



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.

General rules

40 (1) Except as otherwise expressly provided in this Part

(a) a taxpayer's gain for a taxation year from the disposition of any property is the amount, if any, by which

(i) if the property was disposed of in the year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, or

(ii) if the property was disposed of before the year, the amount, if any, claimed by the taxpayer under subparagraph 40(1)(a)(iii) in computing the taxpayer's gain for the immediately preceding year from the disposition of the property,

exceeds

(iii) subject to subsections (1.1) to (1.4), such amount as the taxpayer may claim

(A) in the case of an individual (other than a trust) in prescribed form filed with the taxpayer's return of income under this Part for the year, and

(B) in any other case, in the taxpayer's return of income under this Part for the year,

as a deduction, not exceeding the lesser of

(C) a reasonable amount as a reserve in respect of such of the proceeds of disposition of the property that are payable to the taxpayer after the end of the year as can reasonably be regarded as a portion of the amount determined under subparagraph 40(1)(a)(i) in respect of the property, and

(D) an amount equal to the product obtained when $\frac{1}{5}$ of the amount determined under subparagraph 40(1)(a)(i) in respect of the property is multiplied by the amount, if any, by which 4 exceeds the number of preceding taxation years of the taxpayer ending after the disposition of the property; and

(b) a taxpayer's loss for a taxation year from the disposition of any property is,

(i) if the property was disposed of in the year, the amount, if any, by which the total of the adjusted cost base to the taxpayer of the property immediately before the disposition and any outlays and expenses to the extent that they were made or incurred by the taxpayer for the purpose of making the disposition, exceeds the taxpayer's proceeds of disposition of the property, and

(ii) in any other case, nil.

Gift of non-qualifying security

(1.01) A taxpayer's gain for a particular taxation year from a disposition of a non-qualifying security of the taxpayer (as defined in subsection 118.1(18)) that is the making of a gift (other than an excepted gift, within the meaning assigned by subsection 118.1(19)) to a qualified donee (as defined in subsection 149.1(1)) is the amount, if any, by which

(a) where the disposition occurred in the particular year, the amount, if any, by which the taxpayer's proceeds of disposition exceed the total of the adjusted cost base to the taxpayer of the security immediately before the disposition and any outlays and expenses to the extent they were made or incurred by the taxpayer for the purpose of making the disposition, and

(b) where the disposition occurred in the 60-month period that ends at the beginning of the particular year, the amount, if any, deducted under paragraph 40(1.01)(c) in computing the taxpayer's gain for the preceding taxation year from the disposition of the security

exceeds

(c) the amount that the taxpayer claims in prescribed form filed with the taxpayer's return of income for the particular year, not exceeding the eligible amount of the gift, where the taxpayer is not deemed by subsection 118.1(13) to have made a gift of property before the end of the particular year as a consequence of a disposition of the security by the donee or as a consequence of the security ceasing to be a non-qualifying security of the taxpayer before the end of the particular year.

Reserve — property disposed of to a child

(1.1) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) in computing the taxpayer's gain from the disposition of a property, that subparagraph shall be read as if the references in that subparagraph to "1/5" and "4" were references to "1/10" and "9" respectively, if,

(a) the property was disposed of by the taxpayer to the taxpayer's child,

(b) that child was resident in Canada immediately before the disposition, and

(c) the property was immediately before the disposition,

(i) any land in Canada or depreciable property in Canada of a prescribed class that was used by the taxpayer, the spouse or common-law partner of the taxpayer, a child or a parent of the taxpayer in a farming or fishing business carried on in Canada,

(ii) a share of the capital stock of a family farm or fishing corporation of the taxpayer or an interest in a family farm or fishing partnership of the taxpayer (such a share or an interest having the meaning assigned by subsection 70(10)), or

(iii) a qualified small business corporation share of the taxpayer (within the meaning assigned by subsection 110.6(1)).

(iv) [Repealed, 2014, c. 39, s. 11]

Reserve — intergenerational business transfers

(1.2) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) on a disposition of shares of the capital stock of a corporation resident in Canada to another corporation, that subparagraph is to be read as if the references to “1/5” and “4” were references to “1/10” and “9” respectively, if the conditions set out in subsection 84.1(2.31) or (2.32) are satisfied in respect of the disposition.

Reserve — dispositions to employee ownership trusts

(1.3) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) in computing the taxpayer’s gain from the disposition of a share of the capital stock of a corporation, that subparagraph is to be read as if the references in that subparagraph

to “1/5” and “4” were references to “1/10” and “9” respectively, if the shares were disposed of by the taxpayer under a qualifying business transfer.

Reserve — dispositions to worker cooperatives

(1.4) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) in computing the taxpayer’s gain from the disposition of a share of the capital stock of a corporation, that subparagraph is to be read as if the references in that subparagraph to “1/5” and “4” were references to “1/10” and “9” respectively, if the shares were disposed of by the taxpayer under a qualifying cooperative conversion.

Limitations

(2) Notwithstanding subsection 40(1),

(a) subparagraph 40(1)(a)(iii) does not apply to permit a taxpayer to claim any amount under that subparagraph in computing a gain for a taxation year if

(i) the taxpayer, at the end of the year or at any time in the immediately following year, was not resident in Canada or was exempt from tax under any provision of this Part,

(ii) the purchaser of the property sold is a corporation that, immediately after the sale,

(A) was controlled, directly or indirectly, in any manner whatever, by the taxpayer,

(B) was controlled, directly or indirectly, in any manner whatever, by a person or group of persons by whom the taxpayer was controlled, directly or indirectly, in any manner whatever, or

(C) controlled the taxpayer, directly or indirectly, in any manner whatever, where the taxpayer is a corporation, or

(iii) the purchaser of the property sold is a partnership in which the taxpayer was, immediately after the sale, a majority-interest partner;

(b) where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of a property that was the taxpayer's principal residence at any time after the date (in this section referred to as the "acquisition date") that is the later of December 31, 1971 and the day on which the taxpayer last acquired or reacquired it, as the case may be, is the amount determined by the formula

$$A - (A \times B/C) - D$$

where

A is the amount that would, if this Act were read without reference to this paragraph and subsections 110.6(19) and 110.6(21), be the taxpayer's gain therefrom for the year,

B is

(i) if the taxpayer was resident in Canada during the year that includes the acquisition date, one plus the number of taxation years that end after the acquisition date for which the property is the taxpayer's principal residence and during which the taxpayer was resident in Canada, or

(ii) if it is not the case that the taxpayer was resident in Canada during the year that includes the acquisition date, the number of taxation years that end after the acquisition

date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada,

C is the number of taxation years that end after the acquisition date during which the taxpayer owned the property whether jointly with another person or otherwise, and

D is

(i) if the acquisition date is before February 23, 1994 and the taxpayer or the taxpayer's spouse or common-law partner elected under subsection 110.6(19) in respect of the property or an interest, or for civil law a right, therein that was owned, immediately before the disposition, by the taxpayer, $\frac{4}{3}$ of the lesser of

(A) the total of all amounts each of which is the taxable capital gain of the taxpayer or of their spouse or common-law partner that would have resulted from an election by the taxpayer or spouse or common-law partner under subsection 110.6(19) in respect of the property or the interest or right if

(I) this Act were read without reference to subsection 110.6(20), and

(II) the amount designated in the election were equal to the amount, if any, by which the fair market value of the property or the interest or right at the end of February 22, 1994 exceeds the amount determined by the formula

E – 1.1F

where

E is the amount designated in the election that was made in respect of the property or the interest or

right, and

F is the fair market value of the property or the interest or right at the end of February 22, 1994, and

(B) the total of all amounts each of which is the taxable capital gain of the taxpayer or of their spouse or common-law partner that would have resulted from an election that was made under subsection 110.6(19) in respect of the property or the interest or right if the property were the principal residence of neither the taxpayer nor the spouse or common-law partner for each particular taxation year unless the property was designated, in a return of income for the taxation year that includes February 22, 1994 or for a preceding taxation year, to be the principal residence of either of them for the particular taxation year, and

(ii) in any other case, zero;

(c) where the taxpayer is an individual, the taxpayer's gain for a taxation year from the disposition of land used in a farming business carried on by the taxpayer that includes property that was at any time the taxpayer's principal residence is

(i) the taxpayer's gain for the year, otherwise determined, from the disposition of the portion of the land that does not include the property that was the taxpayer's principal residence, plus the taxpayer's gain for the year, if any, determined under paragraph 40(2)(b) from the disposition of the property that was the taxpayer's principal residence, or

(ii) if the taxpayer so elects in prescribed manner in respect of the land, the taxpayer's gain for the year from the disposition of the land including the property that was the taxpayer's principal residence, determined without regard to paragraph 40(2)(b) or subparagraph (i) of this paragraph, less the total of

(A) \$1,000, and

(B) \$1,000 for each taxation year ending after the acquisition date for which the property was the taxpayer's principal residence and during which the taxpayer was resident in Canada;

(d) where the taxpayer is a corporation, its loss for a taxation year from the disposition of a bond or debenture is its loss therefrom for the year otherwise determined, less the total of such amounts received by it as, on account or in lieu of payment of, or in satisfaction of interest thereon as were, by virtue of paragraph 81(1)(m), not included in computing its income;

(e) [Repealed, 1998, c. 19, s. 89]

(e.1) a particular taxpayer's loss, if any, from the disposition at any time to a particular person or partnership of an obligation — other than, for the purposes of computing the exempt surplus or exempt deficit and taxable surplus or taxable deficit of the particular taxpayer in respect of another taxpayer, where the particular taxpayer or, if the particular taxpayer is a partnership, a member of the particular taxpayer is a foreign affiliate of the other taxpayer, an obligation that is, or would be, if the particular taxpayer were a foreign affiliate of the other taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the particular taxpayer — that was, immediately after that time,

payable by another person or partnership to the particular person or partnership is nil if the particular taxpayer, the particular person or partnership and the other person or partnership are related to each other at that time or would be related to each other at that time if paragraph 80(2)(j) applied for the purpose of this paragraph;

(e.2) subject to paragraph (e.3), a taxpayer's loss on the settlement or extinguishment of a particular commercial obligation (in this paragraph having the meaning assigned by subsection 80(1)) issued by a person or partnership and payable to the taxpayer is deemed to be the amount determined by the following formula if any part of the consideration given by the person or partnership for the settlement or extinguishment of the particular obligation consists of one or more other commercial obligations issued by the person or partnership to the taxpayer:

$$A \times (B - C)/B$$

where

A is the amount, if any, that would be the taxpayer's loss from the disposition of the particular obligation if this Act were read without reference to this paragraph,

B is the total fair market value of all the consideration given by the person or partnership for the settlement or extinguishment of the particular obligation, and

C is the total fair market value of the other obligations;

(e.3) paragraph (e.2) does not apply, for the purposes of computing the exempt surplus or exempt deficit and taxable surplus or taxable deficit of the taxpayer in respect of another taxpayer, where the taxpayer or, if the taxpayer is a partnership, a

member of the taxpayer is a foreign affiliate of the other taxpayer, to the particular commercial obligation if the particular commercial obligation is, or would be, if the taxpayer were a foreign affiliate of the other taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the taxpayer;

(f) a taxpayer's gain or loss from the disposition of

(i) a chance to win a prize or bet, or

(ii) a right to receive an amount as a prize or as winnings on a bet,

in connection with a lottery scheme or a pool system of betting referred to in section 205 of the *Criminal Code* is nil;

(g) a taxpayer's loss, if any, from the disposition of a property (other than, for the purposes of computing the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, and taxable surplus or taxable deficit of the taxpayer in respect of another taxpayer, where the taxpayer or, if the taxpayer is a partnership, a member of the taxpayer is a foreign affiliate of the other taxpayer, a property that is, or would be, if the taxpayer were a foreign affiliate of the other taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the taxpayer), to the extent that it is

(i) a superficial loss,

(ii) a loss from the disposition of a debt or other right to receive an amount, unless the debt or right, as the case may be, was acquired by the taxpayer for the purpose of gaining or producing income from a business or property (other than

exempt income) or as consideration for the disposition of capital property to a person with whom the taxpayer was dealing at arm's length,

(iii) a loss from the disposition of any personal-use property of the taxpayer (other than listed personal property or a debt referred to in subsection 50(2)), or

(iv) a loss from the disposition of property to

(A) a trust governed by a deferred profit sharing plan, an employees profit sharing plan, a FHSA, a registered disability savings plan, a registered retirement income fund or a TFSA, under which the taxpayer is a beneficiary or immediately after the disposition becomes a beneficiary, or

(B) a trust governed by a registered retirement savings plan under which the taxpayer or the taxpayer's spouse or common-law partner is an annuitant or becomes, within 60 days after the end of the taxation year, an annuitant,

is nil;

(h) where the taxpayer is a corporation, its loss otherwise determined from the disposition at any time in a taxation year of shares of the capital stock of a corporation (in this paragraph referred to as the "controlled corporation") that was controlled, directly or indirectly in any manner whatever, by it at any time in the year, is its loss therefrom otherwise determined less the amount, if any, by which

(i) all amounts added under paragraph 53(1)(f.1) to the cost to a corporation, other than the controlled corporation, of property disposed of to that corporation by the controlled

corporation that were added to the cost of the property during the period while the controlled corporation was controlled by the taxpayer and that can reasonably be attributed to losses on the property that accrued during the period while the controlled corporation was controlled by the taxpayer,

exceeds

(ii) all amounts by which losses have been reduced by virtue of this paragraph in respect of dispositions before that time of shares of the capital stock of the controlled corporation; and

(i) where at a particular time a taxpayer has disposed of a share of the capital stock of a corporation that was at any time a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or a share of the capital stock of a taxable Canadian corporation that was held in a prescribed stock savings plan or of a property substituted for such a share, the taxpayer's loss from the disposition thereof shall be deemed to be the amount, if any, by which

(i) the loss otherwise determined

exceeds

(ii) the amount, if any, by which

(A) the amount of prescribed assistance that the taxpayer (or a person with whom the taxpayer was not dealing at arm's length) received or is entitled to receive in respect of the share

exceeds

(B) the total of all amounts determined under subparagraph 40(2)(i)(i) in respect of any disposition of the share or of the property substituted for the share before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length.

Deemed gain where amounts to be deducted from adjusted cost base exceed cost plus amounts to be added to adjusted cost base

(3) Where

(a) the total of all amounts required by subsection 53(2) (except paragraph 53(2)(c)) to be deducted in computing the adjusted cost base to a taxpayer of any property at any time in a taxation year

exceeds

(b) the total of

(i) the cost to the taxpayer of the property determined for the purpose of computing the adjusted cost base to the taxpayer of that property at that time, and

(ii) all amounts required by subsection 53(1) to be added to the cost to the taxpayer of the property in computing the adjusted cost base to the taxpayer of that property at that time,

the following rules apply:

(c) subject to paragraph 93(1)(b), the amount of the excess is deemed to be a gain of the taxpayer for the year from a disposition at that time of the property,

(d) for the purposes of section 93 and subsections 116(6) and (6.1), the property is deemed to have been disposed of by the taxpayer at that time, and

(e) for the purposes of subsection 2(3) and sections 110.6 and 150, the property is deemed to have been disposed of by the taxpayer in the year.

Deemed gain for certain partners

(3.1) Where, at the end of a fiscal period of a partnership, a member of the partnership is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member, except where the member's partnership interest was held by the member on February 22, 1994 and is an excluded interest at the end of the fiscal period,

(a) the amount determined under subsection 40(3.11) is deemed to be a gain from the disposition, at the end of the fiscal period, of the member's interest in the partnership; and

(b) for the purposes of subsection 2(3), section 110.6, subsections 116(6) and (6.1) and section 150, the interest is deemed to have been disposed of by the member at that time.

Amount of gain

(3.11) For the purpose of subsection 40(3.1), the amount determined at any time under this subsection in respect of a member's interest in a partnership is the amount determined by the formula

$$\mathbf{A - B}$$

where

A is the total of

(a) all amounts required by subsection 53(2) to be deducted in computing the adjusted cost base to the member of the interest in the partnership at that time, and

(b) if the member is a member of a professional partnership, and that time is the end of the fiscal period of the partnership, the amount referred to in subparagraph 53(2)(c)(i) in respect of the taxpayer for that fiscal period; and

B is the total of

(a) the cost to the member of the interest determined for the purpose of computing the adjusted cost base to the member of the interest at that time,

(b) all amounts required by subsection 53(1) to be added to the cost to the member of the interest in computing the adjusted cost base to the member of the interest at that time, and

(c) if the member is a member of a professional partnership, and that time is the end of the fiscal period of the partnership, the amount referred to in subparagraph 53(1)(e)(i) in respect of the taxpayer for that fiscal period.

Meaning of *professional partnership*

(3.111) In this section, ***professional partnership*** means a partnership through which one or more persons carry on the practice of a profession that is governed or regulated under a law of Canada or a province.

Deemed loss for certain partners

(3.12) If a corporation, an individual (other than a trust) or a graduated rate estate (each of which is referred to in this subsection as the “taxpayer”) is a member of a partnership at the end of a fiscal period of the partnership, the taxpayer is deemed to have a loss from the disposition at that time of the member’s interest in the partnership equal to the amount that the taxpayer elects in the taxpayer’s return of income under this Part for the taxation year that includes that time, not exceeding the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which was an amount deemed by subsection 40(3.1) to be a gain of the taxpayer from a disposition of the interest before that time

exceeds

(ii) the total of all amounts each of which was an amount deemed by this subsection to be a loss of the taxpayer from a disposition of the interest before that time, and

(b) the adjusted cost base to the taxpayer of the interest at that time.

Artificial transactions

(3.13) For the purpose of applying section 53 at any time to a member of a partnership who would be a member described in subsection (3.1) of the partnership if the fiscal period of the partnership that includes that time ended at that time, where at any time after February 21, 1994 the member of the partnership makes a contribution of capital to the partnership and

(a) the partnership or a person or partnership with whom the partnership does not deal at arm's length

(i) makes a loan to the member or to a person with whom the member does not deal at arm's length, or

(ii) pays an amount as, on account of, in lieu of payment of or in satisfaction of, a distribution of the member's share of the partnership profits or partnership capital, or

(b) the member or a person with whom the member does not deal at arm's length becomes indebted to the partnership or a person or partnership with whom the partnership does not deal at arm's length,

and it is established, by subsequent events or otherwise, that the loan, payment or indebtedness, as the case may be, was made or arose as part of a series of contributions and such loans, payments or other transactions, the contribution of capital shall be deemed not to have been made.

Specified member of a partnership

(3.131) Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of subsection 40(3.1) to the member's interest in the partnership, the member is deemed for the purpose of that subsection to have been a specified member of the partnership at all times since becoming a member of the partnership.

Limited partner

(3.14) For the purpose of subsection 40(3.1), a member of a partnership at a particular time is a limited partner of the partnership at that time if, at that time or within 3 years after that time,

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions, from misconduct or from fault of another member of

the partnership or an employee, an agent or a representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership);

(b) the member or a person not dealing at arm's length with the member is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount or to obtain a benefit that would be described in paragraph 96(2.2)(d) if that paragraph were read without reference to subparagraphs 40(3.14)(b)(ii) and 40(3.14)(b)(vi);

(c) one of the reasons for the existence of the member who owns the interest

(i) can reasonably be considered to be to limit the liability of any person with respect to that interest, and

(ii) cannot reasonably be considered to be to permit any person who has an interest in the member to carry on the person's business (other than an investment business) in the most effective manner; or

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement can reasonably be considered to be to attempt to avoid the application of this subsection to the member.

Excluded interest

(3.15) For the purpose of subsection 40(3.1), an excluded interest in a partnership at any time means an interest in a partnership that actively carries on a business that was carried on by it throughout the period beginning February 22, 1994 and ending at that time, or that

earns income from a property that was owned by it throughout that period, unless in that period there was a substantial contribution of capital to the partnership or a substantial increase in the indebtedness of the partnership.

Amounts considered not to be substantial

(3.16) For the purpose of subsection 40(3.15), an amount will be considered not to be substantial where

(a) the amount

(i) was raised pursuant to the terms of a written agreement entered into by a partnership before February 22, 1994 to issue an interest in the partnership and was expended on expenditures contemplated by the agreement before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production),

(ii) was raised pursuant to the terms of a written agreement (other than an agreement referred to in subparagraph 40(3.16) (a)(i)) entered into by a partnership before February 22, 1994 and was expended on expenditures contemplated by the agreement before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that

is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production),

(iii) was used by the partnership before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production) to make an expenditure required to be made pursuant to the terms of a written agreement entered into by the partnership before February 22, 1994, or

(iv) was used to repay a loan, debt or contribution of capital that had been received or incurred in respect of any such expenditure;

(b) the amount was raised before 1995 pursuant to the terms of a prospectus, preliminary prospectus, offering memorandum or registration statement filed before February 22, 1994 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of a province and, where required by law, accepted for filing by the public authority, and expended before 1995 (or before March 2, 1995 in the case of amounts expended to acquire a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii), or an interest in one or

more partnerships all or substantially all of the property of which is such a film production) on expenditures contemplated by the document that was filed before February 22, 1994;

(c) the amount was raised before 1995 pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

(i) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(ii) the memorandum was distributed before February 22, 1994,

(iii) solicitations in respect of the sale of the securities contemplated by the memorandum were made before February 22, 1994,

(iv) the sale of the securities was substantially in accordance with the memorandum, and

(v) the funds are expended in accordance with the memorandum before 1995 (except that the funds may be expended before March 2, 1995 in the case of a partnership all or substantially all of the property of which is a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) the principal photography of which or, in the case of such a production that is a television series, one episode of the series, commences before 1995 and the production is completed before March 2, 1995, or an interest in one or more partnerships all or substantially all of the property of which is such a film production); or

(d) the amount was used for an activity that was carried on by the partnership on February 22, 1994 but not for a significant expansion of the activity nor for the acquisition or production of a film production.

Whether carrying on business before February 22, 1994

(3.17) For the purpose of subsection 40(3.15), a partnership in respect of which paragraph 40(3.16)(a), 40(3.16)(b) or 40(3.16)(c) applies shall be considered to have actively carried on the business, or earned income from the property, contemplated in the document referred to in that paragraph throughout the period beginning February 22, 1994 and ending on the earlier of the closing date, if any, stipulated in the document and January 1, 1995.

Deemed partner

(3.18) For the purpose of subsection 40(3.1), a member of a partnership who acquired an interest in the partnership after February 22, 1994 shall be deemed to have held the interest on February 22, 1994 where the member acquired the interest

(a) in circumstances in which

(i) paragraph 70(6)(d.1) applied,

(ii) where the member is an individual, the member's spouse or common-law partner held the partnership interest on February 22, 1994,

(iii) where the member is a trust, the taxpayer by whose will the trust was created held the partnership interest on February 22, 1994, and

(iv) the partnership interest was, immediately before the death of the spouse or common-law partner or the taxpayer, as the case may be, an excluded interest;

(b) in circumstances in which

(i) paragraph 70(9.2)(c) applied,

(ii) the member's parent held the partnership interest on February 22, 1994, and

(iii) the partnership interest was, immediately before the parent's death, an excluded interest;

(c) in circumstances in which

(i) paragraph 70(9.3)(e) applied,

(ii) the trust referred to in subsection 70(9.3) or the taxpayer by whose will the trust was created held the partnership interest on February 22, 1994, and

(iii) the partnership interest was, immediately before the death of the spouse or common-law partner referred to in subsection 70(9.3), an excluded interest; or

(d) before 1995 pursuant to a document referred to in subparagraph 40(3.16)(a)(i) or paragraph 40(3.16)(b) or 40(3.16)(c).

Non-application of subsection (3)

(3.19) Subsection 40(3) does not apply in any case where subsection 40(3.1) applies.

Non-application of subsection (3.1)

(3.2) Subsection 40(3.1) does not apply in any case where paragraph 98(1)(c) or 98.1(1)(c) applies.

Deemed capital gain under section 180.01

(3.21) If, in respect of a taxation year, a taxpayer has made an election under subsection 180.01(1), the amount deemed to be a capital gain under paragraph 180.01(2)(b) is deemed to be a gain from the disposition of property for the taxation year.

When subsection (3.4) applies

(3.3) Subsection 40(3.4) applies when

(a) a corporation, trust or partnership (in this subsection and subsection (3.4) referred to as the “transferor”) disposes of a particular capital property — other than depreciable property of a prescribed class and other than, for the purposes of computing the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, and taxable surplus or taxable deficit of a foreign affiliate of a taxpayer, in respect of the taxpayer, where the transferor is the affiliate or is a partnership of which the affiliate is a member, property that is, or would be, if the transferor were a foreign affiliate of the taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the transferor — otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition ***superficial loss*** in section 54;

(b) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection and subsection 40(3.4) referred to as the “substituted property”) that is, or is identical to, the particular property; and

(c) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Loss on certain properties

(3.4) If this subsection applies because of subsection 40(3.3) to a disposition of a particular property,

(a) the transferor's loss, if any, from the disposition is deemed to be nil, and

(b) the amount of the transferor's loss, if any, from the disposition (determined without reference to paragraph 40(2)(g) and this subsection) is deemed to be a loss of the transferor from a disposition of the particular property at the time that is immediately before the first time, after the disposition,

(i) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(ii) at which the property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(iii) that is immediately before the transferor is subject to a loss restriction event,

(iv) at which the transferor or a person affiliated with the transferor is deemed by section 50 to have disposed of the property, where the substituted property is a debt or a share of the capital stock of a corporation, or

(v) if the transferor is a corporation,

(A) for the purposes of computing the transferor's foreign accrual property income, exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, and taxable surplus or taxable deficit, in respect of a taxpayer for a taxation year of the transferor where the transferor is a foreign affiliate of the taxpayer, at which the liquidation and dissolution of the transferor begins, unless the liquidation and dissolution is

(I) a qualifying liquidation and dissolution (within the meaning assigned by subsection 88(3.1)) of the transferor, or

(II) a designated liquidation and dissolution (within the meaning assigned by subsection 95(1)) of the transferor, and

(B) for any other purposes, at which the winding-up (other than a winding-up to which subsection 88(1) applies) of the transferor begins,

and for the purpose of paragraph 40(3.4)(b), where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in subparagraphs 40(3.4)(b)(i) to 40(3.4)(b)(v).

Deemed identical property

(3.5) For the purposes of subsections 40(3.3) and 40(3.4),

(a) right to acquire a property (other than a right, as security only, derived from a mortgage, hypothec, agreement for sale or similar obligation) is deemed to be a property that is identical to the property;

(b) a share of the capital stock of a corporation that is acquired in exchange for another share in a transaction is deemed to be a property that is identical to the other share if

(i) section 51, 86 or 87 applies to the transaction, or

(ii) the following conditions are met, namely,

(A) section 85.1 applies to the transaction,

(B) subsection (3.4) applied to a prior disposition of the other share, and

(C) none of the times described in any of subparagraphs (3.4)(b)(i) to (v) has occurred in respect of the prior disposition;

(b.1) a share of the capital stock of a SIFT wind-up corporation in respect of a SIFT wind-up entity is, if the share was acquired before 2013, deemed to be a property that is identical to equity in the SIFT wind-up entity;

(c) if subsections (3.3) and (3.4) apply to the disposition by a transferor of a share of the capital stock of a particular corporation and after the disposition

(i) the particular corporation is merged or combined with one or more other corporations, otherwise than in a transaction in respect of which paragraph (b) applies to the share, then the

corporation formed on the merger or combination is deemed to own the share while the corporation so formed is affiliated with the transferor,

(ii) the particular corporation is wound up in a winding-up to which subsection 88(1) applies, then the parent (within the meaning assigned by subsection 88(1)) is deemed to own the share while the parent is affiliated with the transferor, or

(iii) the particular corporation is liquidated and dissolved, the liquidation and dissolution is a qualifying liquidation and dissolution (within the meaning assigned by subsection 88(3.1)) of the corporation or a designated liquidation and dissolution (within the meaning assigned by subsection 95(1)) of the corporation, and the transferor is a foreign affiliate of a taxpayer, then for the purposes of computing the transferor's foreign accrual property income, exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, and taxable surplus or taxable deficit, in respect of the taxpayer for a taxation year of the transferor, the taxpayer referred to in subsection 88(3.1) or the particular shareholder referred to in the definition

designated liquidation and dissolution in subsection 95(1), as the case may be, is deemed to own the share while the taxpayer or particular shareholder is affiliated with the transferor; and

(d) where subsections 40(3.3) and 40(3.4) apply to the disposition by a transferor of a share of the capital stock of a corporation, and after the disposition the share is redeemed, acquired or cancelled by the corporation, otherwise than in a transaction in respect of which paragraph 40(3.5)(b) or 40(3.5)(c) applies to the share, the transferor is deemed to own the share while the corporation is affiliated with the transferor.

Loss on shares

(3.6) If at any time a taxpayer disposes, to a corporation that is affiliated with the taxpayer immediately after the disposition, of a share of a class of the capital stock of the corporation (other than a share that is a distress preferred share (within the meaning assigned by subsection 80(1)) and other than, for the purposes of computing the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, and taxable surplus or taxable deficit of the taxpayer in respect of another taxpayer, where the taxpayer or, if the taxpayer is a partnership, a member of the taxpayer is a foreign affiliate of the other taxpayer, a property that is, or would be, if the taxpayer were a foreign affiliate of the other taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the taxpayer),

(a) the taxpayer's loss, if any, from the disposition is deemed to be nil; and

(b) in computing the adjusted cost base to the taxpayer after that time of a share of a class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added the proportion of the amount of the taxpayer's loss from the disposition (determined without reference to paragraph 40(2)(g) and this subsection) that

(i) the fair market value, immediately after the disposition, of the share

is of

(ii) the fair market value, immediately after the disposition, of all shares of the capital stock of the corporation owned by the taxpayer.

Exception — estate loss carried back

(3.61) If, in the course of administering the estate of a deceased taxpayer, the taxpayer's legal representative elects in accordance with subsection 164(6) to treat all or any portion of the estate's capital loss (determined without reference to subsections (3.4) and (3.6)) from the disposition of a share of the capital stock of a corporation as a capital loss of the deceased taxpayer from the disposition of the share, subsections (3.4) and (3.6) apply to the estate in respect of the loss only to the extent that the amount of the loss exceeds the portion of the loss to which the election applies.

Losses of non-resident

(3.7) If an individual disposes of a property at any time after having ceased to be resident in Canada, for the purposes of applying subsections 100(4), 107(1) and 112(3) to (3.32) and (7) in computing the individual's loss from the disposition,

(a) the individual is deemed to be a corporation in respect of dividends received by the individual, or deemed under Part XIII to have been paid to the individual, at a particular time that is after the time at which the individual last acquired the property and at which the individual was non-resident; and

(b) an amount on account of

(i) each taxable dividend received by the individual at a particular time described in paragraph (a), and

(ii) each amount deemed under Part XIII to have been paid to the individual at a particular time described in paragraph (a), as a dividend from a corporation resident in Canada, to the extent that the amount can reasonably be considered to relate to the property,

is deemed to be a taxable dividend that was received by the individual and that was deductible under section 112 in computing the individual's taxable income or taxable income earned in Canada for the taxation year that includes that particular time.

Disposal of principal residence to spouse or trust for spouse

(4) Where a taxpayer has, after 1971, disposed of property to an individual in circumstances to which subsection 70(6) or 73(1) applied, for the purposes of computing the individual's gain from the disposition of the property under paragraph 40(2)(b) or 40(2)(c), as the case may be,

(a) the individual shall be deemed to have owned the property throughout the period during which the taxpayer owned it;

(b) the property shall be deemed to have been the individual's principal residence

(i) in any case where subsection 70(6) is applicable, for any taxation year for which it would, if the taxpayer had designated it in prescribed manner to have been the taxpayer's principal residence for that year, have been the taxpayer's principal residence, and

(ii) in any case where subsection 73(1) is applicable, for any taxation year for which it was the taxpayer's principal residence; and

(c) where the individual is a trust, the trust shall be deemed to have been resident in Canada during each taxation year during which the taxpayer was resident in Canada.

(5) [Repealed, 1994, Sch. VIII, c. 7, s. 12]

Principal residence — property owned at end of 1981

(6) Subject to subsection (6.1), if a property was owned by a taxpayer, whether jointly with another person or otherwise, at the end of 1981 and continuously from the beginning of 1982 until disposed of by the taxpayer, the amount of the gain determined under paragraph (2)(b) in respect of the disposition shall not exceed the amount, if any, by which the total of

(a) the taxpayer's gain calculated in accordance with paragraph 40(2)(b) on the assumption that the taxpayer had disposed of the property on December 31, 1981 for proceeds of disposition equal to its fair market value on that date, and

(b) the taxpayer's gain calculated in accordance with paragraph 40(2)(b) on the assumption that that paragraph applies and that

(i) the taxpayer acquired the property on January 1, 1982 at a cost equal to its proceeds of disposition as determined under paragraph 40(6)(a), and

(ii) the description of B in paragraph 40(2)(b) is read without reference to "one plus"

exceeds

(c) the amount, if any, by which the fair market value of the property on December 31, 1981 exceeds the proceeds of disposition of the property determined without reference to this subsection.

Principal residence — property owned at end of 2016

(6.1) If a trust owns property at the end of 2016, the trust is not in its first taxation year that begins after 2016 a trust described in subparagraph (c.1)(iii.1) of the definition *principal residence* in section 54, the trust disposes of the property after 2016, the disposition is the

trust's first disposition of the property after 2016 and the trust owns the property, whether jointly with another person or otherwise, continuously from the beginning of 2017 until the disposition,

(a) subsection (6) does not apply to the disposition; and

(b) the trust's gain determined under paragraph (2)(b) in respect of the disposition is the amount, if any, determined by the formula

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

where

A is the trust's gain calculated in accordance with paragraph (2)(b) on the assumption that

(i) the trust disposed of the property on December 31, 2016 for proceeds of disposition equal to its fair market value on that date, and

(ii) paragraph (a) did not apply in respect of the disposition described in subparagraph (i),

B is the trust's gain in respect of the disposition calculated in accordance with paragraph (2)(b) on the assumption that

(i) the description of B in that paragraph is read without reference to "one plus", and

(ii) the trust acquired the property on January 1, 2017 at a cost equal to its fair market value on December 31, 2016, and

C is the amount, if any, by which the fair market value of the property on December 31, 2016 exceeds the proceeds of disposition of the property determined without reference to this subsection.

Property in satisfaction of interest in trust

(7) Where property has been acquired by a taxpayer in satisfaction of all or any part of the taxpayer's capital interest in a trust, in circumstances to which subsection 107(2) applies and subsection 107(4) does not apply, for the purposes of paragraph 40(2)(b) and the definition ***principal residence*** in section 54 the taxpayer shall be deemed to have owned the property continuously since the trust last acquired it.

Effect of election under subsection 110.6(19)

(7.1) Where an election was made under subsection 110.6(19) in respect of a property of a taxpayer that was the taxpayer's principal residence for the 1994 taxation year or that, in the taxpayer's return of income for the taxation year in which the taxpayer disposes of the property or grants an option to acquire the property, is designated as the taxpayer's principal residence, in determining, for the purposes of paragraph 40(2)(b) and subsections 40(4) to 40(7), the day on which the property was last acquired or reacquired by the taxpayer and the period throughout which the property was owned by the taxpayer this Act shall be read without reference to subsection 110.6(19).

Application of s. 70(10)

(8) The definitions in subsection 70(10) apply to this section.

Additions to taxable Canadian property

(9) If a non-resident person disposes of a taxable Canadian property

(a) that the person last acquired before April 27, 1995,

(b) that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995, and

(c) that would be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on January 1, 1996,

the person's gain or loss from the disposition is deemed to be the amount determined by the formula

$$A \times B/C$$

where

- A** is the amount of the gain or loss determined without reference to this subsection;
- B** is the number of calendar months in the period that begins with May 1995 and ends with the calendar month that includes the time of the disposition; and
- C** is the number of calendar months in the period that begins with the calendar month in which the person last acquired the property and ends with the calendar month that includes the time of the disposition.

Application of subsection (11)

(10) Subsection (11) applies in computing at any particular time a taxpayer's gain or loss (in this subsection and subsection (11) referred to as the "new gain" or "new loss", as the case may be), in respect of any part (which in this subsection and subsection (11) is referred to as the "relevant part" and which may for greater certainty be the whole) of a foreign currency debt of the taxpayer, arising from a fluctuation in the value of the currency of the foreign currency debt (other than, for greater certainty, a gain or a capital loss that arises because of the application of subsection 111(12)), if at any time before the particular time the taxpayer realized a capital loss or gain in respect of the foreign currency debt because of subsection 111(12).

Gain or loss on foreign currency debt

(11) If this subsection applies, the new gain is the positive amount, or the new loss is the negative amount, as the case may be, determined by the formula

$$A + B - C$$

where

A is

(a) if the taxpayer would, but for any application of subsection 111(12), recognize a new gain, the amount of the new gain, determined without reference to this subsection, or

(b) if the taxpayer would, but for any application of subsection 111(12), recognize a new loss, the amount of the new loss, determined without reference to this subsection, multiplied by (-1);

B is the total of all amounts each of which is that portion of the amount of a capital loss realized by the taxpayer at any time before the particular time, in respect of the foreign currency debt and because of subsection 111(12), that is reasonably attributable to

(a) the relevant part of the foreign currency debt at the particular time, or

(b) the forgiven amount, if any, (as defined in subsection 80(1)) in respect of the foreign currency debt at the particular time; and

C is the total of all amounts each of which is that portion of the amount of a gain realized by the taxpayer at any time before the particular time, in respect of the foreign currency debt and because of subsection 111(12), that is reasonably attributable to

(a) the relevant part of the foreign currency debt at the particular time, or

(b) the forgiven amount, if any, (as defined in subsection 80(1)) in respect of the foreign currency debt at the particular time.

Donated flow-through shares

(12) If at any time a taxpayer disposes of one or more capital properties that are included in a flow-through share class of property and subparagraph 38(a.1)(i) or (iii) applies to the disposition (in this subsection referred to as the “actual disposition”), then the taxpayer is deemed to have a capital gain from a disposition at that time of another capital property equal to the lesser of

(a) the taxpayer’s exemption threshold at that time in respect of the flow-through share class of property, and

(b) the total of all amounts each of which is a capital gain from the actual disposition (for greater certainty, calculated without reference to this subsection).

Class 14.1 — transitional rules

(13) Subsection (14) applies in respect of a disposition by a taxpayer of a property that is included in Class 14.1 of Schedule II to the *Income Tax Regulations* in respect of a business of the taxpayer if

(a) the property was an eligible capital property of the taxpayer immediately before January 1, 2017;

(b) the amount determined for Q in the definition ***cumulative eligible capital*** in subsection 14(5) in respect of the business immediately before January 1, 2017 is greater than nil;

(c) the amount determined for B in that definition in respect of the business immediately before January 1, 2017 is nil; and

(d) no amount is included in the taxpayer's income for a taxation year because of paragraph 13(38)(d).

Class 14.1 — transitional rules

(14) If this subsection applies in respect of a disposition at any time by a taxpayer of a property, the taxpayer's capital gain from the disposition is to be reduced by such amount as the taxpayer claims, not exceeding the amount by which

(a) $\frac{2}{3}$ of the amount determined for Q in the definition ***cumulative eligible capital*** in subsection 14(5) in respect of the business immediately before 2017

exceeds

(b) the total of all amounts each of which is an amount claimed under this subsection in respect of another disposition at or before that time.

Class 14.1 — transitional rules

(15) Subsection (16) applies in respect of a disposition by an individual of a property that is included in Class 14.1 of Schedule II to the *Income Tax Regulations* in respect of a business of the individual if

(a) the property was an eligible capital property of the individual immediately before January 1, 2017; and

(b) the individual's exempt gains balance in respect of the business is greater than nil for the taxation year that includes January 1, 2017.

Class 14.1 — transitional rules

(16) If this subsection applies in respect of a disposition at any time by an individual of a property, the individual's capital gain from the disposition is to be reduced by such amount as the individual claims, not exceeding the amount by which

(a) twice the amount of the individual's exempt gains balance in respect of the business for the taxation year that includes January 1, 2017

exceeds

(b) the total of

(i) if paragraph 13(38)(d) applies in respect of the business for the individual's taxation year that includes January 1, 2017, the amount determined for D in paragraph 14(1)(b) for the purposes of paragraph 13(38)(d), and

(ii) the total of all amounts each of which is an amount claimed under this subsection in respect of another disposition at or before that time.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 40; 1994, c. 7, Sch. II, s. 23, Sch. VIII, s. 12, c. 21, s. 15; 1995, c. 3, s. 12, c. 21, s. 11; 1998, c. 19, ss. 8, 89; 2000, c. 12, s. 142; 2001, c. 17, ss. 25, 205(E); 2005, c. 19, s. 13; 2007, c. 2, s. 4, c. 35, s. 103; 2008, c. 28, s. 5; 2009, c. 2, s. 10; 2010, c. 25, s. 8; 2011, c. 24, s. 5; 2013, c. 34, ss. 60, 102, 183, c. 40, s. 19; 2014, c. 39, s. 11; 2016, c. 12, s. 15; 2017, c. 33, s. 10; 2022, c. 19, s. 4; 2024, c. 15, s. 10; 2026, c. 3, s. 7.

Date modified:

2026-09-11