a "goodwill amount" and the grantor and buyer jointly elect, in prescribed form with their return of income for the tax year that includes the date of the covenant. Prior to 2017 a "goodwill amount" is defined as an amount received or receivable that is required to be included in computing the cumulative eligible capital of a business carried on through a permanent establishment in Canada. For 2017 and subsequent taxation years, the eligible capital property rules are replaced by a new regime treating that property as depreciable property to be included in new capital cost allowance Class 14.1 and so the definition of "goodwill amount" has been amended to refer to an amount required to be included in the proceeds of disposition of property included in Class 14.1, or an amount to which the transitional rules in subsection 13(37) apply, in respect of a business carried on through a permanent establishment in Canada. See ¶4240 for details.

(3) *Shares and partnership interests* — In cases where the consideration for certain types of restrictive covenants directly relates to the grantor's disposition of an eligible interest and where five additional requirements are satisfied and the grantor and buyer elect in prescribed form. An eligible interest means capital property of the grantor that is a partnership interest in a partnership that carries on a business, or a share of the capital stock of a corporation that carries on a business. In these cases, part of the amount receivable for the covenant may be treated as part of the proceeds for the disposition of the eligible interest, to the extent that the covenant increases the FMV of the grantor's eligible interest. The remaining part of the amount receivable for the covenant (that is in excess of the part treated as proceeds of disposition of the eligible interest) will be taxable as ordinary income.

If the parties to a contract agree that no portion of the purchase price is to be allocated to the RC, then the above exceptions would not be required because the taxpayer does not receive an amount in respect of an RC. However, new provisions[72] allow the Minister to reallocate a reasonable portion of the payment as an amount paid or payable to the taxpayer by the person to whom the RC is granted.

It is important to note that the reallocation can occur irrespective of the form or the legal effect of the contract or agreement that the RC relates to. Moreover, the Minister can allocate an amount to be included in a taxpayer's income notwithstanding that another taxpayer actually received the amount to which the income inclusion relates.

There are three situations where the Minister is excepted from the above reallocation:[73]

- an arm's length employee grants the RC;

See page ii for explanation of footnotes.

[72] CCH ¶9140; Sec. 68(c).

[73] CCH ¶8195, ¶8195c; Sec. 56.4(6), (7).

- the amount in respect of the RC is included in computing the "goodwill amount" of the vendor (and the related election is filed); or
- the payment relates to a disposition of property where the vendor receives consideration in respect of the RC (e.g., a corporate sale of property other than goodwill) or, in the case of a sale of shares, the amount in respect of the RC is otherwise included in the vendor's income.

A number of conditions must be met for each of the above exceptions to apply.

Similar reallocation exceptions apply where a taxpayer grants a restrictive covenant to an eligible individual (an individual related to the vendor who is at least 18 years old), although some additional conditions apply.[74]

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

[¶2115] Premium for Group Term Life Insurance

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

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

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

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

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

See page ii for explanation of footnotes.

[74] CCH ¶8195c; Sec. 56.4(7).

[75] CCH ¶2460; Sec. 6(3.1).

[76] CCH ¶2500; Sec. 6(4).

[77] CCH ¶2600; Sec. 6(6).

http://www.pbookshop.com

2015. This election will have the effect of replacing the otherwise deemed taxable benefit with a capital gain equal to the lesser of such benefit and the capital loss otherwise incurred on the disposition of the shares or mutual fund units. For the year of disposition, the taxpayer is subject to tax equal to the proceeds of disposition (2/3 in Quebec).

In many cases, the inclusion in income of the deemed employment benefit will be offset by a 50% deduction. For this 50% deduction to be allowed, certain conditions must be met, and in particular the exercise price under the option (plus any amount paid to obtain the option) cannot be less than the FMV of the securities at the time the option was granted. The 50% deduction may also be allowed in respect of shares in CCPCs if the shares are held for at least two years, regardless of the FMV of the shares at the time the option was granted.[84] In this respect, shares that are identical properties but which are acquired at different times are deemed to have been disposed of in the order in which the taxpayers acquired them for purposes of determining whether the two-year holding period has been satisfied.[85] The effect of the 50% deduction is to tax stock option benefits at the same rate as capital gains.

Commentary on Notice of Ways and Means Motion to amend the Income Tax Act and Explanatory Notes (June 17, 2019)

Note: When NWMM, June 17, 2019, achieves Royal Assent, the commentary will be modified to read:

In many cases, the inclusion in income of the deemed employment benefit will be offset by a 50% deduction. For this 50% deduction to be allowed, certain conditions must be met, and in particular the exercise price under the option (plus any amount paid to obtain the option) cannot be less than the FMV of the securities at the time the option was granted.[86] The 50% deduction may also be allowed in respect of shares in CCPCs if the shares are held for at least two years, regardless of the FMV of the shares at the time the option was granted. In this respect, shares that are identical properties but which are acquired at different times are deemed to have been disposed of in the order in which the taxpayers acquired them for purposes of determining whether the two-year holding period has been satisfied.[87] The effect of the 50% deduction is to tax stock option benefits at the same rate as capital gains. However, for options granted after 2019, the 50% deduction is restricted. Basically, the 50% deduction will apply in a particular year only in respect of the first $200,000 worth of securities under the option (the value determined as of the time of the agreement) that vest in the employee in the year. The restriction does not apply to options issued by CCPCs, or certain "start-up employers" who meet prescribed conditions.[88]

See page ii for explanation of footnotes.

[84] CCH ¶15,015, ¶15,272; Sec. 110(1)(*d*), 110(1)(*d.1*).

[85] CCH ¶2706; Sec. 7(1.3).

[86] CCH ¶15,015, ¶15,272; Sec. 110(1)(*d*), 110(1)(*d.1*).

[87] CCH ¶2706; Sec. 7(1.3).

[88] Sec. 110(1.3)–(1.41).

Where the employee does not acquire the underlying securities, a deemed benefit may also arise in certain circumstances. A deemed benefit will arise if the employee transfers or otherwise disposes of the option, or if the option has been transferred by one or more transactions between persons not dealing at arm's length and a transferee has either acquired securities under the option or has transferred or disposed of the option to a person with whom the transferee was dealing at arm's length. The 50% deduction is still available if a taxpayer dies owning an unexercised employee stock option, and the option is exercised and the shares are acquired within the first taxation year of the deceased's graduated rate estate by the graduated rate estate, a beneficiary of the graduated rate estate, or a person in whom the option has vested as a result of the death. For taxation years ending before 2016, "graduated rate estate" is to be read as "estate".

Before 4 p.m. on March 4, 2010, the above deemed benefit arising where an employee did not acquire the underlying securities could qualify for the 50% deduction in computing income. However, after 4 p.m. on March 4, 2010, the one-half deduction is only allowed if certain conditions are met. Employees receiving employer "cash-outs" of options are not eligible for the deduction. An exception where the deduction is still allowed is provided if (i) the employer elects that it and any non-arm's length person will not deduct any amount in respect of a payment made to or for the benefit of the employee for the employee's transfer or disposition of the option (other than a "designated amount", which is generally a payment made to an arm's length person for the purpose of managing the qualifying person's financial risk in respect of the option agreement), (ii) the employer files the election with the Minister, (iii) the employer provides the employee with evidence in writing of such election (or, if the employee is deceased, provides it to the graduated rate estate of the employee), and (iv) the employee (or if the employee is deceased, the graduated rate estate of the employee) files such evidence with his or her return of income for the year in which the stock option deduction is claimed. For taxation years ending before 2016, the reference to "graduated rate estate" above is to be read as "estate".[89]

If a security is acquired by a trustee for an employee either absolutely, conditionally, or contingently, the employee will be deemed to have acquired the security at the time the trustee commenced to hold it for the employee and to have disposed of the security at the time the trust disposed of the security to a third party.[90]

If a person ceases to be an employee before the transaction is completed, that person is nevertheless treated as an employee until the transaction is completed and will be deemed to have received a benefit as though still

See page ii for explanation of footnotes.

[89] CCH ¶15,015, ¶15,311a; Sec. 110(1)(*d*), 110(1.1).

[90] CCH ¶2710; Sec. 7(2).

http://www.pbookshop.com

an employee.[91] Thus, a former employee can be subject to the deemed benefit rules if the option was granted during the period of employment.

A corporation or mutual fund trust is not allowed to deduct the benefits included in any person's income. In other words, unlike most other forms of remuneration, stock option benefits are not deductible for the employer or issuing entity.[92]

Commentary on Notice of Ways and Means Motion to amend the Income Tax Act and Explanatory Notes (June 17, 2019)

Note: When NWMM, June 17, 2019, achieves Royal Assent, the commentary will be modified to read:

A corporation or mutual fund trust is not normally allowed to deduct the benefits included in any person's income. In other words, unlike most other forms of remuneration, stock option benefits are not normally deductible for the employer or issuing entity. However, for options issued after 2019, the employer may deduct the benefits to the extent that the 50% deduction is not allowed to the employee (see above).[93]

[¶2140] Exchanges of Options or Shares

Special rules provide a tax-deferred "rollover" for certain qualifying exchanges where an employee's option to acquire securities of a particular qualifying person (old option) is exchanged for a different option to acquire securities of a "designated person" (new option).[94] A designated person includes the particular qualifying person, another qualifying person who does not deal at arm's length with the particular qualifying person, a corporation formed on an amalgamation of the particular qualifying person with another corporation, or a qualifying person with which the above-mentioned amalgamated corporation does not deal at arm's length immediately after the exchange. A designated person also includes a mutual fund trust to which the particular qualifying person has transferred property under the mutual trust reorganization rules (see ¶9131).

For the above rollover to apply, the employee must receive no consideration for the old option other than the new option, and the fair market value of the new securities immediately after the exchange in excess of the old option exercise price must not exceed the fair market value of the old securities immediately before the exchange in excess of the new option exercise price. If these conditions are met, the employee is deemed not to have disposed of the old option, the new option is deemed to be the same as the old option, and the issuer of the new option is deemed to be the same

See page ii for explanation of footnotes.

[91] CCH ¶2720; Sec. 7(4).
[92] CCH ¶2715; Sec. 7(3).
[93] CCH ¶2715; Sec. 7(3).
[94] CCH ¶2707; Sec. 7(1.4).

person as, and a continuation of, the particular qualifying person. As a result, the exchange will not itself give rise to a deemed taxable benefit.

A similar rollover applies where an employee, typically in the course of a corporate reorganization or upon an amalgamation, disposes of or exchanges a security (old security) that was acquired under an employee stock option agreement in exchange for another security (new security).[95] For this rollover to apply, the employee must receive no consideration for the old securities other than new securities of either the same qualifying person or a non-arm's length qualifying person, a corporation formed on the amalgamation of the qualifying person and another corporation, a qualifying person that does not deal at arm's length with such amalgamated corporation immediately after the exchange, or a mutual fund trust to which the particular qualifying person has transferred property under the mutual trust reorganization rules (see ¶9131).

If the above conditions are met, the employee is deemed not to have disposed of the old securities, the new securities are deemed to be the same as and a continuation of the old securities, and the qualifying person that issued the new securities is deemed to be the same person and a continuation of the qualifying person that issued the old securities. Therefore, the deferral of the employment benefit associated with the old securities will not be affected by the exchange. The employee will not lose eligibility for the one-half deduction simply because of the disposition or exchange. Furthermore, if the share is a CCPC share, the employee will be entitled to the one-half deduction from the benefit associated with the old securities, as long as the total holding period for the old and the new securities is two years or more.

[¶2145] Other Sources of Income

[¶2146] Business and Investment Income

A taxpayer is required to include in income in a taxation year the taxpayer's income from all sources, including income from a business or property. A taxpayer is also required to deduct the taxpayer's losses in the year from a business or property. For these purposes, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit therefrom for the year.[96] These concepts are discussed in further detail in Chapter III.

Correspondingly, taxpayers are entitled to deduct reasonable expenses related to the earning of business or investment income, in arriving in the computation of net profit.[97] For example, individuals commonly deduct investment advisory fees from investment income.

See page ii for explanation of footnotes.

[95] CCH ¶2708; Sec. 7(1.5).
[96] CCH ¶4010; Sec. 3 and 9(1).
[97] CCH ¶4003; Sec. 9.

http://www.pbookshop.com

[¶2190] Disposition of Income-Averaging Annuity Contract

Any amount received by a taxpayer as proceeds of the surrender, cancellation, redemption, sale, or other disposition of an income-averaging annuity contract is to be included in income. Any amount deemed to have been received as proceeds of disposition of such a contract is also to be included in income.[125] See also ¶2465.

[¶2195] RRSPs, DPSPs, RRIFs, PRPP, and Supplementary Unemployment Benefit Plans

Amounts received by a taxpayer from a trustee under an RRSP, a DPSP, a RRIF, PRPP, or a supplementary unemployment benefit plan are to be included in income.[126] See Chapter X for a discussion of the tax treatment of these types of plans.

An amount of PRPP contributions refunded to a member is not included in his/her income if they were made in error or to avoid the revocation of the plan, and if the amount was not deducted as a PRPP contribution in the year of the refund or any preceding year.

[¶2198] Home Buyers' Plans

Amounts relating to a Home Buyers' Plan may be required to be included in the taxpayer's income for the year. (See ¶10,393.) If the taxpayer did not acquire a home or return the funds to the registered retirement savings plan (RRSP) in accordance with the rules respecting the Home Buyers' Plan, the amounts withdrawn from the RRSP will become taxable in the year in which they were withdrawn.[127]

[¶2200] Life Insurance Policies

Amounts received by a taxpayer upon the disposition of an interest in a life insurance policy are to be included in income. See ¶10,516 *et seq.* for a discussion of life insurance policies.[128]

[¶2205] Award of Legal Costs

A taxpayer must include in income any amount received as legal costs awarded to the taxpayer by a court on an appeal from an assessment of any tax, interest, or penalties and any reimbursement of costs received under employment insurance or the *Canada Pension Plan* if, with respect to the appeal or decision, an amount is deductible.[129]

It is to be noted that legal costs received must be included in income if the expenses are deductible, even though they were not in fact deducted.

See page ii for explanation of footnotes.

[125] CCH ¶8039, ¶8040; Sec. 56(1)(*e*), 56(1)(*f*).

[126] CCH ¶8041, ¶8043, ¶8045b, ¶8080, ¶8096; Sec. 56(1)(*g*), 56(1)(*h*), 56(1)(*i*), 56(1)(*t*), 56(1)(*z*.3).

[127] CCH ¶8045; Sec. 56(1)(*h*.1).

[128] CCH ¶8047; Sec. 56(1)(*j*).

[129] CCH ¶8049; Sec. 56(1)(*l*).

A taxpayer must include in income amounts received as an award or reimbursement of legal expenses paid to collect or establish a right to a retiring allowance or benefit under a pension fund or plan to the extent that those legal expenses are deductible.[130]

[¶2210] Scholarships, Bursaries, etc.

A scholarship, fellowship, bursary, or similar prize, whether in cash or kind (other than a prescribed one) is included in income in the year of receipt to the extent it exceeds the scholarship exemption for the year.[131] The scholarship exemption is the total of three amounts:

(i) the full amount of a scholarship, fellowship or bursary received by a taxpayer if, on or after January 1, 2017, it was received by a student (a) in connection with the student's enrolment at a designated educational institution in an educational program in respect of which the taxpayer is a "qualifying student" (as defined in subsection 118.6(1)) (for the taxation years from 2007 to 2016, prior to the repeal of the education tax credit, enrolment must have been in a program which entitled the student to claim the education tax credit under subsection 118.6(2) for the current taxation year, the immediately preceding taxation year, or the subsequent taxation year); or (b) in connection with enrolment at an elementary or secondary school;

(ii) the lesser of (a) the total amount of scholarships, fellowships, bursaries, and prizes to be used by the recipient in the production of a literary, dramatic, musical, or artistic work and (b) the amount of the taxpayer's expenses (other than expenses for which the taxpayer was reimbursed or are otherwise deductible) incurred to fulfill the conditions of that amount received; and

(iii) the lesser of (a) $500 and (b) the amount by which the scholarship, fellowship, bursary, or prize exceeds the amounts under (i) and (ii) described above.[132]

Certain limitations are placed on the exemption described in (i) above.[133] In order for the exemption in (i) to apply, it must be reasonable to conclude that the award is intended to support the taxpayer's enrolment in the program, having regard for all of the circumstances, such as the terms and conditions of the award, the duration of the program, and the period for which the support is intended. Based on a short illustration in the Department of Finance explanatory notes, it appears the exemption will be denied where the amount of the award is out of proportion to the program to which it relates. Furthermore, for part-time students, the amount of the award that is eligible for the exemption in (i) cannot exceed the cost of materials or the fee paid to the designated educational institution for the

See page ii for explanation of footnotes.

[130] CCH ¶8050; Sec. 56(1)(*l*.1).

[131] CCH ¶8053; Sec. 56(1)(*n*); Income Tax Folio S1-F2-C3; Interp. Bul. IT-257R.

[132] CCH ¶8106; Sec. 56(3).

[133] CCH ¶8106a; Sec. 56(3.1).

http://www.pbookshop.com

The cost of meals consumed while travelling for the employer is deductible only where the meal is consumed during a period when the taxpayer is away, for 12 hours or more, from the municipality or metropolitan area where he or she ordinarily reports for work.[178]

An Ontario Jockey Club employee who resided in Toronto worked at two Toronto racetracks, and for three months of the year at a racetrack in Fort Erie. His meal expenses incurred while working at the latter track were deductible. The municipality where he usually or ordinarily reported for work was Toronto, and he was required to be away from Toronto for more than 12 hours in the course of employment.[179] Occasional absences from the place of employment do not qualify the taxpayer as being "ordinarily required" to carry on duties away from the place of employment.[180]

"Commuting expenses", i.e., expenses resulting from a taxpayer's choice of living in one place while working in another, are not travelling expenses within the meaning of this provision. They are personal and living expenses, the deduction of which is prohibited under the Act.[181] See ¶2070.

[¶2315] Other Expenses and Membership Dues

To the extent an employee is not entitled to be reimbursed, the following types of expenses paid by an employee may be deducted from employment income:

(1) *Certain professional membership dues.*[182] In order to be deductible by an officer or employee, the professional membership dues must have been necessary to maintain a professional status "recognized by statute". These may also be deducted by an employee where paid by someone else on the employee's behalf but included in the employee's income. Typical examples of such dues would be fees payable by a lawyer to a provincial Law Society or dues paid by a doctor, engineer, or chartered accountant to a professional association. However, the Federal Court of Appeal has recently held that "recognized by statute" merely means acknowledged by statute, nor regulated by statute. Thus, a member of the Appraisal Institute of Canada (AIC) was entitled to deduct membership fees on the ground that members of the AIC who held a certain designation were considered experienced appraisers entitled to make appraisals recognized by statute. [183] Membership fees payable to an association are not deductible if the taxpayer can maintain professional status without paying them. The membership dues must be payable on an annual basis. An initial fee payable upon admission to a professional society would not be deductible since it is an entrance fee and not an annual payment.[184] If a taxpayer remained a member of the professional organization during the period for which dues were in arrears, the subsequent payment of the arrears qualifies in full for deduction in the year of payment since the dues are still "annual professional membership dues". However, if the taxpayer's membership in the professional organization was terminated, the payment of arrears to gain re-admittance will not qualify for deduction.

A teacher who went on strike had his "annual membership dues" for the teachers' association increased by $50 for the last four months of the year. Even though the increase was directly related to the costs of the strike and was not likely to recur, it was held that the additional dues were deductible.[185]

(2) *Office rent and assistant's or substitute's salary.* These expenses may be deducted if they were required to be paid by an employee or officer under the contract of employment.[186]

(3) *Supplies.* The cost of supplies consumed directly in the performance of the duties of employment or that an officer or employee was required under the contract of employment to supply or pay for may be deductible. A plumber's tools were held not to be supplies consumed directly in the performance of the duties of employment.[187] Similarly, an airline pilot's uniform and accessories which the pilot was required to supply as a term of employment were not "supplies" which were "consumed" within the ordinary meaning of the words.[188] Books used by a schoolteacher are not supplies consumed in the performance of duties.[189] For a discussion of expenses connected with a home office, see ¶3183.

A pilot who was required to repay training costs upon leaving his place of employment was unsuccessful in arguing the training was a supply consumed in the performance of duties.[190]

(4) *Trade union and association dues.* Dues payable by an officer or employee to a trade union or association of public servants of which the officer or employee is a member are deductible.[191] Such dues must be annual payments to maintain membership. Certain annual dues paid on behalf of an officer or employee of a trade union or association of public servants of which he or she is not a member may be deductible if such payments must be made pursuant to a collective agreement, are retained by the employer from the remuneration of the employee, and are paid by the employer to the trade union or association. The payments must be made in respect of a "trade union" as defined in section 3 of the *Canada Labour Code* or in any provincial statute providing for the investigation, conciliation, or settlement of industrial disputes or an association of public servants, the primary object of which is to promote the improvement of the members' conditions of employment. Union initiation fees are not annual payments

http://www.pbookshop.com

See page ii for explanation of footnotes.

[178] CCH ¶3300; Sec. 8(4).
[179] Healy, 79 DTC 5060.
[180] Stromberg, 56 DTC 61, Tremblay, 70 DTC 1006.
[181] Cross, 98 DTC 6328, Wilkinson, 66 DTC 344, Lahey, 67 DTC 222.
[182] CCH ¶3080; Sec. 8(1)(i); Interp. Bul. IT-352R2.
[183] Montgomery, 99 DTC 5186.
[184] Daley, 50 DTC 877.

See page ii for explanation of footnotes.

[185] Lucas, 87 DTC 5277.
[186] CCH ¶3080; Sec. 8(1)(i)(ii).
[187] Rajewsky, 63 DTC 593.
[188] Martyn, 64 DTC 461.
[189] Carson, 66 DTC 424.
[190] Auclair, 2013 DTC 1162 (TCC).
[191] CCH ¶3080; Sec. 8(1)(i).

Employees claiming the clergy residence deduction must file with their income tax returns a prescribed form signed by their employers to the effect that the employees meet the requirements concerning their status and function as clergy.[210]

[¶2335] Exchange Fund Contributions of Teachers

A taxpayer may deduct a single amount, not exceeding $250, in respect of all employments as a teacher which were paid by the taxpayer in the year to a fund established by the Canadian Education Association for the benefit of teachers from Commonwealth countries present in Canada under a teacher-exchange arrangement.[211]

[¶2340] Certain Railway Company Employees

A special deduction is available for certain railway employees employed away from their ordinary residence or home terminal.[212] A deduction for meals and lodging is permitted to relieving telegraphers, station agents, and railway maintenance workers, as well as to other railway workers who are required by their employment to be away from the ordinary residence where they reside and actually support a spouse/common-law partner or a dependent relative. The deduction is available to the extent that the employee has not been, and is not entitled to be, reimbursed.

[¶2345] Persons Employed in Forestry

In connection with taxpayers employed in forestry operations who are required by their contracts of employment to supply power saws, claims for power saw expenses will be allowed by the CRA on the basis of actual expenses only. Each employee will be required to file with his or her return a statement setting out in detail the actual cost of operating the saw. It is not necessary to file receipts and vouchers for expenses, but they must be retained for examination if required.

[¶2350] Transport Employees

Transport employees, i.e., employees of a person whose principal business is passenger or goods transport (such as railway, bus, and truck transport companies) may deduct from income 50% (see ¶2353 for the 80% deduction available to long-haul truck drivers) of the cost of meals and 100% of the cost of lodging (including the cost of showers) to the extent that they have not been reimbursed and are not entitled to be reimbursed.[213] These costs include any GST and provincial sales tax, or HST, paid on these expenses.

See page ii for explanation of footnotes.

[210] CCH ¶3665; Sec. 8(10).

[211] CCH ¶3030; Sec. 8(1)(d).

[212] CCH ¶3040; Sec. 8(1)(e).

[213] CCH ¶3060, ¶9127; Sec. 8(1)(g), 67.1(1); Inf. Cir. 73-21R9.

Transport employees may claim these costs if they meet the following four conditions:

(1) they work for an airline, railway, bus, or trucking company, or for any other employer whose main business is transporting goods, passengers, or both;

(2) they travel in vehicles their employer uses to transport goods or passengers;

(3) they regularly have to travel away from the municipality and metropolitan area (if there is one) where their terminal is located; and

(4) they regularly incur meal *and* lodging expenses while away from the municipality and metropolitan area (if there is one) where their home terminal is located. The word "and" in this context is clearly conjunctive so that the deductions for meals were disallowed when the taxpayers' duties did not require them to make disbursements for meals and lodging, as required, but only for meals.[214]

A claim will be allowed only if it is supported by records and, where required, by receipts or vouchers. The extent of the records needed and the requirement to maintain supporting vouchers will vary with the method chosen by the transport employee for calculating the deduction. Two methods are available: the detailed method and the simplified method. The detailed method requires anyone who claims a deduction to maintain a record book with the following information: the date the expense was paid, the time the trip started and ended, the geographical location, the name of the restaurant or hotel where the amount was paid, the type of expense, and the amount paid. The simplified method requires the transport employee to maintain a record of trips actually taken during the taxation year. When following this method, the CRA allows a flat rate of $23 per meal (up to a maximum of $69 per day) (prior to 2020 it was a flat rate of $17 per meal (up to a maximum of $51 per day)) without requesting a supporting voucher. The flat rate per meal is subject to the 50% meal deduction limit. The simplified method is also available for transport employees travelling to the United States for employment-related duties. For meal expenses incurred in the United States, they are entitled, under the simplified method, to claim US$23 per meal to a maximum of US$69 per day. These amounts must be converted to the equivalent Canadian dollars at the average exchange rate for the year, as determined by the Bank of Canada or at another rate of exchange accepted by the Minister (see ¶480). Claims made by transport employees travelling to the United States are also subject to the 50% deduction limit.

An inter-city bus driver was permitted to deduct his meal expenses, but was not entitled to lodging expenses because he only reported for work at one place.[215]

See page ii for explanation of footnotes.

[214] Renko, 2003 DTC 5417.

[215] Moreau, 80 DTC 1075.

http://www.pbookshop.com

"Proceeds of disposition" means the sale price or any compensation received for property, including insurance proceeds for loss or destruction of property, compensation for lost or damaged property, expropriation proceeds, etc.[211] See ¶5075.

If the proceeds of disposition are not to be received until after the end of the year, a taxpayer may defer a portion of the capital gain. Any amount claimed as a reserve in one year must be included in computing gains for the following year. See ¶5160.

A loss from the disposition of property is generally the excess of the adjusted cost base and expenses of sale over the proceeds of disposition. One-half of the gain or loss is defined as a taxable capital gain or allowable capital loss.[212] An allowable capital loss can only be used to reduce taxable capital gains unless it is an allowable business investment loss. See ¶5030. The law provides for the carryover of capital losses, back three years and forward indefinitely, to be used against capital gains. See Chapter III.

[¶5150] Partial Dispositions of Property

When only part of a capital property is disposed of, the taxpayer's gain or loss from that part is computed by attributing a reasonable portion of the adjusted cost base of the whole property to the part disposed of.[213] For example, if the adjusted cost base of the whole property were $1,000 and the taxpayer was disposing of 1/2 of it for $900, the taxpayer's gain on that half would be computed from an adjusted cost base of $500 and would, as a result, be $400. Where there is a disparity in value between different parts of the same property, it will be a question of fact as to what is a reasonable allocation of the adjusted cost base among those parts.

[¶5155] Reserves for Future Proceeds

[¶5160] Reserve for Proceeds Not Due Until After End of the Year

A taxpayer is permitted to defer a portion of the capital gain on the disposition of property if the proceeds are not receivable until after the end of the year.[214] Amounts claimed as reserves in one year must be brought back into the computation of gains in the succeeding year and a new reserve may be calculated. For most dispositions a taxpayer may only claim a reserve equal to the lesser of:

(a) a reasonable amount represented by the proportion of the proceeds not yet due before the end of the taxation year; and

See page ii for explanation of footnotes.

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

[212] CCH ¶6007; Sec. 38.

[213] CCH ¶6650; Sec. 43; Interp. Bul. IT-264R; Income Tax Folio S3-F4-C1.

[214] CCH ¶6400; Sec. 40(1).

(b) an amount equal to 1/5 of the gain on the disposition of property multiplied by four minus the number of preceding taxation years ending after the disposition of the property.

Thus, the taxpayer must recognize capital gains at a cumulative rate of at least 20% annually, commencing in the year of disposition. Less restrictive reserve rules are provided for dispositions of family farm or fishing property, shares in the capital stock of family farm or fishing corporations, interests in family farm or fishing partnerships, and shares in small business corporations to children, grandchildren, and great-grandchildren.[215] In this case, the gain must be brought into income at the rate of 10% *per annum* on a cumulative basis unless the proceeds of disposition are received at a rate in excess of 10% *per annum*. The 10-year reserve is applicable to capital gains realized on a disposition of fishing property to a child, grandchild, or great grandchild. It should be noted that a reserve is not available to a taxpayer who, at the end of the year or at any time in the following year, was not resident in Canada or was exempt from tax. It is also not available if the purchaser is a corporation which is controlled directly or indirectly by the taxpayer, or which controls the taxpayer if the taxpayer is a corporation. Furthermore, the reserve is not available to a taxpayer if the purchaser is a partnership of which the taxpayer is a majority interest partner.[216]

http://www.bookshop.com

No reserve can be claimed in respect of a demand promissory note, since it is immediately enforceable and therefore "due" even though no demand has been made.[217]

The law does not provide a method of computing a reserve, but merely provides for a "reasonable amount". A "reasonable" reserve may be calculated as the percentage of the proceeds not yet due for payment, multiplied by the capital gain, subject to the rule that at least 1/5, or in the case of farming or fishing property or a share of a small business corporation disposed of to a child, 1/10 of the gain must be recognized each year.

Example 1:

Proceeds of disposition are $200,000, adjusted cost base is $130,000 and expenses of disposition are $20,000. The balance not yet receivable at year end is $120,000.

Reserve: $\frac{\$120{,}000}{\$200{,}000} \times (\$200{,}000 - (\$130{,}000 + \$20{,}000)) = \$30{,}000$

See page ii for explanation of footnotes.

[215] CCH ¶6401, ¶9295, ¶9295ac, ¶9295ak, ¶9295c; Sec. 40(1.1), 70(10) "child", 70(10) "interest in a family farm partnership", 70(10) "interest in a family fishing partnership", 70(10) "share of the capital stock of a family farm corporation", 70(10) "share of the capital stock of a family fishing corporation".

[216] CCH ¶6420; Sec. 40(2)(a).

[217] Derbecker, 84 DTC 6549, Pineo, 86 DTC 6322.

below. It also does not apply in the situation when an employee acquires shares from the employer corporation at a discount (see item (17) *Share or fund unit taxed as stock option benefit* at ¶5180).[225] Any adjustment to cost will be made only for amounts that have not otherwise been added to the cost or to the adjusted cost base of the property.

(2) A shareholder in receipt of a dividend in kind, other than a stock dividend, is deemed to have acquired the property at a cost equal to its fair market value at the time. The payer corporation is deemed to have disposed of the property for proceeds equal to that fair market value.[226]

(3) When a stock dividend is received by an individual, the "amount" of the stock dividend is generally the amount by which the corporation's paid-up capital has increased by reason of the payment of the dividend. In all other cases (i.e., stock dividends received by corporations), the "amount" of the stock dividend is equal to the greater of:

(a) the amount by which the corporation's paid-up capital has increased by reason of the payment of the dividend; or

(b) the fair market of the shares that are issued as a stock dividend.

A stock dividend paid to a corporation or to a mutual fund trust by a non-resident corporation is not a dividend and therefore has a cost of nil.[227]

(4) A taxpayer who has acquired property as a prize in connection with a lottery scheme is deemed to have acquired the property at a cost equal to the fair market value of the property at the time. A taxpayer's gain or loss from the disposition of a chance to win a prize or a right to receive an amount as a prize in connection with a lottery scheme is nil.[228]

(5) If property used by a non-resident in a Canadian branch operation is transferred to a qualified related corporation, certain deductions are allowed with respect to Part XIV tax (branch tax).[229] The cost base of the shares of the qualified related corporation is reduced to equal the paid-up capital of the shares, so that the amount of the branch tax that is deferred under this transfer will not be tax-free.

The cost[230] of the shares of the qualified related corporation that are received as consideration for the property transferred is equal to the lesser of:

(a) the cost of the shares otherwise determined; and

(b) the amount by which the paid-up capital of that class of shares increased by virtue of the shares being issued.

See page ii for explanation of footnotes.

[225] CCH ¶7500; Sec. 52(1).
[226] CCH ¶7510; Sec. 52(2).
[227] CCH ¶7515, ¶28,071; Sec. 52(3), 248(1) "dividend".
[228] CCH ¶6433, ¶7525; Sec. 40(2)(*f*), 52(4).
[229] CCH ¶26,900; Sec. 219(1)(*l*).
[230] CCH ¶7540; Sec. 52(7).

As a result of the application of these provisions, any amount on which the branch tax is deferred will not be represented by either paid-up capital or adjusted cost base. By reducing the cost of the shares to equal their paid-up capital, the branch tax deferral will form part of a taxable gain if the shares are sold, thus ensuring that the amount will not escape Canadian tax in some form.

(6) Where a corporation becomes resident in Canada, the cost base of the shares (excluding shares that are considered taxable Canadian property) to the non-resident shareholder is equal to the fair market value of the shares at that time.[231]

[¶5175] Adjusted Cost Base and Deemed Gain

Having determined the cost of a capital property, the taxpayer must determine the adjusted cost base of the property. The adjusted cost base of depreciable property is the capital cost of the property at that time. For other property, the adjusted cost base is the cost to the taxpayer (actual or deemed according to ¶5170) plus or minus certain adjustments.[232] These are outlined in ¶7100 for capital property that is a partnership interest, and in ¶5180 and ¶5185 for other capital property.

If at any time in the year the total of all amounts which are to be subtracted in computing the adjusted cost base exceeds the cost of the property plus all amounts added to the base, the excess is deemed to be a gain from the disposition of the property (unless the property involved is a partnership interest).[233] The resulting capital gain must be reported as such on that year's tax return, but is added to the ACB of the property so that it will reduce any subsequent gain or increase any subsequent loss.[234]

Example:

Taxpayer R owns shares in a company that have a cost of $1,000. Over the years R has received a series of tax-free dividends which the company indicated would reduce the adjusted cost base of the shares. At the end of last year R had received $1,000 of such dividends, so that his adjusted cost was exactly nil. This year R receives another such distribution in the amount of $200. R is required to report a capital gain as follows:

Cost of shares	$1,000
All prior year reductions	$1,000
Closing prior year ACB	Nil
Less: Current year reduction of cost base	200
Capital gain	$ (200)

The $200 would then be added in determining R's adjusted cost base so that for purposes of calculating any subsequent capital gain or loss R's adjusted cost base will be

See page ii for explanation of footnotes.

[231] CCH ¶7541; Sec. 52(8).
[232] CCH ¶7850; Sec. 54 "adjusted cost base".
[233] CCH ¶6440; Sec. 40(3).
[234] CCH ¶7600; Sec. 53(1)(*a*).

http://www.pbookshop.com

life estate immediately before the death of the holder of the life estate and any amount by which the fair market value of the whole real property exceeds the adjusted cost base of the remainder interest. This increase in adjusted cost base is applicable for calculating the capital gain or loss on the real property.[264]

(23) *Flow-through entity.* Where an election was made on a flow-though entity under the rules at ¶5011 to create a continuing capital gains exemption balance against the annual gains flowed out to the elector, any remaining unused balance after 2004 is wound up and added to the adjusted cost base of the entity to the elector.[265] Similarly, when the property on which the election was made is disposed of before 2005 and a related capital gains exemption balance remains unused, that balance will be added to the adjusted cost base of the property immediately before the disposition.[266] As a general rule, this will allow recognition of a loss accrued since February 22, 1994.

(24) *Demutualization benefits.* Payments made on shares received under the rollover rules in the course of demutualization of life insurance companies, which are transferred to employees are added to the cost base of the shares as described at ¶9274.

(25) *Derivative Forward Agreement.* Amounts included in income in respect of the purchase or sale of property under a derivative forward agreement.[267]

[¶5185] Deductions from Adjusted Cost Base

A taxpayer may make deductions from his or her cost base as follows:

(1) *Shares of a resident corporation.*[268] Where the property in question is a share of the capital stock of a corporation resident in Canada, four deductions may be applicable in computing the adjusted cost base of the shares at any time:

(a) An amount received by the taxpayer as a dividend on the share, other than a taxable dividend, a capital dividend, or a life insurance capital dividend, will reduce the adjusted cost base of the share.

(b) Where the corporation reduced its paid-up capital in respect of the taxpayer's share, the amount received by the taxpayer on the reduction of capital is deducted from the adjusted cost base of the share, except for the portion of the amount that was deemed to be a dividend. A dividend is deemed to have been paid on a reduction of capital in respect of a share to the extent that the amount paid

See page ii for explanation of footnotes.

[264] CCH ¶6669, ¶7637c; Sec. 43.1(2), 53(1)(*o*).
[265] CCH ¶7637d; Sec. 53(1)(*p*).
[266] CCH ¶7637f; Sec. 53(1)(*r*).
[267] CCH ¶7637; Sec. 53(1)(*s*) and 53(1)(*t*), in respect of income adjustment under sec. 12(1)(z.7).
[268] CCH ¶7639; Sec. 53(2)(*a*); Interp. Bul. IT-456R.

on the reduction of capital exceeds the paid-up capital of the share. If a public corporation reduces the paid-up capital of a class, the full amount is deemed to be a dividend regardless of the paid-up capital of that class. In either case, the deemed dividend need not reduce the adjusted cost base of the share since it will be subject to tax as a taxable dividend.[269]

(c) There is a reduction in the adjusted cost base of a share for an amount which might otherwise be treated as a deemed dividend arising upon a distribution to shareholders on winding-up, discontinuance, or reorganization. Certain shareholders of a public corporation are treated as receiving proceeds of disposition rather than a deemed dividend. If there is a distribution on a winding-up, discontinuance, or reorganization which does not produce a deemed dividend and at the same time does not result in the shareholder disposing of his or her shares, the adjusted cost base of those shares will be reduced by the amount of the distribution less the paid-up capital of the shareholder's shares.[270]

(d) Finally, the adjusted cost base to the individual on the replacement shares qualifying for a capital gains deferral on the disposition of an eligible small business investment must be reduced by the individual "ACB reduction" in respect of such replacement shares. The ACB reduction is discussed at ¶5029.[271]

(2) *Shares of a non-resident corporation.* In general, foreign passive income of a foreign affiliate of the taxpayer is taxed in the taxpayer's hands whether received or not, and the adjusted cost base of the taxpayer's shares of the foreign affiliate is *increased* to reflect this. See item (4) *Shares of a foreign affiliate* at ¶5180. On the other hand, when this income is distributed to the taxpayer by way of dividend, it usually bears no tax and the adjusted cost base of the shares is reduced by the amount of the earlier increase. This reduction is carried through for purposes of the capital gains tax provisions. If the foreign affiliate has suffered expropriation or forced sale of foreign assets and received "expropriation assets" in return, a distribution of these assets to the taxpayer by way of dividend in kind or a benefit to the shareholder will be treated as a dividend to the taxpayer from a foreign affiliate. See also item (18) *Expropriation assets* at ¶5180. The taxpayer may deduct the amount of this dividend in computing income but this deduction is required to be subtracted in computing the adjusted cost base of the taxpayer's shares of the foreign affiliate. The definition of dividend from a foreign affiliate includes PUC reductions by a foreign affiliate.[272]

See page ii for explanation of footnotes.

[269] CCH ¶7639, ¶10,320, ¶10,330; Sec. 53(2)(*a*), 84(4), 84(4.1).
[270] CCH ¶7639, ¶10,240, ¶10,383; Sec. 53(2)(*a*), 84(2), 84(8).
[271] CCH ¶6750m, ¶7639; Sec. 44.1(2)(*b*), 53(2)(*a*).
[272] CCH ¶7642; Sec. 53(2)(*b*).

http://www.pbookshop.com

that the property will be the subject of a gift in respect of which a charitable deduction or credit will be claimed).[360] The proceeds of disposition are deemed to be the greater of actual proceeds or $1,000. Similarly the adjusted cost base is deemed to be the greater of the adjusted cost base or $1,000.

Example:

Herb sells a sculpture, which has an adjusted cost base of $1,500, for $750. Herb has a listed personal property loss of $500.

Proceeds of disposition — minimum	$1,000
Adjusted cost base	1,500
Loss	$ 500

If the adjusted cost base was $900, there would be no loss since both proceeds and ACB would be deemed to be $1,000.

One-half (or the applicable rate prior to October 18, 2000) of a taxpayer's net gain from dispositions of listed personal property is referred to as the taxpayer's taxable net gain and is included in income.[361] The inclusion rate of a taxpayer's net gain from dispositions of listed personal property is the same as for capital gains on other property. See ¶5005.

[¶5325] Set of Items of Personal-Use Property

A taxpayer who disposes separately of parts of personal-use property that would ordinarily be disposed of as a set will be deemed to have made a single disposition of the property if all the pieces of property have been acquired by one person or by a group of persons who are not dealing at arm's length.[362] This provision is designed to prevent taxpayers from taking advantage of the $1,000 cost floor provided for personal-use property by selling assets piece by piece in units of less than $1,000 when the assets would ordinarily be sold as a set.

[¶5330] Personal-Use Property of Corporation, Partnership, or Trust

If, due to a decrease in the fair market value of personal-use property of a corporation, partnership, or trust, a taxpayer's gain from the disposition of a share of the capital stock of the corporation, an interest in the trust, or an interest in the partnership has become a loss, or if the gain is less than it would have been if the decrease had not occurred, or if a loss is greater than it would have been had the decrease not occurred, the amount of the gain or loss, as the case may be, is deemed to be the amount it would have been but for the decrease in the fair market value.[363] The provision prevents a shareholder, beneficiary, or partner from obtaining an indirect deduction because of a decrease in value of personal-use property (even listed personal property) of a company, trust, or partnership.

See page ii for explanation of footnotes.

360 CCH ¶6900, ¶6970; Sec. 46(1), 46(5).
361 CCH ¶6500; Sec. 41(1).
362 CCH ¶6940; Sec. 46(3).
363 CCH ¶6960; Sec. 46(4).

[¶5335] Special Types of Dispositions

[¶5340] Dispositions Subject to Warranty or Covenant

Where a taxpayer has disposed of capital property and the proceeds of disposition (received or receivable) include an amount in consideration of a warranty, covenant, or other conditional or contingent obligation incurred by the taxpayer in respect of the property, that consideration must be included in the taxpayer's proceeds of disposition in the year of sale.[364]

If, in the year of sale or any subsequent year, the taxpayer is required to incur any cost as a result of the warranty, covenant, or other obligation referred to above, that cost will be deemed to be a loss of the taxpayer from the disposition of capital property in the year the cost was incurred. For purposes of the computation of the taxpayer's entitlement to the capital gains exemption, the cost of the warranty claim would also be a factor in the year it is incurred.

Generally, warranties are given in connection with the sale of shares of a closely held company or the sale of a business. Usually, no consideration is expressed to be paid for giving the warranty; the giving of the warranty is often a condition precedent to the making of the agreement of purchase and sale rather than the making of a commitment for a separate consideration. However, any separate consideration given, or expressed to be given, for making a warranty must be included in the proceeds of disposition of the property.

Agreements not to compete

In *Fortino*[365] and *Manrell*,[366] the Federal Court of Appeal held that where a vendor sells shares of a corporation and the vendor receives a payment for a covenant not to compete with the corporation's business, the payment is not an eligible capital amount since the payment was not received in the course of carrying on a business.

In response to these Federal Court of Appeal decisions holding that some of the payments received in respect of restrictive covenants were not taxable, the government enacted legislation to override the decision. A taxpayer must now include in income all amounts received or receivable in a taxation year in respect of a restrictive covenant ("RC") granted.[367]

See page ii for explanation of footnotes.

364 CCH ¶6600; Sec. 42.
365 Fortino, 2000 DTC 6060.
366 Manrell, 2003 DTC 5225.
367 Sec. 56.4(2).

http://www.pbookshop.com

$$\frac{\text{Aggregate cost bases of properties}}{\text{Aggregate principal amounts/principal amount of identical property}}$$

For example, assume a taxpayer owned four bonds having principal amounts of $10,000 each, which he purchased at a cost of $9,750 each. At a later date he purchased a fifth bond, identical to the others in everything except the principal amount, which was $30,000. The purchase price of this bond was $29,000. Averaging the cost bases of these bonds results in the following averaged adjusted cost bases:

$68,000 is the total adjusted cost base and $70,000 is the total principal amount.

$$\frac{\$68{,}000}{\$70{,}000/\$30{,}000} = \$29{,}142.84 \qquad \frac{\$68{,}000}{\$70{,}000/\$10{,}000} = \$9{,}714.29$$

A bond, debenture, bill, note or other similar obligation issued by a debtor is identical to another obligation issued by the debtor if both are identical in respect of all rights, whether in equity or otherwise, either immediately or in the future and either absolutely or contingently, attaching thereto, except as regards the principal amount of the obligation.[407]

[¶5375] Becoming or Ceasing to Be Resident in Canada

[¶5380] Emigration — Ceasing to Be Resident in Canada

A taxpayer (individual, trust, or corporation) who has ceased to be resident in Canada at any particular time, is deemed to have disposed of immediately before that time, each property which the taxpayer owned immediately before becoming a non-resident (with certain exceptions) for proceeds equal to the fair market value of the property at the time of the deemed disposition.[408] The taxpayer is also deemed to have reacquired the property immediately after ceasing to be resident in Canada at a cost equal to the same amount. The taxpayer will therefore realize accrued capital gains or losses and pay all appropriate tax. This is commonly referred to as the departure tax. An individual may elect, on giving adequate security to the Minister, to defer payment of an amount of tax owing as a result of the deemed disposition of a particular property (other than an employee benefit plan right). The security remains in place until the property is disposed of, and no interest is charged. However, to ensure that the departure tax does not result in undue hardship, the first $50,000 of an emigrating individual's taxable income arising from the deemed disposition does not require security (see ¶9012).

See page ii for explanation of footnotes.

407 CCH ¶28,329h; Sec. 248(12).

408 CCH ¶20,026b - ¶20,026g; Sec. 128.1(4); Interp. Bul. IT-451R.

http://www.pbookshop.com

[¶5385] Property Excepted from Deemed Disposition Rule

Virtually *all* property held by an emigrating individual at the time of departure is subject to deemed disposition. Under these rules, an individual who emigrates from Canada is treated as having disposed of *all* properties except:[409]

(1) real property situated in Canada, Canadian resource properties, or timber resource properties;

(2) capital property used in, Class 14.1 property in respect of, or property described in the inventory of a business carried through a permanent establishment in Canada, immediately before departure;

(3) an excluded right or interest of the taxpayer (chiefly RPP, RRSP, RRIF, RESP, and similar employee benefit rights);

(4) if the taxpayer is not a trust and was not during the 10-year period preceding departure resident in Canada for more than 60 months, property owned on moving to Canada, or property inherited while resident; and

(5) taxable Canadian property still held by a returning former resident who elects to unwind the deemed departure tax.

For a more detailed description of these exclusions see ¶9012a.

[¶5390] Optional Deemed Disposition

An individual other than a trust may, upon ceasing to be resident in Canada, elect to recognize a deemed disposition of the property (in (1) and (2) at ¶5385), which would otherwise be excluded from the deemed disposition rule.[410] An emigrating individual might make this choice to recognize a latent loss in the property in order to offset a gain arising from the deemed disposition.

Where a taxpayer has elected to realize a deemed disposition, limits are imposed to ensure that the election cannot be used to realize a loss exceeding any gain realized on the deemed disposition on emigration. In other words, a taxpayer who has taxable capital gains from actual dispositions may not reduce them by allowable capital losses from deemed dispositions. To prevent such a situation, the electing taxpayer's income for the year of departure is deemed to be the greater of:

(a) the income otherwise determined, and

(b) the lesser of:

See page ii for explanation of footnotes.

409 CCH ¶20,026c; Sec. 128.1(4)(*b*).

410 CCH ¶20,026e; Sec. 128.1(4)(*d*).

non- resident shareholders. Where the corporation becomes resident in a country whose tax treaty with Canada limits the rate of tax Canada may impose on dividends paid by a wholly-owned subsidiary in Canada to its parent in that country, the additional tax for dividends will be limited to that rate.[418]

[¶5400] Departure Tax and Trusts

Trusts which have ceased to be resident in Canada are also subject to a departure tax. A trust is considered to be resident in the place where the central management and control of the trust takes place, so when these duties shift from Canada to another country, the trust generally ceases to be resident in Canada.[419] Where a trust ceases to be resident in Canada, the taxation year of the trust is deemed to have ended just before that time and a new taxation year is deemed to have begun. The deemed disposition of property occurs just before the taxation year ends on ceasing to be resident.[420] Some of the exclusions from the deemed disposition rule available to individuals do not apply to trusts. The exclusion for returning former residents, and for those residing in Canada for five years or less during the 10-year period preceding departure, does not apply to trusts. In all other respects, trusts are subject to the same comprehensive deemed disposition rules governing individuals (see ¶5385). Essentially, these no longer exclude taxable Canadian property from the ambit of the departure tax, with few exceptions. It follows that upon ceasing residence, virtually all property held by trusts will be subject to deemed disposition. Previously, many of the assets typically held by trusts, such as shares, which were and remained taxable Canadian property as defined in ¶5095, were subject to tax only when actually disposed of.

[¶5405] Immigration — Becoming Resident of Canada

Where a corporation or a trust becomes resident in Canada, the taxation year of the corporation or trust is deemed to have ended immediately before becoming resident and a new taxation year is deemed to have started at the time of becoming resident. A similar provision is contained in the Act for a corporation that was a foreign affiliate immediately before becoming resident in Canada.[421]

Where a corporation, trust, or individual has become a resident of Canada at any time, the taxpayer is deemed to have disposed of immediately before that time each property which the taxpayer owned immediately before becoming resident in Canada for proceeds equal to the fair market value of the property at the time of the deemed disposition. The taxpayer is also deemed to have reacquired the property immediately after becoming resident in Canada at a cost equal to the same amount.[422] The practical

See page ii for explanation of footnotes.

[418] CCH ¶26,942; Sec. 219.3.
[419] St. Michael Trust Corp., 2012 DTC 5063.
[420] CCH ¶20,026b - ¶20,026g; Sec. 128.1(4).
[421] CCH ¶20,025d; Sec. 128.1(1)(*d*).
[422] CCH ¶20,025c; Sec. 128.1(1)(*c*).

effect of this provision is that taxpayers who become resident in Canada will be subject to the capital gains tax provisions in respect of dispositions of property after they take up Canadian residence, in a similar manner to other residents of Canada. Gains and losses will, however, be computed from a cost base established at the time these taxpayers become resident in Canada. This rule applies for purposes of the Act and not just for purposes of calculating capital gains and losses. Therefore the value of the property at the time of the deemed acquisition will be relevant for capital cost allowance and inventory valuation purposes as well.

Corporations immigrating to Canada will be treated as having disposed of *all* of their assets. If an immigrating corporation owns a share of a Canadian corporation (other than a share on which any gain of the immigration corporation is taxable in Canada), a dividend will be deemed to have been paid equal to the excess of the Canadian share's value over its paid-up capital. In this way, the corporation's immigration is treated in the same manner as a sale of the share for fair market value proceeds by the non-resident corporation to a resident company. These amendments are designed to deal with the opportunity for surplus stripping when an immigrating corporation owns shares of a Canadian corporation and the shares of the non-resident corporation are transferred to a Canadian corporation before the corporate immigration.

http://www.pbookshop.com

[¶5410] Options

[¶5415] General

The general rule regarding options is that when an option is granted there is a deemed disposition of property having an adjusted cost base of nil. The adjusted cost base of the option to the grantor immediately before the grant is nil.[423] Accordingly, a capital gain can result to the extent of the amount received in respect of the option, less any expenses incurred. The cost to the person who receives the option is the consideration given, plus expenses. This applies to most types of options, other than those described in (1), (2), or (3) below. The types of options are:

(1) options to acquire or to dispose of a principal residence;

(2) options granted by a corporation under which the holder may acquire shares of the capital stock or bonds or debentures to be issued by the corporation;

(3) options granted by a trust to acquire units of the trust to be issued by the trust; and

(4) options over other types of property.

See page ii for explanation of footnotes.

[423] CCH ¶7300; Sec. 49(1); Interp. Bul. IT-96R6, IT-403R.

The paid-up capital of the classes of shares received on the exchange of shares may be reduced. This permits any paid-up capital deficiency of the old shares to flow through to the new shares.[437]

If the result of the exchange is to confer a benefit on a related person because the value of the shares received on the exchange is less than the value of the convertible property, other rules apply that may force the recognition of a capital gain and alter the adjusted cost base of the shares received on conversion.[438] These other rules will apply if all of the three following conditions are met:

(1) the rollover provisions noted above would have otherwise applied to the conversion of the property;

(2) the fair market value of the convertible property before the conversion is greater than the fair market value of the shares received after the conversion; and

(3) the difference in (2) above, which is referred to as the "gift portion", can reasonably considered to be a benefit that the taxpayer desired to have conferred upon a person related to the taxpayer.

In this situation the deemed proceeds of disposition of the convertible property will be equal to the lesser of:

(a) the adjusted cost base of the convertible property immediately before the disposition plus the gift portion; and

(b) the fair market value of the convertible property immediately before the conversion.

If the deemed proceeds of disposition would otherwise result in a capital loss on the conversion, the capital loss is deemed to be nil.

The cost of all shares of a particular class received on the conversion is deemed to be the proportion of the lesser of:

(a) the adjusted cost base of the convertible property immediately before the exchange; and

(b) the aggregate of the fair market value, immediately after the conversion, of all shares received on the conversion and the amount of any capital loss which is denied as a result of the exchange,

that the fair market value immediately after the conversion of all the shares of the particular class is of the fair market value of all shares received on conversion.

See page ii for explanation of footnotes.

437 CCH ¶7461; Sec. 51(3).

438 CCH ¶7460; Sec. 51(2).

Example:

J holds Class A preference shares of J Limited which are convertible to Class B preference shares. The Class A preference shares have an adjusted cost base of $50,000 and a fair market value of $100,000. The Class A preference shares are converted into Class B preference shares of J Limited which have a fair market value of $60,000 immediately after the conversion. The children of J are the only other shareholders of J Limited. In this situation a benefit is being conferred on a related person and so the rules to force a realization of a capital gain will apply. The gift portion on the conversion would be the excess of the fair market value of the Class A preference shares ($100,000) over the fair market value of the Class B preference shares ($60,000) or $40,000.

The proceeds of disposition of the Class A preference shares are deemed to be the lesser of:

(a) The adjusted cost base of the Class A preference shares	$ 50,000
Plus the gift portion	40,000
	$ 90,000
(b) The fair market value of the Class A preference shares immediately before the conversion	$100,000

Therefore, the proceeds of disposition are $90,000 and a $40,000 capital gain is realized by Mr. J as a result of the conversion. The adjusted cost base of the Class B preference shares received on the conversion will be equal to the lesser of:

(a) The adjusted cost base of the Class A preference shares before the conversion	$ 50,000
(b) The fair market value of the Class B preference shares after the conversion	$ 60,000
Plus any capital loss denied	nil
	$ 60,000

There is no reduction of the adjusted cost base of the Class B preference shares but there is an immediate recognition of a capital gain equal to the gift portion.

The provisions concerning convertible property do not apply for purposes of a rollover by shareholders of eligible property to a taxable Canadian corporation or an exchange of shares by a shareholder in the course of a reorganization of capital.[439]

See page ii for explanation of footnotes.

439 CCH ¶7462; Sec. 51(4).

http://www.fbookshop.com

Transfers to Corporation from Partnership — Rollovers **6280**
Transfer of Property to Corporation from Partnership 6285
Rollover Where Partnership Wound Up 6290
Property Transferred to Controlled Corporation — Losses **6295**
Loss on Certain Properties 6300
Loss on Shares 6302
Reorganization of Capital — Rollovers **6305**
Exchange of Shares 6310
Cost Base of Shares and Other Property 6315
Foreign Divisive Reorganizations 6317
Foreign Spin-Offs — Rollovers **6320**
Tax-Deferred Rollover 6321
Eligible Distributions 6322
Cost Base Adjustments 6323
Inventory 6324
Amalgamations **6325**
Meaning of "Amalgamation" 6327
Amalgamations — Rollovers **6335**
General 6340
Shareholders of Predecessor Corporations 6345
Exchanged Shares 6350
Options To Acquire Shares of Predecessor Corporation 6355
Obligations and Debts Issued by Predecessor Corporation 6360
Winding Up **6370**
Winding Up a 90%-or-Greater-Owned Taxable Canadian Corporation 6375
Winding Up of Corporation That Is Not a 90%-Owned Subsidiary 6380
Deemed Dividends 6385
SIFT Trust Wind-Up Rollover 6390
Winding Up of an NRO 6395
Foreign Affiliates **6400**
Foreign Accrual Property Income (FAPI) 6410
Key Definitions 6415
Attribution of FAPI 6420
Other Rules for Determination of FAPI Components 6425
Dividends from Foreign Affiliates 6450
Deduction Re Surplus Accounts 6455
Computation of Surplus Accounts 6460
Dividend Deduction — FAPI 6465
Adjustments to Cost Base of Shares in Foreign Affiliate 6470
Canadian Subsidiaries of Non-Residents **6500**
Foreign Affiliate Dumping 6510
Dividend Substitution Election 6520

Recent Changes

Changes to Tax Measures due to COVID-19

Due to the consequences of the COVID-19 pandemic, many tax measures were introduced that affect filing and payment dates, among other changes. Please see the special section in the front of the book at ¶600 for details.

[¶6000] Corporations Resident in Canada

[¶6005] Taxation of Corporations

A corporation that is resident in Canada is subject to Canadian tax on its taxable income derived from sources both within and outside of Canada. A corporation which at no time in the taxation year is resident in Canada is subject to tax if it carries on business in Canada or disposes of taxable Canadian property in the taxation year or a previous year. In this case, the tax is computed on the corporation's taxable income earned in Canada for the year determined under special rules.[1]

A corporation is deemed to be resident in Canada throughout a taxation year if the corporation:

(1) was incorporated in Canada after April 26, 1965; or

(2) was incorporated in Canada between April 9, 1959, and April 26, 1965, and has been resident or has carried on business in Canada since that date.

Corporations not deemed to be resident will be considered residents if their central management and control are located in Canada.[2]

Several special provisions apply to the taxation of private corporations (¶6020) as distinct from public corporations (¶6010). These include:

(a) the small business deduction (¶8425); and

(b) the right of a private corporation to distribute its capital dividend account to its shareholders on a tax-free basis (¶6110).

In some cases, only Canadian-controlled private corporations (¶8435) qualify for special treatment.

For rates of corporate tax, see ¶8300.

[¶6010] "Public Corporation" Defined

"Public corporation" is defined[3] as a corporation resident in Canada having a class of its shares listed on a designated stock exchange. The term also includes a resident corporation which has elected or has been designated by the Minister of National Revenue to be a public corporation. A prescribed labour-sponsored venture capital corporation is not a public corporation unless a class of its shares becomes listed on a designated stock exchange.

See page ii for explanation of footnotes.

[1] CCH ¶17,101; Sec. 115(1).
[2] CCH ¶28,342; Sec. 250(4).
[3] CCH ¶11,191; Sec. 89(1) "public corporation"; Interp. Bul. IT-391R.

http://www.pbookshop.com

distribution of the trust's non-portfolio earnings is considered an eligible dividend.[21]

Generally, a dividend is an eligible dividend if the dividend-paying corporation has given the dividend recipient written notice to that effect. The recipient can rely on that notice, and need not know anything about the tax status of the corporation. However, some corporations will have a limited capacity to pay eligible dividends. If their designations exceed that capacity, they are liable to an additional tax under Part III.1 that applies to the excess amount, or, if the corporation can reasonably be considered to have attempted to artificially increase its capacity to pay eligible dividends, to the full amount of the eligible dividend.[22]

A portion of a taxable dividend received by a person can be designated as an "eligible dividend".

A late designation of an "eligible dividend" may also be permitted where, in the opinion of the CRA, "the circumstances of a case are such that it would be just and equitable to permit a designation"[23] will allow for. The late designation must be made within three years after the day it should have been made, being the time that the dividend was paid.

A corporation's capacity to pay eligible dividends will depend mostly on its status. If a corporation is a Canadian-controlled private corporation (CCPC) or a deposit insurance corporation, it can pay eligible dividends only to the extent of its "general rate income pool" (GRIP), a balance generally reflecting taxable income that has not benefited from the small business deduction or any of certain other special tax rates.[24] A corporation resident in Canada that is neither a CCPC nor a deposit insurance corporation (a "non-CCPC") can pay eligible dividends in any amount, unless it has a "low rate income pool" (LRIP). The LRIP is generally made up of taxable income that benefited from the small business deduction, either in the hands of the dividend-paying non-CCPC itself (at a time when it was a CCPC) or in the hands of a CCPC that paid an ineligible dividend to the non-CCPC.[25] Many non-CCPCs will never have an LRIP, and thus will be able to designate all of their dividends as eligible dividends. However, if it exists, the LRIP balance must be reduced through the payment of ineligible dividends before a non-CCPC can pay an eligible dividend.

The individual in receipt of taxable dividends is entitled to a dividend tax credit. The dividend tax credit for eligible dividends equals $^{6}/_{11}$ of the gross-up for eligible dividends received. The credit for non-eligible dividends is $^{9}/_{13}$ of the gross-up ($^{8}/_{11}$ of the gross-up for 2018). See ¶8275.

See page ii for explanation of footnotes.

[21] CCH ¶11,182a; Sec. 89(1) "eligible dividend".

[22] CCH ¶11,182c, ¶24,345a; Sec. 89(1) "excessive eligible dividend designation", 185.1(1).

[23] CCH ¶11,269da; Sec. 89(14.1).

[24] CCH ¶10,909hb; Sec. 89(1) "general rate income pool".

[25] CCH ¶10,909hc; Sec. 89(1) "low rate income pool".

Carrying charges and other expenses of earning dividend income, such as fees paid to an investment counsel,[26] do not reduce the amount on which the dividend tax credit is calculated.

[¶6055] Dividends Deemed Received

Where a dividend has been received by a person with whom the taxpayer does not deal at arm's length, by the taxpayer's spouse or common-law partner, or by a minor to whom the taxpayer has transferred property, and the amount of the dividend is included in computing the taxpayer's income (by reason of the taxpayer having assigned to such person the right to the dividend or by reason of the attribution rules), for all purposes of the Act, the dividend is deemed to have been received by the taxpayer.[27] Thus, if the taxpayer is an individual, he or she will obtain the dividend tax credit, and if the taxpayer is a corporation resident in Canada, it will obtain a deduction in respect of intercorporate dividends.

[¶6060] Dividends Received by Spouse or Common-Law Partner

A notch provision is provided which permits a taxpayer to elect to have a taxable dividend received by the taxpayer's spouse or common-law partner from a taxable Canadian corporation included in the taxpayer's income.[28] This election would ordinarily be made where the amount of a taxpayer's tax credit for a dependent spouse or common-law partner is reduced as a result of the taxpayer's spouse's or common-law partner's receipt of dividends, and where no tax is payable by the spouse or common-law partner. Where such an election is made, the grossed-up amount of the dividend received by the spouse/common-law partner is included in the taxpayer's income.

[¶6070] Corporate Distributions out of Surplus

[¶6075] Distributions out of Surplus

Dividends include any distribution out of corporate surplus. A "dividend" includes a stock dividend, other than a stock dividend that is paid to a corporation or to a mutual fund trust by a non-resident corporation. Certain amounts received by a shareholder on the winding-up of a corporation, on a redemption of shares, on a reduction of capital, or on an increase in the paid-up capital are deemed to be received as dividends (see ¶6145).

Distributions made by a private corporation may result in refunds of tax previously paid by the corporation.[29] A corporation is entitled to a dividend refund in respect of taxable dividends paid by it while it is private, whether or not it is private at the year end for which the dividend refund is claimed. A corporation may also incur special taxes arising from distributions of surplus in such a way that

See page ii for explanation of footnotes.

[26] CCH ¶5125; Sec. 20(1)(*bb*).

[27] CCH ¶10,040; Sec. 82(2).

[28] CCH ¶10,060; Sec. 82(3); Interp. Bul. IT-295R4.

[29] CCH ¶20,039; Sec. 129.

http://www.ppbookshop.com

- a prescribed property, which includes shares of a qualified small business corporation; shares that are lending assets of the taxpayer (i.e., a preferred share issued in substitution for a loan to the issuer); certain collateralized bonds; certain distress preferred shares; and certain shares held by a credit union.[208]

[¶9279] Communal Organizations

[¶9282] Taxation of Communal Organizations

A congregation (commonly known as a "communal organization") is treated as a trust and all the income and property of the corporation, and such corporations or trusts as it effectively manages or controls, are treated as being the income and property of the trust. The congregation may either pay tax on the income itself or allocate the income among the families which make up the congregation so that the adult members of the congregation pay tax on their allocated shares.[209]

"Congregation" is defined as a community, society, or body of individuals, whether or not incorporated, that adheres to and operates according to the practices and beliefs of a religious organization of which it is a constituent part. A religious organization is defined to mean an organization other than a registered charity that adheres to beliefs, evidenced by the religious and philosophical tenets of the organization, and these must include a belief in the existence of a supreme being. The effect of the definition of a religious organization is that a group of people living and working together on a communal basis for personal or ideological reasons would not be covered, unless they are a constituent part of a religious organization with the above-mentioned religious beliefs. The congregation must carry on a business or have the effective management or control of one or more corporations, trusts, or other persons, collectively referred to as "business agencies". One of the purposes of the business agencies must be the support of the congregation's members or the members of any other congregation. All the members of the congregation, none of whom are permitted by the congregation to own property personally, must live and work together and devote their working lives to the activities of the congregation.

The Federal Court of Appeal recently reviewed the definition of "congregation" in light of the income election available to qualifying congregations (discussed below at ¶9283). It found the definition to be very restrictive, thereby narrowing the scope of eligibility to very few communal organizations that would meet the definition and avail themselves of the tax treatment.[210]

See page ii for explanation of footnotes.

[208] CCH ¶20,860ff, ¶20,860fh; Reg. 9001, 9002.

[209] CCH ¶20,920–¶20,931; Sec. 143(1)–143(5); Inf. Cir. 78-5R3.

[210] *Blackmore v. Her Majesty the Queen*, 2014 DTC 5123 (FCA).

Where a communal organization qualifies as a "congregation", the following rules apply:

(a) The property of the congregation and the property of its "business agencies" are deemed to be the property of a trust as at December 31, 1976.

(b) If the congregation is incorporated, the trustee is the corporation; if unincorporated, the trustee is the group charged with management of the congregation.

(c) The congregation and its business agencies are deemed to act as the agents of the trust and the beneficiaries of the trust are the members of the congregation.

(d) Tax is to be paid by the trust deemed to exist with respect to the communal organization on its taxable income for each taxation year.

(e) No deduction is permitted for salaries or other benefits paid to members.

(f) If the congregation is incorporated, the rules in (a) and (c) do not preclude the corporation from issuing "small business development bonds". However, if the corporation is not an "eligible small business corporation" or fails to use proceeds from the issue of a bond in the financing of an active business, a trust deemed to exist will be required to report additional amounts of income.

Returns are to be filed within 90 days from the year end. The taxation year for a trust is the calendar year. It should be noted that the 21-year deemed disposition rules discussed in ¶7309 do not apply, nor do the provisions applicable to preferred beneficiary election apply to a trust.

[¶9283] Election in Respect of Taxable Income

A congregation may elect that its taxable income be allocated among the adult members of the congregation.[211] Amounts so allocated are deemed to have been paid to the beneficiaries of the trust and are deductible by the trust. In making the election, one adult member of each family is "specified". All other members of that family are deemed to be dependants of the specified person and the specified person is deemed to have supported each of the other family members. The specified person can then take the personal tax credits as a supporting person.

In a communal organization, 80% of the community's income is allocated to the members as follows: one designated spouse/common-law partner in each family is allocated one full share of income; each non-designated spouse/common-law partner is allocated half a share; and each single member is allocated one full share of income. The remaining 20% of the organi-

See page ii for explanation of footnotes.

[211] CCH ¶20,922; Sec. 143(2).

Bill C-13, An Act respecting certain measures in response to COVID-19 (received Royal Assent on March 25, 2020)

For 2020, the minimum amount that must be withdrawn from an RRIF is reduced to 75% of the minimum that would otherwise apply to the year. See ¶10,414.

Legislative Proposal Relating to the Income Tax Act (Amateur Athlete Trust) (proposed on December 20, 2019)

For 2019, the length of time that amounts can be held by an amateur athlete trust is proposed to be extended to nine years. See ¶10,015.

Notice of Ways and Means Motion to amend the Income Tax Act and related Regulations (proposed on December 9, 2019)

Effective 2021, the calculation of the basic personal amount has changed, which affects the income required for a child or grandchild to be considered financially dependent. See ¶10,366.

[¶10,000] Amateur Athletes' Reserve Funds

[¶10,005] Amateur Athlete Trust

Where an individual who is an amateur athlete enters into an arrangement to deposit specified types of income into a qualifying account administered by an eligible national sports organization or other third party issuer, an *inter vivos* trust, termed an "amateur athlete trust", is deemed to be created for the benefit of that individual. Amounts deposited into or earned in the trust account are deemed to be income of the trust and not of the individual, and no tax is payable by the trust on its taxable income. A contribution to the trust is allowed for "qualifying performance income" which the athlete earns — generally, prize and endorsement income. The individual athlete is taxed only on amounts distributed from the trust during the taxation year.[1]

Qualifying performance income that is contributed to an amateur athlete trust qualifies as earned income for the purpose of determining the RRSP contribution limit of the trust's beneficiary.[2]

This tax deferral applies where a national sport organization that is a registered Canadian amateur athletic association receives eligible income amounts for the benefit of an individual under an arrangement made according to the rules of an international sport federation which require such amounts to be held, controlled, and administered by the organization in order to preserve the individual's status as an amateur athlete to compete in sanctioned sporting events. However, an individual athlete may also enter into a "qualifying arrangement" with a third-party issuer (financial institution, credit union, or insurance company) for specified types of income to be deposited into an eligible account controlled and administered by the issuer for the exclusive benefit of the individual. To qualify as an amateur athlete trust, no amount other than qualifying performance income or interest or other income attributable to property of the trust account may be deposited into the account.

See page ii for explanation of footnotes.

[1] CCH ¶20,951; Sec. 143.1(1).

[2] CCH ¶21,203; Sec. 146(1) "earned income" (b2).

[¶10,010] Amounts Distributed Taxable

Any amounts distributed to the beneficiary under an amateur athlete trust are to be included in computing the beneficiary's income. Amounts distributed by the trust include all payments by the national sport organization under the arrangement to or for the benefit of the athlete.[3] Such amounts will be included in the individual's income.[4]

The trust becomes subject to Part XII.2 tax when it distributes an amount to a non-resident beneficiary. The tax is 40% of 100/60 of that amount.[5]

[¶10,015] Termination of Trust

Where an individual has not competed in an international sporting event as a Canadian national team member for eight years, the amounts held by the amateur athlete trust at the end of the year are deemed to be distributed to the individual athlete at that time.[6] Where the athlete is a non-resident at the time, the amount of such deemed distribution is reduced to 60% of the fair market value at that time of the property of the trust. The eight-year period commences with the later of the last year in which the athlete so competed and the year in which the trust was created. A trust will cease to exist at the time the deemed distribution applies.

Commentary on Legislative Proposal Relating to the Income Tax Act (Amateur Athlete Trust) (December 20, 2019)

Note: When Legislative Proposals Relating to the Income Tax Act (Amateur Athlete Trust), December 2019, achieves Royal Assent, the commentary will be modified to read:

Where an individual has not competed in an international sporting event as a Canadian national team member for eight years (or, if the taxation year in question is 2019, for nine years),[7] the amounts held by the amateur athlete trust at the end of the year are deemed to be distributed to the individual athlete at that time.[6] Where the athlete is a non-resident at the time, the amount of such deemed distribution is reduced to 60% of the fair market value at that time of the property of the trust. The eight-year period (or nine-year period, if the taxation year is 2019) commences with

See page ii for explanation of footnotes.

[3] CCH ¶20,951, ¶20,952; Sec. 143.1(1), 143.1(2).

[4] CCH ¶4377ac; Sec. 12(1)(z).

[5] CCH ¶25,883a; Sec. 210.2(1.1).

[6] CCH ¶20,953; Sec. 143.1(3).

[7] CCH ¶20,957; Sec. 143.1(3.1).

http://www.pbookshop.com

resident; and (3) 14% for a non-resident. A deduction ensures that an excess EPSP amount is not subject to regular income tax in addition to the special tax. A specified employee is not able to claim any other deductions in respect of an excess EPSP amount.

The Minister of National Revenue may waive or cancel the application of these new rules where the Minister considers it just and equitable to do so. In these circumstances, the regular rules regarding EPSPs will apply.

[¶10,306] Dividends — Allocation of Credit

If the income of a trust includes taxable dividends from a taxable Canadian corporation, employees are entitled to a dividend tax credit in respect of the portion of the dividends allocated to them by the trustee. However, the amount of the taxable dividends allocated to the employees is included in the employees' incomes as though they had received it directly from the corporation.

[¶10,309] Foreign Tax Deduction

The law provides for the allocation, by a trustee, of non-business income received from sources in a foreign country to beneficiaries of an EPSP. The beneficiary is entitled to a foreign tax credit for amounts paid as taxes to the government of the foreign country, state, province, or other political subdivision of the country. See also ¶8550.

[¶10,312] Employees Who Leave Plan and Forfeit Amounts

An employee who leaves the EPSP and forfeits payments may deduct from *employment* income amounts forfeited in the year employment ceases that were included in income in that year or an earlier year. Very specific rules determine the amount which may be deducted.

Where an employee ceases to be an EPSP beneficiary during the year (and does not rejoin the plan during the year), he or she may deduct from employment income the total of all amounts included in computing income for the year and preceding years *except* that the following adjustments must be made to the current and prior year income inclusions:

(a) where dividends from taxable Canadian corporations have been allocated to the employee, the "gross-up" is ignored and only the actual amount of the dividend is included; in addition, 25% of such dividends is also deducted from current and prior year income allocations;

(b) capital gains or loss allocations are not included in the amount deductible; and

(c) amounts actually received or receivable (as opposed to taxable allocations) are not included in the amount deductible.

http://www.pbookshop.com

When an employee rejoins a plan in the year of forfeiture, no deduction is permitted. Where an employee rejoins a plan in a year subsequent to the year of forfeiture, any carryforward amounts on hand cease to be available for deduction.

The forfeiture deduction does not necessarily come into play when an individual dies; rather, if forfeiture occurs after death, the estate or heir would be entitled to the deduction.

[¶10,315] Payments Out of Profit

A plan may provide that the employer will pay into it either a fixed proportion of profits or a proportion which varies according to the scale of the profits. If the plan provides for payment out of profits, but the payment is not computed with reference to profits, the employer may elect that the payments be computed by reference to profits.

A scheme which was little more than a promise to establish a plan was held not to qualify, especially when it was shown that in the year in question shares in the profits were received also by persons who were not employees.

[¶10,316] Taxation Year of Trust

Where an EPSP is accepted for registration as a deferred profit sharing plan, the taxation year of the trust administering the plan is deemed to end immediately before the plan was deemed to have been registered. The trustee of the profit sharing plan is required to make an allocation to employees of amounts received for them for the current year up to the date of registration of the deferred profit sharing plan.

[¶10,317] Employee Life and Health Trust

[¶10,318] Introduction

The employee life and health trust (ELHT) is a tax vehicle that allows employers to pre-fund employee and retiree health and welfare benefits and receive a tax deduction for their contributions, if any, that relate to designated employee benefit payments in a given future taxation year. "Designated employee benefits" generally means benefits under a group sickness or accident insurance plan, a group term life insurance policy, or a private health services plan.[9]

[¶10,319] Qualification as an ELHT

In order for a trust to qualify as an ELHT for a taxation year, it must meet all the following conditions *throughout* that year:

See page ii for explanation of footnotes.

[9] CCH ¶21,080c; Sec. 144.1(1) "designated employee benefit".

Situation 1

If the spouse/common-law partner were to withdraw $2,000 from the RRSP in 2019, this amount would be included in the income of the taxpayer, notwithstanding the fact that the spouse/common-law partner could be considered to have been withdrawing his or her own contributions from the plan. If the spouse/common-law partner went on to withdraw a further $3,000 from the plan in 2020, only $2,000 would be included in the taxpayer's income.

Situation 2

If the spouse/common-law partner were to withdraw $4,000 from the RRSP in 2021, only $3,000 would be included in the taxpayer's income since this is the total of deductible contributions made by the taxpayer in the year or either of the two preceding taxation years.

Situation 3

Assuming that no further deductible contributions are made by the taxpayer, the spouse/common-law partner may withdraw any amount from the RRSP in the 2022 and subsequent taxation years without any income inclusion in the taxpayer's income.

[¶10,366] Refund of Premiums on Death of Annuitant

When an annuitant dies, the income tax consequences will depend upon whether the amounts payable out of or under the deceased's RRSP pass to the deceased's heirs under the terms of the plan itself or whether the amounts are payable to the deceased's legal representative. Also the identity of the beneficiary will be important. Generally, the full value of property held under an RRSP will be included in the income of the deceased for the year of death even if the amounts are paid out of the plan to another person, unless the recipient is the spouse/common-law partner of the deceased or, subject to certain conditions, a dependent child or grandchild of the deceased.[91]

If the plan had matured prior to the annuitant's death and the remaining annuity payments under the plan are payable directly to the spouse/common-law partner, these payments will be included in the income of the spouse/common-law partner, who becomes the annuitant, or who can elect with the estate to become the annuitant (see below).

If the spouse/common-law partner is not the beneficiary under the plan, the annuity payments which pass at the death of the annuitant to a beneficiary other than the spouse/common-law partner must be commuted.[92] The value of these payments will be included in the income of the deceased for the year of death (but not included in the income of the beneficiary)[93] unless the amounts are paid to dependent children or 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

See page ii for explanation of footnotes.

[91] Interp. Bul. IT-500R.
[92] CCH ¶21,229; Sec. 146(2)(c.2).
[93] CCH ¶21,331; Sec. 146(8.8).

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.[94] 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.[95] 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.[96]

"Refund of premiums" is defined[97] 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.

[94] CCH ¶21,333f; Sec. 146(8.92).
[95] CCH ¶21,331; Sec. 146(8.8).
[96] CCH ¶8510; Sec. 60(*l*).
[97] CCH ¶21,211a; Sec. 146(1) "refund of premiums".

http://www.pbookshop.com

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.

[¶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".[103] 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.[104] 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.

See page ii for explanation of footnotes.

[103] CCH ¶21,211ea; Sec. 146(1) "tax-paid amount". [104] CCH ¶21,333f; Sec. 146(8.92).

http://www.pbookshop.com

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:

(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 or immovable 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 ¶13,515.[113]

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

Below is a list of the most common qualified investments:[114]

(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

See page ii for explanation of footnotes.

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

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

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.

(7) Debt obligations issued or guaranteed by the Government of Canada or 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

http://www.pbookshop.com

he or she will be deemed to have acquired the home before that date in two sets of circumstances:[143]

(1) First, the individual will be considered to have met the original completion date deadline if the individual:

(a) is obliged under the terms of an agreement in writing in effect on the original completion date to acquire the qualifying home or replacement property on or after that day;

(b) ultimately acquires such property by the day that is one calendar year following the original completion date; and

(c) was resident in Canada throughout the period commencing on the original completion date and ending on the day the property was acquired.

(2) Second, the individual will be considered to have met the original completion date deadline if he or she has made payments totalling all amounts withdrawn under the Home Buyers' Plan to an arm's-length person or company and the payments:

(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.[144] This return of withdrawals must be made no later than December 31 following the completion date. Thus, if funds are taken out in 2020 so that the completion date is October 1, 2021, and the individual failed to acquire a qualifying home before that date, he or she has until December 31, 2021, 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

See page ii for explanation of footnotes.

[143] CCH ¶21,372; Sec. 146.01(2)(c).

[144] CCH ¶21,374; Sec. 146.01(3).

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 2020 withdrawal, had an original completion date of October 1, 2021, and qualified for an extended completion date of October 1, 2022, but still failed to complete the transaction by that date, he or she could return the funds by December 31, 2022.

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.

http://www.pbookshop.com

[¶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 2019, the repayment schedule does not start before 2021 but the individual has until March 1, 2022, to make the first repayment.[145]

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.[146] To the extent that such an individual does not make the repayment within 60 days, the unrepaid balance will be included in the

See page ii for explanation of footnotes.

[145] CCH ¶21,375; Sec. 146.01(4).

[146] CCH ¶21,380; Sec. 146.01(5).