



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.

Death of a taxpayer

70 (1) In computing the income of a taxpayer for the taxation year in which the taxpayer died,

(a) an amount of interest, rent, royalty, annuity (other than an amount with respect to an interest in an annuity contract to which paragraph 148(2)(b) applies), remuneration from an office or employment, or other amount payable periodically, that was not paid before the taxpayer's death, shall be deemed to have accrued in equal daily amounts in the period for or in respect of which the amount was payable, and the value of the portion thereof so deemed to have accrued to the day of death shall be included in computing the taxpayer's income for the year in which the taxpayer died; and

(b) paragraph 12(1)(t) shall be read as follows:

"12(1)(t) the amount deducted under subsection 127(5) or 127(6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) or 53(2)(h)(ii) or for I in the definition ***undepreciated capital cost*** in subsection 13(21) or L in the definition ***cumulative Canadian exploration expense*** in subsection 66.1(6);"

Amounts receivable

(2) If a taxpayer who has died had at the time of death rights or things (other than any capital property or any amount included in computing the taxpayer's income by virtue of subsection (1)), the amount of which when realized or disposed of would have been included in computing the taxpayer's income, the value of the rights or things at the time of death shall be included in computing the taxpayer's income for the taxation year in which the taxpayer died, unless the taxpayer's legal representative has, not later than the later of the day that is one year after the date of death of the taxpayer and the day that is 90 days after the sending of any notice of assessment in respect of the tax of the taxpayer for the year of death, elected otherwise, in which case the legal representative shall file a separate return of income for the year under this Part and pay the tax for the year under this Part as if

(a) the taxpayer were another person;

(b) that other person's only income for the year were the value of the rights or things; and

(c) subject to sections 114.2 and 118.93, that other person were entitled to the deductions to which the taxpayer was entitled under sections 110, 118 to 118.7 and 118.9 for the year in computing the taxpayer's taxable income or tax payable under this Part, as the case may be, for the year.

Rights or things transferred to beneficiaries

(3) Where before the time for making an election under subsection 70(2) has expired, a right or thing to which that subsection would otherwise apply has been transferred or distributed to beneficiaries or other persons beneficially interested in the estate or trust,

(a) subsection 70(2) is not applicable to that right or thing; and

(b) an amount received by one of the beneficiaries or persons on the realization or disposition of the right or thing shall be included in computing the income of the beneficiary or person for the taxation year in which the beneficiary or person received it.

Exception

(3.1) For the purposes of this section, ***rights or things*** do not include an interest in a life insurance policy (other than an annuity contract of a taxpayer where the payment therefor was deductible in computing the taxpayer's income because of paragraph 60(l) or was made in circumstances in which subsection 146(21) applied), land included in the inventory of a business, a Canadian resource property or a foreign resource property.

Revocation of election

(4) An election made under subsection 70(2) may be revoked by a notice of revocation signed by the legal representative of the taxpayer and filed with the Minister within the time that an election under that subsection may be made.

Capital property of a deceased taxpayer

(5) Where in a taxation year a taxpayer dies,

(a) the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of each capital property of the taxpayer and received proceeds of disposition therefor equal to the fair market value of the property immediately before the death;

(b) any person who as a consequence of the taxpayer's death acquires any property that is deemed by paragraph 70(5)(a) to have been disposed of by the taxpayer shall be deemed to have

acquired it at the time of the death at a cost equal to its fair market value immediately before the death;

(c) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph 70(5)(a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death (other than where the taxpayer's proceeds of disposition of the property under paragraph 70(5)(a) are redetermined under subsection 13(21.1)) and the amount that was the capital cost to the taxpayer of the property exceeds the amount determined under paragraph 70(5)(b) to be the cost to the person thereof, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the capital cost to the person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and

(ii) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the person acquired the property; and

(d) where a property of the taxpayer that was deemed by paragraph 70(5)(a) to have been disposed of is acquired by any person as a consequence of the taxpayer's death and the taxpayer's proceeds of disposition of the property under paragraph 70(5)(a) are redetermined under subsection 13(21.1), notwithstanding paragraph 70(5)(b),

(i) where the property was depreciable property of a prescribed class and the amount that was the capital cost to the taxpayer of the property exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(A) its capital cost to the person shall be deemed to be the amount that was its capital cost to the taxpayer, and

(B) the excess shall be deemed to have been allowed to the person in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the person acquired the property, and

(ii) where the property is land (other than land to which subparagraph 70(5)(d)(i) applies), its cost to the person shall be deemed to be the amount that was the taxpayer's proceeds of disposition of the land as redetermined under subsection 13(21.1).

Transfer or distribution — Class 14.1

(5.1) Notwithstanding subsection (6), if property included in Class 14.1 of Schedule II to the *Income Tax Regulations* of the taxpayer in respect of a business carried on by the taxpayer immediately before the taxpayer's death that is a property to which subsection (5) would otherwise apply is, as a consequence of the death, transferred or distributed (otherwise than by way of a distribution of property by a trust that claimed a deduction under paragraph 20(1)(a) or (b) in respect of the property or in circumstances to which subsection 24(2) applies) to any person (in this subsection referred to as the **beneficiary**), the following rules apply:

(a) paragraphs (5)(a) and (b) do not apply in respect of the property;

(b) the taxpayer is deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition equal to the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death;

(c) the beneficiary is deemed to have acquired the property at the time of the death at a cost equal to those proceeds; and

(d) paragraph (5)(c) applies as if the references to "paragraph (a)" were read as references to "paragraph (5.1)(b)" and the reference to "paragraph (b)" were read as reference to "paragraph (5.1)(c)".

Resource property and land inventory

(5.2) If in a taxation year a taxpayer dies,

(a) the taxpayer is deemed

(i) to have disposed, at the time that is immediately before the taxpayer's death, of each

(A) Canadian resource property of the taxpayer,

(B) foreign resource property of the taxpayer, and

(C) property that was land included in the inventory of a business of the taxpayer, and

(ii) subject to paragraph (c), to have received at that time proceeds of disposition for each such property equal to its fair market value at that time;

(b) any person who, as a consequence of the taxpayer's death, acquires a property that is deemed by paragraph (a) to have been disposed of by the taxpayer is, subject to paragraph (c), deemed to have acquired the property at the time of the death at a cost equal to its fair market value at the time that is immediately before the death; and

(c) where the taxpayer was resident in Canada at the time that is immediately before the taxpayer's death, a particular property described in clause (a)(i)(A), (B) or (C) is, on or after the death and as a consequence of the death, transferred or distributed to a spouse or common-law partner of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b), and it can be shown within the period that ends 36 months after the death (or, where written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances) that the particular property has, within that period, vested indefeasibly in the spouse, common-law partner or trust, as the case may be,

(i) the taxpayer is deemed to have received, at the time that is immediately before the taxpayer's death, proceeds of disposition of the particular property equal to

(A) if the particular property is Canadian resource property of the taxpayer or foreign resource property of the taxpayer, the amount specified by the taxpayer's legal representative in the taxpayer's return of income filed under paragraph 150(1)(b), not exceeding its fair market value at that time, and

(B) if the particular property was land included in the inventory of a business of the taxpayer, its cost amount to the taxpayer at that time, and

(ii) the spouse, common-law partner or trust, as the case may be, is deemed to have acquired at the time of the death the particular property at a cost equal to the amount determined under subparagraph (i) in respect of the disposition of it under paragraph (a).

Fair market value

(5.3) For the purposes of subsections (5) and 104(4) and section 128.1, the fair market value at any time of any property deemed to have been disposed of at that time as a consequence of a particular individual's death or as a consequence of the particular individual becoming or ceasing to be resident in Canada shall be determined as though the fair market value at that time of any life insurance policy, under which the particular individual (or any other individual not dealing at arm's length with the particular individual at that time or at the time the policy was issued) was a person whose life was insured, were the cash surrender value (as defined in subsection 148(9)) of the policy immediately before the particular individual died or became or ceased to be resident in Canada, as the case may be.

Fair market value

(5.31) For the purposes of subsections (5) and 104(4), the fair market value at any time of any property deemed to have been disposed of at that time as a consequence of a particular individual's death is to be determined as though the fair market value at that time of any

annuity contract were the total of all amounts each of which is the amount of a premium paid on or before that time under the contract if

(a) the contract is, in respect of an LIA policy, a contract referred to in subparagraph (b)(ii) of the definition **LIA policy** in subsection 248(1); and

(b) the particular individual is the individual, in respect of the LIA policy, referred to in that subparagraph.

NISA on death

(5.4) Where a taxpayer who dies has at the time of death a net income stabilization account, all amounts held for or on behalf of the taxpayer in the taxpayer's NISA Fund No. 2 shall be deemed to have been paid out of that fund to the taxpayer immediately before that time.

Where transfer or distribution to spouse or spouse trust

(6) Where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a property to which subsection 70(5) would otherwise apply is, as a consequence of the death, transferred or distributed to

(a) the taxpayer's spouse or common-law partner who was resident in Canada immediately before the taxpayer's death, or

(b) a trust, created by the taxpayer's will, that was resident in Canada immediately after the time the property vested indefeasibly in the trust and under which

(i) the taxpayer's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death, and

(ii) no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or common-law partner or trust, as the case may be, the following rules apply:

(c) paragraphs 70(5)(a) and 70(5)(b) do not apply in respect of the property,

(d) subject to paragraph 70(6)(d.1), the taxpayer shall be deemed to have, immediately before the taxpayer's death, disposed of the property and received proceeds of disposition therefor equal to

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(ii) in any other case, its adjusted cost base to the taxpayer immediately before the death,

and the spouse or common-law partner or trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to those proceeds,

(d.1) where the property is an interest in a partnership (other than an interest in a partnership to which subsection 100(3) applies),

(i) the taxpayer shall, except for the purposes of paragraph 98(5)(g), be deemed not to have disposed of the property as a consequence of the taxpayer's death,

(ii) the spouse or common-law partner or the trust, as the case may be, shall be deemed to have acquired the property at the time of the death at a cost equal to its cost to the taxpayer, and

(iii) each amount added or deducted in computing the adjusted cost base to the taxpayer of the property shall be deemed to be required by subsection 53(1) or 53(2) to be added or deducted, as the case may be, in computing the adjusted cost base to the spouse or common-law partner or the trust, as the case may be, of the property; and

(e) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(c) applies as if the references therein to "paragraph 70(6)(a)" and to "paragraph 70(6)(b)" were read as references to "paragraph 70(6)(d)".

Transfer or distribution of NISA to spouse or trust

(6.1) Where a property that is a net income stabilization account of a taxpayer is, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to

(a) the taxpayer's spouse or common-law partner, or

(b) a trust, created by the taxpayer's will, under which

(i) the taxpayer's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death, and

(ii) no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

subsections 70(5.4) and 73(5) do not apply in respect of the taxpayer's NISA Fund No. 2 if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has vested indefeasibly in the spouse or common-law partner or trust, as the case may be.

Election

(6.2) Subsection (5.1), (6) or (6.1) does not apply to any property of a deceased taxpayer in respect of which the taxpayer's legal representative elects, in the taxpayer's return of income under this Part (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year in which the taxpayer died, to have subsection (5) or (5.4), as the case may be, apply.

Special rules applicable in respect of trust for benefit of spouse

(7) Where a trust created by a taxpayer's will would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust to which subsection 70(6) or 70(6.1) applies,

(a) for the purpose of determining the day on or before which a return (in this subsection referred to as the "taxpayer's return") of the taxpayer's income for the taxation year in which the taxpayer

died is required to be filed by the taxpayer's legal representatives, subsection 150(1) shall be read without reference to paragraph 150(1)(b) and as if paragraph 150(1)(d) read as follows:

"150(1)(d) in the case of any other person, by the person's legal representative within 18 months after the person's death; or;" and

(b) where the taxpayer's legal representative so elects in the taxpayer's return (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) and lists therein one or more properties (other than a net income stabilization account) that were, on or after the taxpayer's death and as a consequence thereof, transferred or distributed to the trust, the total fair market value of which properties immediately after the taxpayer's death was not less than the total of the non-qualifying debts in respect of the taxpayer,

(i) subsection 70(6) does not apply in respect of the properties so listed, and

(ii) notwithstanding the payment of, or provision for payment of, any such particular testamentary debts, the trust shall be deemed to be a trust described in subsection 70(6),

except that, where the fair market value, immediately after the taxpayer's death, of all of the properties so listed exceeds the total of the non-qualifying debts in respect of the taxpayer (the amount of which excess is referred to in this subsection as the "listed value excess") and the taxpayer's legal representative designates in the taxpayer's return one property so listed (other than money) that is capital property other than depreciable property,

(iii) the amount of the taxpayer's capital gain or capital loss, as the case may be, from the disposition of that property deemed by subsection 70(5) to have been made by the taxpayer is that proportion of that capital gain or capital loss otherwise determined that

(A) the amount, if any, by which the fair market value of that property immediately after the taxpayer's death exceeds the listed value excess,

is of

(B) the fair market value of that property immediately after the taxpayer's death, and

(iv) the cost to the trust of that property is

(A) where the taxpayer has a capital gain from the disposition of that property deemed by subsection 70(5) to have been made by the taxpayer, the total of

(I) its adjusted cost base to the taxpayer immediately before the taxpayer's death, and

(II) the amount determined under subparagraph 70(7)(b) (iii) to be the taxpayer's capital gain from the disposition of that property, or

(B) where the taxpayer has a capital loss from the disposition of that property deemed by subsection 70(5) to have been made by the taxpayer, the amount by which

(I) its adjusted cost base to the taxpayer immediately before the taxpayer's death

exceeds

(II) the amount determined under subparagraph 70(7)(b) (iii) to be the taxpayer's capital loss from the disposition of that property.

Meaning of certain expressions in s. (7)

(8) In subsection 70(7),

(a) the ***fair market value*** at any time of any property subject to a mortgage or hypothec is the amount, if any, by which the fair market value at that time of the property otherwise determined exceeds the amount outstanding at that time of the debt secured by the mortgage or hypothec, as the case may be;

(b) ***non-qualifying debt*** in respect of a taxpayer who has died and by whose will any trust has been created that would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust described in subsection 70(6), means any such particular testamentary debt in respect of the taxpayer other than

(i) any estate, legacy, succession or inheritance duty payable, in consequence of the taxpayer's death, in respect of any property of, or interest in, the trust, or

(ii) any debt secured by a mortgage or hypothec on property owned by the taxpayer immediately before the taxpayer's death; and

(c) ***testamentary debt***, in respect of a taxpayer who has died, means

(i) any debt owing by the taxpayer, or any other obligation of the taxpayer to pay an amount, that was outstanding immediately before the taxpayer's death, and

(ii) any amount payable (other than any amount payable to any person as a beneficiary of the taxpayer's estate) by the taxpayer's estate in consequence of the taxpayer's death, including any income or profits tax payable by or in respect of the taxpayer for the taxation year in which the taxpayer died or for any previous taxation year, and any estate, legacy, succession or inheritance duty payable in consequence of the taxpayer's death.

When subsection (9.01) applies

(9) Subsection (9.01) applies to a taxpayer and a child of the taxpayer in respect of land in Canada or depreciable property in Canada of a prescribed class of the taxpayer in respect of which subsection (5) would, if this Act were read without reference to this subsection, apply if

(a) the property was, before the death of the taxpayer, used principally in a farming or fishing business carried on in Canada in which the taxpayer, the spouse or common-law partner of the taxpayer or a child or parent of the taxpayer was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot);

(b) the child of the taxpayer was resident in Canada immediately before the day on which the taxpayer died; and

(c) as a consequence of the death of the taxpayer, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after the death of the taxpayer or, if written application has been made to the Minister by the

taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

Transfer of farming and fishing property to child

(9.01) If, because of subsection (9), this subsection applies to the taxpayer and a child of the taxpayer in respect of a property of the taxpayer that has been transferred to the child as a consequence of the death of the taxpayer, the following rules apply:

(a) where the taxpayer's legal representative does not elect in the taxpayer's return of income under this Part for the year in which the taxpayer died, to have paragraph (b) apply to the taxpayer and the child in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) the taxpayer is deemed to have

(A) disposed of the property immediately before the taxpayer's death, and

(B) received, at the time of the disposition of the property, proceeds of disposition in respect of that disposition of the property equal to

(I) where the property was depreciable property of a prescribed class, the lesser of

1 the capital cost to the taxpayer of the property, and

2 the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of

property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the adjusted cost base to the taxpayer of the property immediately before the time of the disposition of the property,

(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii), and

(iv) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply to the taxpayer and the child in respect of the property as if the references in those paragraphs to "paragraph (a)" and "paragraph (b)" were read as "subparagraph (9.01)(a)(ii)" and "subparagraph (9.01)(a)(iii)", respectively; and

(b) where the taxpayer's legal representative elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this paragraph apply to the taxpayer in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) the taxpayer is deemed to have

(A) disposed of the property immediately before the taxpayer's death, and

(B) received, at the time of the disposition of the property, proceeds of disposition in respect of that disposition of the property equal to

(I) where the property was depreciable property of a prescribed class, the amount that the legal representative designates, which must not be greater than the greater of nor less than the lesser of

1 the fair market value of the property immediately before the time of the disposition of the property, and

2 the lesser of the capital cost to the taxpayer of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the taxpayer that the capital cost to the taxpayer of the property is of the capital cost to the taxpayer of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the amount that the legal representative designates, which must not be greater than the greater of nor less than the lesser of

1 the fair market value of the property immediately before the time of the disposition of the property, and

2 the adjusted cost base to the taxpayer of the property immediately before the time of the disposition of the property,

(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii),

(iv) where the property was depreciable property of a prescribed class, paragraphs (5)(c) and (d) apply to the taxpayer in respect of the property as if the references in those paragraphs to "paragraph (a)" and "paragraph (b)" were read as "subparagraph (9.01)(b)(ii)" and "subparagraph (9.01)(b)(iii)", respectively,

(v) except for the purpose of this subparagraph,

(A) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(I), exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(B) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(II) exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(vi) except for the purpose of this subparagraph,

(A) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(I) is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and

(B) where the amount designated by the taxpayer's legal representative under subclause (ii)(B)(II) is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts.

When subsection (9.11) applies

(9.1) Subsection (9.11) applies to a trust and a child of the settlor of the trust in respect of a property in respect of which subsection 104(4) or (5) would, if this Act were read without reference to this subsection, apply to the trust as a consequence of the death of the beneficiary under the trust who was a spouse or a common-law partner of the settlor if

(a) the property (or property for which the property was substituted) was transferred to the trust by the settlor;

(b) subsection (6), subsection 73(1) (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of the transfer referred to in paragraph (a);

(c) the property is, immediately before the beneficiary's death, land or a depreciable property of a prescribed class of the trust that was used in a farming or fishing business carried on in

Canada;

(d) the child of the settlor is, immediately before the beneficiary's death, resident in Canada; and

(e) as a consequence of the beneficiary's death, the property is transferred to and becomes vested indefeasibly in the child of the settlor within the period ending 36 months after that beneficiary's death or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

Transfer of farming and fishing property from trust to settlor's children

(9.11) If, because of subsection (9.1), this subsection applies to the trust and a child of the settlor of the trust in respect of a property of the trust that has been distributed to the child as a consequence of the death of the beneficiary under the trust who was the spouse or common-law partner of the settlor, the following rules apply:

(a) where the trust does not elect, in its return of income under this Part for the taxation year in which the beneficiary died, to have paragraph (b) apply to the trust in respect of the property,

(i) subsections 104(4) and (5) and section 69 do not apply to the trust and the child in respect of the property,

(ii) the trust is deemed to have

(A) disposed of the property immediately before the beneficiary's death, and

(B) received, at the time of the disposition, proceeds of disposition in respect of that disposition equal to

(I) where the property was depreciable property of a prescribed class, the lesser of

1 the capital cost to the trust of the property, and

2 the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to the trust of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the adjusted cost base to the trust of the property immediately before the time of the disposition of the property, and

(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii);

(b) where the trust elects, in the trust's return of income under this Part for the taxation year in which the beneficiary died, to have this paragraph apply to the trust in respect of the property,

(i) subsections 104(4) and (5) do not apply to the trust in respect of the property,

(ii) the trust is deemed to have

(A) disposed of the property immediately before the beneficiary's death, and

(B) received, at the time of the disposition of the property, proceeds of disposition in respect of the disposition of the property equal to

(I) where the property was depreciable property of a prescribed class, the amount that the trust designates, which must not be greater than the greater of nor less than the lesser of

1 the fair market value of the property immediately before the time of the disposition of the property, and

2 the lesser of the capital cost to the trust of the property and the amount, determined immediately before the time of the disposition of the property, that is that proportion of the undepreciated capital cost of property of that class to the trust that the capital cost to the trust of the property is of the capital cost to the trust of all property of that class that had not, at or before that time, been disposed of, and

(II) where the property is land (other than land to which subclause (I) applies), the amount that the trust designates, which must not be greater than the greater of nor less than the lesser of

1 the fair market value of the property immediately before the time of the disposition of the property, and

2 the adjusted cost base to the trust of the property immediately before the time of the disposition of the property,

(iii) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of the disposition of the property determined under subparagraph (ii),

(iv) except for the purpose of this subparagraph,

(A) where the amount designated by the trust under subclause (ii)(B)(I) exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(B) where the amount designated by the trust under subclause (ii)(B)(II) exceeds the greater of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(v) except for the purpose of this subparagraph,

(A) where the amount designated by the trust under subclause (ii)(B)(I) is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(I)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and

(B) where the amount designated by the trust under subclause (ii)(B)(II), is less than the lesser of the amounts determined under sub-subclauses (ii)(B)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts;

(c) where paragraph (a) or (b) (each of which is referred to in this subsection as the “relevant provision”) applied to the trust in respect of a property that was depreciable property of a prescribed class (other than where the trust’s proceeds of disposition of the property under the relevant provision are redetermined under subsection 13(21.1)),

(i) the capital cost to the child of the property, immediately after the time of the disposition, is deemed to be the amount that was the capital cost to the trust of the property, immediately before the time of the disposition, and

(ii) the amount, if any, by which the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount determined under the relevant provision to be the cost of the property to the child, immediately after the time of the disposition, is, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a), deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property; and

(d) where the relevant provision applied to the trust in respect of a property and the trust’s proceeds of disposition in respect of the disposition of the property determined under the relevant provision are redetermined under subsection 13(21.1), notwithstanding the relevant provision,

(i) where the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount redetermined under subsection 13(21.1), for the

purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(A) the capital cost to the child of the property, immediately after the time of the disposition, is deemed to be the amount that was the capital cost to the trust of the property, immediately before the time of the disposition, and

(B) the amount, if any, by which the capital cost to the trust of the property, immediately before the time of the disposition, exceeds the amount redetermined under subsection 13(21.1) is deemed to have been allowed to the child in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property, and

(ii) where the property is land, the cost to the child of the property is deemed to be the amount that was the trust's proceeds of disposition as redetermined under subsection 13(21.1).

When subsection (9.21) applies

(9.2) Subsection (9.21) applies to a taxpayer and a child of the taxpayer in respect of a property of the taxpayer in respect of which subsection (5) would, if this Act were read without reference to this subsection, apply to the taxpayer and the child if

(a) the property was, immediately before the death of the taxpayer, 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;

(b) the child of the taxpayer was resident in Canada immediately before the day on which taxpayer died; and

(c) as a consequence of the death of the taxpayer, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after the death of the taxpayer or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

Transfer of family farm and fishing corporations and partnerships

(9.21) If, because of subsection (9.2), this subsection applies to the taxpayer and a child of the taxpayer in respect of a property of the taxpayer that has been transferred to the child as a consequence of the death of the taxpayer, the following rules apply:

(a) where the taxpayer's legal representative does not elect, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have paragraph (b) apply to the taxpayer in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) where the property is, immediately before the death of the taxpayer, a share of the capital stock of a family farm or fishing corporation of the taxpayer,

(A) the taxpayer is deemed to have

(I) disposed of the property immediately before the taxpayer's death, and

(II) received proceeds of disposition in respect of that disposition equal to the adjusted cost base to the taxpayer, immediately before the time of that disposition, of the property, and

(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of that disposition determined under clause (A), and

(iii) where the property is, immediately before the death of the taxpayer, a partnership interest described in paragraph (9.2)(a) (other than a partnership interest to which subsection 100(3) applies),

(A) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the taxpayer's death,

(B) the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the time of the taxpayer's death, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the taxpayer, immediately before the time of the taxpayer's death, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at any time at or after the time of the taxpayer's death, the adjusted cost base to the child of the property; and

(b) where the taxpayer's legal representative elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this paragraph apply to the taxpayer in respect of the property,

(i) paragraphs (5)(a) and (b) and section 69 do not apply to the taxpayer and the child in respect of the property,

(ii) subject to subparagraph (iii), where the property is, immediately before the taxpayer's death, 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,

(A) the taxpayer is deemed to have

(I) disposed of the property immediately before the taxpayer's death, and

(II) received, at the time of the disposition of the property, proceeds of disposition in respect of the disposition of the property equal to the amount that the taxpayer's legal representative designates, which must not be greater than the greater of nor less than the lesser of

1 the fair market value of the property immediately before the taxpayer's death, and

2 the adjusted cost base to the taxpayer of the property immediately before the time of the disposition,

(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under clause (A),

(C) except for the purpose of this clause, where the amount designated by the taxpayer's legal representative under subclause (A)(II) exceeds the greater of the amounts determined under sub-subclauses (A)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(D) except for the purpose of this clause, where the amount designated by the taxpayer's legal representative under subclause (A)(II) is less than the lesser of the amounts determined under sub-subclauses (A)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts, and

(iii) where the property is, immediately before the death of the taxpayer, a partnership interest described in paragraph (9.2)(a) (other than a partnership interest to which subsection 100(3) applies), and the taxpayer's legal representative further elects, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, to have this subparagraph apply to the taxpayer in respect of the property,

(A) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the taxpayer's death,

(B) the child is deemed to have acquired the property at the time of the taxpayer's death at a cost equal to the cost to the taxpayer of the interest immediately before the time that is immediately before the death of the taxpayer, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the taxpayer, immediately before the time of the taxpayer's death, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at any time at or after the taxpayer's death, the adjusted cost base to the child of the property.

When subsection (9.31) applies

(9.3) Subsection (9.31) applies to a trust and a child of the settlor of the trust in respect of a property in respect of which subsection 104(4) would, if this Act were read without reference to this subsection, apply to the trust as a consequence of the death of the beneficiary under the trust who was a spouse or a common-law partner of the settlor of the trust if

(a) the property (or property for which the property was substituted) was transferred to the trust by the settlor and was, immediately before that transfer, a share of the capital stock of a family farm or fishing corporation of the settlor or an interest in a family farm or fishing partnership of the settlor;

(b) subsection (6), subsection 73(1) (as that subsection applied to transfers before 2000) or subparagraph 73(1.01)(c)(i) applied to the settlor and the trust in respect of the transfer referred to in paragraph (a);

(c) the property is, immediately before the beneficiary's death,

(i) a share of the capital stock of a Canadian corporation that would, immediately before that beneficiary's death, be a share of the capital stock of a family farm or fishing corporation of the settlor, if the settlor owned the share at that time and paragraph (a) of the definition ***share of the capital stock of a family farm or fishing corporation*** in subsection (10) were read without the words "in which the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot)", or

(ii) [Repealed, 2014, c. 39, s. 13]

(iii) a partnership interest in a partnership that carried on in Canada a farming or fishing business in which it used all or substantially all of the property;

(d) the child of the settlor was, immediately before that beneficiary's death, resident in Canada; and

(e) as a consequence of that beneficiary's death, the property is transferred to and becomes vested indefeasibly in the child within the period ending 36 months after that beneficiary's death or, if written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances.

Transfer of family farm or fishing corporation or family farm or fishing partnership from trust to children of settlor

(9.31) If, because of subsection (9.3), this subsection applies to the trust and a child of the settlor of the trust in respect of a property of the trust that has been distributed to the child as a consequence of the death of the beneficiary under the trust who was a spouse or common-law partner of the settlor of the trust, the following rules apply:

(a) where the trust does not elect, in its return of income under this Part for the taxation year in which the beneficiary died, to have paragraph (b) apply to the trust in respect of the property

(i) section 69 and subsection 104(4) do not apply to the trust and the child in respect of the property,

(ii) where the property is, immediately before the beneficiary's death, a share described in subparagraph (9.3)(c)(i),

(A) the trust is deemed to have

(I) disposed of the property immediately before the beneficiary's death, and

(II) received proceeds of disposition in respect of that disposition equal to the adjusted cost base to the trust of the property immediately before the time of that disposition, and

(B) the child is, immediately after the time of the disposition, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition of the property determined under clause (A), and

(iii) where the property is, immediately before the beneficiary's death, a partnership interest described in subparagraph (9.3)(c)(iii) (other than a partnership interest to which subsection

100(3) applies),

(A) the trust is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the beneficiary's death,

(B) the child is deemed to have acquired the property, at the time of the beneficiary's death, at a cost equal to the cost to the trust of the interest immediately before the time that is immediately before the time of the beneficiary's death, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing the adjusted cost base to the trust, immediately before the beneficiary's death, of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at or after the time of the beneficiary's death, the adjusted cost base to the child of the property; and

(b) where the trust elects, in its return of income under this Part for the taxation year in which the beneficiary died, to have this paragraph apply to the trust in respect of the property

(i) subsection 104(4) does not apply to the trust in respect of the property and section 69 does not apply to the trust or the child in respect of the transfer of the property,

(ii) subject to subparagraph (iii), where the property is, immediately before the beneficiary's death, a share described in subparagraph (9.3)(c)(i) or a partnership interest described in subparagraph (9.3)(c)(iii),

(A) the trust is deemed to have

(I) disposed of the property immediately before the beneficiary's death, and

(II) received, at the time of the disposition of property, proceeds of disposition in respect of the disposition of the property equal to the amount that the trust designates, which must not be greater than the greater of nor less than the lesser of

1 the fair market value of the property immediately before the beneficiary's death, and

2 the adjusted cost base to the trust of the property immediately before the beneficiary's death, and

(B) the child is, immediately after the time of the disposition of the property, deemed to have acquired the property at a cost equal to the trust's proceeds of disposition in respect of that disposition of the property determined under clause (A),

(iii) where the property is, immediately before that beneficiary's death, a partnership interest described in subparagraph (9.3)(c)(iii) (other than a partnership interest to which subsection 100(3) applies), and the trust further elects, in its return of income under this Part for the taxation year in which the beneficiary died, to have this subparagraph apply to the trust in respect of the property,

(A) the trust is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property as a consequence of the beneficiary's death,

(B) the child is deemed to have acquired the property, at the time of the beneficiary's death, at a cost equal to the cost to the trust of the property immediately before the time that is immediately before the beneficiary's death, and

(C) each amount required by subsection 53(1) or (2) to be added or deducted in computing, immediately before the beneficiary's death, the adjusted cost base to the trust of the property is deemed to be an amount required by subsection 53(1) or (2) to be added or deducted in computing, at or after the time of the beneficiary's death, the adjusted cost base to the child of the property,

(iv) except for the purpose of this subparagraph, where the amount designated by the trust under subclause (ii)(A)(II) exceeds the greater of the amounts determined under sub-subclauses (ii)(A)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the greater of those amounts, and

(v) except for the purpose of this subparagraph, where the amount designated by the trust under subclause (ii)(A)(II) is less than the lesser of the amounts determined under sub-subclauses (ii)(A)(II)1 and 2 in respect of the property, the amount designated is deemed to be equal to the lesser of those amounts.

Transfer to a parent

(9.6) Subsection (9.01) or (9.21), as the case may be, applies in respect of a transfer of a property as if the references in those subsections to "child" were read as references to "parent" if

(a) the property was acquired by a taxpayer in circumstances where any of subsections (9.01), (9.11), (9.21), (9.31) and 73(3.1) and (4.1) applied in respect of the acquisition;

(b) as a consequence of the death of the taxpayer the property is transferred to a parent of the taxpayer; and

(c) the taxpayer's legal representative has elected, in the taxpayer's return of income under this Part for the taxation year in which the taxpayer died, that this subsection apply in respect of the transfer.

Leased farm or fishing property

(9.8) For the purposes of subsections (9) and 73(3) and paragraph (d) of the definition ***qualified farm or fishing property*** in subsection 110.6(1), a property of an individual is, at a particular time, deemed to be used by the individual in a farming or fishing business carried on in Canada if, at that particular time, the property is being used, principally in the course of carrying on a farming or fishing business in Canada, by

(a) a corporation, a share of the capital stock of which is a share of the capital stock of a family farm or fishing corporation of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual; or

(b) a partnership, a partnership interest in which is an interest in a family farm or fishing partnership of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual.

Definitions

(10) In this section,

child of a taxpayer includes

- (a) a child of the taxpayer's child,
- (b) a child of the taxpayer's child's child,
- (b.1) a person who was a child of the taxpayer immediately before the death of the person's spouse or common-law partner, and
- (c) a person who, at any time before the person attained the age of 19 years, was wholly dependent on the taxpayer for support and of whom the taxpayer had, at that time, in law or in fact, the custody and control; (*enfant*)

interest in a family farm or fishing partnership, of an individual at any time, means a partnership interest owned by the individual at that time if, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(a) property that has been used principally in the course of carrying on a farming or fishing business in Canada in which the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot), by

(i) the partnership,

(ii) a corporation, a share of the capital stock of which was a share of the capital stock of a family farm or fishing corporation of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,

(iii) a partnership, a partnership interest in which was an interest in a family farm or fishing partnership of the individual, the individual's spouse or common-law partner, a child of the

individual or a parent of the individual, or

(iv) the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,

(b) shares of the capital stock or indebtedness of one or more corporations of which all or substantially all of the fair market value of the property was attributable to property described in paragraph (d),

(c) partnership interests or indebtedness of one or more partnerships of which all or substantially all of the fair market value of the property was attributable to property described in paragraph (d), or

(d) properties described in any of paragraphs (a) to (c);
(*participation dans une société de personnes agricole ou de pêche familiale*)

interest in a family farm partnership [Repealed, 2014, c. 39, s. 13]

interest in a family fishing partnership [Repealed, 2014, c. 39, s. 13]

share of the capital stock of a family farm corporation [Repealed, 2014, c. 39, s. 13]

share of the capital stock of a family farm or fishing corporation, of an individual at any time, means a share of the capital stock of a corporation owned by the individual at that time if, at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(a) property that has been used principally in the course of carrying on a farming or fishing business in Canada in which the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual was actively engaged on a regular and continuous basis (or, in the case of property used

in the operation of a woodlot, was engaged to the extent required by a prescribed forest management plan in respect of that woodlot), by

(i) the corporation,

(ii) a corporation, a share of the capital stock of which was a share of the capital stock of a family farm or fishing corporation of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,

(iii) a corporation controlled by a corporation described in subparagraph (i) or (ii),

(iv) a partnership, a partnership interest in which was an interest in a family farm or fishing partnership of the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual, or

(v) the individual, the individual's spouse or common-law partner, a child of the individual or a parent of the individual,

(b) shares of the capital stock or indebtedness of one or more corporations of which all or substantially all of the fair market value of the property was attributable to property described in paragraph (d),

(c) partnership interests or indebtedness of one or more partnerships of which all or substantially all of the fair market value of the property was attributable to property described in paragraph (d), or

(d) properties described in any of paragraphs (a) to (c). (*action du capital-actions d'une société agricole ou de pêche familiale*)

share of the capital stock of a family fishing corporation [Repealed, 2014, c. 39, s. 13]

Application of s. 138(12)

(11) The definitions in subsection 138(12) apply to this section.

Value of NISA

(12) For the purpose of the definition ***share of the capital stock of a family farm or fishing corporation*** in subsection (10), the fair market value of a net income stabilization account is deemed to be nil.

Capital cost of certain depreciable property

(13) For the purposes of this section and, where a provision of this section (other than this subsection) applies, for the purposes of sections 13 and 20 (but not for the purposes of any regulation made for the purpose of paragraph 20(1)(a)),

(a) the capital cost to a taxpayer of depreciable property of a prescribed class disposed of immediately before the taxpayer's death, or

(b) the capital cost to a trust, to which subsection 70(9.1) applies, of depreciable property of a prescribed class disposed of immediately before the death of the spouse or common-law partner described in that subsection,

shall, in respect of property that was not disposed of by the taxpayer or the trust before that time, be the amount that it would be if subsection 13(7) were read without reference to

(c) the expression "the lesser of" in paragraph 13(7)(b) and clause (d)(i)(A) thereof, and

(d) subparagraph 13(7)(b)(ii), subclause 13(7)(d)(i)(A)(II), clause 13(7)(d)(i)(B) and paragraph (e) thereof.

Order of disposal of depreciable property

(14) Where 2 or more depreciable properties of a prescribed class are disposed of at the same time as a consequence of a taxpayer's death, this section and paragraph (a) of the definition **cost amount** in subsection 248(1) apply as if each property so disposed of were separately disposed of in the order designated by the taxpayer's legal representative or, in the case of a trust described in subsection 70(9.1), by the trust and, where the taxpayer's legal representative or the trust, as the case may be, does not designate an order, in the order designated by the Minister.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 70; 1994, c. 7, Sch. II, s. 48, Sch. VIII, s. 28, c. 21, s. 33; 1995, c. 3, s. 18; 1996, c. 21, s. 14; 1998, c. 19, s. 108; 2000, c. 12, s. 142; 2001, c. 17, ss. 52, 208(E); 2002, c. 9, s. 27; 2007, c. 2, s. 10; 2010, c. 25, s. 13; 2013, c. 34, s. 209, c. 40, s. 34; 2014, c. 39, s. 13; 2016, c. 12, s. 20.

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