

2020 TSG Conference

CRA Technical Interpretations

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Agenda

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18. Pipeline Following 21 Year Deemed Disposition (2018-0765411R3)
19. Nominal Proceeds as Consideration for a Gift (2018 – 0773301E5)

1. Part IV Tax and Trusts (2018 – 075759117 F)

Issues:

1. When would a taxable dividend designated in respect of a beneficiary of a trust pursuant to subsection 104(19) be considered to have been received by the beneficiary?
2. Would a corporate beneficiary of the trust and a corporate dividend payer to the trust be connected with respect to the dividend designated under subsection 104(19)?

Position:

1. At the time that is the end of the taxation year of the trust in which the dividend was received by the trust.
2. Question of fact.

2. Deregistration of TFSA (2017-0718021I7)

Trust ceased to qualify as TFSA pursuant to paragraph 146.2(5)(c) as a result of borrowing money.

Issue:

Did the Trust cease to be exempt from subsection 75(2) pursuant to paragraph 75(3)(a)?

Position:

Subsection 75(2) does not apply to income earned by a trust from the re-investment of income that was previously subject to attribution (ie, second generation income), as this income is not earned on property contributed to the trust by a person (or substituted property). Thus, any second generation income earned by the former TFSA trust after deregistration will generally be taxable to the trust to the extent that it is not paid or payable to the beneficiary of the trust.

3. Foreign Exempt Policies (CLHIA Roundtable Q.6 2019 – 0799101C6)

Issue:

Who is responsible for determining whether an insurance policy qualifies under the exempt test under Reg. 306(1)?

Position:

Given that the information to determine the exempt status of a particular life insurance policy is only available in the accounts of the insurer, the onus is on the policy holder to establish that the policy qualifies as an exempt policy.

4. Trust Claiming Capital Gains Reserve (2018-0768841C6)

A trust claimed a capital gains reserve and in a subsequent year distributed the reserve amount to a beneficiary under the trust.

Issue:

What amount of LCGE can the beneficiary claim? The amount in place at the time the trust realized the capital gain or the amount in place at the time the beneficiary is allocated the capital gain?

Position:

Subsection 110.6(31) provides that the capital gain deduction which may be claimed by the beneficiary is based on the LCGE for the taxation year in which the property was disposed of by the trust and not the year in which the capital gain is allocated to the beneficiary.

5. Deduction in Computing Income of a Trust (2017-0716451E5 F)

Family trust realizes a taxable capital gain of \$200,000 and a rental loss of \$100,000.

The trust distributed the \$200,000 taxable capital gain to a beneficiary.

Issue:

Can the trust take a paragraph 104(6)(b) deduction for the \$200,000 thereby creating a net loss to the trust of \$100,000?

Position:

The \$200,000 could not be deducted under paragraph 104(6)(b). CRA noted the following:

Depending on the circumstances and terms of the trust deed, where an amount paid to a beneficiary exceeds the trust's taxable income for the year and does not represent a distribution of property as capital by virtue of the trust deed, the excess could be a benefit conferred by the trust to be included in computing the income of the beneficiary under subsection 105(1).

6. Life Interest Trust and Charitable Donations (Q. 3 October 5, 2018 APFF Roundtable 2018-0768841C6)

Issue:

Whether in the case of an alter ego trust, a spousal trust, a joint spousal trust or a common law partner trust the rollover in subsection 73(1) is available if the terms of the trust deed permit the trustee(s) to make charitable donations before the death of the individual, their spouse or common law partner.

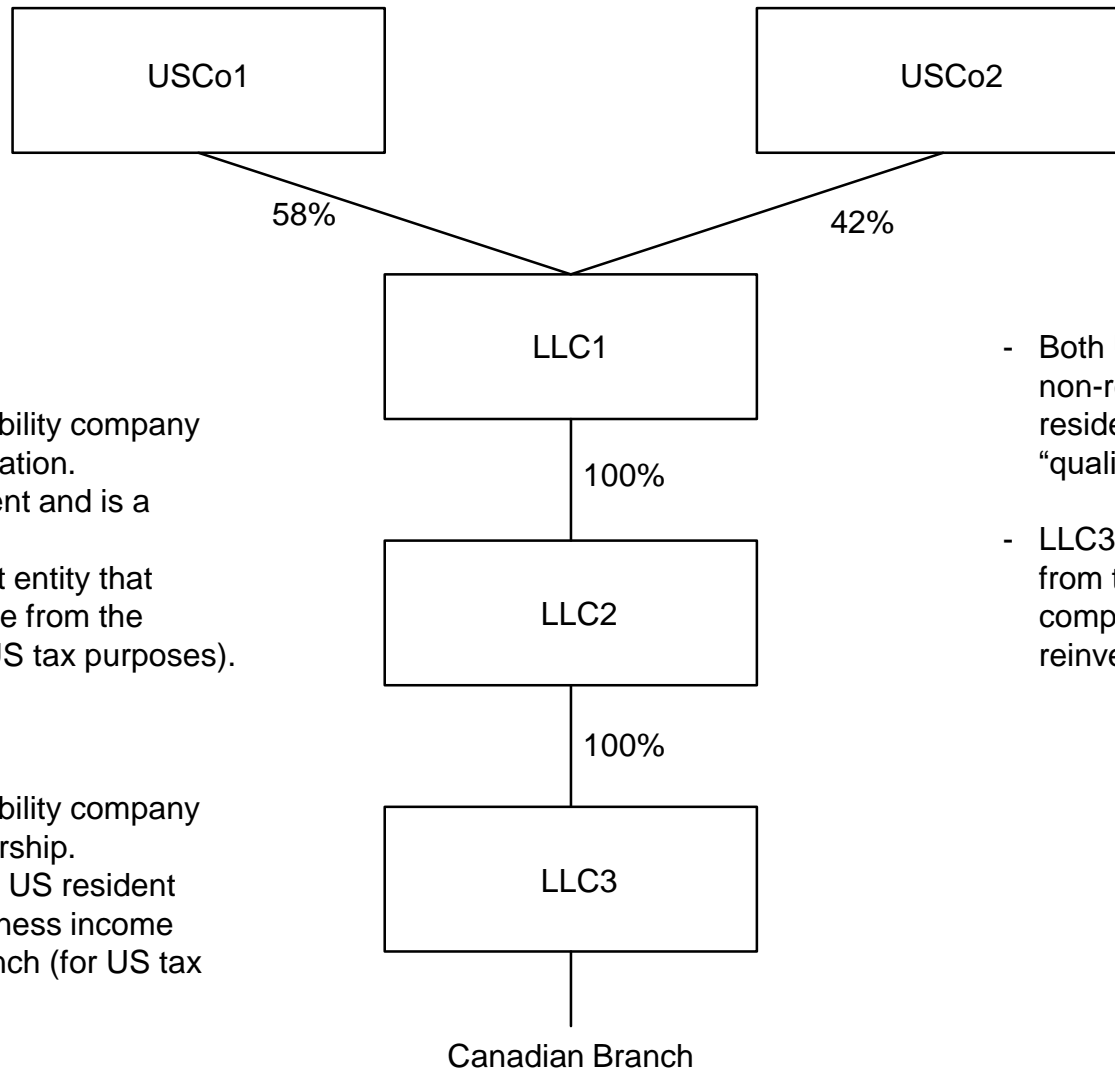
Position

The rollover is not available.

The CRA relied on the provisions of subsection 73(1.01) which require that before the death of the individual, only the individual, their spouse or common law partner can receive or otherwise obtain the income or capital of the trust.

The CRA was also asked whether the rollover would be available if it was *possible* to make donations, but donations had not been made. The CRA provided that the rollover is still not available for the same reasons.

7. Stacked LLC and Branch Profits Tax (2017-0736531I7)



Scenario 1

- LLC1 is a US limited liability company and treated as a corporation.
- LLC1 is a US tax resident and is a “qualifying person.”
- LLC1 is the US resident entity that derives business income from the Canadian Branch (for US tax purposes).

Scenario 2

- LLC1 is a US limited liability company and treated as a partnership.
- USCo1 and USCo2 are US resident entities that derive business income from the Canadian Branch (for US tax purposes).

- Both USCo1 and USCo2 are non-residents of Canada and residents of the US and are “qualifying persons.”
- LLC3 earns business income from the Canadian branch and computes tax on the profits not reinvested in Canada.

7. Stacked LLC and Branch Profits Tax (2017-0736531I7)

Scenario 1

Do Articles IV(6) and X(6) of the Canada-US tax treaty provide treaty benefits (including the reduced 5 percent branch rate) to LLC3 on the branch earnings that LLC1 derives through the stacked LLCs?

LLC1 derives income through LLC3 (fiscally transparent entity) and LLC3 would receive treaty benefits in respect of branch earnings.

Scenario 2

Do Articles IV(6) and X(6) provide treaty benefits to LLC3 on the branch earnings that USCo1 and USCo2 derive through the stacked LLCs?

USCo1 and USCo2 derive income through LLC3 and LLC3 would receive treaty benefits (including the reduced 5 percent branch rate) in respect of branch earnings.

8. FTC and Mutual Funds (2018-0761581C6)

In 2017, the CRA sent letters to taxpayers requesting information on foreign tax credits (FTC) claimed in 2016. Specifically, the CRA was seeking a breakdown of foreign income and taxes by country and type of income.

Mutual fund issuers usually do not provide that information to taxpayers (the requested information is not included on T3 slips).

Issue:

Whether the CRA can provide more information about this initiative and its position now with respect to taxpayers that hold such investments.

Position:

The CRA noticed that there were increasing numbers of tax returns in which the claimed FTCs differed from the amounts on the filed information slips. In those cases, the CRA sought a breakdown.

The CRA is not seeking a breakdown in all cases. However, in cases in which there are inconsistencies between the slips and the FTC claimed, amended slips ought to be filed.

9. Power of Attorney Fees and T4A Reporting (2018-0749251E5)

Issue: Whether compensation received by an individual acting as a power of attorney is included in that individual's income.

Position: Yes

Where that person is in the business of providing power of attorney services, the income is included in income pursuant to subsection 9(1) of the Income Tax Act and the person who paid the compensation is required to report the amount on a T4A (even if no income tax deducted at source) (paragraph 153(1)(g) + Part 1 of the Regulations).

Where that person is not in the business of providing power of attorney services, the income is income from an office pursuant to paragraph 6(1)(c) of the Income Tax Act and the person who paid the compensation is required withhold at source and report that amount on a T4 slip (paragraph 153(1)(a) + Part 1 of the Regulations).

2016 – 0652761C6 – CRA's position with respect to filing T4As remains unchanged. Already administrative relief in two situations:

1. Payment is less than \$500 and no tax is withheld on that amount; and
2. Personal services are rendered to an individual by a professional or anyone else practicing a trade or where the services are rendered for repair / maintenance of the principal residence.

Further, there will be no exemption for filing T4A where an invoice (with valid tax numbers) is provided to the payer.

See also 2017-0709001C6 – 2010 T4A was amended to include Box 048 (Fees for services). CRA provided that they would not apply a penalty under 162(7) for failure to complete the box, though the penalty applies.

10. Failure to File T2091 (2018-0761571C6)

Issue:

Does a taxpayer have to amend his tax return for failing to report the disposition of his principal residence in 2016 and, if so, will a late-filing penalty be applied.

There is relief for failing to file Form T2091 on time (subsections 220(3.2) and 220(3.21)).

CRA's website provides that the penalty will only be applied in the "most excessive cases" and reduced in others.

The CRA was asked whether individuals who prepared their own T1 returns or individuals who failed to inform their accountant they disposed of their principal residence in 2016 would have to amend their returns and, if an amendment was required, whether the CRA would apply a late-filing penalty. The questions specifically refer to situations in which their entire disposition would be exempt.

Position:

Since 2016, taxpayers have been required to report the disposition of their principal residence. Taxpayers who have failed to report the disposition, must amend their returns.

CRA will not confirm penalties would not be applied in examples provided. Penalty application is decided on a "case-by-case basis."

However, the administrative practice to reduce penalties except in the most excessive cases is extended into 2017.

11. Cannabis as a Medical Expense (2019 – 0800911E5 and 2018 – 0777751E5)

a. Purchasing Medical Marijuana (2019 – 0800911E5)

New paragraph 118.2(2)(u) states:

on behalf of the patient who is the holder of a medical document (as defined in subsection 264(1) of the Cannabis Regulations) to support their use of cannabis for medical purposes, for the cost of cannabis, cannabis oil, cannabis plant seeds or cannabis products purchased for medical purposes from a holder of a licence for sale (as defined in subsection 264(1) of the Cannabis Regulations).

b. Grow Your Own Costs (2018 – 0777751E5)

A description of the devices and equipment that would qualify for METC can be found in paragraphs 1.118 and 1.122 of the METC Folio.

12. Carry-Forward Tuition Fees (2018 – 0784491E5)

Question: Do tuition fee carry-forward balances survive a period of non-residency?

13. Coming into Force Rules for AAI (2018 – 0780031C6)

This CRA document reflects Question 16 at the 2018 CTF CRA Roundtable.

When “Adjusted Aggregate Investment Income” (“AAI”) of an associated group of companies exceeds \$50,000 a CCPC’s small business deduction can be ground-down in its subsequent taxation year by virtue of paragraph 125(5.1)(b) of the Act. The term AAI is defined in subsection 125(7) of the Act and, based on Bill C-74, applies to taxation years that begin after 2018.

Where a corporation has a June 30 year end, its June 30, 2019 taxation year did not start after 2018 so it is arguable that it can’t have any AAI for that year. Accordingly, its small business deduction can’t be ground down in its June 30, 2020 taxation year.

Not surprisingly the CRA does not agree with this interpretation of the coming into force rules. If this argument is ultimately successful a retroactive legislative amendment is likely.

14. Assigning the Business Limit Under 125(3.2) (2017 – 0713051E5 and 2017 – 0728581I7)

Question 1: Is “income” determined on a “gross” or “net” basis?

Question 2: What happens if the year-ends of the two corporations are not co-terminus?

15. Meal Expenses for Commissioned Employees (2018-0768791C6)

Commissioned employees are allowed to deduct certain meal expenses under s. 8(1)(f) or 8(1)(h) of the Act.

Frequently commissioned employees (like stock brokers) incur meal expenses in the course of dining with clients but the meals are not consumed during a period while they were required to be away for at least 12 hours from the municipality where their ordinary work place was located.

16. Aborted Share Acquisition Costs (2017 – 0727041E5)

Normally, legal and accounting fees incurred by a purchaser in the acquisition of shares of a corporation would be capital expenditures. In the case of an aborted attempt to acquire shares of a corporation, the purpose test set out in paragraph 18(1)(a) of the Act would not be met and these costs would not be deductible as current expenditures nor would they be considered to be eligible capital expenditures.

17. Pipeline Timing (2018 – 0767431R3)

The CRA issued a positive “pipeline” ruling with the following timing:

1. The Estate will transfer its ACo Shares to Newco, and in exchange the Estate will receive the following consideration from Newco a promissory note which will have a principal amount equal to the Fair Market Value of the ACo Shares at the date of A’s death.
2. ACo will continue to carry on the Business for at least twelve months following the transfer of the ACo Shares to Newco.
3. During the twelve-month period following the transfer of the ACo Shares to Newco, and consistent with its history of paying annual dividends to its shareholder, ACo will pay dividends to Newco in an amount approximately equal to its after-tax net income. Newco will pay dividends to the Estate in an amount approximately equal to the dividends it will receive from ACo. The Estate will allocate the dividends it receives from Newco to the Beneficiaries, in accordance with the will.
4. Twelve months after the transfer of the ACo Shares to Newco, ACo will be amalgamated with Newco to form Amalco. In accordance with subsection 87(1), all of the property and all of the liabilities of Newco and ACo immediately before the amalgamation, including the promissory note issued oin Step #1. In addition, the Estate will receive shares in Amalco.
5. After the amalgamation, Amalco will begin to make payments on the promissory note to the Estate. For greater certainty, the amount paid in any single quarter of the first year that the note is outstanding after the amalgamation will not exceed 15% of the principal amount of the note when it was first issued.
6. Amalco will continue to carry on the Business in the foreseeable future; however, Amalco will sell some of its marketable securities in order to make payments to settle the note.

18. Pipeline Following 21 Year Deemed Disposition (2018 – 0765411R3)

The CRA ruled favourably on post-mortem pipeline planning following a trust realizing a capital gain by virtue of the application of subparagraph 104(4)(b)(ii) of the Act on the deemed disposition of shares of a CCPC and will include the taxable capital gain realized in its income for the year. After the 21st anniversary of the trust, the trust will enter into a pipeline-type transaction. The assets of the corporation subject to the pipeline transaction are mainly rental properties and shares of subsidiaries. The activities of the corporation subject to the pipeline transaction will be maintained over the years after the pipeline transaction is completed. The shares or the substituted shares of the corporation subject to the pipeline transaction will be redeemed more than one year after the pipeline transaction is completed and paid for partly with the profits earned after the pipeline transaction.

19. Nominal Proceeds as Consideration for a Gift (2018 – 0773301E5)

In some situations, the CRA may view a sale for nominal consideration as a gift.