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.

Definitions

118.1 (1) In this section,

first-time donor [Repealed, 2013, c. 33, s. 10]

total charitable gifts, of an individual for a particular taxation year, means the total of all amounts each of which is the eligible amount — to the extent it is not otherwise included in determining an amount that is deducted under this section in computing any individual's tax payable under this Part for any taxation year — of a gift (other than a gift any part of the eligible amount of which is included in the total cultural gifts or the total ecological gifts of any individual for any taxation year) that is made

(a) to a qualified donee,

(b) in a taxation year that is not a year for which an amount is deducted under subsection 110(2) in computing the individual's taxable income, and

(c) if the individual is

(i) not a trust,

(A) by the individual, or the individual's spouse or common-law partner, in the particular year or any of the five preceding taxation years,

(B) by the individual in the year in which the individual dies if the particular year is the taxation year that precedes the taxation year in which the individual dies, or

(C) by the individual’s estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

(ii) a trust

(A) by the trust in the particular year or any of the five preceding taxation years,

(B) by the trust if

(I) the trust is an individual’s estate,

(II) subsection (5.1) applies to the gift, and

(III) the particular year is a taxation year

1 in which the estate is the individual’s graduated rate estate, and

2 that precedes the taxation year in which the gift is made, or

(C) by the trust if

(I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual’s death,

(II) the gift is made after the particular year and on or before the trust’s filing-due date for the particular year, and

(III) the subject of the gift is property that is held by the trust at the time of the individual’s death or is property that was substituted for that property; (*total des dons de bienfaisance*)

total Crown gifts [Repealed, 2014, c. 39, s. 34]

total cultural gifts, of an individual for a particular taxation year, means the total of all amounts each of which is the eligible amount — to the extent it is not otherwise included in determining an amount that is deducted under this section in computing any individual's tax payable under this Part for any taxation year — of a gift

(a) of an object that the Canadian Cultural Property Export Review Board has determined meets the criterion set out in paragraph 29(3)(b) of the *Cultural Property Export and Import Act*,

(b) that is made to an institution or a public authority in Canada that is, at the time the gift is made, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object, and

(c) that is made

(i) if the individual is not a trust,

(A) by the individual, or the individual's spouse or common-law partner, in the particular year or any of the five preceding taxation years,

(B) by the individual in the year in which the individual dies if the particular year is the taxation year that precedes the taxation year in which the individual dies, or

(C) by the individual's estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

(ii) if the individual is a trust,

(A) by the trust in the particular year or any of the five preceding taxation years,

(B) by the trust if

(I) the trust is an individual's estate,

(II) subsection (5.1) applies to the gift, and

(III) the particular year is a taxation year

1 in which the estate is the individual's graduated rate estate, and

2 that precedes the taxation year in which the gift is made, or

(C) by the trust if

(I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual's death,

(II) the gift is made after the particular year and on or before the trust's filing-due date for the particular year, and

(III) the subject of the gift is property that is held by the trust at the time of the individual's death or is property that was substituted for that property; (*total des dons de biens culturels*)

total ecological gifts, of an individual for a particular taxation year, means the total of all amounts each of which is the eligible amount — to the extent it is not otherwise included in determining an amount that is deducted under this section in computing any individual's tax payable under this Part for any taxation year — of a gift (other than a gift any part of the eligible amount of which is included in the total cultural gifts of any individual for any taxation year)

(a) of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a personal servitude (the rights to which the land is subject and which has a term of not less than 100 years) or a real servitude)

(i) the fair market value of which is certified by the Minister of the Environment, and

(ii) that is certified by that Minister, or by a person designated by that Minister, to be ecologically sensitive land, the conservation and protection of which is, in the opinion of that Minister or the designated person, important to the preservation of Canada’s environmental heritage,

(b) that is made to a qualified donee that is

(i) Her Majesty in right of Canada or of a province,

(i.1) a municipality in Canada, or a municipal or public body performing a function of government in Canada, that is approved by that Minister or the designated person in respect of the gift, or

(ii) a registered charity (other than a private foundation) one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada’s environmental heritage, and that is approved by that Minister or the designated person in respect of the gift, and

(c) that is made

(i) if the individual is not a trust,

(A) by the individual, or the individual’s spouse or common-law partner, in the particular year or any of the 10 preceding taxation years,

(B) by the individual in the year in which the individual dies if the particular year is the taxation year that precedes the taxation year in which the individual dies, or

(C) by the individual’s estate if subsection (5.1) applies to the gift and the particular year is the taxation year in which the individual dies or the preceding taxation year, or

(ii) if the individual is a trust,

(A) by the trust in the particular year or any of the 10 preceding taxation years,

(B) by the trust if

(I) the trust is an individual’s estate,

(II) subsection (5.1) applies to the gift, and

(III) the particular year is a taxation year

1 in which the estate is the individual’s graduated rate estate, and

2 that precedes the taxation year in which the gift is made, or

(C) by the trust if

(I) the end of the particular year is determined by paragraph 104(13.4)(a) because of an individual’s death,

(II) the gift is made after the particular year and on or before the trust’s filing-due date for the particular year, and

(III) the subject of the gift is property that is held by the trust at the time of the individual’s death or is property that was substituted for that property; (*total des dons de biens écosensibles*)

total gifts of an individual for a taxation year means the total of

(a) the least of

(i) the individual’s total charitable gifts for the year,

(ii) the individual’s income for the year where the individual dies in the year or in the following taxation year, and

(iii) in any other case, the lesser of the individual's income for the year and the amount determined by the formula

$$0.75A + 0.25 (B + C + D - E)$$

where

A is the individual's income for the year,

B is the total of all amounts, each of which is that proportion of the individual's taxable capital gain for the taxation year in respect of a gift made by the individual in the taxation year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift,

C is the total of all amounts each of which is a taxable capital gain of the individual for the year, because of subsection 40(1.01), from a disposition of a property in a preceding taxation year,

D is the total of all amounts each of which is determined in respect of the individual's depreciable property of a prescribed class and equal to the lesser of

(A) the amount included under subsection 13(1) in respect of the class in computing the individual's income for the year, and

(B) the total of all amounts each of which is determined in respect of a disposition that is the making of a gift of property of the class made by the individual in the year (in respect of which gift an eligible amount is included in the individual's total charitable gifts for the taxation year) equal to the lesser of

(I) that proportion, of the amount by which the proceeds of disposition of the property exceed any outlays and expenses, to the extent that they were made or incurred by the individual for the purpose of making the disposition, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

(II) that proportion, of the capital cost to the individual of the property, that the eligible amount of the gift is of the individual's proceeds of disposition in respect of the gift, and

E is the total of all amounts each of which is the portion of an amount deducted under section 110.6 in computing the individual's taxable income for the year that can reasonably be considered to be in respect of a gift referred to in the description of B or C,

(b) [Repealed, 2014, c. 39, s. 34]

(c) the individual's total cultural gifts for the year, and

(d) the individual's total ecological gifts for the year. (*total des dons*)

Proof of gift

(2) An eligible amount of a gift is not to be included in the total charitable gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(a) a receipt for the gift that contains prescribed information;

(b) in the case of a gift described in the definition ***total cultural gifts*** in subsection (1), the certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act*; and

(c) in the case of a gift described in the definition ***total ecological gifts*** in subsection (1), both certificates referred to in that definition.

Ordering of gifts

(2.1) For the purpose of determining an individual's total charitable gifts, total cultural gifts and total ecological gifts for a taxation year, no amount in respect of a gift described in any of the definitions of those expressions and made in a particular taxation year is to be considered to have been included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a taxation year until amounts in respect of such gifts made in taxation years preceding the particular year that can be so considered are so considered.

Deduction by individuals for gifts

(3) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula

$$A \times B + C \times D + E \times F$$

where

A is the appropriate percentage for the year;

B is the lesser of $200 and the individual's total gifts for the year;

C is the highest individual percentage for the year;

D is

(a) in the case of a trust (other than a graduated rate estate or a **qualified disability trust** as defined in subsection 122(3)), the amount, if any, by which its total gifts for the year exceeds $200, and

(b) in any other case, the lesser of

(i) the amount, if any, by which the individual's total gifts for the year exceeds $200, and

(ii) the amount, if any, by which the individual's amount taxable for the year for the purposes of subsection 117(2) exceeds the first dollar amount for the year referred to in paragraph 117(2)(e);

E is 29%; and

F is the amount, if any, by which the individual's total gifts for the year exceeds the total of $200 and the amount determined for D.

(3.1) and (3.2) [Repealed, 2013, c. 33, s. 10]

Gifts — deaths before 2016

(4) If an individual dies before 2016 and any of this subsection and subsections (5), (5.2), (5.3), (7) and (7.1) (as they read for the taxation year in which the death occurred) applied to deem the individual to have made a gift at a time before the death, then for the purposes of this section the gift is deemed not to have been made by any other taxpayer or at any other time.

Gifts — deaths after 2015

(4.1) Subsection (5) applies to a gift if an estate arises on and as a consequence of the death after 2015 of an individual and the gift is

(a) made by the individual by the individual's will;

(b) deemed by subsection (5.2) to have been made in respect of the death; or

(c) made by the estate.

Gifts — deaths after 2015

(5) If this subsection applies to a gift, then for the purposes of the Act (other than subsections (4.1) and (5.2)) the gift is deemed to be made

(a) by the estate referred to in subsection (4.1) and not by any other taxpayer; and

(b) subject to subsection (13), at the time that the property that is the subject of the gift is transferred to the donee and not at any other time.

Gifts by graduated rate estate

(5.1) This subsection applies to a gift made by an individual’s graduated rate estate (determined without reference to paragraph (a) of the definition ***graduated rate estate*** in subsection 248(1)) if the gift is made no more than 60 months after the individual’s death, the death occurs after 2015 and either

(a) the gift is deemed by subsection (5.2) to have been made in respect of the death, or

(b) the subject of the gift is property that was acquired by the estate on and as a consequence of the death or is property that was substituted for that property.

Deemed gifts — eligible transfers

(5.2) For the purposes of this section, money or a negotiable instrument transferred to a qualified donee is deemed to be property that is the subject of a gift, in respect of an individual’s death, made to the qualified donee, if the death occurs after 2015 and the transfer is

(a) a transfer — other than a transfer the amount of which is not included in computing the income of the individual or the individual’s estate for any taxation year but would have been included in computing the income of the individual or the estate for a taxation year if the transfer had been made to the individual’s legal representative for the estate’s benefit and this Act were read without reference to subsection 70(3) — made

(i) as a consequence of the death,

(ii) solely because of the obligations under a life insurance policy under which, immediately before the death, the individual’s life was insured, and the individual’s consent would have been required to change the recipient of the transfer, and

(iii) from an insurer to a person that is the qualified donee and that was, immediately before the death, neither a policyholder under the policy nor an assignee of the individual’s interest under the policy; or

(b) a transfer made

(i) as a consequence of the death,

(ii) solely because of the qualified donee’s interest or, for civil law a right, as a beneficiary under an arrangement (other than an arrangement of which a licensed annuities provider is the issuer or carrier)

(A) that is a registered retirement savings plan or registered retirement income fund or that was, immediately before the death, a TFSA, and

(B) under which the individual was, immediately before the death, the annuitant or holder, and

(iii) from the arrangement to the qualified donee.

(5.3) [Repealed, 2014, c. 39, s. 34]

Where subsection (6) applies

(5.4) Subsection (6) applies in circumstances where

(a) an individual

(i) makes a gift at any time of capital property to a qualified donee, or

(ii) who is non-resident, makes a gift at any time of real or immovable property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest; and

(b) the fair market value of the property otherwise determined at that time exceeds

(i) in the case of depreciable property of a prescribed class, the lesser of the undepreciated capital cost of that class at the end of the taxation year of the individual that includes that time (determined without reference to proceeds of disposition designated in respect of the property under subsection (6)) and the adjusted cost base to the individual of the property immediately before that time, and

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

Gifts of capital property

(6) If this subsection applies in respect of a gift by an individual of property, and the individual or the individual's legal representative designates an amount in respect of the gift in the individual's return of income under section 150 for the year in which the gift is made, the amount so designated is deemed to be the individual's proceeds of disposition of the property and, for the purpose of subsection 248(31), the fair market value of the gift, but the amount so designated may not exceed the fair market value of the property otherwise determined and may not be less than the greater of

> **(a)** in the case of a gift made after December 20, 2002, the amount of the advantage, if any, in respect of the gift, and
>
> **(b)** the amount determined under subparagraph (5.4)(b)(i) or (ii), as the case may be, in respect of the property.

Gift of art

(7) Subsection (7.1) applies to a gift made by an individual if the gift is described in the definition ***total charitable gifts*** or ***total cultural gifts*** in subsection (1) and the property that is the subject of the gift is a work of art that

> **(a)** was created by the individual and is in the individual's inventory;
>
> **(b)** was acquired by the individual under circumstances where subsection 70(3) applies; or
>
> **(c)** if the individual is an estate that arose on and as a consequence of the death of a particular individual who created the work of art, was in the particular individual's inventory immediately before the death.

Gift of art

(7.1) If this subsection applies to a gift made by an individual, the following rules apply:

(a) in the case of a gift described in the definition ***total cultural gifts*** in subsection (1),

(i) if at the time the gift is made the fair market value of the work of art that is the subject of the gift exceeds its cost amount to the individual, the individual is deemed to receive at that time proceeds of disposition in respect of the work of art equal to the greater of its cost amount to the individual at that time and the amount of the advantage, if any, in respect of the gift, and

(ii) if the individual is the graduated rate estate of a particular individual who created the work of art that is the subject of the gift and at the time immediately before the particular individual's death the fair market value of the work of art exceeds its cost amount to the particular individual, the particular individual is deemed to receive at that time proceeds of disposition in respect of the work of art equal to the cost amount to the particular individual at that time and the estate is deemed to have acquired the work of art at a cost equal to those proceeds; and

(b) in the case of a gift described in the definition ***total charitable gifts*** in subsection (1),

(i) if at the time the gift is made the fair market value of the work of art that is the subject of the gift exceeds its cost amount to the individual, then the amount designated in the individual's return of income under section 150 for the taxation year that includes that time is deemed to be

(A) the individual’s proceeds of disposition in respect of the work of art, and

(B) the fair market value of the work of art for the purposes of subsection 248(31),

(ii) a designation under subparagraph (i) is of no effect to the extent that the amount designated

(A) exceeds the fair market value of the work of art otherwise determined, or

(B) is less than the greater of the amount of the advantage, if any, in respect of the gift, and the cost amount to the individual of the work of art,

(iii) if the individual is the graduated rate estate of a particular individual who created the work of art that is the subject of the gift and at the time immediately before the particular individual’s death the fair market value of the work of art exceeds its cost amount to the particular individual,

(A) the amount designated in the particular individual’s return of income under section 150 for the taxation year that includes that time is deemed to be the value of the work of art at the time of the death, and

(B) the estate is deemed to have acquired the work of art at a cost equal to that value, and

(iv) a designation under subparagraph (iii) is of no effect to the extent that the amount designated

(A) exceeds the fair market value of the work of art otherwise determined, or

(B) is less than the cost amount to the particular individual of the work of art.

Gifts made by partnership

(8) If at the end of a fiscal period of a partnership an individual is a member of the partnership, the individual’s share of any amount that would, if the partnership were a person, be the eligible amount of a gift made by the partnership to any donee is, for the purpose of this section, deemed to be the eligible amount of a gift made to that donee by the individual in the individual’s taxation year in which the fiscal period of the partnership ends.

Commuter’s charitable donations

(9) Where throughout a taxation year an individual resided in Canada near the boundary between Canada and the United States, if

(a) the individual commuted to the individual’s principal place of employment or business in the United States, and

(b) the individual’s chief source of income for the year was that employment or business,

a gift made by the individual in the year to a religious, charitable, scientific, literary or educational organization created or organized in or under the laws of the United States that would be allowed as a deduction under the United States Internal Revenue Code shall, for the purpose of the definition ***total charitable gifts*** in subsection 118.1(1), be deemed to have been made to a registered charity.

Determination of fair market value

(10) For the purposes of paragraph 110.1(1)(c) and the definition ***total cultural gifts*** in subsection 118.1(1), the fair market value of an object is deemed to be the fair market value determined by the Canadian

Cultural Property Export Review Board.

Determination of fair market value

(10.1) For the purposes of this section, subparagraph 69(1)(b)(ii), subsection 70(5) and sections 110.1 and 207.31, if at any time the Canadian Cultural Property Export Review Board or the Minister of the Environment determines or redetermines an amount to be the fair market value of a property that is the subject of a gift described in paragraph 110.1(1)(a), or in the definition ***total charitable gifts*** in subsection (1), made by a taxpayer within the two-year period that begins at that time, an amount equal to the last amount so determined or redetermined within the period is deemed to be the fair market value of the gift at the time the gift was made and, subject to subsections (6), (7.1) and 110.1(3), to be the taxpayer's proceeds of disposition of the gift.

Request for determination by the Minister of the Environment

(10.2) Where a person disposes or proposes to dispose of a property that would, if the disposition were made and the certificates described in paragraph 110.1(1)(d) or in the definition ***total ecological gifts*** in subsection (1) were issued by the Minister of the Environment, be a gift described in those provisions, the person may request, by notice in writing to that Minister, a determination of the fair market value of the property.

Duty of Minister of the Environment

(10.3) In response to a request made under subsection (10.2), the Minister of the Environment shall with all due dispatch make a determination in accordance with subsection (12) or 110.1(5), as the case may be, of the fair market value of the property referred to in that request and give notice of the determination in writing to the person who has disposed of, or who proposes to dispose of, the property, except that no such determination shall be made if the request is received by that Minister after three years after the end of the person’s taxation year in which the disposition occurred.

Ecological gifts — redetermination

(10.4) Where the Minister of the Environment has, under subsection (10.3), notified a person of the amount determined by that Minister to be the fair market value of a property in respect of its disposition or proposed disposition,

- **(a)** that Minister shall, on receipt of a written request made by the person on or before the day that is 90 days after the day that the person was so notified of the first such determination, with all due dispatch confirm or redetermine the fair market value;
- **(b)** that Minister may, on that Minister’s own initiative, at any time redetermine the fair market value;
- **(c)** that Minister shall in either case notify the person in writing of that Minister’s confirmation or redetermination; and
- **(d)** any such redetermination is deemed to replace all preceding determinations and redeterminations of the fair market value of that property from the time at which the first such determination was made.

Certificate of Fair Market Value

(10.5) Where the Minister of the Environment determines under subsection (10.3) the fair market value of a property, or redetermines that value under subsection (10.4), and the property has been disposed of to a qualified donee described in paragraph 110.1(1)(d) or in the definition ***total ecological gifts*** in subsection (1), that Minister shall issue to the person who made the disposition a certificate that states the fair market value of the property so determined or redetermined and, where more than one certificate has been so issued, the last certificate is deemed to replace all preceding certificates from the time at which the first certificate was issued.

Assessments

(11) Notwithstanding subsections 152(4) to (5), such assessments or reassessments of a taxpayer’s tax, interest or penalties payable under this Act for any taxation year shall be made as are necessary to give effect

(a) to a certificate issued under subsection 33(1) of the *Cultural Property Export and Import Act or to a decision of a court resulting from an appeal made pursuant to section 33.1 of that Act*; or

(b) to a certificate issued under subsection (10.5) or to a decision of a court resulting from an appeal made pursuant to subsection 169(1.1).

Ecological gifts

(12) For the purposes of applying subparagraph 69(1)(b)(ii), subsection 70(5), this section and section 207.31 in respect of a gift described in the definition ***total ecological gifts*** in subsection (1) that is made by an individual, the amount that is the fair market value (or, for the purpose of subsection (6), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (6), the individual’s proceeds of disposition of the gift, is deemed to be the amount determined by the Minister of the Environment to be

(a) where the gift is land, the fair market value of the gift; or

(b) where the gift is a servitude, covenant or easement to which land is subject, the greater of

(i) the fair market value otherwise determined of the gift, and

(ii) the amount by which the fair market value of the land is reduced as a result of the making of the gift.

Non-qualifying securities

(13) For the purposes of this section (other than this subsection), if at any particular time an individual makes a gift (including a gift that, but for this subsection, would be deemed by subsection (5) to be made at the particular time) of a non-qualifying security of the individual and the gift is not an excepted gift,

(a) except for the purpose of applying subsection 118.1(6) to determine the individual’s proceeds of disposition of the security, the gift is deemed not to have been made;

(b) if the security ceases to be a non-qualifying security of the individual at a subsequent time that is within 60 months after the particular time and the donee has not disposed of the security at or before the subsequent time, the individual is deemed to have made a gift to the donee of property at the subsequent time and the fair market value of that property is deemed to be the lesser of the fair market value of the security at the subsequent time and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual’s total charitable gifts for a taxation year;

(c) if the security is disposed of by the donee within 60 months after the particular time and paragraph (b) does not apply to the security, the individual is deemed to have made a gift to the donee of property at the time of the disposition and the fair market value of that property is deemed to be the lesser of the fair market value of any consideration (other than a non-qualifying security of any person) received by the donee for the disposition and the fair market value of the security at the particular time that would, if this Act were read without reference to this subsection, have been included in calculating the individual's total charitable gifts for a taxation year; and

(d) a designation under subsection 118.1(6) or 110.1(3) in respect of the gift made at the particular time may be made in the individual's return of income for the year that includes the subsequent time referred to in paragraph 118.1(13)(b) or the time of the disposition referred to in paragraph 118.1(13)(c).

Application of subsection (13.2)

(13.1) Subsection (13.2) applies if, as part of a series of transactions,

(a) an individual makes, at a particular time, a gift of a particular property to a qualified donee;

(b) a particular person holds a non-qualifying security of the individual; and

(c) the qualified donee acquires, directly or indirectly, a non-qualifying security of the individual or of the particular person.

Non-qualifying securities — third-party accommodation

(13.2) If this subsection applies,

(a) for the purposes of this section, the fair market value of the particular property is deemed to be reduced by an amount equal to the fair market value of the non-qualifying security acquired by the qualified donee; and

(b) for the purposes of subsection (13),

(i) if the non-qualifying security acquired by the qualified donee is a non-qualifying security of the particular person, it is deemed to be a non-qualifying security of the individual,

(ii) the individual is deemed to have made, at the particular time referred to in subsection (13.1), a gift of the non-qualifying security acquired by the qualified donee, the fair market value of which does not exceed the amount, if any, by which

(A) the fair market value of the particular property determined without reference to paragraph (a)

exceeds

(B) the fair market value of the particular property determined under paragraph (a), and

(iii) paragraph (13)(b) does not apply in respect of the gift.

Non-qualifying securities — anti-avoidance

(13.3) For the purposes of subsections (13.1) and (13.2), if, as part of a series of transactions, an individual makes a gift to a qualified donee and the qualified donee acquires a non-qualifying security of a person (other than the individual or particular person referred to in subsection (13.1)) and it may reasonably be considered, having regard to all the circumstances, that one of the purposes or results of the acquisition of the non-qualifying security by the qualified donee was to facilitate, directly or indirectly, the making of the gift by the individual, then the non-qualifying security acquired by the qualified donee is deemed to be a non-qualifying security of the individual.

Exchanged security

(14) Where a share (in this subsection referred to as the “new share”) that is a non-qualifying security of an individual has been acquired by a donee referred to in subsection 118.1(13) in exchange for another share (in this subsection referred to as the “original share”) that is a non-qualifying security of the individual by means of a transaction to which section 51, subparagraphs 85.1(1)(a)(i) and 85.1(1)(a)(ii) or section 86 or 87 applies, the new share is deemed for the purposes of this subsection and subsection 118.1(13) to be the same share as the original share.

Exchange of beneficial interest in trust

(14.1) Where a donee disposes of a beneficial interest in a trust that is a non-qualifying security of an individual in circumstances where paragraph (13)(c) would, but for this subsection, apply in respect of the disposition, and in respect of which the donee receives no consideration other than other non-qualifying securities of the individual, for the purpose of subsection (13) the gift referred to in that subsection is to be read as a reference to a gift of those other non-qualifying securities.

Death of donor

(15) If, but for this subsection, an individual would be deemed by subsection 118.1(13) to have made a gift after the individual’s death, for the purpose of this section the individual is deemed to have made the gift in the taxation year in which the individual died, except that the amount of interest payable under any provision of this Act is the amount that it would be if this subsection did not apply to the gift.

Loanbacks

(16) For the purpose of this section, where

(a) at any particular time an individual makes a gift of property,

(b) if the property is a non-qualifying security of the individual, the gift is an excepted gift, and

(c) within 60 months after the particular time

(i) the donee holds a non-qualifying security of the individual that was acquired by the donee after the time that is 60 months before the particular time, or

(ii) the individual or any person or partnership with which the individual does not deal at arm’s length uses property of the donee under an agreement that was made or modified after the time that is 60 months before the particular time, and the property was not used in the carrying on of the donee’s charitable activities,

the fair market value of the gift is deemed to be that value otherwise determined minus the total of all amounts each of which is the fair market value of the consideration given by the donee to so acquire a non-qualifying security so held or the fair market value of such a property so used, as the case may be.

Ordering rule

(17) For the purpose of applying subsection (16) to determine the fair market value of a gift made at any time by a taxpayer, the fair market value of consideration given to acquire property described in subparagraph (16)(c)(i) or of property described in subparagraph (16)(c)(ii) is deemed to be that value otherwise determined minus any portion of it that has been applied under that subsection to reduce the fair market value of another gift made before that time by the taxpayer.

Non-qualifying security defined

(18) For the purposes of this section, ***non-qualifying security*** of an individual at any time means

(a) an obligation (other than an obligation of a financial institution to repay an amount deposited with the institution or an obligation listed on a designated stock exchange) of the individual or the individual's estate or of any person or partnership with which the individual or the estate does not deal at arm's length immediately after that time;

(b) a share (other than a share listed on a designated stock exchange) of the capital stock of a corporation with which the individual or the estate or, where the individual is a trust, a person affiliated with the trust, does not deal at arm's length immediately after that time;

(b.1) a beneficial interest of the individual or the estate in a trust that

(i) immediately after that time is affiliated with the individual or the estate, or

(ii) holds, immediately after that time, a non-qualifying security of the individual or estate, or held, at or before that time, a share described in paragraph (b) that is, after that time, held by the donee; or

(c) any other security (other than a security listed on a designated stock exchange) issued by the individual or the estate or by any person or partnership with which the individ-ual or the estate does not deal at arm's length (or, in the case where the person is a trust, with which the individual or estate is affiliated) immediately after that time.

Excepted gift

(19) For the purposes of this section, a gift made by a taxpayer is an excepted gift if

(a) the security is a share;

(b) the donee is not a private foundation;

(c) either,

(i) if the taxpayer is an individual's graduated rate estate,

(A) the individual dealt at arm's length with the donee immediately before the individual's death, and

(B) the graduated rate estate deals at arm's length with the donee (determined without reference to paragraph 251(1)(b)), or

(ii) if subparagraph (i) does not apply, the taxpayer deals at arm's length with the donee; and

(d) where the donee is a charitable organization or a public foundation, the taxpayer deals at arm’s length with each director, trustee, officer and like official of the donee.

Financial institution defined

(20) For the purpose of subsection 118.1(18), ***financial institution*** means a corporation that is

(a) a member of the Canadian Payments Association; or

(b) a credit union that is a shareholder or member of a body corporate or organization that is a central for the purposes of the *Canadian Payments Act*.

Options

(21) Subject to subsections (23) and (24), if an individual has granted an option to a qualified donee in a taxation year, no amount in respect of the option is to be included in computing the total charitable gifts, total cultural gifts or total ecological gifts in respect of any taxpayer for any taxation year.

Application of subsection (23)

(22) Subsection (23) applies if

(a) an option to acquire a property of an individual is granted to a qualified donee;

(b) the option is exercised so that the property is disposed of by the individual and acquired by the qualified donee at a particular time; and

(c) either

(i) the amount that is 80% of the fair market value of the property at the particular time is greater than or equal to the total of

(A) the consideration received by the individual from the qualified donee for the property, and

(B) the consideration received by the individual from the qualified donee for the option, or

(ii) the individual establishes to the satisfaction of the Minister that the granting of the option or the disposition of the property was made by the individual with the intention to make a gift to the qualified donee.

Granting of an option

(23) If this subsection applies, notwithstanding subsection 49(3),

(a) the individual is deemed to have received proceeds of disposition of the property equal to the property's fair market value at the particular time; and

(b) there shall be included in the individual's total charitable gifts, for the taxation year that includes the particular time, the amount by which the property's fair market value exceeds the total described in subparagraph (22)(c)(i).

Disposition of an option

(24) If an option to acquire a particular property of an individual is granted to a qualified donee and the option is disposed of by the qualified donee (otherwise than by the exercise of the option) at a particular time

(a) the individual is deemed to have disposed of a property at the particular time

(i) the adjusted cost base of which to the individual immediately before the particular time is equal to the consideration, if any, paid by the qualified donee for the option, and

(ii) the proceeds of disposition of which are equal to the lesser of the fair market value of the particular property at the particular time and the fair market value of any consideration (other than a non-qualifying security of any person) received by the qualified donee for the option; and

(b) there shall be included in the total charitable gifts of the individual for the individual’s taxation year that includes the particular time the amount, if any, by which the proceeds of disposition as determined by paragraph (a) exceed the consideration, if any, paid by the donee for the option.

Returned property

(25) Subsection (26) applies if a qualified donee has issued to an individual a receipt referred to in subsection (2) in respect of a transfer of a property (in this subsection and subsection (26) referred to as the “original property”) and a particular property that is

(a) the original property is later transferred to the individual (unless that later transfer is reasonable consideration or remuneration for property acquired by or services rendered to a person); or

(b) any other property that may reasonably be considered compensation for or a substitute for, in whole or in part, the original property, is later transferred to the individual.

Returned property

(26) If this subsection applies, then

(a) irrespective of whether the transfer of the original property by the individual to the qualified donee referred to in subsection (25) was a gift, the individual is deemed not to have disposed of the original property at the time of that transfer nor to have made a gift;

(b) if the particular property is identical to the original property, the particular property is deemed to be the original property; and

(c) if the particular property is not the original property, then

(i) the individual is deemed to have disposed of the original property at the time that the particular property is transferred to the individual for proceeds of disposition equal to the greater of the fair market value of the particular property at that time and the fair market value of the original property at the time that it was transferred by the individual to the donee, and

(ii) if the transfer of the original property by the individual would be a gift if this section were read without reference to paragraph (a), the individual is deemed to have, at the time of that transfer, transferred to the donee a property that is the subject of a gift having a fair market value equal to the amount, if any, by which the fair market value of the original property at the time of that transfer exceeds the fair market value of the particular property at the time that it is transferred to the individual.

Information return

(27) If subsection (26) applies in respect of a transfer of property to an individual and that property has a fair market value greater than $50, the transferor must file an information return containing prescribed information with the Minister not later than 90 days after the day on which the property was transferred and provide a copy of the return to the individual.

Reassessment

(28) If subsection (26) applies in respect of a transfer of property to an individual, the Minister may reassess a return of income of any person to the extent that the reassessment can reasonably be regarded as relating to the transfer.

2024 — extension of time

(29) For the purposes of applying this section, a gift made by an individual before March 2025 and after the end of a taxation year of the individual that ended after November 14, 2024 and before 2025 (referred to in this subsection as the “donation year”) is deemed to have been made by the individual in the donation year and not in the individual’s 2025 taxation year if

(a) a credit for the gift would be deductible under this section in computing the individual’s tax payable under this Part for the donation year if it were made immediately before the end of that year;

(b) the individual claims the amount of the gift under subsection (3) for the donation year;

(c) the gift was in the form of cash or was transferred by way of cheque, credit card, money order or electronic payment; and

(d) the gift was not made

(i) through a payroll deduction, or

(ii) if the individual died after 2024, by the individual's will.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 118.1; 1994, c. 7, Sch. II, s. 88, Sch. VIII, s. 53; 1995, c. 3, s. 34, c. 38, s. 3; 1996, c. 21, s. 23; 1997, c. 25, s. 26; 1998, c. 19, s. 22; 1999, c. 22, s. 32, c. 31, s. 136; 2001, c. 17, s. 94; 2005, c. 19, s. 23; 2007, c. 35, ss. 39, 68; 2008, c. 28, s. 15; 2009, c. 2, s. 35; 2011, c. 24, s. 26; 2013, c. 33, s. 10, c. 34, s. 248; 2014, c. 20, s. 9, c. 39, s. 34; 2016, c. 7, s. 62, c. 11, s. 2, c. 12, s. 42; 2017, c. 33, s. 43; 2019, c. 29, s. 16; 2026, c. 3, s. 43.

Date modified:

2026-09-11