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| **SECTION** | **USE/REQUIREMENTS** | **CASES** |
| **Provisions that apply generally** |
| **s 67** | Only deduct expense that was “reasonable in the circumstances”  |  |
| **s 69** | Acquisition or disposition not at arm’s length**69(b)(i)** non-arm’s length sale and actual PD less than FMV; deems: PD = FMV**69(b)(ii)** gift; deems: PD = FMV  |  |
| **s 251** | **251(1)** “non arm’s length” = related persons or finding of fact**251(2)** “related perons” = blood, marriage, common law, adoption (not aunt, uncle, cousin, niece, nephew) |  |
| **Residence**  |
| **s 2(1)** | Residents taxed on worldwide income |  |
| **s 2(3)** | Non-residents pay tax only on income from Canadian sources |  |
| **s 250(1)(a)** | Sojourner – deemed resident where spend 183+ days in Canada |  |
| **s 114** | Part time resident |  |
| **s 250(3)** | Ordinarily resident |  |
| **s 212** | Passive income (non resident) – 25% withholding tax and no loss deduction |  |
| **Employment Income and Deductions** |
| **s 5(1)** | income from employment = salary, wages, other remuneration (include tips) |  |
| **s 5(2)** | Loss from employment – can only deduct expenses listed in **s 8** |  |
| **s 6(1)(a)** | Include in income – value of board, lodging, other benefits of any kind received/enjoyed by tp in respect of, course of, virtue of employment | *Savage* – material acquisition which confers benefit – include*Laidler* – gift with expectation of good service – include*Sorin* – part of job – don’t include*Waffle* – from third party but connected to employment – include*Lowe* – incidental personal enjoyment doesn’t make it benefit |
| **s 6(3)** | Deems as remunerations:**(c)** consideration for accepting offer of employment**(d)** remuneration for services under employment contract**(e)** for restrictive covenant after termination of employment |  |
| **s 6(19)** | Amount paid for housing loss deemed benefit (unless **eligible housing loss**) | *Ransom* – reimbursement for expenses incurred because of employment is not a benefit*Phillips* – payment for increased housing costs = a benefit; gives advantage |
| **s 6(22)** | **“eligible housing loss”** – means housing loss in respect of eligible relocation |  |
| **s 248** | **“eligible relocation”** – relocation to work; distance moved at least 40 km |  |
| **s 6(20)** | First $15,000 = tax free; above $15,000 = one half of this amount is taxable benefit (**s 6(1)(a)**) |  |
| **s 6(1)(b)** | Allowances – included in income Except **(vii)** – reasonable allowance for travel expenses  |  |
| **s 8(2)** | Unless listed in **s 8(1)** no deductions from employment income |  |
| **s 8(1)(h)** | Travelling expenses deducted if employment K requires you to pay expenses | *Martyn –* commuting expenses aren’t deductible; consumption choice |
| **s 8(1)(b)**  | Legal expenses deducted where incurred to establish right to salary or wages |  |
| **s 8(1)(i)** | Professional and union dues deducted if necessary to maintain professional status recognized by statute | *Swingle* – must be necessary to maintain professional status recognized by statute |
| **Business Income and Deductions** |
| **s 9(1)** | Business/property income is profit (profit = revenue – expenses)  |  |
| **s 248** | **“business”** – includes adventure or concern in nature of trade | *Graham* – business = organized activity carried on for purpose of profit*Walker* – focused on intention to make profit*Luprypa* – work to minimize risk = business*Moldowan* – reasonable expectation of profit test to = business*Stewart* – 1. Undertaken in pursuit of profit? 2. Is source business or property |
| **s 18(1)(a)** | Expense deductible if incurred for purpose of gaining/producing income | *Thomas Harry Benton* – show connection between business and expense*Leduc* – “business need” test: would need exist apart from business*Vango* – legal fees deducted where charges defended relate to tp’s work*65302 BC Ltd* – public policy considerations don’t dictate what is deductible*Cumming* – deduct expenses from one place of work to another |
| **s 18(1)** | Prohibits deduction of certain business expenses**18(1)(h)** – prohibits deduction of personal/living expenses**18(1)(l)** – prohibits deduction of certain membership fees |
| **s 18(12)** | **(a)** only deduct home office expenses where principal place of business or used exclusively for business and on regular and continuous basis to meet clients**(b)** home office expenses cannot be used to create or increase a loss**(c)** losses created can be carried forward 1 year |  |
| **s 67.1** | Food and entertainment – deduct 50% |  |
| **Income from Property** |
| **s 9(3)** | Income from property doesn’t include any capital gain from disposition |  |
| **Timing Provisions** |
| **s 12(1)(a)** | Include amounts when received even if not yet earned |  |
| **s 20(1)(m)** | Deduct reasonable reserve from amounts included under 12(1)(a) |  |
| **s 12(1)(e)** | Include any amount deducted under 20(1)(m) or 20(1)(n) in income next year |  |
| **s 20(6)** | Can only take reserve for transportation or food/drink for 1 year |  |
| **s 20(7)(a)** | Can’t take a reserve fro warranties |  |
| **s 12(1)(b)** | Include “receivables” in income | *Colford* – “receivable” = absolute legal entitlement to it now or in future*Benaby Realties* – amount must be ascertainable*West Kootenay* – goods not billed can still be receivable*Maritime Telegraph* – include services when billed/earned (whatever earlier)*JL Guay* – deduct expense when absolute legal obligation to pay amount |
| **s 12(2)** | If amount already included in income – 12(1) doesn’t work to exclude it | *Maritime Telegraph* – 12(1) is about inclusions not exclusions |
| **s 18(9)(a)** | No deduction of expenses until services are rendered |  |
| **s 18(9)(b)** | Deduct expenses in the year the services are rendered |  |
| **s 20(1)(n)** | Reasonable reserve when you sell property and amount not due until later1. Land = where all or part due in later years 2. Non-real property = where all or part due at least 2 years after sale |  |
| **s 20(8)** | Limits reserve under 20(1)(n) to 4 years – max deferral is 4 years |  |
| **Capital versus Current Expense** |
| **s 18(1)(a)** | Expense for gaining/producing income = current = deductible | *Denison Mines* – can’t be both current and capital; expense incidental to production of output = current*Johns-Manville* – current = ongoing, necessary to continue business, not assembling assets, not increasing value, small in proportion to cost of operation, no enduring benefit*Kellogg* – no material advantage, expense was involuntary, litigation to affirm a right in common*Inskip* – expense merely maintained what was had before*Farmers Mutual* – defending right to income stream = current*Canada Starch* – acquiring goodwill is part of process of operating business |
| **s 18(1)(b)** | Capital expenses = not deductible unless expressly provided | *British Insulated* – capital = once and for all; bringing into existence asset or advantage for enduring benefit of trade*Dominion Natural* – “asset” not confined to something material, doesn’t have to be positive advantage, litigation affirming exclusive right |
| **Related Individuals – property** |
| **s 69** | Inadequate consideration – gifts, transfers not at arm’s length |  |
| **s 73** | Spousal rollover |  |
| **s 74.1(1)** | Where you transfer/loan to spouse – income or loss is deemed to be yours | Avoid attribution rules by:1. receive consideration equal to FMV2. charge prescribed amount of interest on loan3. opt of out spousal rollover |
| **s 74.2** | Where recipient spouse disposes of property – capital gain/loss attributed to transferor |
| **s 74.1(2)** | Where you transfer/loan to not arm’s length or niece/nephew minor – income or loss is deemed to be yours\*capital gain/loss is not attributed back to you\* |
| **s 56(2)** | Direct/concur in transfer to 3rd party – included in your income |  |
| **s 56(4)** | Transfer a right to a non-arm’s length 3rd party – attributed to your income |  |
| **Capital Cost Allowance** |
| **s 18(1)(b)** | No deduction for capital expenses – except as permitted |  |
| **s 20(1)(a)** | Allows CCA deduction – as per regulations |  |
| **Reg 1100(1)** | CCA deduction by classes |  |
| **Reg 1100(11)** | Rental/leasing property restrictions – can’t create or increase a rental property loss through CCA**Reg 1100(14)** “rental property” = building used principally for producing rent | Deductible CCA for “rental properties” is limited to tp’s net income from these properties |
| **Reg 1102(1)** | Property that doesn’t get CCA deduction:**1102(1)(a)** – if deductible as current expense**1102(1)(b) –** inventory **1102(1)(c)** – **main exclusion: not for gaining/producing income****1102(2)** – land  | **1102(1)(a)** – *Denison Mines***1102(1)(c)** – *Ben’s Ltd* |
| **s 13(21)** | Undepreciated capital cost = (A + B) – (E + F) | **A – “cost”:** *Ben’s Ltd* – individual property must be for gaining/producing income |
| **s 68** | Allocation of amounts (as depreciable or not) – must be reasonable | *Golden* – deal at arm’s length, not a sham, apportionment by parties likely reasonable |
| **Reg 1100(2)** | Half year rule |  |
| **s 13(1)** | Recapture – class doesn’t have to be emptyAdd recapture to UCC balance at beginning of next tax year | If you sell for more than you paid for it = capital gains |
| **s 13(4)** | Replacement property – deferral of recapture where disposition involuntary |  |
| **s 20(16)** | Terminal loss – class has to be empty |  |
| **s 39(1)(b)(i)** | No capital loss on depreciable property |  |
| **Change in Use** |
| **s 45(1)(a)** | Calculating capital gains/losses after change in use:Deemed disposition at time of change [PD = FMV]Deemed acquisition at time of change [ACB = FMV] |  |
| **s 13(7)(b)** | For purposes of CCA after change in use – **from personal to business**Capital cost = lesser of FMV or original cost + taxable capital gain |  |
| **s 13(7)(a)** | For purposes of CCA after change in use – **from business to personal**Capital cost = FMV |  |
| **Capital Gains and Losses** |
| **s 40** | Tp’s gain/loss for disposition of property in the year | (include in ACB - expenses incurred for purpose of disposition) |
| **s 54** | **“adjusted cost base”**:**(a)** **depreciable property** = capital cost of property**(b) non-depreciable property** = cost of the property | Only going to be different between depreciable and non depreciable where there is change in use |
| **s 40(1)(a)(b)** | Can add to ACB – expenses incurred for the purpose of making dispositions | Include fixing up expenses, finder’s fees, commissions, surveyors fees, transfer taxes, other reasonable expenses directly related to disposition |
| **s 39** | Tp’s capital gain/capital loss for disposition of property in the year | Capital gain = proceeds of disposition – adjusted cost base |
| **s 38** | Taxable capital gain = ½ capital gain from disposition of propertyAllowable capital loss = ½ capital loss from disposition of property |  |
| **s 3(d)** | Include amount by which TCG exceed ACL |  |
| **s 39(1)** | **(a)** capital gain = not a gain that is business income**(b)** no capital loss on depreciable property (No capital loss if you’ve taken CCA) |  |
| **s 248** | **“Disposition”** – includes sale, gift, change in use, destruction, stolen, expropriation, death, leaving the country, cessation, divestiture, alienation, transfer of incidents of ownership |  |
| **s 248** | **“Proceeds of Disposition” –** sale price, compensation where unlawfully taken, compensation where destroyed, compensation where expropriated**(f)** where damaged - exclude proceeds from amount spent quickly for repair |  |
| **s 40(1)(a)(ii), (iii)** | Reserve for future proceeds – taken for up to 4 years (gain included over 5 yrs)Deducted from capital gain calculation | Reasonable reserve = capital gain x amount not due until after end of year Proceeds of disposition |
| **s 54** | **“Personal Use Proprety”** – property used primarily for personal use/enjoyment of tp or anyone related to tp | ACB and PD for PUP will never be less than $1000 |
| **s 46(1)(a)** | **Disposal of PUP – ACB and PD deemed to be greater than $1000** |  |
| **s 40(2)(g)(iii)** | No capital loss deduction on PUP |  |
| **s 54** | **“listed personal property”** includes: works of art, jewellery, rare books, manuscripts, stamps, coins |  |
| **s 41** | Can take ½ capital losses on LPPLosses on LPP can only be used to deduct gains from LPP |  |
| **s 111(1)(b)** | Capital losses can be carried back 3 years and forward forever |  |
| **Intra Family Transfers** |
| **s 73** | “spousal rollover” – exempts transfer of capital property between spouses from tax | Applies automaticallyTakes precedence over **s 69** |
| **s 74.1** | Give spouse income earning property – income attributed back to you | Avoid attribution – sale at FMV; loan with interest payable; opt out of spousal rollover |
| **s 74.2** | Attribution of any capital gains on disposition – attributed back to donor spouse |
| **Principal Residence Exemption** |
| **s 54** | **“Principal Residence”** – housing unit, owned by tp**(a)** ordinarily inhabited by tp, spouse, or child of tp**(c)** where designated it as the tp’s PR for the year (by tp, spouse, child under 18) |  |
| **s 40(2)(b)** | Where designated as PR for part of the year; portion of gain subject to tax | Gain – (gain x 1 + # of years dwelling qualified as PR) # of years owned |
| **s 45(2)** | Allows you to rent out dwelling and elect to claim PR exemption for up to 4 yrs | After 4 years expires = change in use from personal to business  |
| **Final Calculations** |
| **s 2(1)** | Tax payable = % of taxable income |  |
| **s 2(2)** | Taxable income = income less carryovers |  |
| **s 3** | Income = income calculated in accordance with section 3 |  |
| **s 3(a)** | Combine sources of income – net employment, business, property income | CCA included as a deduction from business income |
| **s 3(b)** | **(i)** Total of:**(A)** All of TCG for disposition of property other than LPP +**(B)** ½ LPP gain – ½ LPP lossMINUS**(ii)** the ACL from disposition of property (other than LPP) | Left over ACL (= “net capital loss” **s 111(8)**) – can only apply to TCG (carry forward forever; back 3 years)Deduct earlier year’s loss before later year’s loss [**s 111(3)(b)**] |
| **s 3(c)** | Deduct subdivision E deduction = child care expense credit |  |
| **s 3(d)**  | Deduct source losses:Business/employment losses where deductions exceed inclusionsDeduct these losses under **3(d)** against any other included income | Non capital loss = if business loss exceeds all other incomesUnused losses = if business, employment or property losses exceed inclusions (can carry back 3 and forward 7 years) |