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Tax on Split Income

i **120.4 (1) Definitions** — The definitions in this subsection apply in this section.

i **arm's length capital**, of a **specified individual**, means **property** of the **individual** if the **property**, or **property** for which it is a substitute, was not

- (a) acquired as **income** from, or a **taxable capital gain** or profit from the **disposition** of, another **property** that was derived directly or indirectly from a **related business** in respect of the **specified individual**;
- (b) borrowed by the **specified individual** under a loan or other indebtedness; or
- (c) transferred, directly or indirectly by any means whatever, to the **specified individual** from a **person** who was related to the **specified individual** (other than as a consequence of the death of a **person**).

History

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i **excluded amount**, in respect of an **individual** for a **taxation year**, means an **amount** that is the **individual's income** for the year from, or the **individual's taxable capital gain** or profit for the year from the **disposition** of, a **property** to the extent that the **amount**

i (a) if the **individual** has not attained the age of 24 years before the year, is from a **property** that was acquired by, or for the benefit of, the **individual** as a consequence of the death of a **person** who is

(i) a **parent** of the **individual**, or

(ii) any **person**, if the **individual** is

(A) enrolled as a full-time student during the year at a **post-secondary educational institution** (as defined in subsection 146.1(1)), or

(B) an **individual** in respect of whom an **amount** may be deducted under section 118.3 in computing a **taxpayer's tax payable under this Part** for the year;

i (b) is from a **property** acquired by the **individual** under a transfer described in subsection 160(4);

i (c) is a **taxable capital gain** that arises because of subsection 70(5);

(d) is a **taxable capital gain** for the year from the **disposition** by the **individual** of **property** that is, at the time of the **disposition**, **qualified farm or fishing property** or **qualified small business corporation shares** (as those terms are defined in subsection 110.6(1)), unless the **amount** would be deemed to be a **dividend** under subsection 120.4(4) or (5) if this definition were read without reference to this paragraph;

i (e) if the **individual** has attained the age of 17 years before the year, is

(i) not derived directly or indirectly from a **related business** in respect of the **individual** for the year, or

(ii) derived directly or indirectly from an **excluded business** of the **individual** for the year;

i (f) if the **individual** has attained the age of 17 years but not the age of 24 years before the year, is

(i) a **safe harbour capital return** of the **individual**, or

(ii) a **reasonable return** in respect of the **individual**, having regard only to the contributions of **arm's length capital** by the **individual**; or

i (g) if the **individual** has attained the age of 24 years before the year, is

(i) **income** from, or a **taxable capital gain** from the **disposition** of, **excluded shares** of the **individual**, or

(ii) a **reasonable return** in respect of the **individual**.

History

i **excluded business**, of a **specified individual** for a **taxation year**, means a **business** if the **specified individual** is actively engaged on a regular, continuous and substantial basis in the activities of the **business** in either

(a) the **taxation year**, except in respect of an **amount** described in paragraph (e) of the definition **split income**; or

(b) any five prior **taxation years** of the **specified individual**.

History

i **excluded shares**, of a **specified individual** at any time, means **shares** of the capital stock of a **corporation** owned by the **specified individual** if

(a) the following conditions are met:

(i) less than 90% of the **business income** of the **corporation** for the last **taxation year** of the **corporation** that ends at or before that time (or, if no such **taxation year** exists, for the **taxation year** of the **corporation** that includes that time) was from the provision of services, and

(ii) the **corporation** is not a **professional corporation**;

(b) immediately before that time, the **specified individual** owns **shares** of the capital stock of the **corporation** that

(i) give the holders thereof 10% or more of the votes that could be cast at an annual meeting of the **shareholders** of the **corporation**, and

(ii) have a fair market value of 10% or more of the fair market value of all of the issued and outstanding **shares** of the capital stock of the **corporation**; and

(c) all or substantially all of the **income** of the **corporation** for the relevant **taxation year** in subparagraph (a)(i) is **income** that is not derived, directly or indirectly, from one or more **related businesses** in respect of the **specified individual** other than a **business** of the **corporation**.

History

i **reasonable return**, in respect of a **specified individual** for a **taxation year**, means a particular **amount** derived directly or indirectly from a **related business** in respect of the **specified individual** that

(a) would, if this subsection were read without reference to subparagraph (f)(ii) or (g)(ii) of the definition **excluded amount**, be an **amount** described in the definition **split income** in respect of the **specified individual** for the year; and

(b) is reasonable having regard to the following factors relating to the relative contributions of the **specified individual**, and each **source individual** in respect of the **specified individual**, in respect of the **related business**:

(i) the work they performed in support of the **related business**,

- (ii) the **property** they contributed, directly or indirectly, in support of the **related business**,
- (iii) the risks they assumed in respect of the **related business**,
- (iv) the total of all **amounts** that were paid or that became payable, directly or indirectly, by any person or partnership to, or for the benefit of, them in respect of the **related business**, and
- (v) such other factors as may be relevant.

History

i **related business**, in respect of a **specified individual** for a **taxation year**, means

- (a) a **business** carried on by
 - (i) a **source individual** in respect of the **specified individual** at any time in the year, or
 - (ii) a partnership, **corporation** or **trust** if a **source individual** in respect of the **specified individual** at any time in the year is actively engaged on a regular basis in the activities of the partnership, **corporation** or **trust** related to earning **income** from the **business**;
- (b) a **business** of a particular partnership, if a **source individual** in respect of the **specified individual** at any time in the year has an interest — including directly or indirectly — in the particular partnership; and
- (c) a **business** of a **corporation**, if the following conditions are met at any time in the year:
 - (i) a **source individual** in respect of the **specified individual** owns
 - (A) **shares** of the capital stock of the **corporation**, or
 - (B) **property** that derives, directly or indirectly, all or part of its fair market value from **shares** of the capital stock of the **corporation**, and
 - (ii) it is the case that

$$0.1A \leq B + C$$

where

- A is the total fair market value of all of the issued and outstanding **shares** of the capital stock of the **corporation**,
- B is the total fair market value of **property** described in clause (i)(A), and
- C is the portion of the total fair market value of **property** described in clause (i)(B) that is derived from **shares** of the capital stock of the **corporation**.

History

i **safe harbour capital return**, of a **specified individual** for a **taxation year**, means an **amount** that does not exceed the **amount** determined by the formula

$$A \times B$$

where

- A is the rate equal to the highest rate of interest **prescribed** under paragraph 4301(c) of the Income Tax Regulations in effect for a quarter in the year; and
- B is the total of all **amounts** each of which is determined by the formula

$$C \times D/E$$

where

- C is the fair market value of **property** contributed by the **specified individual** in support of a **related business** at the time it was contributed,
- D is the number of days in the year that the **property** (or **property** substituted for it) is used in support of the **related business** and has not directly or indirectly, in any manner whatever, been returned to the **specified individual**, and
- E is the number of days in the year.

History

i **source individual**, in respect of a **specified individual** for a **taxation year**, means an **individual** (other than a **trust**) who, at any time in the year, is

- (a) **resident in Canada**; and
- (b) related to the **specified individual**.

History

particulier déterminé

i **specified individual**, for a **taxation year**, means an **individual** (other than a **trust**) who

- (a) is **resident in Canada**
 - (i) in the case where the **individual** dies in the year, immediately before the death, and
 - (ii) in any other case, at the end of the year; and
- (b) if the **individual** has not attained the age of 17 years before the year, has a **parent resident in Canada** at any time in the year.

History

revenu fractionné

i **split income**, of a **specified individual** for a **taxation year**, means the total of all **amounts** (other than **excluded amounts**) each of which is

- (a) an **amount** required to be included in computing the **individual's income** for the year
 - (i) in respect of **taxable dividends** received by the **individual** in respect of **shares** of the capital stock of a **corporation** (other than **shares** of a class listed on a designated stock exchange or **shares** of the capital stock of a **mutual fund corporation**), or
 - (ii) because of the application of section 15 in respect of the ownership by any **person** of **shares** of the capital stock of a **corporation** (other than **shares** of a class listed on a designated stock exchange),
- (b) a portion of an **amount** included because of the application of paragraph 96(1)(f) in computing the **individual's income** for the year, to the extent that the portion
 - (i) is not included in an **amount** described in paragraph (a), and
 - (ii) can reasonably be considered to be **income** derived directly or indirectly from
 - (A) one or more **related businesses** in respect of the **individual** for the year, or

(B) the rental of **property** by a particular partnership or **trust**, if a **person** who is related to the **individual** at any time in the year

(I) is actively engaged on a regular basis in the activities of the particular partnership or **trust** related to the rental of **property**, or

(II) in the case of a particular partnership, has an interest in the particular partnership directly or indirectly through one or more other partnerships,

(c) a portion of an **amount** included because of the application of subsection 104(13) or 105(2) in respect of a **trust** (other than a **mutual fund trust** or a **trust** that is deemed to be in existence by subsection 143(1)) in computing the **individual's** income for the year, to the extent that the portion

(i) is not included in an **amount** described in paragraph (a), and

(ii) can reasonably be considered

(A) to be in respect of **taxable dividends** received in respect of **shares** of the capital stock of a **corporation** (other than **shares** of a class listed on a designated stock exchange or **shares** of the capital stock of a **mutual fund corporation**),

(B) to arise because of the application of section 15 in respect of the ownership by any **person** of **shares** of the capital stock of a **corporation** (other than **shares** of a class listed on a designated stock exchange),

(C) to be **income** derived directly or indirectly from one or more **related businesses** in respect of the **individual** for the year, or

(D) to be **income** derived from the rental of **property** by a particular partnership or **trust**, if a **person** who is related to the **individual** at any time in the year is actively engaged on a regular basis in the activities of the particular partnership or **trust** related to the rental of **property**,

(d) an **amount** included in computing the **individual's** **income** for the year to the extent that the **amount** is in respect of a debt **obligation** that

(i) is of a **corporation** (other than a **mutual fund corporation** or a **corporation** **shares** of a class of the capital stock of which are listed on a **designated stock exchange**), partnership or **trust** (other than a **mutual fund trust**), and

(ii) is not

(A) described in paragraph (a) of the definition *fully exempt interest* in subsection 212(3),

(B) listed or traded on a **public market**, or

(C) a deposit, standing to the credit of the **individual**,

(I) within the meaning assigned by the *Canada Deposit Insurance Corporation Act*, or

(II) with a **credit union** or a branch in **Canada** of a **bank**, and

(e) an **amount** in respect of a **property**, to the extent that

(i) the **amount**

(A) is a **taxable capital gain**, or a profit, of the **individual** for the year from the **disposition** after 2017 of the **property**, or

(B) is included under subsection 104(13) or 105(2) in computing the **individual's** **income** for the year and can reasonably be considered to be attributable to a **taxable capital gain**, or a profit, of any **person** or partnership for the year from the **disposition** after 2017 of the **property**, and

(ii) the **property** is

(A) a **share** of the capital stock of a **corporation** (other than a **share** of a class listed on a **designated stock exchange** or a **share** of the capital stock of a **mutual fund corporation**), or

(B) a **property** in respect of which the following conditions are met:

(I) the **property** is

1. an interest in a partnership,
2. an interest as a beneficiary under a **trust** (other than a **mutual fund trust** or a **trust** that is deemed to be in existence by subsection 143(1)), or
3. a debt **obligation** (other than a debt **obligation** described in any of clauses (d)(ii)(A) to (C)), and

(II) either

1. in respect of the **property** an **amount** is included in the **individual's split income** for the year or an earlier **taxation year**, or
2. all or any part of the fair market value of the **property**, immediately before the **disposition** referred to in clause (i)(A) or (B), as the case may be, is derived, directly or indirectly, from a **share** described in clause (A).

History

i (1.1) **Additional rules – Specified individual** — For the purpose of applying this section in respect of a **specified individual** in respect of a **taxation year**,

i (a) an **individual** is deemed to be actively engaged on a regular, continuous and substantial basis in the activities of a **business** in a **taxation year** of the **individual** if the **individual** works in the **business** at least an average of 20 hours per week during the portion of the year in which the **business** operates;

i (b) if an **amount** would — if this section were read without reference to this paragraph — be **split income** of a **specified individual** who has attained the age of 17 years before the year in respect of a **property**, and that **property** was acquired by, or for the benefit of, the **specified individual** as a consequence of the death of another **person**, then

(i) for the purpose of applying paragraph (b) of the definition **reasonable return** in subsection (1), to the extent that the particular **amount** referred to in that paragraph is in respect of the **property**, then the factors referred to in that paragraph in respect of the other **person** are to be included for the purpose of determining a **reasonable return** in respect of the **individual**,

(ii) for the purposes of this subparagraph and the definition **excluded business** in subsection (1), if the other **person** was actively engaged on a regular, substantial and continuous basis in the activities of a **business** throughout five previous **taxation years**, then the **individual** is deemed to have been actively engaged on a regular, substantial and continuous basis in the **business** throughout those five years, and

(iii) for the purpose of applying paragraph (g) of the definition **excluded amount** in subsection (1) in respect of that **property**, the **individual** is deemed to have attained the age of 24 years before the year if the other **person** had attained the age of 24 years before the year;

i (c) an **amount** that is a **specified individual's income** for a **taxation year** from, or the **specified individual's taxable capital gain** or profit for the year from the **disposition** of, a **property** is deemed to be an **excluded amount** in respect of the **specified individual** for the **taxation year** if

(i) the following conditions are met:

(A) the amount would be an excluded amount in respect of the specified individual's spouse or common-law partner for the year, if the amount were included in computing the spouse or common-law partner's income for the year, and

(B) the spouse or common law partner has attained the age of 64 years before the year, or

(ii) the amount would have been an excluded amount in respect of an individual who was, immediately before their death, the specified individual's spouse or common-law partner, if the amount were included in computing the spouse or common-law partner's income for their last taxation year (determined as if this section applies in respect of that year);

i (d) for greater certainty, an amount derived directly or indirectly from a business includes

(i) an amount that

(A) is derived from the provision of property or services to, or in support of, the business, or

(B) arises in connection with the ownership or disposition of an interest in the person or partnership carrying on the business, and

(ii) an amount derived from an amount described in this paragraph; and

i (e) for the purposes of this section, an individual is deemed not to be related to their spouse or common-law partner at any time in a year if, at the end of the year, the individual is living separate and apart from their spouse or common-law partner because of a breakdown of their marriage or common-law partnership.

History

i (2) **Tax on split income** — There shall be added to a specified individual's tax payable under this Part for a taxation year the highest individual percentage for the year multiplied by the individual's split income for the year.

History

i (3) **Tax payable by a specified individual** — Notwithstanding any other provision of this Act, if an individual is a specified individual for a taxation year, the individual's tax payable under this Part for the year shall not be less than the amount by which the amount added under subsection (2) to the individual's tax payable under this Part for the year exceeds the amount determined by the formula

$$A + B$$

where

A is the amount deducted under section 118.3 in computing the individual's tax payable under this Part for the year; and

B is the total of all amounts each of which is the amount that

(a) may be deducted under section 121 or 126 in computing the individual's tax payable under this Part for the year, and

(b) can reasonably be considered to be in respect of an amount included in computing the individual's split income for the year.

History

i (4) **Taxable capital gain** — If a **specified individual** who has not attained the age of 17 years before a **taxation year** would have for the **taxation year**, if this Act were read without reference to this section, a **taxable capital gain** (other than an **excluded amount**) from a **disposition** of **shares** (other than **shares** of a class listed on a **designated stock exchange** or **shares** of a **mutual fund corporation**) that are transferred, either directly or indirectly, in any manner whatever, to a **person** with whom the **specified individual** does not deal at **arm's length**, then the **amount** of that **taxable capital gain** is deemed not to be a **taxable capital gain** and twice the **amount** is deemed to be received by the **specified individual** in the year as a **taxable dividend** that is not an **eligible dividend**.

History

i (5) **Taxable capital gain of trust** — If a **specified individual** who has not attained the age of 17 years before a the **taxation year** would be, if this Act were read without reference to this section, required under subsection 104(13) or 105(2) to include an **amount** in computing the **specified individual's income** for the **taxation year**, then to the extent that the **amount** can reasonably be considered to be attributable to a **taxable capital gain** (other than an **excluded amount**) of a **trust** from a **disposition** of **shares** (other than **shares** of a class listed on a **designated stock exchange** or **shares** of a **mutual fund corporation**) that are transferred, either directly or indirectly, in any manner whatever, to a **person** with whom the **specified individual** does not deal at **arm's length**, subsections 104(13) and 105(2) do not apply in respect of the **amount** and twice the **amount** is deemed to be received by the **specified individual** in the year as a **taxable dividend** that is not an **eligible dividend**.

History

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