



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.

Inter vivos transfers by individuals

73 (1) For the purposes of this Part, where at any time any particular capital property of an individual (other than a trust) has been transferred in circumstances to which subsection (1.01) applies and both the individual and the transferee are resident in Canada at that time, unless the individual elects in the individual's return of income under this Part for the taxation year in which the property was transferred that the provisions of this subsection not apply, the particular property is deemed

(a) to have been disposed of at that time by the individual for proceeds equal to,

(i) where the particular property is depreciable property of a prescribed class, that proportion of the undepreciated capital cost to the individual immediately before that time of all property of that class that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all of that property of that class, and

(ii) in any other case, the adjusted cost base to the individual of the particular property immediately before that time; and

(b) to have been acquired at that time by the transferee for an amount equal to those proceeds.

Qualifying transfers

(1.01) Subject to subsection (1.02), property is transferred by an individual in circumstances to which this subsection applies where it is transferred to

(a) the individual's spouse or common-law partner;

(b) a former spouse or common-law partner of the individual in settlement of rights arising out of their marriage or common-law partnership; or

(c) a trust created by the individual under which

(i) the individual'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 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,

(ii) the individual is entitled to receive all of the income of the trust that arises before the individual's death and no person except the individual may, before the individual's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iii) either

(A) the individual or the individual's spouse is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the spouse and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust, or

(B) the individual or the individual's common-law partner is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the common-law partner and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust.

Exception for transfers

(1.02) Subsection (1.01) applies to a transfer of property by an individual to a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii) or (iii) only where

(a) the trust was created after 1999;

(b) either

(i) the individual had attained 65 years of age at the time the trust was created, or

(ii) the transfer does not result in a change in beneficial ownership of the property and there is immediately after the transfer no absolute or contingent right of a person (other than the individual) or partnership as a beneficiary (determined with reference to subsection 104(1.1)) under the trust; and

(c) in the case of a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii), the trust does not make an election under subparagraph 104(4)(a)(ii.1).

Interpretation

(1.1) For greater certainty, a property is, for the purposes of subsections (1) and (1.01), deemed to be property of the individual referred to in subsection (1) that has been transferred to a particular

transferee where,

(a) under the laws of a province or because of a decree, order or judgment of a competent tribunal made in accordance with those laws, the property

(i) is acquired or is deemed to have been acquired by the particular transferee,

(ii) is deemed or declared to be property of, or is awarded to, the particular transferee, or

(iii) has vested in the particular transferee; and

(b) the property was or would, but for those laws, have been a capital property of the individual referred to in subsection (1).

Capital cost and amount deemed allowed to spouse, etc., or trust

(2) If a transferee is deemed by subsection (1) to have acquired any particular depreciable property of a prescribed class of a taxpayer for an amount determined under paragraph (1)(b) and the capital cost to the taxpayer of the particular property exceeds the amount determined under that paragraph, in applying sections 13 and 20 and any regulations made under paragraph 20(1)(a)

(a) the capital cost to the transferee of the particular property is deemed to be the amount that was the capital cost to the taxpayer of the particular property; and

(b) the excess is deemed to have been allowed to the transferee in respect of the particular property under regulations made under paragraph 20(1)(a) in computing income for taxation years before the acquisition of the particular property.

When subsection (3.1) applies

(3) Subsection (3.1) applies to a taxpayer and a child of the taxpayer in respect of property that has been transferred, at any time, by the taxpayer to the child, where

(a) the property was, before the transfer, land in Canada or depreciable property in Canada of a prescribed class, of the taxpayer;

(b) the child of the taxpayer was resident in Canada immediately before the transfer; and

(c) the property has been used principally in a farming or fishing business in which the taxpayer, the taxpayer's spouse or common-law partner, a child of the taxpayer or a 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).

Inter vivos transfer of farm or fishing property to child

(3.1) If, because of subsection (3), this subsection applies to the taxpayer and a child of the taxpayer in respect of a property transferred by the taxpayer to the child of the taxpayer, the following rules apply:

(a) where, immediately before the transfer, the property was depreciable property of a prescribed class, the taxpayer is deemed to have disposed of the property, at the time of the transfer, for proceeds of disposition equal to

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the taxpayer's proceeds of disposition otherwise determined,

(ii) the greater of the amounts referred to in clauses (A) and (B), if the taxpayer's proceeds of disposition otherwise determined exceed the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the lesser of

(I) the capital cost to the taxpayer of the property, and

(II) 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, or

(iii) if the taxpayer's proceeds of disposition otherwise determined are less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b) where the property transferred was land, the taxpayer is deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the taxpayer's proceeds of disposition otherwise determined,

(ii) the greater of the amounts referred to in clauses (A) and (B), if the taxpayer's proceeds of disposition otherwise determined exceed the greater of

(A) the fair market value of the land immediately before the time of the transfer, and

(B) the adjusted cost base to the taxpayer of the land immediately before the time of the transfer, or

(iii) if the taxpayer's proceeds of disposition otherwise determined are less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(c) [Repealed, 2016, c. 12, s. 21]

(d) subsection 69(1) does not apply to the taxpayer and the child in respect of the property;

(e) the child is 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

(i) where the property is depreciable property of the taxpayer, paragraph (a), and

(ii) where the property is land of the taxpayer, paragraph (b); and

(f) and (g) [Repealed, 2016, c. 12, s. 21]

(h) where the property is depreciable property of a prescribed class of the taxpayer and the capital cost to the taxpayer of the property exceeds the cost to the child of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),

(i) the capital cost to the child of the property is deemed to be the amount that was the capital cost to the taxpayer of the property immediately before the transfer, and

(ii) the excess is deemed to have been allowed to the child in respect of the property under regulations made under paragraph 20(1)(a) in computing income for taxation years that ended before the child acquired the property.

When subsection (4.1) applies

(4) Subsection (4.1) applies to a taxpayer and a child of the taxpayer in respect of property that has been transferred, at any time, to the child if

(a) the child was resident in Canada immediately before the transfer; and

(b) the property was, immediately before the transfer, 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 (as defined in subsection 70(10)).

***Inter vivos* transfer of family farm or fishing corporations and partnerships**

(4.1) If, because of subsection (4), this subsection applies to the taxpayer and the taxpayer's child in respect of the transfer of the property by the taxpayer to the child,

(a) subject to paragraph (c), where the property was, immediately before the transfer, 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, the taxpayer is deemed to have disposed of the property at the time of the transfer for proceeds of disposition equal to,

(i) in any case to which neither subparagraph (ii) nor (iii) applies, the taxpayer's proceeds of disposition otherwise determined,

(ii) the greater of the amounts referred to in clauses (A) and (B), if the taxpayer's proceeds of disposition otherwise determined exceed the greater of

(A) the fair market value of the property immediately before the time of the transfer, and

(B) the adjusted cost base to the taxpayer of the property immediately before the time of the transfer, or

(iii) if the taxpayer's proceeds of disposition otherwise determined are less than the lesser of the amounts referred to in clauses (ii)(A) and (B), the lesser of those amounts;

(b) subject to paragraph (c), where the property is, immediately before the transfer, 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, the child is deemed to have acquired the property for an amount equal to the taxpayer's proceeds of disposition in respect of the disposition of the property determined under paragraph (a);

(c) where the property is, immediately before the transfer, an interest in a family farm or fishing partnership of the taxpayer (other than a partnership interest to which subsection 100(3) applies), the taxpayer receives no consideration in respect of the transfer of the property and the taxpayer elects, in the taxpayer's return of income under this Part for the taxation year which includes the time of the transfer, to have this paragraph apply in respect of the transfer of the property,

(i) the taxpayer is, except for the purpose of paragraph 98(5)(g), deemed not to have disposed of the property at the time of the transfer,

(ii) the child is deemed to have acquired the property at the time of the transfer at a cost equal to the cost to the taxpayer of the interest immediately before the transfer, and

(iii) 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 transfer, 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 transfer, the adjusted cost base to the child of the property; and

(d) subsection 69(1) does not apply to the taxpayer and the child in respect of the property.

Disposition of a NISA

(5) Where at any time a taxpayer disposes of an interest in the taxpayer's NISA Fund No. 2, an amount equal to the balance in the fund so disposed of shall be deemed to have been paid out of the fund at that time to the taxpayer except that,

(a) where the interest is disposed of to the taxpayer's spouse or common-law partner, former spouse or common-law partner or an individual referred to in paragraph 73(1)(d) (as it applies to transfers of property that occurred before 1993) in settlement of rights arising out of their marriage or common-law partnership, on or after the breakdown of the marriage or common-law partnership, that amount shall not be deemed to have been paid to the taxpayer if

(i) the disposition is made under a decree, order or judgment of a competent tribunal or, in the case of a spouse or common-law partner or former spouse or common-law partner, a written

separation agreement, and

(ii) the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the property was disposed of to have this paragraph apply to the disposition; and

(b) where the interest is disposed of to a taxable Canadian corporation in a transaction in respect of which an election is made under section 85, an amount equal to the proceeds of disposition in respect of that interest shall be deemed to be paid, at that time, to the taxpayer out of the taxpayer's NISA Fund No. 2.

Application of s. 70(10)

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

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 73; 1994, c. 7, Sch. II, s. 50, Sch. VIII, s. 29, c. 21, s. 34; 1995, c. 3, s. 19; 2000, c. 12, s. 142; 2001, c. 17, s. 53; 2002, c. 9, s. 28; 2007, c. 2, s. 11; 2013, c. 34, s. 211; 2014, c. 39, s. 14; 2016, c. 12, s. 21.

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