



September 10, 2024

Department of Finance Canada
90 Elgin Street
Ottawa, Ontario K1A 0G5
Via email: consultation-legislation@fin.gc.ca

Re: Technical Tax Bill released on August 12, 2024

On behalf of the Conference for Advanced Life Underwriting (CALU), we are writing to provide recommendations and other comments relating to certain changes to the Income Tax Act (the Act) contained in the technical tax bill¹ released by the Department of Finance (Finance Canada) on August 12, 2024.

The Conference for Advanced Life Underwriting (CALU) is a national professional membership association of leaders in the life insurance and financial advisory industry. Along with our partner organization, Advocis, we speak for thousands of life insurance and financial advisors in every part of Canada and, in turn, the interests of millions of Canadians.

Commentary on the TTB

1. Trust Reporting Rules

We wish to express our general support for the various relieving amendments to the trust reporting rules which are designed to deal with concerns expressed by the tax and accounting community and their clients. These changes will certainly help reduce the administrative burden currently imposed on trustees of trusts under existing legislation.

We will limit our detailed comments to the proposed reporting exemption for larger trusts which own specific types of property. CALU has previously expressed concerns with the application of the trust reporting rules to “life insurance trusts” which are established for estate planning purposes.² To partially address this concern, CALU had recommended that the list of assets that could be owned by a trust and qualify for the small trust exception³ also include life insurance policies, with the FMV of such policies based on their cash surrender value (CSV).

¹ Herein referred to as the TTB.

² These trusts often own life insurance as well as investments and are designed to provide creditor protection, probate avoidance, U.S. estate tax minimization and funding for the settlor’s tax liabilities arising on death.

³ Now contained in paragraph 150(1.2)(b) which is proposed to be amended by the TTB.



The TTB proposes a new exemption for trusts where its property consists of prescribed types of assets (including segregated fund policies and personal-use property) and the total FMV of that property does not exceed \$250,000 in the year.⁴ However, the proposed list of assets does not include life insurance policies.

To assist those Canadians who establish trusts for estate planning purposes, **CALU recommends that the prescribed list of properties be extended to include an exempt “life insurance policy in Canada”⁵ that is issued by a Canadian life insurance company, with the FMV of such policies deemed to be equal to their cash surrender value.**

2. Graduated Rate Estates and Post-Mortem Planning

The TTB contains a positive change to paragraph 212.1(6)(b)⁶ that will assist GREs in avoiding the potential application of section 212.1, where there are non-resident beneficiaries of an estate and the GRE proposes to engage certain post-mortem planning arrangements⁷ to avoid double taxation. Such changes were in response to a “comfort letter”⁸ issued by Finance Canada in 2019.

We would note that similar issues can arise on the death of a “life interest beneficiary” under a life interest trust⁹ where there is a non-resident residual beneficiary. The life interest trust might also want to engage in post-mortem pipeline planning to minimize the incidence of double taxation on shares held in trust upon the death of the life interest beneficiary,¹⁰ but would be caught by section 212.1 as a result of the trust look-through rules.

CALU therefore recommends that the exemption to the trust look-through rules in paragraph 212.1(6)(b) be expanded to apply to a life interest trust, where the shares were held by the trust immediately before the death of the relevant life interest beneficiary, and the life interest beneficiary was resident in Canada immediately before their death.

3. Other Changes of Interest to CALU Members

CALU would also like to express its support for the following changes included in the TTB:

- Modifications to the paragraphs (a) and (b) of the definition of “excluded amount”¹¹ for purposes of the tax on split income (TOSI) rules to include “property substituted for that property.” This addresses

⁴ Proposed paragraph 150(1.2)(b.1). There is additional criteria that must also be met by the trust to qualify for this exemption.

⁵ As defined in subsection 138(12).

⁶ The so-call trust look-through rules.

⁷ Commonly referred to as post-mortem pipeline planning.

⁸ Letter TL-29 from the Department of Finance dated December 2, 2019.

⁹ Life interest trusts include alter ego, joint partner and inter vivos/testamentary spousal trusts. The death of the life interest beneficiary (or surviving life interest beneficiary) results in a deemed disposition of capital property held by the life interest trust under subsection 104(4).

¹⁰ The CRA has confirmed that alter ego trusts can engage in post-mortem pipeline planning in an Advance Tax Ruling Request (2019-0800431R3 dated 2021).

¹¹ The definition of excluded amount is set out in subsection 120.4(1).



concerns arising from a recent CRA technical interpretation¹² which could otherwise limit the scope of these exemptions from the TOSI rules.

- Amendments to subsection 164(6) to provide that where a GRE realizes a capital loss in the first three taxation years of the estate, the deceased's legal representative can elect that such capital loss be a loss of the deceased taxpayer from the disposition of properties in their final tax return. We are also appreciative of the complementary change to the stop-loss rules in subsection 112(3.2).
- Amendments to subsection 248(36) to confirm that the "cost" of a life insurance policy is equal to the adjusted cost basis to the policyholder (as defined in subsection 148(9)) for purposes of its application to subsection 248(35).
- Permitting the late filing, amendment and revocation of a joint election¹³ made in respect of a qualifying intergenerational business transfer of shares.¹⁴

We would appreciate the opportunity to discuss our recommendations relating to the TTB with Finance officials at your earliest convenience. Our contact person is CALU's Tax Advisor, Kevin Wark who can be reached at kwark@calu.com.

Sincerely yours,

Jeff Wilson

Jeff Wilson
Chair of the Board of Directors

Guy Legault

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cc.

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¹² CRA Technical Interpretation 2024-1005811C6 dated May 7, 2024.

¹³ Paragraph 84.1(2)(e).

¹⁴ Draft paragraph 600(c) of the Income Tax Regulations in combination with paragraphs 220(3.2)(a) and (b).