

**LEGISLATIVE PROPOSALS RELATING TO INCOME TAXATION OF CERTAIN TRUSTS  
AND ESTATES**

**TRUST LOSS RESTRICTION EVENTS**

**1. (1) Paragraph 94(4)(b) of the *Income Tax Act* is replaced by the following:**

(b) subsections (8.1) and (8.2), paragraph (14)(a), subsections 70(6) and 73(1), the definition “Canadian partnership” in subsection 102(1), paragraph 107.4(1)(c), the definition “qualified disability trust” in subsection 122(3), paragraph (a) of the definition “mutual fund trust” in subsection 132(6) and subparagraph (b)(ii) of the definition “investment fund” in subsection 251.2(1);

**(2) Subsection (1) is deemed to have come into force on March 21, 2013, except that for taxation years that end before 2016, paragraph 94(4)(b) of the Act, as enacted by subsection (1), is to be read without reference to “the definition “qualified disability trust” in subsection 122(3),”.**

**2. (1) Paragraph 132.11(1)(b) of the Act is replaced by the following:**

(b) if the trust’s taxation year ends on December 15 because of paragraph (a), subject to subsection (1.1), each subsequent taxation year of the trust is deemed to be the period that begins at the beginning of December 16 of a calendar year and that ends at the end of December 15 of the following calendar year or at any earlier time that is determined under paragraph 128.1(4)(a), 132.2(3)(b), 142.6(1)(a) or 249(4)(a); and

**(2) Subsection (1) is deemed to have come into force on March 21, 2013.**

**3. (1) Paragraph (a) of the definition “balance-due day” in subsection 248(1) of the Act is replaced by the following:**

(a) where the taxpayer is a trust,

(i) in the case where the trust is subject to a loss restriction event immediately after the end of the taxation year and the trust’s following taxation year ends in the calendar year in which the taxation year ends, the day that is the balance-due day of the trust for that following taxation year,

(ii) in the case where the trust is subject to a loss restriction event immediately after the end of the taxation year and the trust’s following taxation year does not end in the calendar year in which the taxation year ends, the day that is

(A) in the case where the trust’s preceding taxation year ended on December 15 of that calendar year because of an election made under paragraph 132.11(1)(a), the balance-due day of the trust for that preceding taxation year, and

(B) in any other case, 90 days after the end of that calendar year, and

(iii) in any other case, the day that is 90 days after the end of the taxation year,

**(2) Subsection (1) is deemed to have come into force on March 21, 2013.**

**4. (1) Paragraph 249(4)(b) of the Act is replaced by the following:**

(b) subject to paragraph 128(1)(d), section 128.1 and paragraphs 142.6(1)(a) and 149(10)(a), and notwithstanding subsections (1) and (3), if the taxpayer is a corporation and the taxpayer’s taxation year that would, but for this subsection, have been its last taxation year that ended before that time, would, but for this paragraph, have ended within the seven-day period that ended immediately before that time, that taxation year is, except if the taxpayer is subject to a loss restriction event with-

in that period, deemed to end immediately before that time, provided that the taxpayer so elects in its return of income under Part I for that taxation year.

**(2) Subsection (1) is deemed to have come into force on March 21, 2013.**

**5. (1) The definition “portfolio investment fund” in subsection 251.2(1) of the Act is repealed.**

**(2) The definitions “investment fund” and “majority-interest beneficiary” in subsection 251.2(1) of the Act are replaced by the following:**

“investment  
fund”  
« fiducie de  
placement  
déterminée »

“investment fund”, at any time, means a trust, if

(a) at all times throughout the period that begins at the later of March 21, 2013 and the end of the calendar year in which it is created and that ends at that time, the trust has a class of units outstanding that complies with the conditions prescribed for the purposes of paragraph 132(6)(c) determined without reference to paragraph 4801(b) of the *Income Tax Regulations*; and

(b) at all times throughout the period that begins at the later of March 21, 2013 and the time of its creation and that ends at that time, the trust

(i) derives all or substantially all its value, directly or indirectly, from one or any combination of

(A) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value),

(B) deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank or a credit union) of money described by clause (A) standing to the credit of the trust,

(C) commodities, and

(D) a diversified portfolio of securities (in this definition as defined in subsection 122.1(1)),

(ii) is resident in Canada,

(iii) has no beneficiaries who may for any reason receive directly from the trust any of the income or capital of the trust, other than beneficiaries whose interests as beneficiaries under the trust are fixed interests described by reference to units of the trust,

(iv) limits its undertaking to the investing of its funds in property,

(v) does not alone, or as a member of a group of persons, control a corporation, and

(vi) does not hold

(A) property that the trust, or a person with which the trust does not deal at arm’s length, uses in carrying on a business,

(B) real or immovable property, an interest in real property or an immovable, or a real right in an immovable,

(C) resource property, or an interest or right in resource property, or

(D) more than 20% of the securities of any class of securities of a person (other than an investment fund), unless at that time

(I) the securities (other than liabilities) of the person held by the trust have a total fair market value that is no more than 10% of the equity value of the person, and

(II) the liabilities of the person held by the trust have a total fair market value that is no more than 10% of the fair market value of all of the liabilities of the person.

“majority-interest beneficiary”  
« bénéficiaires détenant une participation majoritaire »

“majority-interest beneficiary” has the same meaning as in subsection 251.1(3) read without reference to the expression “, if any,” in the definition “majority-interest beneficiary” in that subsection.

**(3) Paragraph 251.2(3)(f) of the Act is replaced by the following:**

(f) the acquisition or disposition of equity of the particular trust at any time if

(i) the particular trust is an investment fund immediately before that time, and

(ii) the acquisition or disposition, as the case may be, is not part of a series of transactions or events that includes the particular trust ceasing to be an investment fund.

**(4) Subsection 251.2(5) of the Act is amended by striking out “and” at the end of paragraph (a), by adding “and” at the end of paragraph (b) and by adding the following after that paragraph:**

(c) if, at any time as part of a series of transactions or events a person acquires a security (as defined in subsection 122.1(1)) and it can reasonably be concluded that one of the reasons for the acquisition, or for making any agreement or undertaking in respect of the acquisition, is to cause a condition in subparagraph (b)(v) or clause (b)(vi)(D) of the definition “investment fund” in subsection (1) to be satisfied at a particular time in respect of a trust, the condition is deemed not to be satisfied at the particular time in respect of the trust.

**(5) Subsection 251.2(7) of the Act is replaced by the following:**

(7) If at any time a trust is subject to a loss restriction event, in respect of the trust for its taxation year that ends immediately before that time

(a) the reference in paragraph 132(2.1)(a) to “the day that is 90 days after the end of the year” is to be read as “the balance-due day of the trust for the year”;

(b) the reference in subsection 132(6.1) to “before the 91st day after the end of” is to be read as “on or before the balance-due day of the trust for”;

(c) the reference in paragraphs 150(1)(c) to “within 90 days from the end of” is to be read as “on or before the balance-due day of the trust for”;

(d) the reference in subsection 204.7(1) to “Within 90 days from the end of each taxation year commencing after 1980” is to be read as “On or before the balance-due day of the trust for each taxation year”;

(e) the reference in subsection 210.2(5) to “within 90 days after the end of” is to be read as “on or before the balance-due day of the trust for”; and

(f) the references in subsections 202(8) and 204(2) of the *Income Tax Regulations* to “within 90 days from the end of” are to be read as “on or before the balance-due day of the trust for”.

**(6) Subsections (1) to (5) are deemed to have come into force on March 21, 2013, except that**

**(a) if a trust elects in writing to have paragraph 251.2(3)(f) of the Act, as enacted by subsection (3), apply as of the first day of the trust’s 2014 taxation year and files the election with the Minister of National Revenue on or before the trust’s filing-due date for its last 2014 tax-**

Filing and other deadlines

tion year, then subsections (1) to (4) are deemed to have come into force in respect of that trust on the first day of the trust's first 2014 taxation year; and

(b) if a trust elects in writing to have paragraph 251.2(3)(f) of the Act, as enacted by subsection (3), apply as of the first day of the trust's 2015 taxation year and files the election with the Minister of National Revenue on or before the trust's filing-due date for its last 2014 taxation year, then subsections (1) to (4) are deemed to have come into force in respect of that trust on the first day of the trust's first 2015 taxation year.

**6. (1) Section 253.1 of the Act is replaced by the following:**

**253.1** For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b) and 146.1(2.1)(c), subsection 146.2(6), paragraph 146.4(5)(b), subsection 147.5(8), paragraph 149(1)(o.2), the definition "private holding corporation" in subsection 191(1), the definition "investment fund" in subsection 251.2(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), if a trust or corporation holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

**(2) Subsection (1) is deemed to have come into force on March 21, 2013.**

**7. (1) The portion of subsection 256(8) of the Act after paragraph (e) is replaced by the following:**

the taxpayer is deemed to be in the same position in relation to the control of the corporation as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time for the purpose of determining whether control of a corporation has been acquired for the purposes of subsections 10(10) and 13(24), section 37, subsections 55(2), 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subparagraph 88(1)(c)(vi), paragraph 88(1)(c.3), subsections 88(1.1) and (1.2), sections 111 and 127, subsections 181.1(7), 190.1(6) and 249(4) and paragraph 251.2(2)(a) and in determining for the purposes of section 251.1, paragraph (b) of the definition "investment fund" in subsection 251.2(1) and paragraphs 251.2(3)(c) and (d) and 256(7)(i) whether a corporation is controlled by any other person or group of persons.

**(2) Subsection (1) is deemed to have come into force on March 21, 2013.**

#### ESTATE DONATIONS AND SPOUSAL AND COMMON-LAW (AND SIMILAR) TRUSTS

**8. (1) Clause 38(a.1)(ii)(B) of the Act is replaced by the following:**

(B) the subject of a gift to which subsection 118.1(5.1) applies and that is made by the taxpayer's estate to a qualified donee, or

**(2) Clause 38(a.2)(ii)(B) of the Act is replaced by the following:**

(B) the subject of a gift to which subsection 118.1(5.1) applies and that is made by the taxpayer's estate to a qualified donee (other than a private foundation);

**(3) Subsections (1) and (2) apply to the 2016 and subsequent taxation years.**

**9. (1) Clause 39(1)(a)(i.1)(B) of the Act is replaced by the following:**

(B) the disposition is deemed by section 70 to have occurred and the object is the subject of a gift to which subsection 118.1(5.1) applies and that is made by the taxpayer's estate to an in-

stitution that would be described in clause (A) if the disposition were made at the time the estate makes the gift,

**(2) Subsection (1) applies to the 2016 and subsequent taxation years.**

**10. (1) Subparagraph (i) of the description of B of the formula in paragraph 104(6)(b) of the Act is replaced by the following:**

(i) if the trust is a trust for which a day is to be determined under paragraph (4)(a) or (a.4) by reference to a death or later death, as the case may be, that has not occurred before the beginning of the year, the part of its income (determined without reference to this subsection and subsection (12)) for the year that became payable in the year to, or that was included under subsection 105(2) in computing the income of, a beneficiary (other than an individual whose death is that death or later death, as the case may be), and

**(2) The portion of paragraph 104(13.4)(b) of the Act before subparagraph (i) is replaced by the following:**

(b) subject to paragraph (b.1), the trust's income (determined without reference to subsections (6) and (12)) for the particular year is, notwithstanding subsection (24), deemed

**(3) Subsection 104(13.4) of the Act is amended by striking out “and” at the end of paragraph (b) and by adding the following after that paragraph:**

(b.1) paragraph (b) does not apply in respect of the trust for the particular year, unless

(i) the individual is resident in Canada immediately before the death,

(ii) the trust is, immediately before the death, a testamentary trust that

(A) is a post-1971 spousal or common-law partner trust, and

(B) was created by the will of a taxpayer who died before 2017, and

(iii) an election — made jointly between the trust and the legal representative administering the individual's graduated rate estate in prescribed form — that paragraph (b) applies is filed with

(A) the individual's return of income under this Part for the individual's year, and

(B) the trust's return of income under this Part for the particular year; and

**(4) Subparagraph 104(13.4)(c)(i) of the Act is replaced by the following:**

(i) the references in paragraph 150(1)(c) to “year” and in subparagraph (a)(iii) of the definition “balance-due day” in subsection 248(1) to “taxation year” are to be read as “calendar year in which the taxation year ends”, and

**(5) Subsections (1) to (4) apply to the 2016 and subsequent taxation years.**

**11. (1) Clause (c)(i)(C) of the definition “total charitable gifts” in subsection 118.1(1) of the Act is replaced by the following:**

(C) by the individual's estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

**(2) Subparagraph (c)(ii) of the definition “total charitable gifts” in subsection 118.1(1) of the Act is amended by striking out “or” at the end of clause (A), by adding “or” at the end of clause (B) and by adding the following after clause (B):**

(C) by the trust if

(I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual's death,

(II) the gift is made after the particular year and on or before the trust's filing-due date for the particular year, and

(III) the subject of the gift is property that is held by the trust at the time of the individual's death or is property that was substituted for that property;

**(3) Clause (c)(i)(C) of the definition "total cultural gifts" in subsection 118.1(1) of the Act is replaced by the following:**

(C) by the individual's estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

**(4) Subparagraph (c)(ii) of the definition "total cultural gifts" in subsection 118.1(1) of the Act is amended by striking out "or" at the end of clause (A), by adding "or" at the end of clause (B) and by adding the following after clause (B):**

(C) by the trust if

(I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual's death,

(II) the gift is made after the particular year and on or before the trust's filing-due date for the particular year, and

(III) the subject of the gift is property that is held by the trust at the time of the individual's death or is property that was substituted for that property;

**(5) Clause (c)(i)(A) of the definition "total ecological gifts" in subsection 118.1(1) of the Act is replaced by the following:**

(A) by the individual, or the individual's spouse or common-law partner, in the particular year or any of the 10 preceding taxation years,

**(6) Clause (c)(i)(C) of the definition "total ecological gifts" in subsection 118.1(1) of the Act is replaced by the following:**

(C) by the individual's estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

**(7) Subparagraph (c)(ii) of the definition "total ecological gifts" in subsection 118.1(1) of the Act is amended by striking out "or" at the end of clause (A), by adding "or" at the end of clause (B) and by adding the following after clause (B):**

(C) by the trust if

(I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual's death,

(II) the gift is made after the particular year and on or before the trust's filing-due date for the particular year, and

(III) the subject of the gift is property that is held by the trust at the time of the individual's death or is property that was substituted for that property;

**(8) The portion of subsection 118.1(5.1) of the Act before paragraph (a) is replaced by the following:**

Gifts by  
graduated rate  
estate

(5.1) This subsection applies to a gift made by an individual's graduated rate estate (determined without reference to paragraph (a) of the definition "graduated rate estate" in subsection 248(1)) if the gift is made no more than 60 months after the individual's death, the death occurs after 2015 and either

**(9) Subsections (1) to (8) apply to the 2016 and subsequent taxation years.**