



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.

Meaning of capital gain and capital loss

39 (1) For the purposes of this Act,

(a) a taxpayer's capital gain for a taxation year from the disposition of any property is the taxpayer's gain for the year determined under this Subdivision (to the extent of the amount thereof that would not, if section 3 were read without reference to the expression "other than a taxable capital gain from the disposition of a property" in paragraph 3(a) and without reference to paragraph 3(b), be included in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

(i) [Repealed, 2016, c. 12, s. 13]

(i.1) an object that the Canadian Cultural Property Export Review Board has determined meets the criterion set out in paragraph 29(3)(b) of the *Cultural Property Export and Import Act* if

(A) the disposition is to an institution or a public authority in Canada that was, at the time of the disposition, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object, or

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

(ii) a Canadian resource property,

(ii.1) a foreign resource property,

(ii.2) a property if the disposition is a disposition to which subsection 142.4(4) or (5) or 142.5(1) applies,

(iii) an insurance policy, including a life insurance policy, except for that part of a life insurance policy in respect of which a policyholder is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust,

(iv) a timber resource property; or

(v) an interest of a beneficiary under a qualifying environmental trust;

(b) a taxpayer's capital loss for a taxation year from the disposition of any property is the taxpayer's loss for the year determined under this Subdivision (to the extent of the amount thereof that would not, if section 3 were read in the manner described in paragraph (a) of this subsection and without reference to the expression "or the taxpayer's allowable business investment loss for the year" in paragraph 3(d), be deductible in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

(i) depreciable property, or

(ii) property described in any of subparagraphs 39(1)(a)(ii) to (iii) and (v); and

(c) a taxpayer's business investment loss for a taxation year from the disposition of any property is the amount, if any, by which the taxpayer's capital loss for the year from a disposition after 1977

(i) to which subsection 50(1) applies, or

(ii) to a person with whom the taxpayer was dealing at arm's length

of any property that is

(iii) a share of the capital stock of a small business corporation, or

(iv) a debt owing to the taxpayer by a Canadian-controlled private corporation (other than, where the taxpayer is a corporation, a debt owing to it by a corporation with which it does not deal at arm's length) that is

(A) a small business corporation,

(B) a bankrupt that was a small business corporation at the time it last became a bankrupt, or

(C) a corporation referred to in section 6 of the *Winding-up and Restructuring Act* that was insolvent (within the meaning of that Act) and was a small business corporation at the time a winding-up order under that Act was made in respect of the corporation,

exceeds the total of

(v) in the case of a share referred to in subparagraph 39(1)(c)(iii), the amount, if any, of the increase after 1977 by virtue of the application of subsection 85(4) in the adjusted cost base to

the taxpayer of the share or of any share (in this subparagraph referred to as a “replaced share”) for which the share or a replaced share was substituted or exchanged,

(vi) in the case of a share referred to in subparagraph 39(1)(c) (iii) that was issued before 1972 or a share (in this subparagraph and subparagraph 39(1)(c)(vii) referred to as a “substituted share”) that was substituted or exchanged for such a share or for a substituted share, the total of all amounts each of which is an amount received after 1971 and before or on the disposition of the share or an amount receivable at the time of such a disposition by

(A) the taxpayer,

(B) where the taxpayer is an individual, the taxpayer’s spouse or common-law partner, or

(C) a trust of which the taxpayer or the taxpayer’s spouse or common-law partner was a beneficiary

as a taxable dividend on the share or on any other share in respect of which it is a substituted share, except that this subparagraph shall not apply in respect of a share or substituted share that was acquired after 1971 from a person with whom the taxpayer was dealing at arm’s length,

(vii) in the case of a share to which subparagraph (vi) applies and where the taxpayer is a trust for which a day is to be, or has been, determined under paragraph 104(4)(a), or (a.4) by reference to a death or later death, as the case may be, the total of all amounts each of which is an amount received after 1971 or receivable at the time of the disposition, as a taxable dividend on the share or on any other share in respect of which

it is a substituted share, by an individual whose death is that death or later death, as the case may be, or a spouse or common-law partner of the individual, and

(viii) the amount determined in respect of the taxpayer under subsection 39(9) or 39(10), as the case may be.

Foreign currency dispositions by an individual

(1.1) If, because of any fluctuation after 1971 in the value of one or more currencies other than Canadian currency relative to Canadian currency, an individual (other than a trust) has made one or more particular gains or sustained one or more particular losses in a taxation year from dispositions of currency other than Canadian currency and the particular gains or losses would, in the absence of this subsection, be capital gains or losses described under subsection (1)

(a) subsection (1) does not apply to any of the particular gains or losses;

(b) the amount determined by the following formula is deemed to be a capital gain of the individual for the year from the disposition of currency other than Canadian currency:

$$\mathbf{A - (B + C)}$$

where

A is the total of all the particular gains made by the individual in the year,

B is the total of all the particular losses sustained by the individual in the year, and

C is \$200; and

(c) the amount determined by the following formula is deemed to be a capital loss of the individual for the year from the disposition of currency other than Canadian currency:

$$D - (E + F)$$

where

D is the total of all the particular losses sustained by the individual in the year,

E is the total of all the particular gains made by the individual in the year, and

F is \$200.

Foreign exchange capital gains and losses

(2) If, because of any fluctuation after 1971 in the value of a currency other than Canadian currency relative to Canadian currency, a taxpayer has made a gain or sustained a loss in a taxation year (other than a gain or loss that would, in the absence of this subsection, be a capital gain or capital loss to which subsection (1) or (1.1) applies, or a gain or loss in respect of a transaction or event in respect of shares of the capital stock of the taxpayer)

(a) the amount of the gain (to the extent of the amount of that gain that would not, if section 3 were read in the manner described in paragraph (1)(a), be included in computing the taxpayer's income for the year or any other taxation year), if any, is deemed to be a capital gain of the taxpayer for the year from the disposition of currency other than Canadian currency; and

(b) the amount of the loss (to the extent of the amount of that loss that would not, if section 3 were read in the manner described in paragraph (1)(a), be deductible in computing the taxpayer's

income for the year or any other taxation year), if any, is deemed to be a capital loss of the taxpayer for the year from the disposition of currency other than Canadian currency.

Deemed gain — parked obligation

(2.01) For the purposes of subsection (2), if a debt obligation owing by a taxpayer (referred to in this subsection and subsections (2.02) and (2.03) as the **debtor**) is denominated in a foreign currency and the debt obligation has become a parked obligation at a particular time, the debtor is deemed at that time to have made the gain, if any, that the debtor otherwise would have made if it had paid an amount at the particular time in satisfaction of the debt obligation equal to

(a) if the debt obligation has become a parked obligation at the particular time as a result of its acquisition by the holder of the debt obligation, the amount paid by the holder to acquire the debt obligation; and

(b) in any other case, the fair market value of the debt obligation at the particular time.

Parked obligation

(2.02) For the purposes of subsection (2.01), a debt obligation owing by a debtor is a parked obligation at a particular time if

(a) both

(i) at that time, the holder of the debt obligation does not deal at arm's length with the debtor or, if the debtor is a corporation, has a significant interest in the debtor, and

(ii) at any previous time, a person who held the debt obligation dealt at arm's length with the debtor and, where the debtor is a corporation, did not have a significant interest in the debtor;

and

(b) it can reasonably be considered that one of the main purposes of the transaction or event or series of transactions or events that resulted in the debt obligation meeting the condition in subparagraph (a)(i) is to avoid the application of subsection (2).

Interpretation

(2.03) For the purposes of subsections (2.01) and (2.02),

(a) paragraph 80(2)(j) applies for the purpose of determining whether two persons are related to each other or whether any person is controlled by any other person; and

(b) paragraph 80.01(2)(b) applies for the purpose of determining whether a person has a significant interest in a corporation.

Upstream loan — transitional set-off

(2.1) If at any time a corporation resident in Canada or a partnership of which such a corporation is a member (such corporation or partnership referred to in this subsection and subsections (2.2) and (2.3) as the “borrowing party”) has received a loan from, or become indebted to, a creditor that is a foreign affiliate (referred to in this subsection and subsections (2.2) and (2.3) as a “creditor affiliate”) of a qualifying entity, or that is a partnership (referred to in this subsection and subsection (2.3) as a “creditor partnership”) of which such an affiliate is a member, and the loan or indebtedness is at a later time repaid, in whole or in part, then the amount of the borrowing party’s capital gain or capital loss determined, in the absence of this subsection, under subsection (2) in respect of the repayment, is to be reduced

(a) in the case of a capital gain

(i) if the creditor is a creditor affiliate, by an amount, not exceeding that capital gain, that is equal to twice the amount that would — in the absence of subparagraph 40(2)(g)(ii) and paragraph 95(2)(g.04) and on the assumption that the creditor affiliate's capital loss in respect of the repayment of the loan or indebtedness were a capital gain of the creditor affiliate, the creditor affiliate had no other income, loss, capital gain or capital loss for any taxation year, and no other foreign affiliate of a qualifying entity had any income, loss, capital gain or capital loss for any taxation year — be the total of all amounts each of which is an amount that would be included in computing a qualifying entity's income under subsection 91(1) for its taxation year that includes the last day of the taxation year of the creditor affiliate that includes the later time, or

(ii) if the creditor is a creditor partnership, by an amount, not exceeding that capital gain, that is equal to twice the amount that is the total of each amount, determined in respect of a particular member of the creditor partnership that is a foreign affiliate of a qualifying entity, that would — in the absence of subparagraph 40(2)(g)(ii) and paragraph 95(2)(g.04) and on the assumption that the creditor partnership's capital loss in respect of the repayment of the loan or indebtedness were a capital gain of the creditor partnership, the particular member had no other income, loss, capital gain or capital loss for any taxation year, and no other foreign affiliate of a qualifying entity had any income, loss, capital gain or capital loss for any taxation year — be the total of all amounts each of which is an amount that would be included in computing a qualifying entity's income under subsection 91(1) for its taxation year that

includes the last day of the taxation year of the particular member that includes the last day of the creditor partnership's fiscal period that includes that later time; and

(b) in the case of a capital loss

(i) if the creditor is a creditor affiliate, by an amount, not exceeding that capital loss, that is equal to twice the amount, in respect of the creditor affiliate's capital gain in respect of the repayment of the loan or indebtedness, that would — in the absence of paragraph 95(2)(g.04) and on the assumption that the creditor affiliate had no other income, loss, capital gain or capital loss for any taxation year, and no other foreign affiliate of a qualifying entity had any income, loss, capital gain or capital loss for any taxation year — be the total of all amounts each of which is an amount that would be included in computing a qualifying entity's income under subsection 91(1) for its taxation year that includes the last day of the taxation year of the creditor affiliate that includes the later time, or

(ii) if the creditor is a creditor partnership, by an amount, not exceeding that capital loss, that is equal to twice the amount, in respect of the creditor partnership's capital gain in respect of the repayment of the loan or indebtedness, that is the total of each amount, determined in respect of a particular member of the creditor partnership that is a foreign affiliate of a qualifying entity, that would — in the absence of paragraph 95(2)(g.04) and on the assumption that the particular member had no other income, loss, capital gain or capital loss for any taxation year, and no other foreign affiliate of a qualifying entity had any income, loss, capital gain or capital loss for any taxation year — be the total of all amounts each of which is an amount that

would be included in computing a qualifying entity's income under subsection 91(1) for its taxation year that includes the last day of the taxation year of the particular member that includes the last day of the creditor partnership's fiscal period that includes the later time.

Definition of *qualifying entity*

(2.2) For purposes of subsections (2.1) and (2.3), ***qualifying entity*** means

(a) in the case of a borrowing party that is a corporation,

(i) the borrowing party,

(ii) a corporation resident in Canada of which

(A) the borrowing party is a subsidiary wholly-owned corporation, or

(B) a corporation described in this paragraph is a subsidiary wholly-owned corporation,

(iii) a corporation resident in Canada

(A) each share of the capital stock of which is owned by

(I) the borrowing party, or

(II) a corporation that is described in this subparagraph or subparagraph (ii), or

(B) all or substantially all of the capital stock of which is owned by one or more corporations resident in Canada that are borrowing parties in respect of the creditor affiliate because of subsection 90(7), or

(iv) a partnership each member of which is

(A) a corporation described in any of subparagraphs (i) to (iii), or

(B) another partnership described in this subparagraph; and

(b) in the case of a borrowing party that is a partnership,

(i) the borrowing party,

(ii) if each member — determined as if each member of a partnership that is a member of another partnership is a member of that other partnership — of the borrowing party is either a particular corporation resident in Canada (in this paragraph referred to as the “parent”) or a corporation resident in Canada that is a *subsidiary wholly-owned corporation*, as defined in subsection 87(1.4), of the parent,

(A) the parent, or

(B) a corporation resident in Canada that is a *subsidiary wholly-owned corporation*, as defined in subsection 87(1.4), of the parent, or

(iii) a partnership each member of which is any of

(A) the borrowing party,

(B) a corporation described in subparagraph (ii), and

(C) another partnership described in this subparagraph.

Upstream loan — transitional set-off election

(2.3) Subsection (2.1) and paragraph 95(2)(g.04) do not apply in respect of a repayment, in whole or in part, of a loan or indebtedness if an election has been filed with the Minister before 2019 jointly by

(a) the borrowing party;

(b) if the creditor is a creditor affiliate, each qualifying entity of which the creditor affiliate is a foreign affiliate; and

(c) if the creditor is a creditor partnership, each qualifying entity of which a member of the creditor partnership is a foreign affiliate.

Gain in respect of purchase of bonds, etc., by issuer

(3) Where a taxpayer has issued any bond, debenture or similar obligation and has at any subsequent time in a taxation year and after 1971 purchased the obligation in the open market, in the manner in which any such obligation would normally be purchased in the open market by any member of the public,

(a) the amount, if any, by which the amount for which the obligation was issued by the taxpayer exceeds the purchase price paid or agreed to be paid by the taxpayer for the obligation shall be deemed to be a capital gain of the taxpayer for the taxation year from the disposition of a capital property, and

(b) the amount, if any, by which the purchase price paid or agreed to be paid by the taxpayer for the obligation exceeds the greater of the principal amount of the obligation and the amount for which it was issued by the taxpayer shall be deemed to be a capital loss of the taxpayer for the taxation year from the disposition of a capital property,

to the extent that the amount determined under paragraph 39(3)(a) or 39(3)(b) would not, if section 3 were read in the manner described in paragraph 39(1)(a) and this Act were read without reference to subsections 80(12) and 80(13), be included or be deductible, as the case may be, in computing the taxpayer's income for the year or any other taxation year.

Election concerning disposition of Canadian securities

(4) Except as provided in subsection 39(5), where a Canadian security has been disposed of by a taxpayer in a taxation year and the taxpayer so elects in prescribed form in the taxpayer's return of income under this Part for that year,

(a) every Canadian security owned by the taxpayer in that year or any subsequent taxation year shall be deemed to have been a capital property owned by the taxpayer in those years; and

(b) every disposition by the taxpayer of any such Canadian security shall be deemed to be a disposition by the taxpayer of a capital property.

Members of partnerships

(4.1) For the purpose of determining the income of a taxpayer who is a member of a partnership, subsections 39(4) and 39(5) apply as if

(a) every Canadian security owned by the partnership were owned by the taxpayer; and

(b) every Canadian security disposed of by the partnership in a fiscal period of the partnership were disposed of by the taxpayer at the end of that fiscal period.

Exception

(5) An election under subsection 39(4) does not apply to a disposition of a Canadian security by a taxpayer (other than a mutual fund corporation or a mutual fund trust) who at the time of the disposition is

(a) a trader or dealer in securities,

(b) a financial institution (as defined in subsection 142.2(1)),

(c) to (e) [Repealed, 1995, c. 21, s. 49]

(f) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof, or

(g) a non-resident,

or any combination thereof.

Definition of *Canadian security*

(6) For the purposes of this section, ***Canadian security*** means a security (other than a prescribed security) that is a share of the capital stock of a corporation resident in Canada, a unit of a mutual fund trust or a bond, debenture, bill, note, mortgage, hypothecary claim or similar obligation issued by a person resident in Canada.

Unused share-purchase tax credit

(7) The amount of any unused share-purchase tax credit of a taxpayer for a particular taxation year, to the extent that it was not deducted from the taxpayer's tax otherwise payable under this Part for the immediately preceding taxation year, shall be deemed to be a capital loss of the taxpayer from a disposition of property for the year immediately following the particular taxation year.

Unused scientific research and experimental development tax credit

(8) The amount of any unused scientific research and experimental development tax credit of a taxpayer for a particular taxation year, to the extent that it was not deducted from the taxpayer's tax otherwise payable under this Part for the immediately preceding taxation year, shall be deemed to be a capital loss of the taxpayer from a disposition of property for the year immediately following the particular taxation year, except that where the taxpayer is an individual the capital loss shall be deemed to be 147% of that amount.

Deduction from business investment loss

(9) In computing the business investment loss of a taxpayer who is an individual (other than a trust) for a taxation year from the disposition of a particular property, there shall be deducted an amount equal to the lesser of

(a) the amount that would be the taxpayer's business investment loss for the year from the disposition of that particular property if paragraph 39(1)(c) were read without reference to subparagraph 39(1)(c)(viii), and

(b) the amount, if any, by which the total of

(i) the total of all amounts each of which is twice the amount deducted by the taxpayer under section 110.6, 110.61 or 110.62 in computing the taxpayer's taxable income for a preceding taxation year that

(A) ended before 1988, or

(B) begins after October 17, 2000,

(i.1) the total of all amounts each of which is

(A) $\frac{3}{2}$ of the amount deducted under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year that

(I) ended after 1987 and before 1990, or

(II) began after February 27, 2000 and ended before October 18, 2000, or

(B) the amount determined by multiplying the reciprocal of the fraction in paragraph 38(a) that applies to the taxpayer for each of the taxpayer's taxation years that includes

February 28, 2000 or October 18, 2000 by the amount deducted under section 110.6 in computing the taxpayer's taxable income for that year, and

(i.2) the total of all amounts each of which is $\frac{4}{3}$ of the amount deducted under section 110.6 in computing the taxpayer's taxable income for a preceding taxation year that ended after 1989 and before February 28, 2000

exceeds

(ii) the total of all amounts each of which is an amount deducted by the taxpayer under paragraph 39(1)(c) by virtue of subparagraph 39(1)(c)(viii) in computing the taxpayer's business investment loss

(A) from the disposition of property in taxation years preceding the year, or

(B) from the disposition of property other than the particular property in the year,

except that, where a particular amount was included under subparagraph 14(1)(a)(v) in the taxpayer's income for a taxation year that ended after 1987 and before 1990, the reference in subparagraph 39(9)(b)(i.1) to " $\frac{3}{2}$ " shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as " $\frac{4}{3}$ ".

Idem, of a trust

(10) In computing the business investment loss of a trust for a taxation year from the disposition of a particular property, there shall be deducted an amount equal to the lesser of

(a) the amount that would be the trust's business investment loss for the year from the disposition of that particular property if paragraph 39(1)(c) were read without reference to subparagraph 39(1)(c)(viii), and

(b) the amount, if any, by which the total of

(i) the total of all amounts each of which is twice the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year that

(A) ended before 1988, or

(B) begins after October 17, 2000,

(i.1) the total of all amounts each of which is

(A) $\frac{3}{2}$ of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year that

(I) ended after 1987 and before 1990, or

(II) began after February 27, 2000 and ended before October 18, 2000, or

(B) the amount determined by multiplying the reciprocal of the fraction in paragraph 38(a) that applies to the trust for each of the trust's taxation years that includes February 28, 2000 or October 18, 2000 by the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for that year, and

(i.2) the total of all amounts each of which is $\frac{4}{3}$ of the amount designated by the trust under subsection 104(21.2) in respect of a beneficiary in its return of income for a preceding taxation year that ended after 1989 and before February 28, 2000

exceeds

(ii) the total of all amounts each of which is an amount deducted by the trust under paragraph 39(1)(c) by virtue of subparagraph 39(1)(c)(viii) in computing its business investment loss

(A) from the disposition of property in taxation years preceding the year, or

(B) from the disposition of property other than the particular property in the year,

except that, where a particular amount was included under subparagraph 14(1)(a)(v) in the trust's income for a taxation year that ended after 1987 and before 1990, the reference in subparagraph 39(10)(b)(i.1) to " $\frac{3}{2}$ " shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as " $\frac{4}{3}$ ".

Recovery of bad debt

(11) Where an amount is received in a taxation year on account of a debt (in this subsection referred to as the "recovered amount") in respect of which a deduction for bad debts had been made under subsection 20(4.2) in computing a taxpayer's income for a preceding taxation year, the amount, if any, by which $\frac{1}{2}$ of the recovered amount exceeds the amount determined under paragraph 12(1)(i.1) in respect of the recovered amount is deemed to be a taxable capital gain of the taxpayer from a disposition of capital property in the year.

Guarantees

(12) For the purpose of paragraph 39(1)(c), where

(a) an amount was paid by a taxpayer in respect of a debt of a corporation under an arrangement under which the taxpayer guaranteed the debt,

(b) the amount was paid to a person with whom the taxpayer was dealing at arm's length, and

(c) the corporation was a small business corporation

(i) at the time the debt was incurred, and

(ii) at any time in the 12 months before the time an amount first became payable by the taxpayer under the arrangement in respect of a debt of the corporation,

that part of the amount that is owing to the taxpayer by the corporation shall be deemed to be a debt owing to the taxpayer by a small business corporation.

Repayment of assistance

(13) The total of all amounts paid by a taxpayer in a taxation year each of which is

(a) such part of any assistance described in subparagraph 53(2)(k) (i) in respect of, or for the acquisition of, a capital property (other than depreciable property) by the taxpayer that was repaid by the taxpayer in the year where the repayment is made after the disposition of the property by the taxpayer and under an obligation to repay all or any part of that assistance, or

(b) an amount repaid by the taxpayer in the year in respect of a capital property (other than depreciable property) acquired by the taxpayer that is repaid after the disposition thereof by the taxpayer and that would have been an amount described in subparagraph 53(2)(s)(ii) had the repayment been made before the disposition of the property,

shall be deemed to be a capital loss of the taxpayer for the year from the disposition of property by the taxpayer in the year and, for the purpose of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 39; 1994, c. 7, Sch. II, s. 22, Sch. VIII, s. 11, c. 21, s. 14; 1995, c. 3, s. 10, c. 21, ss. 10, 49; 1998, c. 19, s. 7; 2000, c. 12, s. 142; 2001, c. 17, ss. 23, 204; 2009, c. 2, s. 9; 2013, c. 34, s. 59; 2014, c. 39, s. 10; 2016, c. 12, s. 13; 2017, c. 33, s. 9; 2019, c. 29, s. 4; 2024, c. 17, s. 7; 2026, c. 3, s. 6.

Date modified:

2026-09-11