[redacted]

<u>Question 3: TOSI and Hours Worked</u>

A safe harbour for purposes of the Excluded Business definition applies where a person works on average at least 20 hours a week during the part of the year that the business is carried on. If this test is met, then the business is considered an Excluded Business and the TOSI rules do not apply by virtue of the amount being an Excluded Amount.

It is noted that the 20 hour week rule is a safe harbour. Working less than 20 hours per week might still meet the requirement for an Excluded Business, since the wording is general in nature, using the phrase "actively engaged on a regular, continuous and substantial basis in the activities of the business".

Suppose a business is carried on through a corporation owned by husband and wife. Both husband and wife contribute an equal amount of effort but the business only requires 10 hours of work per week on average, with each spouse contributing 5 hours. In these circumstances, can the business be an Excluded Business?

<u>CRA Response:</u>

One of the safe harbour exclusions from TOSI is for income received by a "specified individual" from an "excluded business". The definition of excluded business is set out in subsection 120.4(1). In general, a business is an excluded business of a specified individual for a taxation year if the specified individual is actively engaged on a regular, continuous and substantial basis in the activities of the business in either: (a) the relevant taxation year; or (b) any five prior taxation years of the specified individual. Whether an individual has been actively engaged in the activities of a business on a "regular, continuous and substantial basis" in a particular year will depend on the circumstances, including the nature of the individual's involvement in the business (i.e., the work and energy that the individual devotes to the business) and the nature of the business itself. The more an individual is involved in the management and/or current activities of the business, the more likely it is that the individual will be considered to participate in the business on a regular, continuous and substantial basis.

However, without limiting the generality of the "regular, continuous and substantial basis" test described above, a specified individual will be deemed under paragraph 120.4(1.1)(a) to have been 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. Paragraph 120.4(1.1)(a) is considered as a "bright line deeming rule" that is intended to eliminate some of the uncertainty inherent in the "excluded business" definition described above.

With respect to the scenario provided in the question, as the husband and wife don't work in the business at least an average of 20 hours per week during the portion of the year in which the business operates the bright line test in paragraph 120.4(1.1)(a) is not met.

Accordingly, the other factors used to determine if the specified individual is actively engaged in the activities of the business must be considered.

In Example 9 in our Guidance on the Application of the Split Income Rules for Adults, we considered a similar scenario to the one posed in this question. In that example, Spouse A and Spouse B were the only shareholders of Opco that carried on a business of developing mobile applications. Spouse A and Spouse B both had other jobs and/or attended university and only worked in the business of Opco on evenings and weekends for less than an average of 20 hours per week. There was no need for other employees or more involvement from either Spouse A and Spouse B to work in Opco's business. We concluded in that fact situation that the specified individuals could be considered as being actively engaged in the activities of the business of Opco on a regular, continuous and substantial basis.

Therefore, in the above scenario both the husband and wife could be considered to be actively engaged in the activities of the business on a regular, continuous and substantial basis even though the bright line test in paragraph 120.4(1.1)(a) is not met by either individual. It is a question of fact as to whether the husband and wife would be considered to meet the excluded business test for a particular taxation year (or continue to meet such test in any subsequent taxation year) as consideration must be given to the ongoing nature, and labour requirements of the corporation's business.

Additional guidance on the TOSI Rules can be found on the Canada Revenue Agency (CRA) website at: https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/income-sprinkling/guidance-split-income-rules-adults.html.

Question 4: TOSI and the Meaning of "Excluded Business"

A resident of Canada ("Individual") carries on a professional practice through a professional corporation ("XCo"). Individual owns all the voting common shares of XCo and the spouse of Individual ("Spouse"), who is also an adult resident of Canada, owns non-voting preferred shares of XCo. Spouse acts as a part-time receptionist for XCo and on average, works at least 20 hours per week. Typically, a part-time receptionist working similar hours would be paid a salary of $18,000 per annum, however, Spouse, by virtue of being a shareholder of XCo, receives a dividend of $150,000 each year.

Can the CRA provide confirmation that the dividend income received by Spouse from XCo on the non-voting preferred shares will not be subject to tax on split income ("TOSI")? Specifically, can the CRA confirm that the dividend income received by Spouse will be considered an "excluded amount" pursuant to subparagraph (e)(ii) of that definition found in subsection 120.4(1) of the Income Tax Act (Canada) (the "Act") by virtue of the fact that paragraph (a) of the "excluded business" exception will apply because Spouse works at least 20 hours a week as a part-time receptionist for XCo?

CRA Response:

In the situation described above, Spouse is a "specified individual" as defined in subsection 120.4(1) and Individual is a "source individual" (also as defined in subsection 120.4(1)) in respect of Spouse. The business carried on by XCo is a "related business" in respect of Spouse for the relevant taxation year (see subparagraph (a)(ii) and paragraph (c) of the definition of "related business" in subsection 120.4(1)).

As such, if Spouse receives dividends on the non-voting preferred shares of XCo in a particular taxation year, such dividends will be "split income" unless it is an "excluded amount". Pursuant to subparagraph (e)(ii) of the definition of "excluded amount" in subsection 120.4(1), such dividends could be an excluded amount if such amount is derived directly or indirectly from an "excluded business" of the individual for the year. The term "excluded business" is also defined in subsection 120.4(1) and generally includes a business in which the specified individual is actively engaged on a regular, continuous and substantial basis in the year (see paragraph (a) of the definition of "excluded business").

It is a question of fact as to whether an individual is "actively engaged on a regular, continuous and substantial basis". Whether an individual has been actively engaged in the activities of a business on a regular, continuous and substantial basis in a particular year will depend on the circumstances, including the nature of the individual's involvement in the business and the nature of the business itself. Whether an individual is actively engaged in a business will generally turn on the time, energy and work the individual devotes to the business. The more an individual is involved in the management and/or current activities of the business, the more likely it is that the individual will be considered to participate in the business on a regular, continuous and substantial basis. Likewise, the more an individual's contributions are integral to the success of the business, the more substantial they would be.

However, without limiting the generality of the "regular, continuous and substantial" test described above, paragraph 120.4(1.1)(a) will deem a specified individual to be actively engaged on a regular, continuous and substantial basis in the activities of a particular business for a particular year if that individual works an average of 20 hours per week of work throughout the portion of the year when the business operates.

Assuming Spouse works for XCo on average at least 20 hours a week throughout the portion of the year when that business operates, the bright-line test in paragraph 120.4(1.1)(a) is met. As such, the dividend income received by Spouse would be considered an "excluded amount" because the exception in subparagraph (e)(ii) of that definition in subsection 120.4(1) for an amount derived from an excluded business is met. Accordingly, the dividend income received by Spouse would not be subject to TOSI.

Question 5: TOSI and the Exclusion for Surviving Spouse/Spouse Age 65+

A specified individual's income or taxable capital gain for a taxation year will be an excluded amount if 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, assuming such amount were included in the spouse or common-law partner's income for that year.

However, there is a question of whether this exemption will apply where the deceased spouse qualified under the "excluded shares" exception based on direct ownership of the shares, and the surviving spouse holds the shares through a holding company or trust. The issue is whether the surviving spouse's indirect ownership arrangement needs to be imputed to the deceased in determining whether he or she would have qualified for an exemption from the TOSI rules.

As well, split income received by a specified individual in a year will be deemed to be an excluded amount if that person's spouse or common-law partner has attained the age of 65 in the year, and the split income would be an excluded amount if that amount had been received by the spouse or common-law partner in the year.

Again, there may be a question as to whether this exemption will apply where the spouse qualifies for the excluded shares exemption, but the specified individual does not directly own the shares in the corporation. In effect, does the specified individual's ownership arrangement impact the application of this deeming rule for purposes of the excluded shares exemption?

CRA Response:

The question raises the issue of how paragraph 120.4(1.1)(c) applies, if at all, to deem an amount to be an excluded amount in respect of a specified individual where the excluded amount to be relied on for purposes of that paragraph is the one for excluded shares.

The Applicable Law

Subsection 120.4(2) levies an additional tax on the split income of a specified individual except to the extent of such income that is an excluded amount.

A specified individual is defined in subsection 120.4 and includes an individual who is a resident of Canada at the end of the year.

Split income is defined in subsection 120.4(1) and includes income of a specified individual from, or taxable capital gains from the disposition of, shares 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).

Split income is also defined to not include an excluded amount.

Excluded amount is defined in subsection 120.4(1) and includes, under paragraph (g) of the definition, income from, or a taxable capital gain from the disposition of, excluded shares where the individual has attained the age of 24 before the year.

Shares are excluded shares of a specified individual at any time if such shares meet the income/corporate status and ownership requirements described in paragraphs (a) to (c) of the definition of that term in subsection 120.4(1).

In particular, paragraph (b) of the definition of excluded share requires that the specified individual owns shares of the capital stock of the corporation that immediately before the time

(i) gives the holder 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.

A special rule in paragraph 120.4(1.1)(c) deems income or a taxable capital gain that would otherwise be split income of a specified individual to be an excluded amount in respect of the individual for a taxation year where certain requirements are met.

In particular, paragraph 120.4(1.1)(c) deems an amount of split income to be an excluded amount if either:

(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);

Discussion

The application of the deeming rule in paragraph 120.4(1.1)(c) can be illustrated through the following hypothetical.

Assume A is the deceased spouse or common-law partner of a specified individual (the "Specified Individual"), and owned shares of Canco, a taxable Canadian corporation that is a private corporation, that were excluded shares of A, as that term is defined in subsection 120.4(1), throughout A's last taxation year before death. The Specified Individual is a beneficiary of a Canadian resident trust that owns a class of shares of Canco. A and the Specified Individual are residents of Canada. Canco carries on a business that was a related business of A and is a related business of the Specified Individual. The Canco shares owned by the trust were acquired during A's lifetime and were not acquired for the benefit of the Specified Individual as a consequence of A's death. Canco pays a dividend (the "Dividend") to the trust which is then distributed by the trust to the Specified Individual. By reason of subsections 104(13) and (19) and subparagraph (a)(i) of the definition of split income in subsection 120.4(1), the income (i.e. the Dividend) of the Specified Individual will be split income of the Specified Individual unless it is an excluded amount. In the circumstances, the Dividend will not be an excluded amount as income from excluded shares of the Specified Individual because the Specified Individual does not meet the ownership requirement in paragraph (b) of the definition as the Specified Individual does not directly own any shares of Canco. For purposes of this discussion, we have also assumed that the Dividend would not otherwise be an excluded amount of the Specified Individual under any other category of excluded amount listed in the definition in subsection 120.4(1).

Based on the foregoing, the Dividend will be split income of the Specified Individual unless it is deemed to be an excluded amount under subparagraph 120.4(1.1)(c)(ii) because the amount of the Dividend would have been an excluded amount if it had been included in computing A's income for A's last taxation year in the circumstances described in that subparagraph.

In general, for purposes of determining whether an amount would have been an excluded amount in respect of the deceased spouse or common-law partner (the "Spouse") of a specified individual under subparagraph 120.4(1.1)(c)(ii) if the amount had been included in the Spouse's income, consideration should be given to all of such Spouse's relevant facts and circumstances in the applicable taxation year, including in the case of determining whether an amount is an excluded amount because it is income is from excluded shares, any shares of a corporation owned by such Spouse.

Thus, in our view, the ownership requirement in paragraph (b) of the definition of excluded shares for purposes of paragraphs 120.4(1.1)(c) is based on the actual ownership of the shares of the dividend payor by the Spouse of the specified individual in the relevant year or taxation year described in subparagraphs 120.4(1.1)(c)(i) and (ii).

Based on the foregoing, subparagraph 120.4(1.1)(c)(ii) will then apply to the hypothetical as follows. The subparagraph will deem the Dividend to be an excluded amount of the Specified Individual if the amount would have been an excluded amount of A if the Dividend had been notionally included in computing A's income in A's last taxation year before death. In our circumstances, the excluded amount that is being relied on for A is the one for income from excluded shares. Whether the amount of the Dividend would have been income from excluded shares of A should take into consideration the following: (1) A owned shares of Canco throughout A's last taxation year before death; (2) such shares met the requirements for being excluded shares under subsection 120.4(1) during that period; and (3) we will consider the amount of the Dividend that was notionally included in computing A's income for purposes of subparagraph 120.4(1.1)(c)(ii) to be income from such shares. Based on the foregoing, the amount of the Dividend would have been an excluded amount in respect of A if the amount had been included in computing A's income in A's last taxation year as income from excluded shares. Accordingly, the Dividend should be deemed to be an excluded amount in respect of the Specified Individual under subparagraph 120.4(1.1)(c)(ii).

A similar analysis would apply for purposes of subparagraph 120.4(1.1)(c)(i) where the spouse or common-law partner is age 65 or over in the applicable year.

The foregoing is intended to illustrate a general approach to applying paragraph 120.4(1.1)(c) in the context of excluded shares to a relatively straightforward set of circumstances involving a basic and common share ownership structure. It is unclear whether the same approach could apply in the case of more complex structures, including structures involving holding corporations. In those cases, taxpayers should consider seeking confirmation of whether this general approach would apply to their particular fact situation. As well, the GAAR may apply where artificial transactions are undertaken to achieve a similar but inappropriate result.

Finally, note that while the foregoing discussion has been limited to the excluded amount for income from excluded shares, the deeming rule in paragraph 120.4(1.1)(c) could also generally apply based on one or more of the other categories of excluded amount listed in the definition of that term in subsection 120.4(1) which should be considered in any fact circumstance.

Question 6(a): Tracing of Owner or Property Attributes

It is unclear how the rules in subsection 120.4(1.1) will work where there have been multiple deaths. For example, assume Mr. and Mrs. A own all the shares of Opco, which operates a services business. Mrs. A has been actively engaged in the business for at least five years, whereas Mr. A has not been actively engaged in the business. Mrs. A passes away and all her shares are gifted through her will to Mr. A. Subsequent distributions from Opco to Mr. A would not be split income as Opco would be deemed to be an excluded business in respect of Mr. A, even if he is not actively engaged in the business. But how will the deeming rules apply if Mr. A subsequently dies and those shares are gifted to the children. Will they be deemed to have made the same contributions as Mrs. A? Or do the deeming rules only reference Mr. A's contributions? If the latter, then the children could become subject to the TOSI rules unless they can rely on another exemption.

CRA Response:

Subparagraph 120.4(1.1)(b)(ii) provides a continuity rule that may apply for the purposes of this subparagraph and the definition of "excluded business" in subsection 120.4(1). This rule can apply where the property (in this case the inherited shares) was acquired by, or for the benefit of, the specified individual as a consequence of the death of another person. If this rule applies, the specified individual's income on the inherited property will qualify as an "excluded amount" under subparagraph 120.4(1)(e)(ii) to the extent that the deceased individual was otherwise actively engaged on a regular, continuous and substantial basis in the activities of the particular business throughout five previous taxation years, and will not be subject to the tax on split income (TOSI). It remains a question of fact as to whether a particular individual acquired property as a consequence of the death of another individual and whether that other individual was otherwise actively engaged on a regular, continuous and substantial basis in the activities of such business throughout five previous taxation years.

With respect to the acquisition of Mrs. A's Opco shares by Mr. A as a consequence of her death, Mr. A will be deemed to have been actively engaged on a regular, continuous and substantial basis in the activities of Opco's business throughout five previous taxation years for the purposes of the "excluded business" definition for all taxation years commencing with the year in which such Opco shares were so acquired. Therefore, any dividends arising on any Opco shares owned by Mr. A for a taxation year commencing with the year in which such shares were acquired as a consequence of Mrs. A's death will not be subject to the TOSI.

Similarly, in our view, the effect of the previous application of the deeming rule in subparagraph 120.4(1.1)(b)(ii) could extend to a subsequent acquisition of property as a consequence of death of another individual. This would be the case where in respect of a particular property the particular deceased individual was previously deemed by subparagraph 120.4(1.1)(b)(ii) to have been actively engaged on a regular, continuous and substantial basis in the activities of that particular business throughout five previous taxation years.

For instance, for the purposes of subparagraph 120.4(1.1)(b)(ii) and the definition of "excluded business" in subsection 120.4(1), Mr. A was deemed by this subparagraph to have been actively engaged on a regular, continuous and substantial basis in the activities of Opco's business throughout five previous taxation years when he acquired shares of Opco as a consequence of Mrs. A's death. Similarly, when the children inherit Mr. A's Opco shares as a consequence of his death, subparagraph 120.4(1.1)(b)(ii) will apply to deem each of the children to have been actively engaged on a regular, substantial and continuous basis in the business of Opco throughout five prior taxation years since Mr. A was also deemed by subparagraph 120.4(1.1)(b)(ii) to have met that requirement. As a result, the income from Opco, which would otherwise be subject to TOSI, would be an excluded amount under the excluded business definition, as discussed above. Therefore, any dividends arising on any of the shares of Opco owned by the children, for any taxation year commencing with the taxation year in which they inherited Mr. A's Opco shares, will not be subject to the TOSI.

Question 6(b): Tracing of Attributes (Continued)

Consider the situation where Mr. A passed away in Year 1 and Mrs. A passed away in Year 2. In each of their will, they each bequest ½ of their shares of Opco to each of their 2 inactive children. As a result, each child received ½ of his/her shares of Opco from Mr. A and the other ½ from Mrs. A. Is each child entitled to the excluded business exemption in respect of all future dividends received from Opco?

CRA Response:

As noted above, Mr. A was not actively engaged on a regular, continuous and substantial basis in the activities of Opco's business throughout five previous taxation years before his death and he did not inherit any of Mrs. A's Opco shares before his death. As such, when his children acquire his shares of Opco, as a consequence of his death, the conditions in subparagraph 120.4(1.1)(b)(ii) would not be met. Therefore, the "excluded business" exemption will not apply at that time, and any dividends arising on the shares of Opco they inherited from Mr. A will initially be subject to the TOSI (unless another exception applies).

However, beginning with the taxation year in which the children inherit Mrs. A's Opco shares as a consequence of her death, subparagraph 120.4(1.1)(b)(ii) will apply such that each of the children will be deemed to have been actively engaged on a regular, substantial and continuous basis in the business of Opco throughout five prior taxation years. Based on the foregoing, income from Opco that would otherwise be subject to TOSI would be an excluded amount under the "excluded business" definition as discussed above. Therefore, once the children inherit shares of Opco from Mrs. A, any dividends received on any of the Opco shares (including those previously acquired on Mr. A's death) will not be subject to TOSI from that taxation year onward.

Additional guidance on the TOSI rules can be found on the Canada Revenue Agency (CRA) website at: https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/income-sprinkling/guidance-split-income-rules-adults.html

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Question 13: TOSI and Preferred Beneficiary Election

The preferred beneficiary election is made jointly by a trust and a preferred beneficiary pursuant to subsection 104(14). The term "preferred beneficiary" is defined in subsection 108(1) to be an individual resident in Canada who is a beneficiary of a trust who has either a severe and prolonged impairment in physical or mental functions that qualifies for the disability amount, or, if at least age 18, is dependent on another individual because of mental or physical infirmity and whose income does not exceed an amount referenced to the basic personal tax credit for single status. In addition, the individual must be a settlor of the trust, a spouse, common law partner or former spouse or common law partner of the settlor, or a child, grandchild or great grandchild of the settlor, or the spouse or common law partner of such person.

The preferred beneficiary election allows the trust to "allocate" income of the trust to the preferred beneficiary, whereupon the trust can take a deduction and the amount is included in the income of the preferred beneficiary.

The question is whether an amount included in a beneficiary's income under a preferred beneficiary election is split income or not under paragraph (c) of the definition of "split income" in the TOSI rules. Paragraph (c) refers to an amount included in a beneficiary's income because of the application of subsection 104(13) or 105(2) and does not refer to the preferred beneficiary election where the designated amount is included in the beneficiary's income pursuant to subsection 104(14).

CRA Response:

The definition of "split income" in subsection 120.4(1) is relevant in determining income of a specified individual that is subject to the tax on split income, as provided for in subsection 120.4(2). The "split income" definition requires that the total of each amount which is to be included pursuant to paragraphs (a) through (e) be determined for a given taxation year.

In general terms, the preamble to paragraph (c) provides for the inclusion in the split income calculation of the portion of certain trust income described in subparagraphs (i) and (ii) that is included in the income of the specified individual pursuant to subsection 104(13) or 105(2). The amount of income which is allocated to a preferred beneficiary in a given year is included in that beneficiary's income for that year pursuant to subsection 104(14). Accordingly, paragraph (c) of the "split income" definition is not applicable to this amount.

However, one must also consider subparagraph (a)(i) of the definition, which provides for the inclusion of certain taxable dividends received by the specified individual. If the income allocated to a preferred beneficiary election is also subject to a subsection 104(19) designation, the amount so designated is deemed to be a taxable dividend received by the preferred beneficiary, for purposes of the Act (other than Part XIII). Accordingly, the amount designated under subsection 104(19), if not an "excluded amount" as defined in subsection 120.4(1), and not in respect of shares listed on a designated stock exchange or on shares of a mutual fund corporation, must be considered in the split income calculation.

Question 14: TOSI and the Preferred Beneficiary Election

In the Summary portion of Technical Interpretation 2018-0759521E5, the CRA indicated that if a designation under subsection 104(19) is made in respect of a preferred beneficiary income amount resulting from an election under subsection 104(14), the amount would be includable in the definition of "split income" by virtue of paragraph (a) of that definition. However, the CRA did not provide any explanation for this statement in the body of the External Interpretation document. By referring only to trust income under subsections 104(13) and 105(2) in paragraph (c) of the split income definition, it appears to us that the provision was deliberately drafted to exclude a preferred beneficiary elected income amount, and this has been the case since the introduction of the kiddie tax rules in 2000. We submit that it was always common practice to make the subsection 104(19) designation in respect of any dividend income allocation made under a preferred beneficiary election to allow the beneficiary to access the gross-up and dividend tax credit regime, and in fact, all major tax return preparation software automatically preserve dividend characterization (in effect making the subsection 104(19) designation) whenever a trust receives dividend income that is allocated to a preferred beneficiary. Can the CRA (i) elaborate on its reasoning behind its comment regarding subsection 104(19) in Technical Interpretation 2018-0759521E5, (ii) confirm its position on this matter for minor preferred beneficiaries for years prior to 2018, (iii) provide guidance on how a T3 return and slip should be prepared to avoid a subsection 104(19) designation when allocating a taxable dividend to a preferred beneficiary, and (iv) consider granting relief for all historical preferred beneficiary elections made?

CRA Response:

i) The fact scenario that we were asked to comment on in Technical Interpretation 2018-0759521E5 was such that there was no dividend income received by the trust that made the subsection 104(14) election.

Accordingly, our response noted that the amount included in the income of the preferred beneficiary in that case would not be considered to be split income by virtue of paragraph (c) of the "split income" definition.

The Summary section of Technical Interpretation 2018-0759521E5 qualifies the statements made in the body of the letter to highlight what might be best categorized as an exception to the general conclusion that amounts subject to a preferred beneficiary election are not considered to be split income, by virtue of paragraph (c) of the "split income" definition. An election by a trust and a preferred beneficiary to include such part of the accumulating income of the trust in the preferred beneficiary's income would not be subject to

TOSI unless a designation is made under subsection 104(19) in respect of that income, as indicated in our response in Question 13. This comment was made upon considering that:

- subparagraph (a)(i) of the definition of "split income" in 120.4 includes in computing income an amount "in respect of taxable dividends received by the individual in respect of shares of the capital stock ...";
- subsection 104(19) deems the amount so designated to be a taxable dividend received by the taxpayer (the preferred beneficiary) for all purposes of the Act other than Part XIII; and
- there is no legislated exclusion from TOSI for dividends designated under subsection 104(19).

ii) This position is not a new interpretation. It is consistent with the statements made in Technical Interpretation 2000-0056385, which was published in 2000. In addition, it should be noted that the 2018 T3 Guide (Publication T4013) points out on page 44 that:

> "The tax on split income applies to all of the following:
>
> > taxable dividends allocated by the trust (other than dividends from shares of a class listed on a designated stock exchange and those of a mutual fund corporation)"

This wording is consistent with the wording contained in each T3 Guide since 2000, the year the Kiddie Tax (now TOSI) legislation became effective.

iii) In order to "avoid" a subsection 104(19) designation when allocating a taxable dividend to a preferred beneficiary the T3 slip can be prepared showing the amount so allocated in box 26 "Other Income".

iv) We have discussed this issue with the Department of Finance and have confirmed that our interpretation of this matter is consistent with tax policy. As such, the CRA will not be granting relief for all historical preferred beneficiary elections made.

[redacted]