonable allowances for the use of a motor vehicle received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling in the performance of the duties of the office or employment. For 2018, the general rate used to determine the benefit from the personal portion of operating expenses paid by employers in respect of automobiles provided to employees increased from 25 to 26 cents per kilometre. In the case of taxpayers principally employed in the selling or leasing of automobiles, the prescribed rate increased from 22 to 23 cents per kilometre driven for personal use;

(h) reasonable allowances received by ministers or members of the clergy for transportation expenses incidental to their ministerial duties; and

(i) allowances paid by an employer for the education of an employee's child where the employee is required to live in a specific location by reason of his or her employment, and instruction in the official language of the employee is not available in that area. For the exemption to apply, the following must be true:

(i) the allowance must be reasonable,

(ii) the child must not live with the employee in the area where the employee works,

(iii) the child must be in full-time attendance at a school which is in a community not farther from the employee's home than the nearest community having suitable boarding facilities and providing instruction in the appropriate language,

(iv) the language of instruction primarily used in the school must be the official language of Canada which the employee uses, and

(v) such a school must not be available in the location where the employee is required to live.

An emergency service volunteer shall not include the first $1,000 of amounts received in a year from a government, municipality, or public

authority for the performance of the volunteer services.[47] The provision applies to persons who volunteer their duties as ambulance technicians, firefighters, or in the search or rescue of individuals or in other emergency situations, and does not apply to volunteers claiming a volunteer firefighter or search and rescue volunteer tax credit. Note that the $1,000 exclusion from income does not apply to remuneration received for emergency services carried on by a person in their capacity as an actual employee. In this regard, if requested by the Minister, the payer of the amount must certify that the recipient was at no time in the relevant year employed or otherwise engaged in connection with the services, other than as a volunteer.

Note that reasonable allowances in respect of travelling expenses and motor vehicle expenses will be excluded in computing the income of an individual from an office or employment.[48] Accordingly, allowances that are not reasonable may be included in income and the taxpayer will be entitled to a deduction with respect to those travelling expenses. (For allowances received in connection with the business use of automobiles, see ¶2085.) Where the taxpayer received an automobile allowance that he considered to be unreasonably low, he included the allowance in income and deducted the actual expenses. However, the deduction was denied where the taxpayer failed to show specific evidence as to whether the allowance was intended as a full reimbursement for the use of the automobile.[49]

Travelling allowances are different from reimbursement for out-of-pocket expenses which are proved by vouchers and which do not have to be included in income. For example, a member of an office staff who uses his or her own automobile on an errand for the company and is then reimbursed for this is not required to show the amount of the reimbursement as income. See also ¶2325 and ¶2335.

[¶2075] Director's or Other Fees

Where a director's fee is paid in addition to a salary from the same employer, the fee will be added to the salary for the pay period and the required tax deduction will then be completed in accordance with tax deduction tables.

Where the fee is the only remuneration paid by the employer, and it is estimated that such fees will not exceed the director's personal exemptions, no tax need be deducted at source.

Where the director's fee is the only remuneration paid by the employer, but it is estimated that the fee will exceed the personal exemptions, the tax deductions should be made in accordance with the monthly tax deduction table by converting the fee to its monthly equivalent.

See page ii for explanation of footnotes.

[47] CCH ¶9982; Sec. 81(4), 118.06, 118.07.
[48] CCH ¶2322; Sec. 6(1)(b).
[49] Lemire, 94 DTC 1772.

The word "fee" is not defined in the Act. Presumably it will be interpreted in accordance with its ordinary meaning to include fees received by professional persons, musicians, etc.

[¶2080] Allocations, etc. under Profit Sharing Plan

Amounts allocated to an employee in the year by a trustee of an employee's profit sharing plan are included in the employee's income.[50] This includes the allocation of capital gains and losses. See also ¶10,294.

[¶2085] Automobile Benefits

The benefit an employee enjoys as a result of the employer paying operating expenses is required to be included in income.[51] The value of the benefit is an amount equal to the portion of the operating costs paid by the employer that relates to the personal use plus a "reasonable standby charge", plus the equivalent to the GST thereon. In general, this standby charge is 2% per month of the cost of the automobile to the employer, or 2/3 of the lease costs if leased, for the number of days the automobile was available to the employee or to a person related to an employee.[52]

Where an automobile is supplied by an employer (or a person related to the employer)[53] to an employee (or a person related to the employee), there are two methods for computing the operating cost benefit.

(1) The benefit is computed at a prescribed rate of 26 cents in 2018 for each kilometre of personal use during the period for which the automobile was made available. The general prescribed rate is 23 cents per kilometre for taxpayers employed principally in selling or leasing automobiles.

(2) The second method is only available to employees who use the automobile (in respect of which the standby charge is incurred) primarily (i.e., more than 50%) in the performance of duties of employment. If this test is met, the operating costs benefit may be calculated as simply 1/2 of the standby charge for the year (see below). To use this method, the employee must notify the employer in writing before the end of the year.

In both cases, the operating costs benefit will be reduced by all amounts repaid by the employee or a relative of the employer within 45 days of the end of the calendar year to which the costs relate. The resulting income inclusion is considered to include the GST component and no further inclusion is required. Any benefit related to parking is not considered to be a benefit in respect of the use (including the operation) of an automobile.[54] See item (g) at ¶2070 for a discussion of reasonable

See page ii for explanation of footnotes.

[50] CCH ¶2350; Sec. 6(1)(d).
[51] CCH ¶2301; Sec. 6(1)(a).
[52] Interp. Bul. IT-63R5.
[53] CCH ¶2392a, ¶2392b; Sec. 6(1)(k), 6(1)(l).
[54] CCH ¶2392c; Sec. 6(1.1).

income because there was no obligation to make such a lump-sum payment under the terms of the plan.[60] However, the portion of the lump-sum payment that was attributable to disability payments in arrears and accruing to the date of the settlement was taxable because it was meant to replace amounts payable pursuant to the plan (the "*surrogatum* principle").

Taking into account the *surrogatum* principle, the Federal Court of Appeal held that the portion of a lump-sum payment that was attributable to disability payments that were in arrears at the time of the settlement was taxable, whereas the portion attributable to future benefits that would have been otherwise paid under the plan was not taxable.[61]

Employer-paid contributions to a group sickness and accident insurance plan for an employee's coverage are taxable to the employee to the extent that such contributions are not in respect of a wage loss replacement benefit payable on a periodic basis. See discussion at ¶2100.

[¶2100] Group Sickness and Accident Insurance Plans

Wage loss replacement benefits payable on a periodic basis under a group sickness and accident insurance plan to which an employer has contributed are included in an employee's income for tax purposes when those benefits are received (see discussion at ¶2095). However, no amount is included in an employee's income, either when the employer contributions are made or the benefits are received, to the extent that:

- benefits are not payable on a periodic basis; or
- benefits are payable in respect of a sickness or accident when there is no loss of employment income.

To address these two shortcomings, employer-paid contributions to a group sickness and accident insurance plan for an employee's coverage are included in income to the extent that such contributions are not in respect of a wage loss replacement benefit payable on a periodic basis.[62]

[¶2105] Salary Deferral Arrangements

Where a person has deferred receipt of salary or wages to a subsequent year, an amount equal to the deferred amount will be considered to be an employment benefit.[63] The benefit must be included in computing the income of the employee for the year to the extent that the deferred amount has not otherwise been included in income.[64] If there is a right to receive interest or other additional amounts in addition to the deferred salary or wages that accrue during the year under a salary deferral arrangement, the additional amount is deemed to be a deferred amount and must also be included in income.[65]

See page ii for explanation of footnotes.

[60] Tsiaprailis, 2005 DTC 5119.
[61] Siftar, 2005 DTC 5119.
[62] Sec. 6(1)(e.1).
[63] CCH ¶2680; Sec. 6(11).
[64] CCH ¶2301; Sec. 6(1)(*a*).
[65] CCH ¶2681; Sec. 6(12).

An exception to these rules is provided with respect to salary deferral arrangements established primarily for the benefit of non-resident employees for services rendered outside Canada.[66]

[¶2110] Payments by Employer to Employee

Certain amounts paid by an employer to an officer or employee will be regarded as remuneration for services.[67] This prevents an officer or employee from excluding such payments from employment income by arranging to receive payment before or after employment. While the provision does not apply to damages for wrongful dismissal that are not paid under a contract, such damages will constitute a retiring allowance and be included in income. A lump sum of money received when an offer of employment was withdrawn was determined not to constitute income from employment.[68]

[¶2112] Restrictive Covenants

In response to two Federal Court of Appeal decisions[69] holding that some of the payments received in respect of restrictive covenants were not taxable, a series of technical amendments now includes such amounts in the recipient's income. According to this inclusion rule and subject to many exceptions described below, a taxpayer must now include in income all amounts received or receivable in a taxation year in respect of a restrictive covenant ("RC") granted by him.[70]

The definition of an RC is very broad and applies to most forms of agreement not to compete. It can take the form of an arrangement between the parties, or an undertaking or a waiver of an advantage or right. It does not have to be enforceable to be subject to the new restrictive covenant rules.

There are three exceptions to the new general income inclusion rule and they only apply when the grantor of a restrictive covenant deals at arm's length with the person to whom the covenant is granted. These exceptions are:[71]

(1) *Employment income* — The general inclusion rule does not apply if the amount is required to be included in the calculation of the grantor's employment income or would be so required if the amount had been received in the tax year.

(2) *Goodwill amount (formerly eligible capital property)* — Sometimes an agreement to sell a business and its underlying assets includes a non-competition agreement by the seller (grantor). An amount received or receivable by the grantor for the granting of such a restrictive covenant is income under the general rule unless the amount qualifies as

See page ii for explanation of footnotes.

[66] CCH ¶2682; Sec. 6(13).
[67] CCH ¶2450; Sec. 6(3); Income Tax Folio S2-F3-C1.
[68] Schwartz, 96 DTC 6103.
[69] Fortino, 2000 DTC 6060, Manrell, 2003 DTC 5225.
[70] Sec. 56.4(2).
[71] Sec. 56.4(3).

While the provisions largely come into force on March 21, 2013, they do not apply to an event or transaction that occurs on or after that date pursuant to an obligation created by the terms of an agreement in writing entered into between parties before that date. For these purposes, parties will be considered not to be obligated if one or more of those parties may be excused from fulfilling the obligation as a result of changes to the Act.

[¶3393] Other Restrictions on Losses and Their Use

Several other specific restrictions are placed on a taxpayer as follows:

(1) A corporation cannot realize a loss by selling property to a parent or any corporation controlled by its parent.[369]

(2) Subject to certain exceptions, no loss can be realized if the taxpayer (whether an individual or corporation) or an "affiliated person" [370] acquires identical property within 30 days before or after a disposition of the original property and still owns the substituted property 30 days after the original disposition. This is known as a "superficial loss".[371] See also ¶5180.

(3) A taxpayer who disposes of an asset to a person with whom the taxpayer was not dealing at arm's length for no proceeds, or for proceeds less than its fair market value, or to any person by gift (by way of *inter vivos* gift prior to 2016), is deemed to have received proceeds equal to its fair market value.[372]

(4) No allowable loss can result from the disposition of a debt or other right to receive an amount, unless the debt or right was acquired for the purpose of gaining or producing income from business or property or as consideration for an arm's length disposition of capital property.[373] See ¶3456.

(5) No allowable loss may be claimed on the disposition of personal-use property (see ¶5315) other than listed personal property (see ¶5300). Losses on listed personal property are allowable only to the extent of gains from such property.[374] However, this provision does not prevent the deduction of a capital loss on the disposition of personal-use property or arm's length debt in certain circumstances.

(6) No deduction is permitted for a loss on an interest in a corporation, partnership, or trust, to the extent that such loss is attributable to a loss of the corporation, partnership, or trust in personal-use property.[375]

(7) The amount of any prescribed assistance received in respect of the acquisition of shares in a prescribed venture capital corporation or a prescribed

See page ii for explanation of footnotes.

369 CCH ¶6459; Sec. 40(3.3).
370 CCH ¶28,371a–¶28,371f; Sec. 251.1.
371 CCH ¶6434, ¶6439, ¶7621–¶7623, ¶7850; Sec. 40(2)(*g*), 40(2)(*h*), 53(1)(*f*)–53(1)(*f.2*), 54 "superficial loss".
372 CCH ¶9146; Sec. 69(1)(*b*).
373 CCH ¶6434, ¶7852; Sec. 40(2)(*g*), 54 "proceeds of disposition".
374 CCH ¶6434, ¶6510; Sec. 40(2)(*g*), 41(2).
375 CCH ¶6960; Sec. 46(4).

labour-sponsored venture capital corporation will reduce any loss realized on their disposition.[376]

(8) No allowable capital loss may arise on a disposition of property to a deferred profit sharing plan (DPSP), an employees' profit sharing plan, a registered retirement income fund, a registered retirement savings plan (RRSP), a registered disability savings plan (RDSP), or a tax-free savings account (TFSA).[377]

(9) No allowable capital loss may arise on a transfer by a shareholder to a controlled corporation.[378]

(10) No allowable capital loss may arise on the disposition of property to a partnership by a majority interest partner.[379]

(11) The losses of a partnership allocated to a limited partner in the partner's taxation year will be deductible by the partner only to the extent of the partner's at-risk amount as at the end of the fiscal period of the partnership ending in that year.[380]

The rules curtailing the transferability of losses between "affiliated" parties allow the property to retain its characteristics in the transferor's hands for continued amortization (if any) or eventual loss treatment. Persons are considered to be affiliated with themselves; control means *de facto* control; an affiliated group means a group of persons each member of which is affiliated with every other member; and merged corporations continue their prior affiliations with the new corporation shareholders.

[¶3396] Losses of Hobby Farmers — Restricted Farm Loss

The Act restricts a loss deductible in any one year by a taxpayer whose chief source of income for a taxation year is neither farming nor a combination of farming and some other source of income (i.e., "hobby farmer").[381] In such cases, the loss deductible is the lesser of:

(a) the amount by which the taxpayer's total losses for the year from all farming businesses computed without reference to any amounts expended for scientific research[382] exceeds the total income from all such business; and

(b) $2,500 plus 1/2 of the next $30,000 in losses[383] for a maximum deduction of $17,500.[384]

See page ii for explanation of footnotes.

376 CCH ¶6439b; Sec. 40(2)(*l*).
377 CCH ¶6434; Sec. 40(2)(*g*).
378 CCH ¶10,580a; Sec. 85(4).
379 CCH ¶12,191; Sec. 97(3).
380 CCH ¶12,149ac; Sec. 96(2.1).
381 CCH ¶5660, ¶7630, ¶16,025; Sec. 31, 53(1)(*l*), 111(1)(c); Interp. Bul. IT-322R.
382 CCH ¶5900; Sec. 37; Interp. Bul. IT-232R3.
383 For taxation years that end before March 20, 2013, unrestricted farm losses are limited to $2,500 + 1/2 of the next $12,500 of losses.
384 CCH ¶5660; Sec. 31; Interp. Bul. IT-322R.

Any loss in excess of the actual amount deducted is a "restricted farm loss". See also ¶3573 for comment on farming business.

The carryforward of business loss provisions are extended to "restricted farm losses". Such a loss may be carried back three years or forward 20 years and deducted only to the extent of the taxpayer's income from farming.

Where a taxpayer disposes of a farm and has losses which have not been deducted as incurred or as restricted farm losses, they may be applied, within certain limits, to increase the adjusted cost base of the farm property. Any loss so applied is deemed not to be a loss for purposes of the loss carryover provisions.[385] Furthermore, any such loss is not available in later years to reduce income from other farming businesses.[386]

[¶3399] Net Capital Loss in Year of Death

The total net capital losses for all taxation years that can be deducted in the year of death and the immediately preceding year from sources of income other than capital gains will be reduced to the extent of the total of all capital gains exemptions that had been claimed by the deceased individual.

The amount that may be deducted in respect of net capital losses in the year of death and the immediately preceding year must be adjusted to ensure the offset of a capital loss against an equal amount of capital gain as a result of increased inclusion rates. However, for net capital losses deducted against other income, no adjustment need be made. Therefore, the excess of the total amount of unadjusted net capital losses claimed for deduction over the amount of such unadjusted losses that were used to offset the net taxable capital gains for the year will be deductible against other income in the year of death or the preceding year.[387]

[¶3402] Amended Return for Succeeding Year's Loss

A taxpayer who is filing a return for a year in which the taxpayer has taxable income does not know whether he or she will have a loss in the next succeeding year. Consequently, if a taxpayer sustains a loss in such succeeding year, he or she is entitled to amend the return by filing with the Minister a prescribed form on or before the due date for filing the return of income for the taxation year from which the carryback is made.

Where an individual is not required to file a return for the latter taxation year because no tax is payable for such year, the Act requires the prescribed form claiming the carryback to be filed on or before the return-due date which would have been applicable if tax were payable for that year.[388]

See page ii for explanation of footnotes.

385 CCH ¶7630; Sec. 53(1)(i).
386 CCH ¶16,180; Sec. 111(6).
387 CCH ¶16,100; Sec. 111(2).
388 CCH ¶22,255; Sec. 152(6).

[¶3405] Intercompany Dividends — Deductibility

In general terms, where a corporation's income has been subject to Canadian tax, after-tax profits will not be taxed again when they are distributed to corporate shareholders by way of dividend. However, there are exceptions to this general rule in certain cases where the dividend is paid on a "term preferred share", where certain defined financial corporations provide a guarantee or security with respect to any share, or where shareholder values are secured.[389]

While a corporation may deduct the amount of a particular dividend in computing taxable income, the effect of so doing is merely to exclude the dividend from tax under Part I. Part IV of the Act may then apply to impose a refundable tax of 38.33% (33.33% for taxation years ending before 2016) on the dividend.[390] It should also be noted that the above rules apply only to dividends received by resident corporations. Non-residents are subject to Part XIII tax on dividends paid to them by residents of Canada.[391]

Where a corporation receives a taxable dividend from a corporation resident in Canada, the amount of the dividend is to be included in computing the recipient corporation's income.[392] The amount of the dividend may be deducted in computing the recipient's taxable income if one of two conditions are met:

(1) The taxpayer corporation must be a "taxable Canadian corporation".[393] This means a corporation that is resident in Canada, that was either incorporated in Canada or has been resident here continuously since June 18, 1971, and that is not exempt from Part I tax.

(2) The payer corporation must be resident in Canada and be controlled by the corporation receiving the dividend, but must not be a non-resident owned investment corporation or a corporation exempt from tax under Part I.

It will be noted that the deduction for intercorporate dividends applies only to "taxable dividends". This term is defined generally to mean a dividend that is not payable out of the paying corporation's tax-paid undistributed surplus, 1971 capital surplus, or capital dividend account.[394]

[¶3408] Losses in Share Transactions

Stop-loss rules may reduce the amount of loss that a shareholder incurs on the disposition of a share, generally by the amount of dividends previously received on the share. In general terms, the stop-loss rules do not apply to a "qualified dividend" defined below after March 21, 2011 where the selling shareholder owned the share throughout the 365-day period immediately

See page ii for explanation of footnotes.

389 CCH ¶16,345–¶16,367; Sec. 112(2.1), 112(2.2), 112(2.4).
390 CCH ¶24,350; Sec. 186.
391 CCH ¶26,105; Sec. 212(2).
392 CCH ¶10,003; Sec. 82(1)(a).
393 CCH ¶11,206; Sec. 89(1) "taxable Canadian corporation".
394 CCH ¶11,209; Sec. 89(1) "taxable dividend".

prior to its disposition and the shareholder and non-arm's length persons did not own more than 5% of the issued shares of any class in the corporation at the time the relevant dividends were received.[395] In order for the above exception to the stop-loss rules to apply after March 21, 2011, a dividend must not only meet the above 365-day ownership test and 5% ownership test, it must also be a "qualified dividend". In simple terms, qualified dividends are dividends received on a share other than those deemed to have been received by a corporation upon a redemption of shares if the dividends are received, whether directly or indirectly through a partnership or trust, from another corporation, unless, at the time the divided is deemed paid and received, the recipient corporation is a private corporation other than a financial institution and the payer is another private corporation.[396] Where both of these conditions are not met, a shareholder's loss on the disposition of a share is generally reduced as follows:

(i) if the shareholder is an individual (other than a trust) and the corporation is a taxable Canadian corporation, the loss is reduced by the amount of all dividends (except a capital gains dividend from a mutual fund corporation) received on the shares;

(ii) if the shareholder is a trust, the loss is reduced to the extent that dividends have been received by the trust on the share or have been allocated to a beneficiary;

(iii) if the shareholder is a partnership, the loss is reduced by the total of any dividend, other than a capital gains dividend from a mutual fund corporation, received by the partnership on the shares (i.e., the reduction of the loss takes place at the partnership level, rather than at the partner level); and

(iv) if the shareholder is a corporation, the loss is reduced by the amount of all non-taxable dividends plus the amount of all taxable dividends to the extent that the amount thereof was deductible in computing the corporation's taxable income or taxable income earned in Canada for any taxation year by reason of the corporation being a non-resident corporation or a life insurer.

Property subject to a synthetic disposition arrangement[397] entered into or extended after March 20, 2013, is treated as not having been owned throughout the requisite time periods for the purposes of the stop-loss rules.

If there is a synthetic disposition arrangement with a synthetic disposition period[398] greater than 30 days, the taxpayer is deemed not to own shares for the purposes of the 365-day period requirement. As a result, the taxpayer

See page ii for explanation of footnotes.

395 CCH ¶16,380–¶16,432, ¶16,470; Sec. 112(3)–112(4.3), 112(7); Interp. Bul. IT-328R3.

396 Sec. 112(6.1).

397 CCH ¶9900e; Sec. 248(1) "synthetic disposition arrangement".

398 CCH ¶9900f; Sec. 248(1) "synthetic disposition period".

can only meet the 365-day period test if the taxpayer owns the property for more than one year after the synthetic disposition period.

If the taxpayer owned property throughout the 365-day period immediately prior to the synthetic disposition period, the taxpayer may meet the requisite time period.[399]

[¶3411] Order of Deductions

Where an individual is entitled to deduct amounts in computing taxable income under more than one section of the Act, the Act provides that the order in which these deductions are to be taken is as follows:[400]

(1) deductions such as employee stock options;[401]

(2) deductions for certain lump-sum payments;[402]

(3) deductible losses;[403]

(4) deductions for the capital gains exemption;[404] and

(5) deduction of amounts in respect of northern allowance.[405]

It should be noted that the deductions which cannot be carried over to another taxation year and cannot be shared with any other taxpayer are the first deductions that must be taken.

[¶3414] Reserves, Bad and Doubtful Debts

[¶3417] Amounts Included in Income and Reserves — Goods and Services

Amounts *received* in the taxation year that are not earned in that year because they are subject to the supplying of future services or goods, or the making of refunds, are to be included in computing business income.[406]

Inasmuch as receivables are to be included in a taxpayer's income, the Act makes provision for the deduction of certain reserves.[407] The amount which may be deducted as a reserve must be reasonable.

A reserve of $4,500 in respect of deferred profit of $21,000 on property sold and secured by a mortgage was held to be reasonable in the circumstances.[408] Similarly, the total profit content of a mortgage, allowed as a reserve, was held to be the maximum amount allowable as a reserve under the Act.[409]

See page ii for explanation of footnotes.

399 CCH ¶16,480; Sec. 112(8), (9).

400 CCH ¶16,235; Sec. 111.1.

401 CCH ¶15,015; Sec. 110.

402 CCH ¶15,877; Sec. 110.2.

403 CCH ¶16,003; Sec. 111(1).

404 CCH ¶15,976, ¶15,976a, ¶15,976b; Sec. 110.6.

405 CCH ¶15,999g; Sec. 110.7(1).

406 CCH ¶4251, ¶4256, ¶4375; Sec. 12(1)(*a*), 12(1)(*b*), Interp. Bul. IT-152R3, IT-154R.

407 CCH ¶5085; Sec. 20(1)(*m*), 12(1)(*b*); Interp Bul. IT-152R3, IT-154R.

408 Aden Building Enterprises, 60 DTC 31.

409 Felgor Investments, 60 DTC 350.

[¶3420] Amounts Receivable — Sale of Land

Where property is sold, an amount is required to be included in the computation of a taxpayer's income from a business at the time that the amount becomes "receivable by the taxpayer" (unless the taxpayer is permitted to use the "cash basis" of reporting). Since the amount that becomes receivable in respect of property sold is the sale price, the taxable event in respect of the sale of property can be stated as occurring on the date that the sale price becomes receivable to the vendor. The sale price of any property sold is brought into account for income tax purposes when the vendor has an absolute but not necessarily immediate right to be paid. As long as a "condition precedent" remains unsatisfied, a vendor does not have an absolute right to be paid. A condition precedent is an event (beyond the direct control of the vendor) that suspends completion of the contract until the condition is met or waived and that could cancel the contract *ab initio* if it is not met or waived.

Many agreements involving the sale of real property propose a "closing date" for the completion of the sale. This is normally the date that beneficial ownership is intended to pass from the vendor to the purchaser and the time that the vendor is entitled to the sale price, but the facts of a particular situation must support that the expressed intent was in fact carried out. In cases where the "closing date" is to occur "on or before" a specified date, the actual date of closing must be determined by the particular facts such as:

(a) the date funds required to be paid on closing were actually paid;

(b) the date that the title was conveyed;

(c) the date of adjustments of insurance premiums, rentals, mortgage interest, realty taxes, etc.; and

(d) the date of possession by the purchaser.[410]

When the total sale price has been included and part of the sale price or instalments is not due until after the end of the taxation year, the deduction of a reserve for the profit portion of the instalments is permitted. See ¶3450.

For a discussion of real estate transactions, see ¶5110 *et seq.*

[¶3423] Reserves for Undelivered Goods

Where the taxpayer, in computing business income, has included amounts received in the taxation year or a previous taxation year for goods not delivered by the end of the taxation year, the taxpayer may deduct a reasonable amount as a reserve in respect of the goods, since it is reasonably anticipated that they will have to be delivered after the end of the year.[411]

See page ii for explanation of footnotes.

[410] Interp. Bul. IT-170R.

[411] CCH ¶4335, ¶5085; Sec. 12(1)(e), 20(1)(m).

It is common in the construction industry for the owner of property not to pay the full amount owing for particular work until the owner receives a certificate from the architect or engineer that the work has been satisfactorily performed.

It has been held that if obtaining this certificate is a condition precedent to the contractor's receiving payment, the amount is not "receivable" until the certificate is issued.[412] On the other hand, once the certificate is issued, the amount is receivable whether the contractor learns of the issue at once or some time later.

Payment as a result of the certificate may in fact be delayed, but as long as the contractor has a right to payment not dependent on the happening of a condition, the amount is receivable and must be included in income.

Where the goods are articles of food and drink, the amount deducted as a reserve must not exceed the amounts included in income for that year in respect of food or drink to be delivered after the year end.[413]

No deduction under this provision may be claimed by taxpayers who keep their accounts on a cash basis.[414] A chain food store company which gave trading stamps to its customers along with purchased merchandise was found to be entitled to deduct a reasonable amount as a reserve in respect of goods that it reasonably anticipated would have been delivered upon redemption of the stamps after the end of the year.[415]

[¶3426] Reserves for Unrendered Services

Where the taxpayer has included in business income amounts received in the taxation year or a previous taxation year for services not rendered by the end of the taxation year, the taxpayer may deduct a reasonable amount as a reserve in respect of services that it is reasonably anticipated will have to be rendered after the end of the year.[416]

Where the unrendered service is transportation, this deduction must not exceed the amount included in computing income in respect of transportation to be provided after the end of the year.[417] Thus "ticket reserves" of companies at the end of a taxation year may not exceed the dollar amount of unredeemed tickets issued during the year and credited to that year's income.

Generally effective for amounts received after March 20, 2013, the reserve will no longer apply in respect of reclamation obligations, so as to ensure that the reserve does not provide relief for taxpayers who have rendered services to customers but who have future reclamation obligations (other than to the customer) arising from providing such services.

See page ii for explanation of footnotes.

[412] John Colford Contracting Co. Ltd., 62 DTC 1338.

[413] CCH ¶4335, ¶5133; Sec. 12(1)(e), 20(6).

[414] CCH ¶5134; Sec. 20(7).

[415] Dominion Stores Ltd., 66 DTC 5111.

[416] CCH ¶4335, ¶5085; Sec. 12(1)(e), 20(1)(m).

[417] CCH ¶4335, ¶5133; Sec. 12(1)(e), 20(6).

No deductions under this provision may be claimed by taxpayers who keep their accounts on a cash basis.[418]

[¶3429] Reserve for Guarantees

A taxpayer is permitted to deduct a reasonable amount as a reserve for certain arm's length credit risks such as guarantees.[419] Where a taxpayer has taken such a reserve in a particular taxation year, an inclusion in income must be made in the following year equal to the amount previously taken as such a reserve.[420] Accordingly, the taxpayer will eventually deduct the amount as a cost of doing business (when paid in settlement of the guarantee or credit risk) or return it into income.

[¶3432] Indemnities and Warranties

No deduction is permissible as a reserve in respect of indemnities or warranties (except for extended warranties granted by the taxpayer to an arm's length person relating to property manufactured by the taxpayer).[421] The amount of the reserve is the lesser of:

(a) a reasonable amount in respect of goods or services that it is reasonably anticipated will have to be delivered or rendered after the end of the year under the extended warranty; and

(b) insurance premiums paid or payable to an insurer who carries on business in Canada to insure against the taxpayer's liability under the extended warranty to the extent those premiums relate to a period after the end of the year.

[¶3438] Repayment of Amount Previously Included in Income

A deduction is provided, as opposed to a reserve which is brought back into income later, when a taxpayer repays an amount which was brought into income in respect of future goods or services. This deduction would apply, for example, where a taxpayer received a payment for services or goods to be delivered in the future, but was required to repay all or a portion of this amount because the services or goods were not in fact delivered.[422]

[¶3440] Reserves for Unamortized Bond Premiums

A taxpayer can claim a reserve in a taxation year for the unamortized amount at the end of the year of any premium received on the issuance of a new bond that arose on the re-opening of a previous issuance of bonds by the taxpayer.[423]

See page ii for explanation of footnotes.

[418] CCH ¶5134; Sec. 20(7).

[419] CCH ¶5084h; Sec. 20(1)(*l.1*).

[420] CCH ¶4332; Sec. 12(1)(*d.1*).

[421] CCH ¶5085a, ¶5134; Sec. 20(1)(*m.1*), 20(7); Mister Muffler Ltd., 74 DTC 6615, Amesbury Distributors Ltd., 85 DTC 5076.

[422] CCH ¶5085b; Sec. 20(1)(*m.2*).

[423] Sec. 12(1)(*d.2*); 20(1)(*m.3*).

[¶3444] Reserves for Unexpired Rent

A taxpayer may deduct a reasonable amount as a reserve in respect of periods for which payment for the possession or use of land or chattels has been received in advance. This amount represents an expenditure that is not properly attributable to the year's business activity.[424]

[¶3447] Reserves for Undischarged Obligations

Provided that the taxpayer has brought into income account amounts received in respect of undischarged obligations, the taxpayer may deduct a reasonable amount as a reserve in respect of repayments reasonably anticipated to be due at the end of the taxation year under an arrangement or understanding that an amount received is repayable in whole or in part on the return or resale to the taxpayer of articles in or by means of which goods, such as returnable containers, were delivered to a customer.[425] This reserve does not apply in respect of bottle containers.

[¶3450] Reserves for Unpaid Amounts

If an amount included in computing a taxpayer's income for the year or for a preceding taxation year in respect of real property sold in the course of business is payable to the taxpayer after the end of the year, a deduction is permitted in computing the taxpayer's income of a reasonable amount as a reserve in respect of that part of the amount that can reasonably be regarded as a portion of the profit from the sale.[426] In the case of property other than real property, a reserve may be claimed on the same basis provided that all or part of the amount payable at the end of the year was, at the time of the sale, due at least two years after the time of the sale. The reserve is subject to the 36-month limit discussed below.[427]

"Reasonable" in this context is not defined, nor is any method prescribed for the computation of the amount of the reserve. However, two different methods have evolved for the determination of the reserve, depending upon whether or not a mortgage was assumed by the taxpayer on the purchase of the land.

Where the taxpayer assumes a mortgage on the purchase of land and the taxpayer's obligations are taken over by the purchaser, the amount *receivable* is changed, thus affecting the basis of the calculation of the amount of the reserve.[428]

However, where at the end of the year or at any time in the immediately following year a taxpayer was not resident in Canada and did not carry on a business in Canada or was exempt from tax, no reserve is allowed. The purpose of this provision is to prevent a taxpayer from transferring income

See page ii for explanation of footnotes.

[424] CCH ¶5085; 20(1)(*m*); Interp. Bul. IT-154R.

[425] CCH ¶5085; Sec. 20(1)(*m*); Interp. Bul. IT-154R.

[426] Sec. 20(1)(*n*).

[427] CCH ¶5091; Sec. 20(1)(*n*).

[428] CCH ¶5086, ¶5136; Sec. 20(1)(*n*), 20(8).

from a year in which the taxpayer would be taxable to a year in which no tax is payable by virtue of the taxpayer's exempt status or by virtue of being a non-resident not subject to tax. This prohibition would not apply to a Canadian resident taxpayer who subsequently ceased to be a resident of Canada but continued to carry on business in Canada. The claiming of the reserve for a taxation year where the sale occurred more than 36 months before the end of that taxation year is prohibited. Thus, unless taxation years of less than 12 months are involved, a reserve may be claimed in the year of sale and the two subsequent years and the balance, if any, of the amount receivable will be brought into income no later than the third year subsequent to the year of sale. Furthermore, the reserve is denied to a taxpayer if the purchaser is a corporation controlled by the taxpayer, or is a partnership of which the taxpayer is a majority interest partner.[429]

A company received debentures for the sale of its land. The debentures were payable in instalments commencing six years later. No reserve could be deducted in respect of the instalments, since the debentures themselves were the price of the land and the instalments were on account of the principal of the debentures, rather than the sale price.[430]

The determination of the amount of the reserve does not necessarily require the application of any precise and inflexible formula, but is to be made on a case-by-case basis.[431]

[¶3451] Reserve for Debt Forgiveness

In general, the "debt forgiveness rules"[432] apply where a debtor's obligation is settled for an amount which is less than the lesser of the principal amount of the obligation and the amount for which it was issued. The rules apply to commercial obligations and general debt obligations incurred in the course of earning business or property income. Where the rules apply, the forgiven amount of the obligation reduces certain tax attributes or tax accounts of the debtor, such as a loss carryforward, resource pool, or the tax cost of property. If, after the application of these rules there is a remaining forgiven amount, 1/2 of the remainder is included in the debtor's income. In such a case, a reserve may be available.[433] For individuals, other than trusts, a reserve is allowed to the extent the forgiven amount included in income exceeds 20% of the debtor's other income in excess of $40,000. In other words, it ensures that the forgiven amount is included in income in any one year, only to the extent of 20% of the debtor's other income in excess of $40,000. The reserve, for corporations, effectively allows a taxpayer to spread out the debt forgiveness income over five years, including at least 20% each year. The reserve allowed for the year of forgiveness is 4/5 of the income inclusion. That amount is then added back into income in the next year and in Year Two a reserve up to 3/5 of the original income inclusion can be

See page ii for explanation of footnotes.

429 CCH ¶5136; Sec. 20(8).
430 Avril Holdings Ltd., 70 DTC 6366.
431 The Enniscare Corporation, 84 DTC 6262.
432 CCH ¶9850, ¶9867, ¶9868, ¶9869, ¶9870; Sec. 80, 80.01, 80.02, 80.03, 80.04.
433 CCH ¶8631, ¶8639, ¶8642; Sec. 61.2, 61.3, 61.4.

claimed. That amount is added back into income in Year 3 and the pattern continues through Year 5, after which no reserve remains. Finally, a deduction is given for certain insolvent corporations, which effectively limits the debt forgiveness income inclusion to twice the fair market value of the corporation's net assets at the end of the year.

A debt restructuring transaction, despite having been undertaken for *bona fide* non-tax purposes, was ruled as having been a misuse of the debt forgiveness rules and the application of GAAR was upheld in respect of the transactions.[434]

[¶3453] Bad Debts and Reserves for Doubtful Debts

A taxpayer may deduct a reasonable amount as a reserve for doubtful debts.[435] Provision is made for that inclusion in income of the amount which the taxpayer deducted as a reserve for doubtful debts in the previous year.[436] When the debt is no longer doubtful but is established to be bad, it may then be deductible.[437] However, if such a debt is subsequently recovered, the amount recovered will ordinarily be included in the taxpayer's income in the year of recovery.

A taxpayer whose business includes the lending of money on the security of mortgages, hypothecs, or agreements of a sale of real property may deduct a reserve under this provision. Where a deduction has been made in respect of inventory that has been reduced below cost, a bad debt deduction may also be made in respect of that same property. In the event of recovery, the excess of the amount deducted as a bad debt over the amount included in income as a bad debt recovery will also be included as income.[438]

It is the taxpayer who is required to establish that a debt has become bad. A bad debt may be designated as such when the creditor, after having considered all factors relevant to it, honestly and reasonably determines that it is uncollectible, notwithstanding the fact that it may subsequently be collected.[439] There is no necessity that a debt be unequivocally irrecoverable and the possibility of recovery in the future is not an absolute bar to a determination of uncollectibility.[440] In some cases, the report of a collection agency may be relied on as evidence that an amount has become uncollectible. In other cases, as for example, where the debtor has become bankrupt, there will be little question as to the time at which the debt became bad. Whether or not lending of money is part of the taxpayer's ordinary course of business will be closely examined; loans made by a lawyer to a corporation she was a minority shareholder of were held not to be part of the taxpayer's ordinary course of business and a reserve for bad debts not deductible.[441] In this respect, it is open to the Tax Court judge, on the evidence before him,

See page ii for explanation of footnotes.

434 Pièces Automobiles Lecavalier Inc., 2013 DTC 1245 (TCC).
435 CCH ¶5084; Sec. 20(1)(*l*); Interp. Bul. IT-442R.
436 CCH ¶4330; Sec. 12(1)(*d*).
437 CCH ¶5097; Sec. 20(1)(*p*).
438 CCH ¶4458; Sec. 12.4.
439 Flexi-Coil Ltd., 96 DTC 6350, Anjalle Enterprises Ltd., 95 DTC 216.
440 Berretti, 86 DTC 1719.
441 Martin, 2007 DTC 1284.

property. The proration factor for this purpose is the fair market value of all capital interest in the trust.[255]

Where original beneficiaries of a trust have not purchased their capital interests (e.g., the children of the testator who take subject to their parent's life interest), the adjusted cost base, computed in the ordinary manner, will be nil.

A taxpayer who disposes of a capital interest in an *inter vivos* trust not resident in Canada calculates his or her gain in the ordinary manner and is not subject to the special rules set out above. However, the distribution of property by such a trust is a deemed disposition of capital interest to which the above rules apply in computing taxable capital gains.

[¶7455] Income and Capital Interests — Capital Gains or Losses

When a trust transfers property to a beneficiary in satisfaction of an income interest, the property is deemed to have been disposed of at fair value and any resulting capital gains or losses are reported by the trust.[256] When a trust distributes property to a capital beneficiary, other than as a SIFT trust wind-up event described at ¶6278 and ¶7486, the trust is generally deemed to have disposed of the property at its cost amount and the beneficiary takes the assets at that cost amount, so that any future capital gains or losses are the beneficiary's and not those of the trust.[257]

This rollover applies only to personal and prescribed trusts. "Personal trusts"[258] are either graduated rate estates (prior to 2016, all testamentary trusts), or *inter vivos* trusts in which no beneficial interest was acquired for consideration payable to the trust, or a person who has made a contribution to the trust. A "prescribed trust"[259] is a trust that is:

(a) maintained principally for the purpose of holding employer shares;

(b) established exclusively for the purpose of securing a debt; or

(c) established as a voting trust with respect to shares.

With the exception of a tax-deferred transfer of property from one mutual fund to another, on a distribution of property by a trust (other than a personal or prescribed trust) to satisfy a beneficiary's capital interest, the trust is deemed to have disposed of the property for proceeds equal to its fair market value and the beneficiary is deemed to have acquired it at the same value.[260]

This rollover applies only in circumstances where there is a distribution of property which constitutes a disposition of all or part of the capital interest in a trust. If there is no disposition of a capital interest in a trust, a

See page ii for explanation of footnotes.

[255] CCH ¶13,915; Sec. 108(1) "cost amount".
[256] Sec. 106(3).
[257] CCH ¶13,820; Sec. 107(2).
[258] CCH ¶13,940; Sec. 108(1) "testamentary trust".
[259] CCH ¶13,825; Reg. 4800.1.
[260] CCH ¶13,845; Sec. 107(2.1).

distribution of trust property to a beneficiary in satisfaction of all or part of the capital interest in a trust will result in the trust being deemed to have disposed of the property for proceeds equal to its fair market value and the beneficiary will be deemed to have acquired the property at a cost equal to the deemed proceeds of the trust. The beneficiary will also be deemed to have disposed of the capital interest in the trust for proceeds of disposition which will be reduced by an amount of any gains realized by the trust because of the disposition and any "eligible offset". Generally speaking, the eligible offset is the proportionate amount of the trust liabilities assumed by the beneficiary as a condition for the distribution of the trust property.[261]

For purposes of computing a taxable capital gain, the adjusted cost base is the cost amount to the taxpayer of the capital interest immediately before disposal. For purposes of computing an allowable capital loss, the adjusted cost base to the taxpayer is the amount determined under the general rules for capital gains and losses. This amount will normally be less than the cost amount of the capital interest.

[¶7460] Distribution in Satisfaction of Capital Interest — Cost Amount

Where capital assets of a personal or prescribed trust are distributed to a beneficiary, either as a discretionary encroachment on capital or under a mandatory provision, there is ordinarily no deemed realization by the trust at fair market value and the trust is deemed to have disposed of the property at its "cost amount".[262] In the ordinary case, the beneficiary is deemed to have acquired it at the trust's cost amount. The "cost amount" of the property, or a part thereof, to the trust would be as follows:[263]

(a) the undepreciated capital cost of depreciable property of a class, allocated in proportion to the capital cost of assets in the class;

(b) the adjusted cost base of capital assets other than depreciable property;

(c) the value, for purposes of computing income, of any inventory;

(d) the cost to the taxpayer for a "mark-to market" property of a financial institution;

(e) 4/3 of the cumulative eligible capital of eligible capital property (prior to January 1, 2017, when the eligible capital property regime was repealed);

(f) the amortized cost of accounts receivable or, if they have not been written off prior to that time, their face value (except in the case of a net income stabilization account);

(g) nil for a policy loan of an insurer;

See page ii for explanation of footnotes.

[261] CCH ¶13,916; Sec. 108(1) "eligible offset".
[262] CCH ¶13,820, ¶29,540; Sec. 107(2)(a); ITAR 36.
[263] CCH ¶28,054; Sec. 248(1) "cost amount".

(h) nil for an interest of a beneficiary under a mining reclamation trust; and

(i) in any other case, the cost to the taxpayer as determined for the purpose of computing income, less any amount previously deducted in computing income.

There is an exception to the foregoing rule where a post-1971 spousal or common-law partner trust distributes capital property to a person other than the spouse or common-law partner.[264] There is a further exception where a capital distribution of property other than property excluded from the deemed disposition rule at the time of departure is made to a non-resident beneficiary.[265]

[¶7465] Example Illustrating Disposition of Capital Interest and Distribution in Satisfaction Thereof

The following example illustrates the disposition of a capital interest in a personal trust and the distribution in satisfaction thereof:

Example:

Taxpayer A has a vested remainder interest in a personal trust subject to his mother's life interest. His mother is now age 80. The assets in the trust consist of cash of $1,000 and securities which have an adjusted cost base of $5,000 but a fair market value of $20,000. Mr. A sells his remainder interest to Mr. B for $18,000. Two years later, Mr. A's mother dies and the corpus of the trust is distributed to Mr. B. The trust is not a spousal trust, an alter ego trust, or a joint spousal trust, so the mother's death does not trigger a disposition of the trust's property.

Mr. A's proceeds of disposition are $18,000. His adjusted cost base is the greater of the adjusted cost base computed in the ordinary manner, i.e., nil, and the "cost amount" of his capital interest. This is calculated under the definition of "cost amount" in ¶7460 as follows:

Assets in trust — Cash	$1,000
Securities at adjusted cost base	5,000
	$6,000

Mr. A's proportion of the assets =

$$\$6{,}000 \times \frac{\text{f.m.v. of his capital interest}}{\text{f.m.v. of all capital interests}}$$

This equals $6,000 as he had the only capital interest.

Thus, Mr. A has a capital gain of $18,000 – $6,000 = $12,000 on the disposition of his capital interest.

See page ii for explanation of footnotes.

[264] CCH ¶13,870; Sec. 107(4).

[265] CCH ¶13,880; Sec. 107(5).

On A's mother's death, the trustees immediately distributed the $1,000 in cash to Mr. B. Mr. B now has an adjusted cost base (computed in the ordinary manner) of $18,000 – $1,000, i.e., $17,000. The cost amount of his capital interest is the cost amount to the trust of the securities, i.e., $5,000. Several months later the trustees distribute the securities to Mr. B. Mr. B's proceeds of disposition are calculated as follows:

$5,000 + ($17,000 – $5,000) = $17,000

Thus Mr. B realizes neither a capital gain nor a capital loss. However, he has securities worth $20,000 at a cost of only $17,000. On disposition of them he would realize a gain of $3,000. Thus the actual gain of $15,000 is split as $12,000 to Mr. A and $3,000 to Mr. B.

[¶7470] Distribution of Depreciable Property

If the property distributed to the beneficiary is depreciable property, and if the original capital cost to the trust of the property exceeds the cost amount at which the taxpayer is deemed to have acquired it, the capital cost to the taxpayer for purposes of recapture is the original capital cost to the trust.[266] The taxpayer is deemed to have claimed as capital cost allowance any excess of the trust's capital cost over the cost amount at which the taxpayer is deemed to acquire the asset.

Example:

A trust has certain depreciable property, claims capital cost allowance in respect of it and eventually distributes it to the sole capital beneficiary in satisfaction of the beneficiary's capital interest, which was acquired gratuitously.

capital cost to trust	$100,000
undepreciated capital cost	80,000
fair market value	95,000
deemed cost to beneficiary	80,000
deemed capital cost to beneficiary	100,000
deemed allowed to beneficiary as capital cost allowance ($100,000 - $80,000)	20,000
undepreciated capital cost to beneficiary	80,000

The beneficiary then sells the property for its fair market value ($95,000) and realizes recapture of $15,000.

[¶7475] Proceeds of Disposition of Capital Interest

A taxpayer is deemed to have disposed of the capital interest in the trust for proceeds equal to the cost at which the property distributed is deemed to have been acquired, minus any "eligible offset". Generally speaking, the eligible offset is the proportionate amount of the trust liabilities assumed by the beneficiary as a condition for the distribution of the trust property.[267]

See page ii for explanation of footnotes.

[266] CCH ¶13,820, ¶29,170; Sec. 107(2)(d); ITAR 20(1.2).

[267] CCH ¶13,820, ¶13,916; Sec. 107(2)(c), 108(1) "eligible offset".

[¶7477] Proceeds of Disposition of Eligible Capital Property

The eligible capital property rules have been eliminated effective January 1, 2017. What previously was eligible capital property will now be a separate class of depreciable property and will be dealt with in accordance with those rules. The commentary below only applies prior to 2017.

Where eligible capital property is distributed in satisfaction of all or part of the capital interest, the trust is deemed to have received an amount equal to 4/3 of the cost amount of the property to the trust immediately before that time. The beneficiary is deemed to have acquired the property at 4/3 of that same cost amount, plus adjustments in certain cases. This treatment provides the rollover for eligible capital property, since the trust only includes 3/4 of the proceeds in the calculation of its cumulative eligible capital (CEC) account.

Additionally, the beneficiary is deemed to have previously deducted 3/4 of any of the excess of the trust's eligible capital expenditure with respect to the property over the cost at which the beneficiary is deemed to have acquired the asset, so that the beneficiary "steps into the shoes" of the trust with respect to the CEC account.[268]

Example:

A trust distributes eligible capital property to a beneficiary in satisfaction of the beneficiary's capital interest in the trust.

ECE to trust		$100,000
CEC to trust		$ 60,000
Deemed cost to beneficiary	4/3 × $60,000 =	$80,000
Deemed ECE to beneficiary		$100,000
Amount deemed to have been previously deducted by beneficiary under sec. 20(1)(*b*)	3/4 × ($100,000 - $80,000) = 3/4 × $20,000 =	$ 15,000
Deemed CEC to beneficiary	(3/4 × $100,000) - $15,000 =	$ 60,000

[¶7480] Trusts in Favour of Spouse or Common-Law Partner

Where a post-1971 spousal or common-law partner trust distributes depreciable capital property of a prescribed class, non-depreciable capital property, Canadian or foreign resource property, or land inventory to anyone other than the spouse/partner beneficiary, the trust is deemed to have proceeds of disposition equal to the fair market value of such property.[269] As a result, the post-1971 spousal or common-law partner trust will realize any accrued capital gains or losses and inventory profits or losses in respect of the capital property or inventory. Capital gains, recapture, or terminal losses

See page ii for explanation of footnotes.

[268] CCH ¶13,820; Sec. 107(2)(*f*).

[269] CCH ¶13,150, ¶13,870; Sec. 104(4), 107(4).

could arise as a result of the application of this rule to depreciable property of a prescribed class. In addition, the deemed proceeds of disposition for the resource properties could result in an income inclusion. The deemed disposition of property at fair market value will apply to a distribution by *alter ego trusts* and *joint spousal or common-law partner trusts*, where the individual (or, in the case of a joint spousal or common-law partner trust, either the individual or the spouse/common-law partner) is alive on the day of the distribution and the distribution is made to a beneficiary other than the individual (or, in the case of a joint spousal or common-law partner trust, the individual or the spouse/common-law partner).

The beneficiary to whom the distribution is made is deemed to have acquired the property at a cost equal to its deemed proceeds of disposition to the post-1971 spousal or common-law partner trust. On any later disposition of capital property or land inventory, this base will be used to compute the beneficiary's capital gain or loss or profit or loss. Likewise, this base will be the beneficiary's original cost for purposes of computing capital cost allowance and the amount of any recaptured capital cost allowance on a subsequent disposition of the depreciable property by the beneficiary.

The beneficiary who has paid nothing for the trust interest is deemed to have acquired property for its cost amount. If such a beneficiary had to assume any debt of the trust as a condition of the distribution of the property, the amount of the debt is subtracted in arriving at the deemed proceeds of disposition of the capital interest.

[¶7485] Distribution to Non-Resident Beneficiary

The distribution of property by a trust to a non-resident beneficiary (other than as a SIFT trust wind-up event described at ¶6278 and ¶7486) is treated as a disposition of the property by the trust. As a result, the distribution may give rise to a capital gain. However, the trust may elect to include such gain in its income instead of having the beneficiary include the gain.[270] This deemed disposition does not apply to shares of a non-resident-owned investment corporation, real property situated in Canada, Canadian resource property, timber resource property, capital property used in, eligible capital property (prior to January 1, 2017) in respect of, and property described in the inventory of a business carried on in Canada through a permanent establishment in Canada, and certain interests in trusts and deferred income streams.

[¶7486] Distribution by SIFT Wind-Up Entity

On the winding-up of a SIFT trust and redemption of its units after July 14, 2008, a SIFT trust may distribute its shares of a Canadian corporation to its unitholders, on a tax-deferred basis. This rollover will also apply where a SIFT trust holds all of the equity interests in a second-tier trust and

See page ii for explanation of footnotes.

[270] CCH ¶13,845, ¶13,847; Sec. 107(2.1), 107(2.11).

the second-tier trust distributes shares of a Canadian corporation to the SIFT trust on the winding-up of the second-tier trust. For this rollover to apply, there must be a distribution of all of the trust's property to its unitholders and the distribution must occur within 60 days of the first distribution of property, if any, on the wind-up of the second-tier trust. The only property that can be distributed to former SIFT unitholders under this rollover is shares of a single class of the capital stock of a taxable Canadian corporation.[271]

The following deemed proceeds of disposition achieve the tax-free rollover. The trust being wound up is deemed to have disposed of the property for proceeds of disposition equal to the adjusted cost base to the trust of the property immediately before the disposition. The unitholder is deemed to have disposed of its units for proceeds of disposition equal to the cost amount of the unit immediately before the distribution. If the taxpayer is the only beneficiary of the trust, as would happen where the trust is wholly owned by another trust or corporation, and the taxpayer is a "SIFT wind-up entity" or a taxable Canadian corporation, the taxpayer is deemed to have acquired the trust property at a cost equal to the adjusted cost base to the trust immediately before the disposition. In any other case, such as where the beneficial interests in the trust are held by the public, the property is deemed to be acquired at the cost amount to the taxpayer of the taxpayer's interest as a beneficiary of the trust. Furthermore, if the taxpayer's interest as a beneficiary under the trust was taxable Canadian property, the new property received is deemed to continue to be taxable Canadian property of the taxpayer.

Under the above conversion method of a SIFT trust into a corporation, the trust must first transfer its property to a taxable Canadian corporation. If a liability owed by the trust is, as a consequence of the distribution, assumed by the corporation (i.e., the corporation whose shares are being distributed) and the amount payable on maturity by the corporation is the same as that amount payable by the trust, the trust may transfer this liability to the corporation without any income tax consequences. In such a case, the liability is deemed to have been incurred or issued by the corporation and not the trust.

These SIFT conversion rules apply only to the redemption of units or winding-up of a trust that occurs after July 14, 2009, and before 2013.

[¶7487] Distribution of Property with an Accrued Loss

Any loss on a disposition of the property is denied to the extent that it can be considered to have accrued while owned by a trust and at a time when neither the vendor of the property nor a person affiliated with the vendor had a capital interest in the trust.[272] Without this anti-avoidance rule, a person or partnership acquiring a capital interest in a trust which has

See page ii for explanation of footnotes.

[271] CCH ¶13,860, ¶13,860g; Sec. 107(3), 107(3.1). [272] CCH ¶13,882; Sec. 107(6).

a property with an accrued loss could cause the property to be distributed in satisfaction of such interest at its cost amount to the trust and realize a loss on a subsequent disposition.

[¶7490] Distributions by Employee Trust or Employee Benefit Plan

Special rules[273] apply with respect to the distribution of property by an employee trust or an employee benefit plan to a beneficiary in satisfaction of all or part of the beneficiary's interest in the trust.

In the case of an employee trust, the trust is deemed to have disposed of the property immediately before the distribution for proceeds equal to fair market value. Any gain or loss resulting on the deemed disposition would form part of the amount which the trustee must allocate among the beneficiaries of the trust. The beneficiary is deemed to have acquired the distributed property at a cost equal to its fair market value.

In the case of an employee benefit plan, the trust is deemed to have disposed of the distributed property for proceeds equal to the cost amount of the property to the trust (thus realizing neither a gain nor a loss). The taxpayer is deemed to have acquired the property at a cost equal to the greater of its fair market value at that time and the adjusted cost base of his or her interest in the trust (immediately before that time). It is this fair market value of the property distributed that is the "amount" received by the taxpayer from the plan for the purpose of computing the income inclusion. If the taxpayer would otherwise have a loss on the disposition of his or her interest in the trust, that loss is added to the adjusted cost base of the property received by the beneficiary from the trust.

The taxpayer is deemed to have disposed of his or her interest in the employee trust or employee benefit plan for proceeds equal to its adjusted cost base, thus recognizing no gain or loss on the disposition.

The recognition in an employee trust or employee benefit plan of any gain or loss in respect of property distributed to a beneficiary will apply after 1998 to a health and welfare trust.

Where depreciable property is distributed in satisfaction of the beneficiary's interest, special rules apply where the capital cost of the property to the trust exceeds the deemed cost thereof to the beneficiary. In general, these rules place the beneficiary in the trust's position for claiming capital cost allowance and recognizing recapture or terminal losses. The beneficiary's capital cost is deemed to be the trust's capital cost. The beneficiary is considered to have claimed as capital cost allowance any excess of the trust's capital cost over the cost at which the beneficiary is deemed to acquire the asset. For an example, see ¶7470.

See page ii for explanation of footnotes.

[273] CCH ¶13,890; Sec. 107.1.

(c) a program of eight or more consecutive weeks offered by a club, association, or similar organization in which participants can select among a number of activities, if more than 50% of the activities offered are activities that include a significant amount of physical activity, or more than 50% of the scheduled time is scheduled for activities that include a significant amount of physical activity; or

(d) a membership in an organization of eight or more consecutive weeks, if more than 50% of all the activities offered include a significant amount of physical activity.[112]

The term "physical activity" is defined as a supervised activity suitable for children that "contributes to cardio-respiratory endurance and to one or more of muscular strength, muscular endurance, flexibility and balance".[113] Horseback riding is deemed to meet the requirements of this definition.[114] With respect to children who are eligible for the disability tax credit, the term "physical activity" is defined to mean a supervised activity suitable for children "that results in movement and in an observable expenditure of energy in a recreational context". Activities not considered to be eligible for the credit include activities where riding a motorized vehicle is an essential component of the activity and programs offered as part of a school's curriculum.

The following is an example (provided in the original Explanatory Notes accompanying enacting legislation) illustrating what constitutes a prescribed program of physical activity:

Example:

Sabrina just joined the Girl Guides of Canada. Her mother paid $100 in registration fees for two hours of activities per week for 10 weeks. The Girl Guides program provides that one hour and 15 minutes of the two hours of activities will be devoted to physical activity. Therefore, the program will be considered a prescribed program of physical activity and Sabrina's mother may claim a child fitness tax credit of $15.00 ($100 × 15%).

In cases where a program is not a prescribed program of physical activity because it does not meet the 50% requirement set out in item (c) above, a taxpayer may claim a portion of the amount paid for the program as an eligible fitness expense.[115] In such cases, the portion a taxpayer may claim is the percentage of activities that are activities that include a significant amount of physical activity, or the percentage of the time that is scheduled for activities that include a significant amount of physical activity.

The following is an example provided in the same Explanatory Notes, which illustrates the application of the above provision:

See page ii for explanation of footnotes.

[112] CCH ¶18,329ed; Reg. 9400(2).
[113] CCH ¶18,329ed; Reg. 9400(1) "physical activity".
[114] CCH ¶18,329ed; Reg. 9400(5).
[115] CCH ¶18,329ed; Reg. 9400(3).

Example:

Sabrina's mother pays $200 for the registration of her daughter at a community centre. The portion of the activity offered to children by the centre that qualifies as physical activities for the purpose of the credit is 40 percent. Therefore, only 40 percent of the program will be considered a prescribed program of physical activity and Sabrina's mother may claim a child fitness tax credit of $12.00 ($200 × 40 percent × 15%).

In cases where a membership in an organization does not meet the 50% requirement set out in item (d) above, the portion of the expense that will be eligible for the purposes of the definition of "eligible fitness expense" is the percentage of all of the activities offered to children by the organization that include a significant amount of physical activity, assuming the activity is not part of a school's curriculum.[116]

[¶8114] Children's Arts Tax Credit

Prior to 2017, parents could claim a 15% non-refundable tax credit for up to $250 ($500 before 2016) of eligible expenses for the enrolment of a child under 16 (under 18 if the child is eligible for the disability tax credit) in an eligible program of artistic, cultural, recreational, or developmental activities.[117] For a child under 18 who was eligible for the disability tax credit, the 15% non-refundable tax credit could be claimed on an additional $500 disability supplement amount, when a minimum of $100 was paid for eligible expenses.[118] Both of these credits were discontinued after 2016. Either parent could claim the credit or the credit could be shared if the total amount claimed did not exceed the maximum allowed if only one parent made the claim.[119]

An eligible expense was a fee paid in the taxation year to a qualifying entity to the extent that the fee was for the registration or membership of a child in an eligible program of artistic, cultural, recreational, or developmental activities. Fees for registration or membership could be paid in respect of expenses for the operation and administration of the program, instruction, renting facilities, equipment used in common, and incidental supplies. Registration or membership fees would not be eligible to the extent that they were paid for the purchase or rental of equipment for exclusive personal use (e.g., musical instruments), travel, meals, and accommodation.[120]

[¶8115] Home Accessibility Credit

Effective for 2016, a non-refundable home accessibility tax credit may be claimed for the year by one of the following persons:

See page ii for explanation of footnotes.

[116] CCH ¶18,329ed; Reg. 9400(4).
[117] CCH ¶18,329ia; Sec. 118.031(1) "qualifying child", 118.031(2).
[118] CCH ¶18,329ie; Sec. 118.031(3).
[119] CCH ¶18,329if; Sec. 118.031(4).
[120] CCH ¶18,329ia; Sec. 118.031(1) "eligible expense".

- a qualifying individual who is a disabled person having claimed the disability tax credit for a year or a senior person having reached the age of 65 during the year; or
- an eligible individual who is a person having claimed the following credits: (1) for 2017 and subsequent taxation years, a spouse or common-law partner, eligible dependant, or Canada caregiver credit for a qualifying individual; or (2) for 2016 and preceding taxation years, a spouse or common-law partner, eligible dependant, caregiver, or infirm dependant credit for a qualifying individual.

An individual could still qualify as an eligible individual to claim the home accessibility tax credit even if he or she could not claim the personal credit for the qualifying individual. This would normally be the case if the amount of the qualifying individual's net income prevented him or her from claiming the personal credit and if certain other conditions were met.

The credit for the year is calculated at a rate of 15% on up to $10,000 of qualifying expenditures (see definition below). The total credit cannot exceed $1,500 ($10,000 × 15%) even if both the qualifying and eligible individuals are allowed to claim the credit. If an expenditure is eligible to claim both the home accessibility and medical expense tax credits, the qualifying and eligible individuals may claim both credits.

To be considered a qualifying expenditure, an expense must be:

- incurred during the year (i.e., it cannot be carried back or forward); and
- attributed to the qualifying renovation of an eligible dwelling (see definition of those two terms below) owned by a qualifying or eligible individual.

A home must meet the following conditions to be considered an eligible dwelling:

- the home must be the principal residence of a qualifying or eligible individual at any time in the year;
- the home must be a housing unit located in Canada (including subjacent land and one-half hectare of contiguous land);
- the home must be owned jointly or otherwise by a qualifying or eligible individual;
- if the unit is owned by a qualifying individual, he or she must ordinarily live in it at any time in the year; and
- if the unit is owned by an eligible individual and the qualifying individual does not own another unit at any time in the year, they must both ordinarily live in the unit at any time in the year.

In order to be considered a qualifying renovation, the renovation must be:

- related to an eligible dwelling owned by a qualifying or eligible individual;
- of an enduring nature (i.e., capital versus current expenditure); and
- undertaken to improve the qualifying individual's mobility in the dwelling, to improve its accessibility and functionality for him or her, and reduce the risk of harm for him/her in living or accessing it.

Qualifying expenditures include the cost of goods and services, permits, and equipment rental to complete the renovation but exclude the following items:

- property for general improvement of the dwelling;
- routine repairs and general maintenance of the dwelling;
- purchase of household appliances or electronic home-entertainment devices;
- housekeeping, security monitoring, gardening, or outdoor maintenance services;
- financing costs;
- renovation of a dwelling area used to earn business or property income;
- expenses reimbursed by a person other than the government; and
- goods or services provided by a person related to the qualifying or eligible individual (unless that person is registered for GST/HST purposes).

[¶8116] Teacher and Early Childhood Educator School Supply Tax Credit

This tax credit was introduced to provide tax relief to educators who purchase school supplies for their students with their own money. Effective for 2016 and subsequent years, eligible educators can claim a 15 percent refundable tax credit for eligible supplies expenses incurred in the year. Maximum annual expenses of $1,000 are permitted, thus generating up to $150 in tax savings per year. The terms "eligible educator", "eligible supplies expense", and "teaching supplies" are defined below.

Eligible Educator and Eligible Supplies Expense

The definition of an eligible educator[121] is fairly straightforward. It refers to an individual who,

(a) is employed in Canada as a teacher or early childhood educator at an elementary or secondary school, or a regulated child care facility; and

(b) holds a valid and recognized (in the province or territory in which the individual is employed)

See page ii for explanation of footnotes.

[121] CCH ¶19,356a; Sec. 122.9(1) "eligible educator".

(i) teaching certificate, licence, permit or diploma; or

(ii) certificate or diploma in early childhood education.

The definition of eligible supplies expense[122] is more complex. Eligible supplies expense of an eligible educator refers to an amount paid by that individual for teaching supplies to the extent that the teaching supplies were:

(i) purchased for the purpose of teaching or facilitating students' learning; and

(ii) were directly consumed or used in an elementary or secondary school or in a regulated child care facility in the performance of the individual's employment duties.

Expenses that were deducted from any person's income or taxes payable in any taxation year are ineligible for the credit. Furthermore, expenses for which the eligible educator is entitled to receive a reimbursement, allowance, or any other form of assistance (excluding amounts that are included in his or her income and are not deductible) are also ineligible for the credit.

The term "teaching supplies" means consumable supplies and prescribed durable goods. According to the Department of Finance, consumable supplies include:

- construction paper for activities, flashcards for activity centres;
- items for science experiments, such as seeds, potting soil, vinegar, baking soda and stir sticks;
- art supplies such as paper, glue and paint; and
- various stationary items, such as pens, pencils, posters and charts.

"Prescribed durable goods"[123] includes:

- games and puzzles;
- books for the classroom;
- containers such as plastic boxes or banker boxes; and
- educational support software.

Computers, tablets, and rugs for children to sit on are not eligible expenses as they are durable goods and are not specifically prescribed.

Computing the Credit

Since the credit is refundable, the taxpayer is deemed to have paid the amount of the credit on the account of tax payable. The amount of the credit is computed by multiplying the appropriate percentage for the year (15%) by the lesser of:[124]

(a) $1,000; and

See page ii for explanation of footnotes.

[122] CCH ¶19,356a; Sec. 122.9(1) "eligible supplies expense".

[123] Reg. 9600.

[124] CCH ¶19,356b; Sec. 122.9(2).

(b) the taxpayer's total eligible supplies expenses incurred in the year.

However, where the taxpayer fails to provide a certificate when the Minister requests it (see below), the credit is denied for the year in question.

Certification

It is also crucial that the taxpayer is able to produce a certification document with respect to the expenses if requested by the CRA.[125] Upon request, the individual must provide a written certificate from his or her employer or a delegated official of the employer (e.g., the school principal). This certification must attest to the amounts paid as eligible supplies expenses of the eligible educator with respect to a taxation year. According to the CRA's guidance pertaining to this compliance requirement, the certification should be a statement signed by the employer or official that provides and attests (to the best of their knowledge) to the amount paid for the eligible teaching supplies purchased in the year:

- by the eligible educator;
- for the purpose of teaching or facilitating students' learning;
- directly consumed or used in an elementary or secondary school or regulated child care facility in the performance of the individual's employment duties; and
- not reimbursable, not subject to an allowance or other assistance (unless the assistance is included in the individual's income and is not deductible), and not deducted or used in computing a deduction from any person's income for any taxation year.

The employer or official should take a reasonable approach regarding the fourth requirement. The CRA provides examples of ineligible expenses where:

- Form T2200 allows a teacher to deduct the expenses from income because the contract of employment requires him or her to provide for and pay for supplies and the expenses; or
- an educator is entitled to a reimbursement from the employer, students or parents, or through fundraising activities.

As mentioned previously, where a taxpayer fails to provide the certification requested for a particular year, the amount of the credit will deemed to be nil.

Additional Rules

Where an eligible educator becomes bankrupt in a particular calendar year, the last taxation year of the individual in that calendar year (i.e., the return for the taxation year that begins at the bankruptcy date and ends on December 31 of that calendar year) is the only return of income in which the individual may claim the credit.[126]

See page ii for explanation of footnotes.

[125] CCH ¶1,356ac; Sec. 122.9(3).

[126] CCH ¶19,356d; Sec. 122.9(4).

A taxpayer may not claim the school supplies tax credit for a taxation year in which they were not resident in Canada at any time during that year. The taxpayer may still claim the credit if all or substantially all (at least 90%) of his or her income for that year was included in his or her taxable income earned in Canada for that year. Where the individual is resident in Canada for part of a taxation year, the credit is computed for two periods: the period of residency and the period of non-residency. But the credit for the calendar year still may not exceed $150.[127]

[¶8117] First-Time Home Buyers' Credit (HBTC)

The HBTC is a non-refundable tax credit for certain home buyers who acquire a qualifying home.[128] Individuals will qualify for the HBTC if:

- they acquire a qualifying home; and
- neither the individual nor the individual's spouse or common-law partner owned and lived in another home in the year of purchase or any of the four preceding years.

If the house is bought by a person with a disability or for a related person with a disability, the individual does not have to be a first-time home buyer. However, the home must be acquired to enable the person with a disability to live in a more accessible dwelling or in an environment better suited to the personal needs and care of that person.

A qualifying home is a housing unit located in Canada. This includes single-family homes, semi-detached homes, townhouses, mobile homes, condominium units, and apartments in duplexes, triplexes, fourplexes, or apartment buildings. It also includes a share of the capital stock of a cooperative housing corporation, where the holder of the share is entitled to possession of a housing unit located in Canada. However, a share that only provides the holder with a right to tenancy in the housing unit does not qualify. As well, the individual or the related person with a disability must intend to occupy the home as a principal place of residence no later than one year after buying it.

The HBTC is calculated at the rate of 15% (i.e., lowest personal marginal tax rate) of an amount of $5,000 for a credit worth $750.

[¶8118] Volunteer Firefighters and Search and Rescue Tax Credit

Volunteer firefighters may claim a 15% non-refundable tax credit based on an amount of $3,000, if they have performed at least 200 hours of eligible volunteer firefighting services for one or more fire departments.[129] Effective in 2014, this credit was extended to those who provide eligible volunteer

See page ii for explanation of footnotes.

[127] CCH ¶19,356e, ¶19,356f; Sec. 122.9(5), (6).
[128] CCH ¶18,329pp; Sec. 118.05.
[129] CCH ¶18,329qb; Sec. 118.06(2).

search and rescue services, if they have provided at least 200 hours of either firefighting or search and rescue service.[130]

Eligible firefighting services are services provided to a fire department as a volunteer firefighter, which consist primarily of responding to and being on call for firefighting and related emergency calls, attending meetings held by the fire department, and participating in required training related to the prevention or suppression of fires.

Volunteer services performed for a particular fire department are not eligible if the firefighter also provides non-volunteer firefighting services to that department.[131]

Eligible search and rescue services are provided in the individual's capacity as a volunteer to an eligible search and rescue organization. The service consists primarily of responding to and being on call for search and rescue and related emergency calls, attending meetings held by the organization, and participating in required training related to search and rescue.[132] This credit is not available to an individual who provides search and rescue services in another capacity (not as a volunteer). The individual claiming this tax credit may have to obtain a written certificate from a team president, or an individual with equivalent authority, to certify the number of hours of service completed.[133]

An individual who claims either of these credits will not be allowed to claim the current tax exemption up to $1,000 for honoraria paid by a government, municipality, or other public body in respect of volunteer firefighting services.

If an individual performs services that are eligible for both the search and rescue and the volunteer firefighters credits, then the individual can claim either credit but not both.

[¶8119] Tuition Credit

A qualifying student who is enrolled full-time or part-time at an educational institution may deduct a tax credit of the appropriate percentage (currently 15%) of eligible tuition fees where such fees are greater than $100.[134]

Eligible tuition fees are those paid to a post-secondary educational institution in Canada or (for individuals aged 16 and over at the end of the year), an institution certified by the Minister of Employment and Social Development as being an institution that develops or improves skills in an occupation. Effective January 1, 2017, tuition fees paid in respect of courses that are not at the post-secondary level to a university or college will be

See page ii for explanation of footnotes.

[130] CCH ¶18,329rb; Sec. 118.07(2).
[131] CCH ¶18,329qa; Sec. 118.06(1).
[132] CCH ¶18,329ra; Sec. 118.07(1).
[133] CCH ¶18,329rc; Sec. 118.07(3).
[134] CCH ¶18,415; Sec. 118.5(1), 118.6(1) "qualifying student"; Income Tax Folio S1-F2-C2.

Fees paid on behalf of a student who was enrolled in a certified vocational job training course would not qualify for the education tax credit unless the student had reached the age of 16 before the end of the year.

Generally, students could not claim the education tax credit for a program for which they received a benefit, a grant, an allowance, or a reimbursement of their tuition fees. However, students could claim the credit even if they received salary or wages from a job that was related to their program of study, certain other kinds of payments, such as scholarships and student loans, or if they received and included in their income any financial assistance provided under the *Employment Insurance Act* (Part II) or the *Employment and Social Development Act*. As with the tuition and textbook credit, the unused portion of the education credit could be transferred to a spouse or common-law partner, parent, or grandparent or carried forward for future use by the student (unused education credits may be carried forward from years prior to 2017 and will remain available to be claimed in 2017 and subsequent years). A student could also transfer part of the unused portion of the credit and carry forward the remainder. The amount that could be transferred was limited to the amount that the student designates in writing and was further limited to the lesser of the total tuition, textbook (this credit is also repealed effective January 1, 2017), and education tax credits combined and $750 (transfer limit of $5,000 × 15%).

[¶8121] Part-Time Education Credit

Before the repeal of the education credit, part-time students were eligible for a partial credit equal to the appropriate percentage of 15% of $120 a month.[141] To be eligible, students had to be enrolled in an educational program lasting at least three consecutive weeks and involving a minimum of 12 hours of courses per month. A specified educational program was essentially a qualifying educational program (described at ¶8120), except that the 10-hour-per-week course requirement was replaced by a 12-hour-per-month course requirement. The unused portion of the part-time credit could be transferred to a supporting person or carried forward for future use (see ¶8124). Unused education credits may be carried forward from years prior to 2017 and remain available to be claimed in 2017 and subsequent years.

[¶8122] Post-Secondary Textbook Credit

This credit was repealed effective January 1, 2017. Prior to that time, students could claim a tax credit in respect of textbooks for each month for which they qualified for the education tax credit (which was also repealed January 1, 2017). The credit was non-refundable, and for full-time students was calculated at 15% of $65 × the number of months during the year in

See page ii for explanation of footnotes.

[141] CCH ¶18,427a, ¶18,428; Sec. 118.6(1) "specified educational program", 118.6(2).

which the student was entitled to claim the education credit as a full-time student. For part-time students, the credit was 15% of $20 × the number of months during the year in which the student was entitled to claim the education credit as a part-time student.[142] Disabled students qualified for the full textbook amount of $65 per month, even if they were not enrolled on a full-time basis. Unused textbook credits may be carried forward from years prior to 2017 and remain available to be claimed in 2017 and subsequent years.[143]

[¶8123] Credit for Interest on Student and Apprentice Loans

A personal tax credit is allowed for interest paid in a year or in any of the previous five years on a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act*, the *Apprentice Loans Act*, or a similar provincial statute.[144] This credit is not transferable. Only the student to whom the loan was made or who legally owes interest can claim the credit. However, to qualify, the interest may be paid by the student or a person related to the student.

Financial institutions and the Minister of Employment and Social Development Canada (or provincial government departments or agencies administering these loans) will provide taxpayers with statements indicating eligible interest payments. The credit applies to interest only, not repayment of principal. It does not apply to interest accrued but not paid or to any forgiven interest.

Effective for 2015, the credit for interest on student loans was extended to allow taxpayers to include interest paid on Canada Apprentice Loans under the *Apprentice Loans Act*.

[¶8124] Carryforward of Tuition, Textbook, and Education Tax Credits

The combined tuition, textbook, and education credits (the textbook and education credits were repealed effective January 1, 2017; unused credit amounts carried forward from years prior to 2017 remain available to be claimed in 2017 and subsequent years) that the student cannot claim in a year (because his or her income is too low) will automatically carry forward for future use by the student, unless the student has designated the unused portion to a spouse/common-law partner, parent, or grandparent. The student must use these carryforwards immediately in future years as sufficient income arises to absorb them. It is a first-in first-out system in which old credits must be used before new ones, and any new credits so blocked are added to the carryforward.

Technically, the amount that may be carried forward to future taxation years is determined by first, adding to the student's unused tuition,

See page ii for explanation of footnotes.

[142] CCH ¶18,428d; Sec. 118.6(2.1).

[143] CCH ¶18,429; Sec. 118.6(3).

[144] CCH ¶18,439; Sec. 118.62.

textbook, and education tax credits at the end of the previous year, the portion of the student's tuition, textbook, and education credits for the current year that is not needed to eliminate the student's tax payable for the current year. This total is then reduced by the amount of the tuition, textbook, and education tax credits carryforward that is deductible for the year.[145] The amount of the carryforward that is deductible for the year is equal to the lesser of the previous year's carryforward and the tax that would be payable for the year by the student if no tuition, textbook, and education tax credits were allowed.[146] Finally, this total is further reduced by the tuition, textbook, and education tax credits transferred for the year by the student to the student's spouse/common-law partner, parent, or grandparent.

[¶8125] Medical Expense Credit

The medical expense tax credit for 2018 is calculated as 15% of qualifying medical expenses that are in excess of the lesser of:

(a) $2,302; and

(b) 3% of the individual's net income.[147]

The expenses giving rise to the tax credit may be for the taxpayer, a spouse, a common-law partner, a child under 18, or other dependent relatives.[148] (as defined at ¶8095).

There is no longer a maximum limit for claiming expenses for other dependent relatives, so that eligible expenses for dependent relatives are only subject to the above minimum expense threshold, i.e., the lesser of 3% of the individual's net income and $2,302 in 2018.

The medical expenses must be paid either by the taxpayer or by the taxpayer's legal representative within any 12-month period ending in the year of claim. Where the individual has died in the tax year, the expenses must be paid within any 24-month period that includes the date of death. Receipts must be filed with the taxpayer's return to support the claim for a medical expense credit.

The Act lists certain items (which are included as medical expenses for purposes of calculating the credit), and is updated periodically to add certain items.[149] So that the Act will not become unwieldy by additions to the list, it is provided that certain devices and equipment, when prescribed by a medical doctor or practitioner, and as prescribed by Regulation, will be considered medical expenses. There is no restriction that eligible medical expenses be paid for treatment in Canada. Premiums paid to a private health services plan are eligible medical expenses.[150]

See page ii for explanation of footnotes.

145 CCH ¶18,437; Sec. 118.61(1).
146 CCH ¶18,438; Sec. 118.61(2).
147 CCH ¶18,370; Sec. 118.2; Income Tax Folio S1-F1-C1.
148 CCH ¶18,314, ¶18,372; Sec. 118(6), 118.2(2).
149 CCH ¶18,372, ¶18,374; Sec. 118.2(2); Reg. 5700.
150 CCH ¶18,372; Sec. 118.2(2)(q); Interp. Bul. IT-339R2.

Expenses incurred for purely cosmetic purposes (including related services and other expenses such as travel) are not eligible for the medical expense tax credit.[151] This exclusion of purely cosmetic procedures generally includes surgical and non-surgical procedures purely aimed at enhancing one's appearance, such as liposuction, hair replacement procedures, botulinum toxin injections, and teeth whitening. A cosmetic procedure, including those identified above, will continue to qualify for the credit if it is required for medical or reconstructive purposes, such as surgery to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.

Effective for 2017 and subsequent taxation years, any individual having incurred medical expenses for the use of reproductive technologies to conceive a child may use them to calculate a medical expense tax credit. Provided a medical intervention was needed to conceive the child, there is no need for the individual to be medically infertile to qualify for the credit. The fertility expenses may only qualify for the credit if they would have otherwise qualified as eligible medical expenses if the person would not be able to conceive a child because of a medical condition. Any individual having incurred eligible fertility expenses during any of the 10 preceding calendar years (i.e., 2007 to 2016) may claim a medical expense tax credit for that year and apply for a tax refund.[152]

An individual is allowed to claim as a medical expense an amount that is included in the taxpayer's income from employment in respect of a medical expense that is paid or provided by the taxpayer's employer. Medical expenses — for which the taxpayer, the taxpayer's legal representative, or the patient (if the patient is not the taxpayer) has been or is entitled to be reimbursed — do not qualify for the credit unless the reimbursement is included in income. In order for the expense to be eligible for the medical expense tax credit, any reimbursement must be included in income and not be deductible in computing taxable income.[153]

[¶8130] Types of Expenses Qualifying for Credit

To qualify as eligible medical expenses for purposes of computing the credit (see ¶8125), the Act provides that payments are to be made on behalf of the taxpayer, the taxpayer's spouse/common-law partner, or the taxpayer's dependant as follows:[154]

(1) *Payments for medical practitioners, hospitals, etc.* Payments are eligible if made to a medical practitioner (as defined below), dentist, pharmacist, nurse, optometrist, or to a public or licensed private hospital in respect of medical or dental services provided to the taxpayer, the taxpayer's

See page ii for explanation of footnotes.

151 CCH ¶18,372f; Sec. 118.2(2.1).
152 CCH ¶18,381a; Sec. 118.2(2.2).
153 CCH ¶18,382; Sec. 118.2(3).
154 CCH ¶18,372; Sec. 118.2(2); Income Tax Folio S1-F1-C1.

spouse/common-law partner, or any dependant. "Medical practitioner" encompasses not only a medical doctor but also the following medical professionals as long as they are authorized to practice according to the laws of the jurisdiction where the expenses are incurred: an osteopath; a chiropractor; a nurse practitioner (after March 21, 2017); a naturopath; a therapeutist (or therapist); a physiotherapist; a chiropodist (or podiatrist); a Christian Science practitioner; a psychoanalyst who is a member of the Canadian Institute of Psychoanalysis or a member of the Quebec Association of Jungian Psychoanalysts; a psychologist; a qualified speech-language pathologist or audiologist such as, for example, a person who is certified as such by The Canadian Association of Speech-Language Pathologists and Audiologists (CASLPA) or a provincial affiliate of that organization; an occupational therapist who is a member of the Canadian Association of Occupational Therapists; an acupuncturist; a dietitian; a dental hygienist; and a physiotherapist.

(2) *Payments for a full-time attendant or care in a nursing home.* Such payments are made as remuneration for one full-time attendant, other than the taxpayer's spouse/common-law partner or a person under 18 years of age; or as payment for the full-time care in a nursing home for an individual who has "one or more severe and prolonged impairments in physical or mental functions". An impairment is prolonged if it has lasted, or is expected to last, for a continuous period of at least 12 months. An impairment is severe if the individual is markedly restricted in performing one basic activity of daily living or would be so restricted were it not for extensive therapy (i.e., averaging at least 14 hours per week) in order to sustain a vital function. An individual whose ability to perform one basic activity of daily living and is not "markedly restricted" will still qualify if the individual's ability to perform more than one basic activity of daily living is significantly restricted, and the cumulative effect of those multiple restrictions is equivalent to a marked restriction in one basic activity of daily living. In other words, an individual may have multiple restrictions, none of which is in itself a marked restriction in performing one basic activity of daily living and still qualify for the credit if the cumulative effect of those multiple restrictions is tantamount to the individual's ability to perform a basic activity of daily living being markedly restricted. The marked restrictions must be present together, all or substantially all of the time.

The Tax Court defined remuneration paid to "one full-time attendant" as the total remuneration paid to any number of attendants in the relevant period provided the total remuneration so claimed only covered the services of one attendant at any given time.[155] The basic activities of daily living are speaking, hearing, walking, elimination (bowel or bladder functions), feeding (which does not include preparing food due to dietary restrictions, or obtaining food), dressing (which does not include obtaining clothing), and "mental functions necessary for everyday life". The expression

See page ii for explanation of footnotes.

[155] Wakelyn, 71 DTC 35.

"mental functions necessary for every day life", includes memory, problem solving, goal setting and judgment (taken together), and adaptive functioning. General activities such as working, housekeeping, or a social or recreational activity are not considered to be basic activities of daily living (see ¶8145).[156] If a taxpayer is so impaired and does not take into account any amount paid to a full-time attendant or to a nursing home in computing his or her medical expense credit, the taxpayer may be entitled to a disability tax credit under the rules discussed at ¶8145. Accordingly, in these circumstances, a taxpayer may have an option to make a claim under this provision including items (4) and (5) below or under the rules set out at ¶8145. A medical doctor, an optometrist for a sight impairment, an audiologist for a hearing impairment, an occupational therapist or physiotherapist for a mobility impairment, a psychologist for an impairment with respect to mental functions necessary for everyday life, a speech language pathologist for a speech impairment, or a physiotherapist for an impairment with respect to an individual's ability in walking, must certify the extent of the impairment on a prescribed form.[157]

(3) *Payments for part-time attendant care.* Payments made as remuneration for attendant care up to a maximum of $10,000 ($20,000 in the year of death) may qualify as eligible medical expenses. The attendant must be 18 years of age or over and must not be the individual's spouse/common-law partner. The taxpayer must file receipts showing the Social Insurance Number of the attendant, if the receipt is issued by an individual. Unlike for expenses noted in items (2), (4), and (5), the medical expense credit under this provision may be claimed in conjunction with the credit for mental or physical impairment, described at ¶8145. After suffering severe disabilities from a car accident, the taxpayer had to hire a cleaning company to do the housecleaning tasks that she could no longer do. These costs constituted "remuneration for attendant care" and qualified for a medical expense tax credit.[158]

(4) *Payments for an attendant in one's home.* Such payments are made as remuneration for a full-time attendant for an individual (the "cared-for person") in a self-contained domestic establishment where such person lives. The cared-for person must be certified in writing by a qualified medical practitioner as likely to be dependent upon others for a long period of indefinite duration by reason of mental or physical infirmity. Note that this provision refers to "infirmity" which, unlike "impairment", is not a defined term in the Act. The CRA's view is that a person is infirm if the person is incapable of being gainfully employed for a considerable period of time due to the infirmity.[159] The attendant cannot be the individual's spouse or common-law partner or a person under the age of 18. Each receipt filed with the Minister to prove payment to the attendant must contain the Social Insurance Number of the person who issued the receipt.

See page ii for explanation of footnotes.

[156] CCH ¶18,405; Sec. 118.4(1).
[157] CCH ¶39,296; Form T2201.
[158] Zaffino, 2007 DTC 1178.
[159] Income Tax Folio S1-F4-C1.

grandchildren and qualify as, or are deemed to qualify as, a "refund of premiums" (see below).

If the annuitant dies before the maturity of the plan, it is common that the accumulated value of the plan is paid out in a lump sum to his or her estate or other beneficiary provided for in the plan. Again, subject to the following, the annuitant will be subject to tax on this amount in the year of death unless the amount passes directly to the spouse/common-law partner or a dependent child or grandchild and qualifies as a refund of premiums.

If an amount is paid out of or under an RRSP to the estate of the annuitant and not directly to a beneficiary, the amount will be included in the income of the annuitant for the year of death unless one of the elections described below is available and is used. These elections permit amounts paid to the estate to be treated as if they had been paid directly to a beneficiary such that they will not be included in the income of the deceased.

For RRSPs wound up following the death of the annuitant, losses incurred on the RRSP investments following that death may be carried back and deducted from the annuitant's RRSP income.[76] The deduction is the amount by which the total of amounts included in the annuitant's income, plus taxable amounts received from the RRSP from the date of death to the date the RRSP is wound up, plus "tax-paid amounts", exceed amounts distributed from the RRSP during the same period. Tax-paid amounts are certain amounts paid from an RRSP after the RRSP's tax-exempt period (i.e., after December 31 of the year following the year of the annuitant's death). The RRSP must be wound up by the end of the year following the year of death and must not hold non-qualified investments during the post-death period, in order for the deduction to be available without special permission by the Minister of National Revenue. For more details, see ¶10,368.

If the payment arising on the death of the annuitant prior to the maturity of the plan is made to the spouse/common-law partner or to a dependent child or grandchild and qualifies as a refund of premiums, the amount of the payment will be included in the recipient's income. Otherwise, it will be included in the income of the deceased for the year of death.[77] Where it is the spouse/common-law partner who receives these amounts, he or she is given the alternative of transferring the amount received to another RRSP, a RRIF, PRPP, or SPP or certain forms of annuity, and may deduct the amount so transferred.[78]

"Refund of premiums" is defined[79] as any amount paid out of or under an RRSP (other than a "tax-paid amount", as defined in ¶10,367) to the spouse/common-law partner of an annuitant as a consequence of the annuitant's death prior to the plan's maturity, or amounts paid out of or under an RRSP after the annuitant's death to a dependent child or grandchild (whether the death occurred before or after the maturity of the plan), subject to the following two limitations:

See page ii for explanation of footnotes.

[76] CCH ¶21,333f; Sec. 146(8.92).
[77] CCH ¶21,331; Sec. 146(8.8).
[78] CCH ¶8510; Sec. 60(l).
[79] CCH ¶21,211a; Sec. 146(1) "refund of premiums".

(1) At the time the annuitant died, the child or grandchild must have been financially dependent on the annuitant.

(2) It is assumed, unless the contrary is established, a child or grandchild is not financially dependent on the annuitant at the time of the annuitant's death if the income of the child or grandchild for the taxation year preceding the year of the annuitant's death exceeded the basic personal amount described in ¶8095 for the preceding year ($11,635 for 2017, which therefore applies for deaths occurring in 2018). If the child or grandchild is dependent by reason of mental or physical infirmity, the income threshold for these purposes is equal to the basic personal amount plus the disability amount for the preceding year ($19,748 for deaths in 2018 based on the basic personal amount plus the disability amount for 2017; $20,044 for deaths in 2019).[80]

A financially dependent non-infirm child or grandchild can make a tax-deferred transfer of a refund of premiums to an annuity to age 18. The amount received will then be taxed as the annuity payments are received. The annuity must be acquired within 60 days of the end of the year of receipt of the refund of premiums. A child or grandchild, who, regardless of age, was dependent on the deceased parent or grandparent by reason of physical or mental infirmity can make a tax-deferred transfer of a refund of premiums to an RRSP, RRIF, PRPP, SPP, eligible annuity, or annuity to age 18. The transfer must be made or the annuity purchased within 60 days of year end.

A refund of premiums paid in favour of a person who is mentally infirm (whether a spouse or dependent child or grandchild) may also be transferred to a life annuity or a term to age 90 annuity of which the annuitant is a "lifetime benefit trust". Alternatively, the refund of premiums can be directed to the trustees of the lifetime benefit trust who purchase the annuity. A lifetime benefit trust is a trust under which the infirm beneficiary is the sole person beneficially interested in amounts payable under the annuity (determined without regard to any right of a person to receive an amount from the trust only on or after the death of the beneficiary) so long as that beneficiary is alive. The rule that the trust can have other beneficiaries after the recipient's death would ensure that provision could be made for any residual amounts remaining after death.[81]

Amounts paid out of the deceased's RRSP to the deceased's financially dependent children or grandchildren qualify as a refund of premiums,

See page ii for explanation of footnotes.

[80] CCH ¶21,211g; Sec. 146(1.1).
[81] CCH ¶8559kh; Sec. 60.011(1).

regardless of whether the deceased had a surviving spouse (similar rules apply to amounts paid out of the deceased's RRIF).

If an amount paid to the estate would have qualified as a refund of premiums if paid directly to a beneficiary, the legal representative of the estate and the beneficiary can file a joint election (using Form T2019) such that all or a portion of that amount is deemed to be received by the beneficiary as a refund of premiums.[82] A refund of premiums may be transferred to another RRSP, to a RRIF, PRPP, SPP, or used to acquire certain forms of annuity under the rollover provisions. The amount covered by an election (or received directly by beneficiaries of the RRSP) which qualifies as a refund of premiums will be deducted from the amount included in the income of the deceased.[83] That is, these amounts will be taxable in the hands of the spouse/common-law partner or dependent children, as the case may be, and not the estate, and may (but need not) be rolled over by them into another tax deferral plan. The election will be of interest in cases where the taxpayer dies before the maturity of a plan and his or her spouse/common-law partner is a beneficiary of his or her estate or where the taxpayer has no spouse/common-law partner and the beneficiaries of the estate are dependent children as described above. It does not appear that the amount designated in the election must actually be paid to the beneficiary.

A refund of premium under an RRSP may on the annuitant's death be rolled over to the registered disability savings plan (RDSP) of a financially dependent infirm child or grandchild (see income test above) to the extent there is room under the $200,000 RDSP contribution limit. See ¶10,430.

An election is possible where a taxpayer has died after the maturity of a plan and the estate receives the remaining amounts owing under the plan.[84] Where such amounts are held by the legal representative for the benefit of the spouse/common-law partner, the legal representative and the spouse/common-law partner may file a joint election such that the spouse/common-law partner is deemed to have become the annuitant under the plan and amounts paid to the estate will be deemed to be received by the spouse/common-law partner as a benefit under the plan. Accordingly, the spouse/common-law partner will include the payments in income in the same manner as if the remaining payments under the plan had been payable to the spouse/common-law partner under the terms of the plan. It is not necessary that the amounts received by the estate in fact be paid to the spouse/common-law partner. The effect of the election will be that payments out of or under the RRSP after the death of the taxpayer will be included in the spouse/common-law partner's income and not in the income of the deceased.

See page ii for explanation of footnotes.

[82] CCH ¶21,324; Sec. 146(8.1).
[83] CCH ¶21,332; Sec. 146(8.9).
[84] CCH ¶21,333; Sec. 146(8.91).

[¶10,367] Post-Death Increase in RRSP Value

There are relieving rules that alter the calculation of amounts to be included in the income of the deceased. The representatives of the deceased may elect to treat less than the full amount as eligible for refund of premiums treatment as taxable to the qualified beneficiary rather than the deceased where this gives a better result.

As well, the effect of growth of RRSP assets after the death of the annuitant is minimized by allowing amounts accrued in the plan after death to be taxed to (and in the case of a spouse/common-law partner or infirm child rolled over by) the survivors rather than the deceased. Under these rules, the amount eligible for refund of premiums treatment is the value of the plan at death plus a specified fraction of post-death growth. For this purpose, the total growth in RRSP assets after the death of an RRSP annuitant is considered to be the amount, if positive, equal to:

(a) the total payments (referred to as the "relevant payments") out of or under the RRSP after the annuitant's death and before the later of the end of the first calendar year commencing after the death and the time immediately after the distribution of all refunds of premiums;

plus:

(b) the fair market value of property of the RRSP at the later of the two times described in (a) (called the "residual value" and usually nil);

minus:

(c) the fair market value of all the property of the RRSP at the time of the annuitant's death.

The specified fraction of that growth, eligible for refund of premiums treatment, is the total of such refunds divided by the sum of relevant payments in (a) plus the residual value in (b).

Rules ensure that where the RRSP funds are distributed to both qualifying and non-qualifying beneficiaries, any post-death accumulations in the RRSP cannot be sheltered from tax in the hands of the deceased to the extent they represented distributions to non-qualified beneficiaries. The rules on post-death accumulations are harmonized with the rules under which RRSP trusts become taxable beginning with the year following the year of death. In particular, the rules provide that distributions of RRSP funds of a deceased taxpayer representing post-death accumulations will bear some measure of taxation in the year-of-death return of the deceased even when all distributions are made to a surviving spouse/common-law partner or other qualified beneficiaries.

Where the RRSP is divided between a surviving spouse/common-law partner and another beneficiary, the offset of the value included in the

deceased's year of death return is fixed as the percentage of total distribution paid out to refund of premiums beneficiaries. The refund of premiums beneficiary takes all receipts (including post-death growth in the trust) except those arising after January 1st following the year of death as a refund of premiums. Other beneficiaries receive taxable amounts. To the extent the estate elects to be taxable on post-death growth, the recipient will not be taxable.

The refund of premiums excludes the "tax-paid amount".[85] This amount represents the surviving spouse/common-law partner's share of the increase in value of the plan from January 1 of the year following the year of death. This amount is taxed either in the RRSP trust (since that becomes taxable in the year following death) or in the hands of the recipient beneficiary if paid to the beneficiary in the year. In either case, the amount does not qualify for refund of premium treatment.

[¶10,368] Post-Death Reduction in RRSP Value

For RRSPs wound up as a result of the annuitant's death, losses incurred on the RRSP investments after death may be carried back and deducted against the year of death income inclusion discussed at ¶10,366.[86] The allowed deduction is the difference between the following two variables (A - B) where:

- A is the amount included in the annuitant's income in the year of death, plus taxable amounts received from the RRSP from the date of death to the date the RRSP is wound up, plus "tax-paid amounts" (see below); and
- B is the total of all amounts paid out of the RRSP (otherwise called "RRSP distributions") after the annuitant's death.

"Tax-paid amounts" are certain amounts paid from an RRSP after the RRSP's tax exempt period (i.e., after December 31 of the year following the year of the annuitant's death).

The following example is based on the Department of Finance's Explanatory Notes accompanying the 2009 Budget implementing Bill C-10 (now S.C. 2009, c. 2):

Example:

An RRSP annuitant dies in June 2008. The fair market value of his RRSP assets is $100,000. In November 2009, the annuitant's estate distributes $80,000 to two beneficiaries of the annuitant and the executor winds up the RRSP. As discussed at ¶10,366), an amount of $100,000 must be included in the annuitant's income for 2008. Under new subsection 146(8.92), the legal representative of the annuitant can claim a deduction of $20,000 against the deceased annuitant's 2008 income (i.e., $100,000 - $80,000).

See page ii for explanation of footnotes.

[85] CCH ¶21,211ea; Sec. 146(1) "tax-paid amount". [86] CCH ¶21,333f; Sec. 146(8.92).

The deduction is only available if the following two conditions are met:

(1) the RRSP is wound up by the end of the year following the year of death, and

(2) the RRSP does not hold non-qualified investments during the post-death period.[87]

If either of those conditions is not met, the deceased annuitant's legal representative can submit a request in writing to the Minister of National Revenue that the offsetting deduction be allowed. The Minister may allow some or all of the deduction, subject to possible additional conditions to be met, as appropriate.

[¶10,369] Refund of Non-Deductible Premiums — Penalties on Excess

Every RRSP must provide for the refund of all or a portion of the premiums paid and gifts made to the plan in a year in excess of amounts deductible by the payor in computing income for that year or the previous year.[88] Amounts so refunded would be included in computing the recipient's income in the year of receipt,[89] although the contribution itself would not have produced any deduction. Amounts refunded in these circumstances may be deducted by the recipient in computing income.[90] Form T3012A issued by the CRA is to be filed for the purposes of the deduction. So long as an excessive contribution remains unrefunded, there will be a special tax payable under Part X.1 (discussed at ¶13,455 *et seq.*).[91]

The deduction is available only if the refund of the excess amount is received in the year the excessive premiums were paid, the year in which the notice of assessment for the excess contribution year is sent, or in the year following either of those years. Since the taxpayer earns no deduction for excess premiums paid to a plan it is to his or her advantage to take them out as a refund within the time limits and thereby receive the deduction. If the taxpayer leaves the relevant amount in the plan, it will be included in income on eventual distribution as part of his or her annuity; the taxpayer will in effect have paid a non-deductible premium to the plan that attracts tax on its return as a benefit. As well, a continuing Part X.1 tax will be incurred.

Where the taxpayer over-contributes to a spousal/common-law partner plan, the refund may be made to the taxpayer or the spouse/common-law partner.

Under Part X.1, a 1% monthly tax is imposed on a taxpayer's cumulative excess amount in respect of RRSPs.[92] The cumulative excess amount is, generally, equal to the amount by which the taxpayer's paid but undeducted RRSP premiums exceed the taxpayer's RRSP deduction limit plus $2,000 (there is no $2,000 cushion for persons under 18 years of age). See ¶13,455.

The deduction of undeducted RRSP premiums paid back to a taxpayer does not apply to "prescribed withdrawals" which are designated "qualifying

See page ii for explanation of footnotes.

[87] CCH ¶21,333h; Sec. 146(8.93).
[88] CCH ¶21,229; Sec. 146(2)(c.1).
[89] CCH ¶21,323; Sec. 146(8).
[90] CCH ¶21,325; Sec. 146(8.2).
[91] CCH ¶25,545c; Sec. 204.1(2).
[92] CCH ¶25,545; Sec. 204.1.

withdrawals" withdrawn from a taxpayer's RRSP in order to make room for the certification of past service benefits under a defined benefit pension plan. Past service benefits cannot be certified by the Minister unless there is sufficient room (represented by amounts such as the taxpayer's unused RRSP deduction room, qualifying withdrawals, and qualifying transfers) available for the past service benefits. If the withdrawn amounts are designated for the purposes of certification, they are excluded from deduction; if they are not so designated, they may qualify for the deduction to the extent they represent previously undeducted premiums.

Amounts of undeducted RRSP premiums paid back to a taxpayer and deducted are deemed not to be premiums paid to an RRSP and therefore cannot be deducted again where a taxpayer subsequently learns that he or she had sufficient room to make the deduction with respect to those premiums paid.[93] This ensures that such amounts cannot be deducted twice.

[¶10,372] Meaning of "Earned Income"

A taxpayer's "earned income" includes:[94]

(1) Income from office or employment, without reference to deduction of employee contributions to a registered pension plan (RPP), the residence deduction for members of the clergy, and employee contributions to a retirement compensation arrangement.

(2) Royalties in respect of a work or invention, authored or invented by the taxpayer.

(3) Rental income from real property.

(4) Income from carrying on business as a proprietor or active partner.

(5) Support payments taxable in the hands of a spouse/common-law partner, former spouse/common-law partner (these can include amounts previously paid and deducted by a taxpayer and eventually refunded to the taxpayer under a court order).

(6) Amounts received under a supplementary unemployment benefit plan.

(7) Net research grants.

(8) Amounts received under the *Wage Earner Protection Program Act.*

(9) CPP/QPP disability pensions received in the year, regardless of whether the amounts relate to another year and are included in income of another year.

(10) Non-residents will include employment or business income only to the extent that the employment or business is in Canada, and only to the extent that such income is not exempt by treaty.

From the aggregate of the amounts described above there are to be deducted the following amounts:

See page ii for explanation of footnotes.

[93] CCH ¶21,325e; Sec. 146(8.21).

[94] CCH ¶21,203; Sec. 146(1) "earned income".

(1) Losses from carrying on a business as proprietor or active partner; for non-residents the loss is calculated only if the business is carried on in Canada.

(2) Losses from rental of real property.

(3) Support payments made by the taxpayer to his former spouse/common-law partner (these can include amounts previously received by the taxpayer and taxable to the taxpayer and eventually repaid by the taxpayer under a court order).

[¶10,375] Disposition of Non-Qualified Investment

A Part XI.01 penalty tax of 50% applies to non-qualified RRSP investments. For further information on Part XI.01 tax on RRSP non-qualified and prohibited investments, see ¶13,518.[95]

[¶10,378] Meaning of "Qualified Investment"

Below is a list of the most common qualified investments:[96]

(1) Cash, whether denominated in Canadian dollars or foreign currency, is a qualified investment, provided that its fair market value doesn't exceed its stated value as legal tender. Rare coins or money that is held for its numismatic value is non-qualified, as are digital currencies, such as Bitcoins.

(2) Deposits with a branch of a Canadian bank, Canadian trust company, including foreign-denominated deposits and deposits with a maturity longer than 5 years.

(3) Deposits with a credit union, provided that the credit union has not granted or extended any privilege to a connected person under the plan as a result of the plan having invested in a share, obligation or deposit issued by the credit union.

(4) Any securities, other than futures contracts or other derivative instruments in respect of which the holder's risk of loss may exceed the holder's cost, that are listed on a designated Canadian or foreign stock exchange. This accommodates a wide range of listed securities, including shares of corporations, put and call options, warrants, debt obligations, units of exchange-traded funds, units of real estate investment trusts, units of royalty trusts, and units of limited partnerships.

(5) Shares or debt (bonds, debentures, notes, or similar obligations) of Canadian public corporations (other than a mortgage investment corporation — but see (16) below.

(6) Units of a mutual fund trust and shares of most mutual fund corporations.

See page ii for explanation of footnotes.

[95] CCH ¶21,207; Sec. 146(1) "non-qualified investment".

[96] CCH ¶21,209, ¶21,341, ¶25,540; Sec. 146(1) "qualified investment", 146(11); Reg. 4900; Income Tax Folio S3-F10-C1.

(7) Debt obligations issued or guaranteed by the Government of Canada, issued by a province or municipality in Canada or a federal or provincial Crown corporation; debt obligations issued by a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada; debt obligations issued by a corporation the shares of which are listed on a designated stock exchange outside Canada; debt obligations that are listed on a designated stock exchange; a bankers' acceptance of a Canadian corporation, provided the corporation is not a connected person (essentially the annuitant of the RRSP or a person not dealing at arm's length with the annuitant) under the RRSP; debt obligations issued by an authorized foreign bank and payable at a Canadian branch of the bank; debt obligations that have, or had at the time of purchase, an investment grade rating (generally BBB or higher) with a prescribed credit rating agency and that were issued as part of a single issue, or under a continuous issuance program, of debt of at least $25 million; a mortgage-backed security (generally an undivided interest or undivided right in a pool of mortgages or hypothecary claims) if it has an investment grade rating with a prescribed credit rating agency at the time it is acquired by the registered plan, is issued as part of a minimum $25 million issuance, and derives all or substantially all of its fair market value from debt obligations that are secured by a mortgage or hypothec on real or immovable property situated in Canada.

(8) Shares of a "specified small business corporation", provided the share is not a "prohibited investment" (essentially one where the annuitant does not deal at arm's length with the corporation or is a specified shareholder of the corporation (generally a shareholder directly or indirectly owning 10% or more of the shares of any class of the corporation)). A specified small business corporation is basically a Canadian-controlled corporation with all or substantially all of the fair market value of its assets used principally in an active business carried on in Canada, and/or shares or debt of a connected small business corporation.

(9) Shares of an "eligible corporation", provided it meets certain conditions similar to those for specified small business corporations noted above. One difference is that while the conditions for a specified small business corporation share to be a qualified investment need only be met at the time that the share is acquired, a share of an eligible corporation must meet the required conditions throughout the entire period the share is held by the RRSP to qualify.

(10) Investment-grade gold and silver bullion coins and bars, and certificates on such investments. Investment-grade gold must have a purity of at least 99.5%, while investment-grade silver must have a purity of at least 99.9%. Legal tender bullion coins will qualify if they meet the above purity standards and as long as the fair market value of the coin doesn't exceed 110% of the fair market value of its precious metal content. Bullion bars will qualify if they are produced by a metal refinery accredited by the London

Bullion Market Association, as evidenced by a hallmark identifying the refiner, purity, and weight. Certificates will qualify if they are issued by the Royal Canadian Mint or a "specified corporation" (essentially a Canadian-resident bank, trust company, credit union, insurance company or registered securities dealer whose business activities are regulated by the Superintendent of Financial Institutions or a similar provincial authority). For all such investments (i.e., coins, bars, and certificates) to quality, it must be acquired either directly from the producer of the investment or from a specified corporation.

(11) Shares of venture capital corporations and co-operatives, provided certain conditions are met.

(12) A mortgage fully secured by Canadian real estate, provided the mortgagor is not a connected person (essentially the annuitant of the RRSP or a person not dealing at arm's length with the annuitant). Alternatively, a taxpayer can use RRSP funds to provide the mortgage on his/her own real estate provided the mortgage is administered by an approved lender under the *National Housing Act*, is insured by the Canada Mortgage and Housing Corporation or by an approved private insurer of mortgages, has normal commercial interest rates and other terms, and in general is administered on an arm's-length basis.

(13) An annuity issued by a licensed annuities provider, provided that the annuity contract satisfies two conditions:

(a) The RRSP trust must be the only person that has the right to receive any annuity payments under the contract (unless the trust disposes of the annuity); and

(b) The annuity contract must give the holder of the contract an ongoing right to surrender the contract for an amount that, ignoring reasonable sales and administrative charges, approximates the amount that could be required to fund the future periodic payments under the contract.

This includes segregated fund annuities.

(14) A "retirement income" annuity payable to the annuitant at the maturity of the RRSP. Retirement income annuities providing that annuity payments may be made to the RRSP before the maturity of the RRSP also qualify.

(15) An unlisted option, warrant, or similar right to acquire either immediately or in the future, property all of which is a qualified investment that is a share, unit or debt of the issuer or a person or partnership that doesn't deal at arm's length with the issuer, or a warrant issued by the issuer or a non-arm's length party to acquire such a share, unit or debt.

(16) A share of a mortgage investment corporation that does not hold any indebtedness of a connected person (the annuitant of the RRSP and any person with whom the annuitant does not deal at arm's length).

(17) An interest in a trust or a share of a corporation that is a registered investment during the current or immediately preceding year.

(18) An interest of a limited partner in a small business investment limited partnership or an interest in a small business investment trust.

(19) American Depositary Receipts (ADR), provided that the underlying security which the ADR represents is listed on a designated stock exchange, or that the ADR itself is listed on a designated stock exchange.

[¶10,381] Foreign Investments

RRSPs and other deferred income plans can invest in any kind of qualified investment without regard to whether it is foreign property. However, the qualified investment requirement described in ¶10,375 remains in force.

[¶10,384] Property Used as Security — Disposition of Property

If an RRSP trust uses or permits to be used any of the trust property as security for a loan, the fair market value of the property is to be included in the annuitant's income.[97] When the loan for which the trust property was given as security ceases to exist, the annuitant may deduct the amount previously included in income minus any loss sustained by the trust as a consequence of using such property as security for a loan. Most RRSP plans offered by financial institutions will not allow RRSP trust property to be pledged as security.

Where a trust disposes of property for consideration less than its fair market value or acquires property for a consideration that is greater than its fair market value, the difference between the fair market value and the consideration is to be included in the beneficiary's income.[98]

[¶10,387] Benefits Taxable

All amounts received by a taxpayer as a benefit under an RRSP must be included in income in the year received, other than amounts included in the taxpayer's income because an RRSP is revised, amended, or a new plan substituted for it so that the revised, amended, or substituted plan is no longer acceptable for registration or other than "excluded withdrawals" received by a taxpayer pursuant to the Home Buyers' Plan, described in ¶10,393 *et seq.*[99] or the Lifelong Learning Plan discussed at ¶10,396. Normally, the person receiving the benefits will be the annuitant (i.e., the

See page ii for explanation of footnotes.

[97] CCH ¶21,317, ¶21,335; Sec. 146(7), 146(10).
[98] CCH ¶21,334; Sec. 146(9).
[99] CCH ¶21,323, ¶21,323k; Sec. 146(8), 146(8.01).

taxpayer who has paid the premiums). However, in the case of an annuity for the joint lives of the annuitant and the annuitant's spouse/common-law partner, the benefit payments will be taxable in the hands of the surviving annuitant. An annuity which passes to a beneficiary other than the annuitant's spouse/common-law partner as a result of the annuitant's death after the plan has matured must be commuted and the payments will be included in the income of the deceased for the year of death unless the amounts pass to dependent children or grandchildren and qualify as a refund of premiums. An annuity which passes to a spouse/common-law partner after death and after the plan's maturity need not be commuted but is to be included in the spouse's/common-law partner's income.

The annuitant under a plan may decide to terminate (or, as it is sometimes put, to "collapse") his or her plan before maturity. The payment of any amount to the annuitant prior to maturity will require an amendment to the plan, and, by virtue of this amendment, the fair market value of the property of the plan will be included in income. Amounts received at that time are included in income in the year of receipt. Notwithstanding the taxpayer's failure to deduct premiums in prior years, the entire amount withdrawn by a taxpayer was found to be properly included in his income.[100] Where the annuitant wishes to transfer the funds in one plan to another plan, this may be done without tax.[101]

The term "benefit" is defined to specifically include any amount paid under the plan in accordance with the terms of the plan, or resulting from an amendment to or modification of the plan, or resulting from the termination of the plan.[102]

A benefit includes any amount received under a retirement savings plan other than:

(a) the amount received by a person other than the annuitant that can be reasonably regarded as part of the amount included in the annuitant's income for the year of death;[103]

(b) a premium;

(c) an amount in respect of the income of the trust governing the plan for a taxation year following the year of death of the annuitant; and

(d) an amount received from a depositary RRSP that relates to an interest or another amount that was credited or accrued after the end of the first calendar year commencing after the death of the annuitant if such interest or other amount has otherwise been included in computing income.

See page ii for explanation of footnotes.

[100] Carroll, 84 DTC 1614.
[101] CCH ¶21,363; Sec. 146(16).
[102] CCH ¶21,202; Sec. 146(1) "benefit".
[103] CCH ¶21,331, ¶21,332; Sec. 146(8.8), 146(8.9).

instalments over a 15-year period, commencing with the second year following the withdrawal.[110] 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 2018, he or she must commence repayments by March 1, 2021.

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.[111]

[¶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.[112]

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).

See page ii for explanation of footnotes.

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

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

[112] CCH ¶21,249; Sec. 146(5).

The same rules apply to funds Jennifer's spouse/common-law partner withdraws from a spousal or common-law partner plan.[113]

If Jennifer contributes funds to her spouse/common-law partner plan and her spouse/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/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.[114] The funds need not be withdrawn at the same time, but all withdrawals must be received in the same calendar year, and further limitations will be imposed by the 30-day rule in (3) below. A general exception to the rule that all funds must be withdrawn in the same calendar year permits a withdrawal of funds requested in Year 1 but not received until January of Year 2 to be considered a Year 1 withdrawal, where an individual has already made a qualifying Year 1 withdrawal.

All of the following rules must be met in respect of each withdrawal by an individual from an RRSP to ensure that it qualifies under the Home Buyers' Plan:

(1) All the funds withdrawn must actually be received in the same calendar year, subject to the exception discussed above.

(2) The funds must be withdrawn by completing Form T1036; this form requires an applicant to set out the location of a qualifying home which the applicant has begun, or intends to begin no later than one year after acquisition, to use as a principal place of residence. Rather than reporting HBP withdrawals on a quarterly basis by filing the relevant T1036, RRSP issuers are required to report such withdrawals on an annual basis using the T4RSP.

(3) Neither the individual nor his or her spouse/common-law partner may have acquired the qualifying home more than 30 days before receiving the RRSP withdrawal amount.

See page ii for explanation of footnotes.

[113] CCH ¶21,262; Sec. 146(5.1).

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

(a) were all made in the period beginning with his or her first withdrawal under the Home Buyers' Plan and ending before the completion date;

(b) were all made to persons (or companies) with whom the individual was dealing at arm's length; and

(c) were made in respect of the construction of the original qualifying home or a replacement property.

[¶10,395b] Return of Withdrawals Not Used to Acquire Qualifying Home

If an individual fails to acquire a qualifying home (or replacement property) before the applicable completion date and the extension rules discussed at ¶10,395a do not apply, the amounts withdrawn must be returned to the RRSPs with the same issuers from whom the funds were withdrawn.[122] This return of withdrawals must be made no later than December 31 following the completion date. Thus, if funds are taken out in 2018 so that the completion date is October 1, 2019, and the individual failed to acquire a qualifying home before that date, he or she has until December 31, 2019, to return the funds to his or her RRSP.

If an individual fails to acquire the home set out on the original withdrawal form, he or she is not required to delay the return of funds to the Plan. The individual can return them at any time before December 31 of the year following withdrawal. If the funds are returned under this mechanism, the Home Buyers' Plan is considered not to have been used.

If an individual did not return the funds because he or she expected to qualify for an extension described at ¶10,395a, but failed to qualify solely because he or she did not eventually acquire the home by the extended deadline, the individual can return the funds to the RRSP before January 1 following the extended date. Thus, if an individual made a 2018 withdrawal, had an original completion date of October 1, 2019, and qualified for an extended completion date of October 1, 2020, but still failed to complete the transaction by that date, he or she could return the funds by December 31, 2020.

If the individual has not acquired the home nor returned the funds within the time limits, he or she will become taxable on the amounts withdrawn in the year they were withdrawn, as if they had been ordinary taxable withdrawals from an RRSP.

See page ii for explanation of footnotes.

[122] CCH ¶21,374; Sec. 146.01(3).

[¶10,395c] Repayments of Withdrawals Used to Acquire Qualifying Home

If an individual acquires a qualifying home within the required time limit, he or she must repay to an RRSP, a Specified Pension Plan ("SPP") or a Pooled Registered Pension Plan ("PRPP") the money withdrawn over a 15-year period, with the first payment being made no later than 60 days after the end of the second year following the first withdrawal. Thus, if an individual withdrew funds under the plan in 2017, the repayment schedule does not start before 2019 but the individual has until March 1, 2020, to make the first repayment.[123]

The repayment required to avoid an income inclusion for any subsequent taxation year is a fraction of the individual's "balance" under the Home Buyers' Plan at the beginning of the year. This balance, at the beginning of a particular year, is equal to the total of all eligible amounts received by the individual minus the sum of repayments made before that time and shortfalls included in the individual's income for previous years.

[¶10,395d] Where Individual Becomes a Non-Resident

If an individual withdraws funds from an RRSP under the Home Buyers' Plan and becomes a non-resident after acquiring a qualifying Canadian home, the individual must repay the entire withdrawal (less any repayments already made as discussed at ¶10,395b) or income inclusion he or she may have had under the rules discussed at ¶10,395c within 60 days of becoming a non-resident.[124] To the extent that such an individual does not make the repayment within 60 days, the unrepaid balance will be included in the individual's income for the period of the year in which he or she was still a resident of Canada.

[¶10,395e] Where Individual Dies

If an individual has withdrawn funds from an RRSP under the Home Buyers' Plan and properly acquired a qualifying home before death and dies with an outstanding balance of repayment instalments owing to the RRSP, the outstanding balance is included in his or her income for the year of death.[125] However, the surviving spouse/common-law partner of the deceased individual may, with his or her legal representatives, elect to avoid such income inclusion if the spouse/common-law partner is resident in Canada immediately before the individual's death. If this election is made in the deceased's terminal return, the surviving spouse/common-law partner in effect assumes the position of the deceased by being treated as having received an eligible amount, at the time of the deceased's death, equal to the excess. This amount is added to any balance of eligible amounts

See page ii for explanation of footnotes.

[123] CCH ¶21,375; Sec. 146.01(4).
[124] CCH ¶21,380; Sec. 146.01(5).
[125] CCH ¶21,381; Sec. 146.01(6).

received by the surviving spouse/common-law partner that have not been previously repaid to RRSPs.[126]

The election only applies to a spouse/common-law partner on the death of an individual where:

(a) the surviving spouse/common-law partner (or the deceased) had not previously received an eligible amount under the Home Buyers' Plan; or

(b) the period for repayments under the Home Buyers' Plan of any eligible amounts received by the surviving spouse/common-law partner coincides with the corresponding period for the deceased.

Furthermore, for the purposes of determining the surviving spouse's/common-law partner's own eligibility under the Home Buyers' Plan, such a spouse/common-law partner is considered to have received eligible amounts at such times as they were received by the deceased. As a consequence, a surviving spouse/common-law partner who makes the election on the death of his or her spouse/common-law partner will generally be precluded from subsequently participating in the Home Buyers' Plan after such death.

[¶10,395f] Filing of Prescribed Form

A prescribed form submitted to an issuer of an RRSP in connection with the Home Buyers' Plan must be filed with the CRA no later than 15 days after the calendar quarter in which it was submitted to the issuer.[127]

[¶10,396] Lifelong Learning Plan (LLP)

[¶10,396a] Eligibility

RRSP annuitants may make tax-free withdrawals from their RRSP (other than a locked-in RRSP) to finance full-time training or education for themselves or their spouses/common-law partners. Withdrawals may not exceed $10,000 in a year. More than one withdrawal may be made in any given year from any number of specific RRSP accounts, provided that the annual limit is not exceeded. Withdrawals under this plan are permitted for a withdrawal period of up to four calendar years, provided that the total amount withdrawn does not exceed $20,000.[128] However, the withdrawal period for a participant in the plan must end before the start of a year for which repayment by the participant is required in accordance with the rules described at ¶10,396b.

See page ii for explanation of footnotes.

[126] CCH ¶21,381c; Sec. 146.01(7).
[127] CCH ¶21,382a; Sec. 146.01(8).
[128] CCH ¶21,382m; Sec. 146.02(1) "eligible amount".

RRSP funds may be withdrawn under the plan where the recipient, or the recipient's spouse/common-law partner, is enrolled, or committed to enroll, as a full-time student in a qualifying educational program of at least three months' duration at an eligible educational institution.[129] However, a disabled student may qualify as a student under the plan whether or not studying on a full-time basis.[130] Where RRSP funds are withdrawn before the enrolment of the recipient or the recipient's spouse/common-law partner, the enrolment must occur in the year of the RRSP withdrawal or before March of the following year.

Special rules apply where RRSP funds are withdrawn under the plan and the student does not finish the qualifying educational program. Under these circumstances, an RRSP withdrawal in respect of a program is still considered to have been received under the plan if any of the following three conditions is met:

(a) the student withdraws from the program more than two months after the year of the RRSP withdrawal;

(b) less than 75% of the student's tuition is refundable as a consequence of leaving a program; or

(c) the student enrolls in another qualifying educational program before April of the year following the year of the RRSP withdrawal.

In all other cases, the RRSP withdrawal will be included in the recipient's income unless the recipient repays the RRSP withdrawal and files an approved form with the CRA.[131] Where this procedure is followed, the RRSP withdrawal is not included in computing income and the recipient is treated as having not participated in the plan.

Under the LLP, RRSP annuitants are permitted to withdraw funds in respect of the education of themselves or their spouses/common-law partners, but they cannot have a positive LLP balance in respect of the education of more than one individual. This restriction limits administrative complexity associated with the calculation of repayments required under the Plan. Nonetheless, both spouses/common-law partners could withdraw funds from their RRSPs in respect of the same spouse/common-law partner.

[¶10,396b] Repayment Period

RRSP withdrawals under the LLP are repayable to the withdrawing individual's RRSPs, SPPs, or PRPPs in equal instalments over a 10-year period, beginning no later than 60 days following the fifth year after the year in which the individual first received the funds.[132] However, repayment will be required to start earlier if the individual is not a qualifying student (or,

See page ii for explanation of footnotes.

[129] CCH ¶21,382t; Sec. 146.02(1) "qualifying educational program".
[130] CCH ¶21,382p; Sec. 146.02(1) "full-time student".
[131] CCH ¶21,382o, ¶21,382v; Sec. 146.02(1) "excluded withdrawal", 146.02(2).
[132] CCH ¶21,382u, ¶21,382w; Sec. 146.02(1) "repayment period", 146.02(3).