



Income Tax Act (R.S.C. (Revised Statutes of Canada), 1985, c. 1 (5th Supp.))

Act current to 2026-07-21 and on 2026-06-18.

Taxable capital gain and allowable capital loss

38 For the purposes of this Act,

(a) subject to paragraphs (a.1) to (a.3), a taxpayer's taxable capital gain for a taxation year from the disposition of any property is $\frac{1}{2}$ of the taxpayer's capital gain for the year from the disposition of the property;

(a.1) a taxpayer's taxable capital gain for a taxation year from the disposition of a property is equal to zero if

(i) the disposition is the making of a gift to a qualified donee of a share, debt obligation or right listed on a designated stock exchange, a share of the capital stock of a mutual fund corporation, a unit of a mutual fund trust, an interest in a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)) or a prescribed debt obligation,

(ii) the disposition is deemed by section 70 to have occurred and the property is

(A) a security described in subparagraph (i), and

(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

(iii) the disposition is the exchange, for a security described in subparagraph (i), of a share of the capital stock of a corporation, which share included, at the time it was issued and

at the time of the disposition, a condition allowing the holder to exchange it for the security, and the taxpayer

(A) receives no consideration on the exchange other than the security, and

(B) makes a gift of the security to a qualified donee not more than 30 days after the exchange;

(a.2) a taxpayer's taxable capital gain for a taxation year from the disposition of a property is equal to zero if

(i) the disposition is the making of a gift to a qualified donee (other than a private foundation) of a property described, in respect of the taxpayer, in paragraph 110.1(1)(d) or in the definition ***total ecological gifts*** in subsection 118.1(1), or

(ii) the disposition is deemed by section 70 to have occurred and the property is

(A) described in subparagraph (i), and

(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);

(a.3) a taxpayer's taxable capital gain for a taxation year, from the disposition of an interest in a partnership (other than a prescribed interest in a partnership) that would be an exchange described in subparagraph (a.1)(iii) if the interest were a share in the capital stock of a corporation, is equal to the lesser of

(i) that taxable capital gain determined without reference to this paragraph, and

(ii) $\frac{1}{2}$ of the amount, if any, by which

(A) the total of

(I) the cost to the taxpayer of the partnership interest,
and

(II) each amount required by subparagraph 53(1)(e)(iv)
or (x) to be added in determining the taxpayer's adjusted
cost base of the partnership interest,

exceeds

(B) the adjusted cost base to the taxpayer of the partnership
interest (determined without reference to subparagraphs
53(2)(c)(iv) and (v));

(b) a taxpayer's allowable capital loss for a taxation year from the
disposition of any property is $\frac{1}{2}$ of the taxpayer's capital loss for
the year from the disposition of that property; and

(c) a taxpayer's allowable business investment loss for a taxation
year from the disposition of any property is $\frac{1}{2}$ of the taxpayer's
business investment loss for the year from the disposition of that
property.

[NOTE: Application provisions are not included in the consolidated text; see relevant
amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 38; 1998, c. 19, s. 6;
2001, c. 17, s. 22; 2002, c. 9, s. 22; 2006, c. 4, s. 51; 2007, c. 35, s. 15; 2008, c. 28, s. 4;
2014, c. 39, s. 9; 2016, c. 12, s. 12.

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