Income Tax Folio S3-F10-C2, Prohibited Investments – RRSPs, RESPs, RRIFs, RDSPs, FHSAs and TFSAs

Series 3: Property, Investments and Savings Plans

Folio 10: Registered Plans for Individuals

Chapter 2: Prohibited Investments – RRSPs, RESPs, RRIFs, RDSPs, FHSAs and TFSAs

Summary

The Income Tax Act imposes several investment restrictions on registered retirement savings plans (RRSPs), registered education savings plans (RESPs), registered retirement income funds (RRIFs), registered disability savings plans (RDSPs), first home savings accounts (FHSAs) and tax-free savings accounts (TFSAs). These registered plans may invest only in property that is a **qualified investment** and must not invest in property that is a **prohibited investment**. In addition, they must avoid investments or transactions that are structured so as to artificially shift value into or out of the plan or result in certain other supplementary advantages.

The qualified investment rules are discussed in Income Tax Folio S3-F10-C1, Qualified Investments – RRSPs, RESPs, RRIFs, RDSPs, FHSAs and TFSAs and the advantage rules are discussed in Income Tax Folio S3-F10-C3, Advantages – RRSPs, RESPs, RRIFs, RDSPs, FHSAs and TFSAs.

This Chapter focuses on the prohibited investment rules. These rules, together with the advantage rules, represent overriding investment restrictions for registered plans intended to guard against abusive tax planning. This Chapter discusses the meaning of the term **prohibited investment**, as well as the tax consequences of acquiring, holding and disposing of prohibited investments.

The comments in this Chapter apply only to registered plans that are structured as a trust and do not apply to plans that are in the form of a deposit or an insurance contract.

The Canada Revenue Agency (CRA) issues income tax folios to provide a summary of technical interpretations and positions regarding certain provisions contained in income tax law. Due to their technical nature, folios are used primarily by tax specialists and other individuals who have an interest in tax matters. While each paragraph in a chapter of a folio may relate to provisions of the law in force at the time it was written (see the Application section), the information provided is not a substitute for the law. The reader should, therefore, consider the chapter’s information in light of the relevant provisions of the law in force for the particular tax year being considered.

The CRA may have published additional guidance and detailed filing instructions on matters discussed in this Chapter and other topics that may be of interest. See the CRA's Forms and publications web page for this and other topics that may be of interest.

Table of contents

Discussion and interpretation

References to various terms

2.1 The following terms are used throughout this Chapter.

- A trust governed by an RRSP, RESP, RRIF, RDSP, FHSA or TFSA is referred to individually as an RRSP, RESP, RRIF, RDSP, FHSA or TFSA, respectively, and collectively as a **registered plan**
- A **controlling individual** of a registered plan is defined in subsection 207.01(1) as the annuitant of an RRSP or RRIF, the subscriber of an RESP, or the holder of an RDSP, FHSA or TFSA

Overview of prohibited investments

2.2 A prohibited investment for a registered plan is generally an investment to which the plan's controlling individual is closely connected. The Act imposes two special taxes when a registered plan holds a prohibited investment:

- a 50% tax on the value of the investment, which is refundable in certain circumstances
- a 100% tax on any income or capital gain derived from the investment

The prohibited investment taxes originally applied only to TFSAs but were extended to RRSPs and RRIFs with general effect from March 23, 2011, and to RESPs and RDSPs with general effect from March 23, 2017. FHSAs came into force on April 1, 2023 and since that time have been subject to the prohibited investment rules. The taxes are payable by the controlling individual.

2.3 If an investment is both a non-qualified investment and a prohibited investment, subsection 207.04(3) deems the investment to be a prohibited investment only. This ensures that subsections 146(10.1), 146.1(5), 146.2(6), 146.3(9), and 146.4(5) do not apply to subject the registered plan to Part I tax on any income or capital gain from the investment.

2.4 The controlling individual of a registered plan is responsible for compliance with the prohibited investment rules. Registered plan trustees generally have no obligation under the Act to identify investments that may result in the controlling individual being liable for the taxes on prohibited investments. However, the CRA expects that trustees will not knowingly facilitate the acquisition or holding of such investments in light of the serious tax consequences for the controlling individual.

Meaning of prohibited investment

2.5 A **prohibited investment** for a registered plan is defined in subsection 207.01(1) as **any** of the following:

- a debt of the controlling individual of the plan
- a debt or share of, or an interest in, a corporation, trust or partnership in which the controlling individual has a significant interest (see ¶2.6 to 2.15)
- a debt or share of, or an interest in, a person or partnership with which the controlling individual does not deal at arm’s length
- an interest (or for civil law a right) in, or a right to acquire, a debt, share or interest described in any of the preceding bullets

A prohibited investment also includes certain **prescribed property** (see ¶2.16). There are also three categories of **excluded property**, notably insured mortgages or hypothecs (see ¶2.18). The conditions for an investment to be a prohibited investment apply on an ongoing basis.

Significant interest

2.6 The concept of **significant interest** is relevant in determining whether a particular investment is a prohibited investment for an individual’s registered plans. Subsection 207.01(4) sets out the circumstances in which an individual has a significant interest in a corporation, trust or partnership. Each of these is discussed below, but in general, an interest of at least 10% is considered a significant interest.

Significant interest in a corporation

2.7 An individual is considered to have a significant interest in a corporation at any time if the individual is a specified shareholder of the corporation at that time. Subject to various deeming rules, an individual is a **specified shareholder** of a corporation at any time if the individual owns, directly or indirectly, at that time, at least 10% of the issued shares of any class of the capital stock of the corporation or a related corporation. The term specified shareholder is defined in subsection 248(1), but modified so that the determination is made at a point in time rather than in a tax year.

2.8 For purposes of this test, a taxpayer is deemed to own the shares of a corporation that are owned by persons with whom they do not deal at arm's length. A beneficiary of a trust, or a member of a partnership, that owns shares of a corporation is deemed to own a pro rata share of those shares based on their interest in the trust or partnership. However, in the case of a discretionary trust, the beneficiary is deemed to own all of the trust's shares, not just their pro rata share.

2.9 In the case of a corporation that has issued shares of a class in more than one series, the ownership test in the specified shareholder definition is based on each series of the class of shares in accordance with subsection 248(6).

Significant interest in a partnership or trust

2.10 An individual is considered to have a significant interest in a partnership or trust at any time if **both** of the following conditions are met:

- the individual (alone or together with persons and partnerships not dealing at arm's length with the individual) holds interests in the partnership as a member or interests in the trust as a beneficiary
- those interests have a fair market value of at least 10% of the fair market value of all such interests in the partnership or trust

Generally speaking, for the types of partnerships and trusts that are eligible for investment by registered plans, the interests of members and beneficiaries are determined by reference to units. The remainder of this Chapter will refer to units in describing an interest in a partnership or trust.

Non-arm's-length holdings

2.11 In determining whether an individual has a significant interest in a corporation, partnership or trust, any shares or units held by persons or partnerships not dealing at arm's length with the individual must be counted:

- This will include shares and units held by persons related to the individual who are deemed by paragraph 251(1)(a) not to deal at arm's length with the individual. According to paragraph 251(2)(a), individuals connected by blood relationship, marriage, common-law partnership or adoption are related to each other. Paragraph 251(2)(b) sets out, among other things, the circumstances in which an individual is considered to be related to a corporation.
- It will also include shares and units held by certain personal trusts in which the individual (or a person not dealing at arm's length with the individual) is beneficially interested, which trusts are deemed by paragraph 251(1)(b) not to deal at arm's length with the individual.
- Finally, it will include shares and units held by persons or partnerships who, as a factual matter, do not deal at arm's length with the individual, as provided for by paragraph 251(1)(c). In this regard, it is the CRA's view that an individual would be found not to deal at arm's length with any of their registered plans because of the level of influence and control they have over the plan.

For a detailed discussion of the rules for determining whether persons deal with each other at arm's length, refer to Income Tax Folio S1-F5-C1, Related Persons and Dealing at Arm's Length.

Beneficially interested in a trust

2.12 In determining whether an individual has a significant interest in a trust, any units of the trust held in RRSPs, RRIFs, FHSAs or TFSAs of family members who are related to the individual must be counted. This is the case even if the individual deals at arm's length with the family member's plan. This is because the significant interest test for trusts is based on the extended meaning of **beneficiary** in subsection 108(1). That extended meaning includes a person who is beneficially interested in a trust.

2.13 Subsection 248(25) determines when a person is **beneficially interested** in a trust. One of the rules in that subsection is that a person is beneficially interested in a trust if they have any right to receive any of the income or capital of the trust as a beneficiary of a trust either directly from the trust or indirectly through one or more trusts or partnerships.

2.14 In the context of RRSPs, RRIFs, FHSAs and TFSAs, this means that a controlling individual who holds units of an investment trust in their plan would be considered to be a beneficiary of that investment trust. This is because, as the sole beneficiary of the plan, they have the right to receive all of the pro rata share of the income and capital of the investment trust indirectly through their plan. For the purposes of the significant interest test, this equates to the controlling individual holding the units of the investment trust that are held in the plan. Consequently, those trust units will need to be counted where the plan's controlling individual does not deal at arm's length with the other controlling individual for whom the significant interest determination is being made. In the context of RESPs and RDSPs, and in particular where the subscriber or holder of the plan is not the beneficiary under the plan, such a determination would depend on the facts and circumstances of the case.

Warrants and other rights

2.15 The significant interest test does not require one to assume that warrants or other acquisition rights have been exercised. However, these rights may still need to be taken into account when determining whether an investment is a prohibited investment. This would be the case where an individual holds a sufficient number of rights such that they would not be considered to be dealing at arm's length with the underlying corporation, partnership or trust either as a factual matter or, in the case of a corporation, because the application of subparagraph 251(5)(b)(i) results in the individual being treated as having control of the corporation and thus related to the corporation.

Example 1

Kenjii owns 5% of the common shares of ABC Company and holds another 4% in his RRSP. Kenjii deals at arm's length with ABC Company. Recently Kenjii's RRSP bought warrants that give the RRSP the right to acquire an additional 3% of ABC's common shares.

Kenjii's current holdings amount to only 9% of ABC's common shares and there is no requirement to consider unexercised warrants. Therefore, he would not be considered to have a significant interest in ABC Company. This means that neither the RRSP's existing shares nor the warrants would be a prohibited investment for the RRSP.

If the RRSP were to later exercise the warrants, Kenjii would hold 12% of ABC's common shares and would therefore have a significant interest. This would result in both the existing shares and the newly-acquired shares being treated as a prohibited investment for the RRSP. In addition, because Kenjii would have known (or ought to have known) that the exercise of the warrants would cause the shares to become prohibited, the 50% prohibited investment tax would not be refundable (see ¶2.20 for more details).

The prohibited investment rules are not of concern in this example as long as the warrants remain unexercised. However, it should be noted that the qualified investment rules could have application. In this regard, refer to Example 1 in Income Tax Folio S3-F10-C1.

Prescribed property

2.16 Property prescribed by subsection 4900(15) of the Regulations is also a prohibited investment. Under this provision, shares of certain small business corporations, venture capital corporations or co-operative corporations that are a qualified investment for an RRSP, RESP, RRIF, FHSA or TFSA solely because of subsection 4900(14) of the Regulations will become a prohibited investment in the event the qualification conditions in any of subparagraphs 4900(14)(a)(i) to (iii) are no longer met. This could occur, for example, if a specified small business corporation were to stop carrying on an **active business**.

Example 2

Shares of XYZ Corporation are a qualified investment under subparagraph 4900(14)(a)(i) by virtue of the corporation being a specified small business corporation (SSBC), as defined in subsection 4901(2) of the Regulations. Midway through its 2016 tax year, the corporation's asset mix changes such that it no longer meets the definition's active business test.

XYZ Corporation met the active business test at the end of its 2015 tax year. This means that it will retain its status as an SSBC for the remainder of its 2016 tax year in accordance with the SSBC definition.

The shares will be a prohibited investment at the beginning of the corporation's 2017 tax year by operation of subsection 4900(15) of the Regulations.

The corporation could avoid the application of subsection 4900(15) if it takes steps to satisfy the active business test at the end its 2016 tax year. If a corporation were to make repeated or deliberate use of this relief mechanism, consideration would be given to the application of the general anti-avoidance rule in section 245.

2.17 Subsection 4900(15) does not apply to small business investments acquired before March 23, 2011, for RRSPs and RRIFs, and before March 23, 2017, for RESPs. These investments are qualified investments because of subsection 4900(12) (as it read prior to being repealed) and not subsection 4900(14). Subsection 4900(15) is not relevant for RDSPs as such small business investments are not qualified investments for RDSPs.

Excluded property

2.18 Three categories of property are specifically excluded from the application of the prohibited investment rules. These are described in the definition of **excluded property** in subsection 207.01(1). Specifically:

- The first category is for a mortgage or hypothecary claim that is insured by the Canada Mortgage and Housing Corporation or by an approved private insurer (see Income Tax Folio S3-F10-C1).
- The second category is for a share or unit of a mutual fund corporation, mutual fund trust or registered investment that either operates under the requirements of National Instrument 81-102 Mutual Funds or follows a reasonable diversification policy. This exclusion applies only for the 24-month period on start-up and wind-up of the fund and is

subject to two anti-avoidance rules.

- The third category is for a share or unit of a corporation, partnership or trust (the **investment entity**) where certain conditions designed to minimize the risk of self-dealing are satisfied. One of these conditions sets limits on the votes that could be cast regarding the governance of the investment entity. Although it is a question of fact whether this condition is satisfied in any given circumstance, the phrase **governance of the investment entity** should be given a wide meaning. For example, where the investment entity is a corporation, the condition might not be satisfied because of the votes that could be cast at either a general meeting of shareholders or at a meeting of the board of directors.

Tax consequences of prohibited investments

50% tax on prohibited investments

2.19 If a registered plan acquires a prohibited investment or an existing investment becomes prohibited, the plan's controlling individual is subject to a tax under section 207.04. The tax is equal to 50% of the fair market value of the prohibited investment at that time.

2.20 The 50% tax on prohibited investments is refundable in certain circumstances. To qualify for the refund, the investment must be disposed of before the end of the calendar year following the year in which the tax arose (or such later time as is permitted by the Minister of National Revenue). However, no refund is available if it is reasonable to consider that the controlling individual knew or ought to have known that the investment was or would become prohibited. The forms referred to in ¶2.25 explain how to claim the refund.

100% advantage tax on prohibited investment income

2.21 The controlling individual of a registered plan is also subject to a 100% advantage tax under section 207.05 on income earned and capital gains realized by the plan that is reasonably attributable directly or indirectly to a prohibited investment. This tax applies to any income or capital gain derived from the prohibited investment or from the reinvestment of those amounts. This is the case regardless of whether the subsequent generation income arose in the plan in which the prohibited investment was held or in another of the individual's registered plans to which the investment proceeds were later transferred. For purposes of the advantage tax, income and capital gains are determined in accordance with general income tax rules, except that the dividend gross-up is disregarded.

Investment becoming or ceasing to be prohibited

2.22 Subsection 207.01(6) provides a rule that applies when an investment becomes or ceases to be a prohibited investment while being held by a registered plan. The plan is deemed to have disposed of the investment immediately before that time for proceeds of disposition equal to its fair market value. The plan is then deemed to have re-acquired the investment for the same amount at that time. This ensures that only the portion of the capital gain that accrues during the period in which the investment is prohibited is taken into account in determining the amount of advantage tax payable. It also ensures that a refund is available in this situation, provided the conditions described in ¶2.20 are met. ¶2.34 discusses an elective exception to this rule.

Removal of prohibited investment

2.23 The advantage tax rules effectively prohibit most transfers of property between a registered plan and its controlling individual (or a person with whom the individual does not deal at arm's length). These transfers, which are referred to as **swap transactions**, are treated as an advantage and give rise to advantage tax under section 207.05. There are, however, two exceptions from these rules that facilitate the removal of a prohibited investment recognizing that in many cases it may not be possible or desirable to sell a prohibited investment to an arm's-length party.

2.24 The swap transaction rules permit a prohibited investment to be sold to the plan's controlling individual (or a person with whom they do not deal at arm's length), provided that the individual is entitled to a refund of the 50% prohibited investment tax in respect of the investment (see ¶2.20). As a transitional measure for RRSPs, RRIFs, RESPs and RDSPs, the condition that the controlling individual be entitled to a refund does not apply to a sale that occurs before 2022 (or before 2028, in the case of a sale of transitional prohibited property of an RESP or RDSP). The removal may also be accomplished by making an in-kind distribution of the prohibited investment to the controlling individual if permitted by the plan. The distribution (other than any portion that constitutes an advantage) is treated as a regular withdrawal and therefore may be includable in income in accordance with the rules applicable to the type of registered plan. In both situations, any capital gain that accrued while the property was a prohibited investment constitutes an advantage and is subject to the 100% advantage tax (see Example 4).

Filing of tax return

2.25 Taxpayers liable for the tax on prohibited investments or the advantage tax for any calendar year must file Form RC339, Individual Return for Certain Taxes for RRSPs, RRIFs, RESPs or RDSPs, RC728, First Home Savings Account (FHSA) Return or Form RC243, Tax-Free Savings Account (TFSA) Return, as applicable. The form, together with any balance due, must be submitted by no later than June 30 of the following year. In the case of an RESP or RDSP with multiple subscribers or holders, each such person is jointly and severally, or solidarily, liable with each other to pay the tax.

RRSP and RRIF transitional rules

2.26 As mentioned in ¶2.2, the taxes on prohibited investments were extended to RRSPs and RRIFs with general effect from March 23, 2011. A number of transitional rules apply to investments that were acquired before that date.

Non-application of prohibited investment tax

2.27 The 50% prohibited investment tax does not apply to **transitional prohibited property**. This term is defined in subsection 207.01(1) as property that was held by an individual's RRSP or RRIF on March 22, 2011 and that was a prohibited investment for the RRSP or RRIF on March 23, 2011 as a result of the introduction of the new rules. An individual may transfer transitional prohibited property between their RRSPs or RRIFs without triggering the tax.

2.28 Additional exceptions from the 50% prohibited investment tax apply in **any** of the following more narrow circumstances:

a. when there is a transfer of transitional prohibited property between RRSPs or RRIFs of current or former spouses or common-law partners relating to a division of assets on breakdown of their marriage or common-law partnership, and subsections 207.01(10) and (11) apply
b. when property is acquired in the course of a re-organization or exchange permitted under any of section 51, subsection 85(1) and sections 85.1, 86 and 87, and subsections 207.01(12) and (13) apply
c. when property is acquired before March 23, 2011 that first became prohibited between that date and October 4, 2011

Example 3

In 2009, Elise’s RRSP acquired warrants that represent the right to purchase common shares of XYZ Incorporated. Elise has a significant interest in XYZ Incorporated because of holdings outside of the RRSP. On June 15, 2015, the RRSP exercises the warrants and purchases the shares.

Because the RRSP acquired the warrants before March 23, 2011, they qualified as transitional prohibited property and therefore were not subject to the 50% prohibited investment tax.

However, on June 15, 2015 when the RRSP exercises the warrants and purchases the shares, the RRSP is considered to acquire those shares. The result is that the RRSP holds shares of a corporation in which the controlling individual has a significant interest. The shares are therefore a prohibited investment acquired by the RRSP after March 22, 2011. This means the 50% prohibited investment tax applies based on the fair market value of the shares on June 15, 2015. The fact that the tax did not apply to the warrants is not relevant to this determination. When the RRSP exercised the warrants, Elise would have known (or ought to have known) that her significant interest in XYZ Incorporated made the underlying shares a prohibited investment for her RRSP. This means that she does not qualify for a refund of the 50% tax.

Non-application of advantage tax

2.29 The 100% advantage tax on prohibited investment income does not apply to any income earned, or the portion of any capital gain that accrued, before March 23, 2011. In these circumstances, when determining the amount of a capital gain that is subject to the tax, subsection 207.01(7) deems the cost of transitional prohibited property to be its fair market value at the end of March 22, 2011.

2.30 Subsection 207.05(4) offers additional transitional relief from the 100% advantage tax for investments that qualify as transitional prohibited property. Under this provision, any income or capital gains derived from such property in a tax year will not be subject to advantage tax, but instead will be included in the annuitant's income as a regular RRSP or RRIF withdrawal. To take advantage of this transitional relief, the RRSP or RRIF annuitant must have met **all** of the following conditions:

- Form RC341 Election on Transitional Prohibited Investment Benefit for RRSPs or RRIFs was filed on or before March 1, 2013.
- Within 90 days after the end of each tax year, an amount equal to their **transitional prohibited investment benefit** for the year was withdrawn from their RRSP or RRIF

Note that for the 2011 and 2012 tax years, the withdrawal deadline was extended from 90 days after the end of the tax year to April 2, 2013.

2.31 An individual's **transitional prohibited investment benefit** for a tax year is defined in subsection 207.01(1). It is the total of any income earned and capital gains realized in the year that are directly or indirectly attributable to transitional prohibited property of the plan less any capital losses realized on such property in the year. For this purpose, income is determined without regard to the dividend gross-up and capital losses are determined without regard to the loss denial rule in subparagraph 40(2)(g)(i) and the loss deferral rule in subsection 40(3.4).

2.32 Where the transitional prohibited investment benefit amount is withdrawn from a RRIF, the amount may also be taken into account by the carrier of the RRIF for purposes of satisfying the RRIF minimum withdrawal requirements.

2.33 This transitional rule does not distinguish between locked-in plans and regular plans. Consequently, in a situation where the prohibited investment is held in an RRSP or RRIF that is subject to locking-in provisions under pension benefits legislation, the mandated withdrawal must still be made in order to qualify for the transitional relief. However, there are several solutions that can mitigate a potentially adverse tax result:

- As there is nothing in the transitional rule that actually requires the withdrawal to be made from the particular plan in which the prohibited investment is being held, an individual could make the withdrawal from their regular RRSP or RRIF if they have sufficient funds.
- By swapping out the prohibited investment from the locked-in plan to avoid triggering advantage tax on future earnings, an individual could at least resolve the problem on a prospective basis
- An individual may wish to explore the locking-in rules with the applicable pension benefits authority:
  - The rules of the relevant jurisdiction might allow for locked-in RRSP funds to be transferred to a locked-in RRIF starting at a certain age where they become accessible in part
  - Many jurisdictions have relaxed their locking-in rules in recent years to allow some unlocking

Election to retain prohibited investment status

2.34 Subsections 207.01(8) and (9) enable an annuitant of an RRSP or RRIF to elect to retain prohibited investment status of transitional prohibited property that in the absence of the election would cease to be a prohibited investment and therefore trigger the deemed disposition rule discussed in ¶2.22. The election will be of benefit where the deemed disposition would have resulted in a capital gain that would have been required to be withdrawn from the RRSP or RRIF to take advantage of the transitional relief discussed in ¶2.30 even though no actual proceeds of disposition were received.

2.35 The election to retain prohibited investment status must be filed within 90 days after the end of the relevant tax year. Note that the filing deadline for 2011 and 2012 tax years was extended to March 12, 2014. To make this election, the RRSP or RRIF annuitant must submit a signed letter to the address listed in Form RC339, Individual Return for Certain Taxes for RRSPs or RRIFs stating that the annuitant is making an election under subsection 207.01(8). The letter should include the annuitant’s name, social insurance number, address, telephone number, the name of the RRSP issuer or RRIF carrier, the plan number and a description of the property.

RESP and RDSP transitional rules

2.35.1 The taxes on prohibited investments were extended to RESPs and RDSPs with general effect from March 23, 2017. Several transitional rules apply to investments that were acquired before that date.

2.35.2 Like RRSPs and RRIFs, the 50% prohibited investment tax does not apply to transitional prohibited property. For RESPs and RDSPs, this is property that was held by the plan on March 22, 2017, and that was a prohibited investment for the plan on March 23, 2017. Similarly, the 100% advantage tax on prohibited investment income does not apply to any income earned, or the portion of any capital gain that accrued, before the introduction of these rules (that is, before March 23, 2017). The transitional rules described in ¶2.28(b) and in ¶2.34 also apply to RESPs and RDSPs. However, unlike RRSPs and RRIFs, there is no mechanism similar to the one described in ¶2.30 to avoid advantage tax by withdrawing prohibited investment income earned on transitional prohibited property from the plan. There is also no provision to accommodate the transfer of transitional prohibited property from one RESP or RDSP to another without triggering the 50% tax.

Waiver of tax

2.36 Subsection 207.06(2) gives the Minister the authority to waive or cancel all or part of the 50% tax on prohibited investments or the 100% advantage tax in appropriate circumstances. Various factors will be taken into account including reasonable error, the extent to which the transactions that gave rise to the tax also gave rise to another tax, and the extent to which payments were made from the taxpayer's registered plan.

2.37 Taxpayers or their authorized representatives can make a written request for the waiver or cancellation of the tax. To support the request, taxpayers should provide all relevant information including the following, as applicable:

- the taxpayer's name, address, and telephone number
- the taxpayer's social insurance number, tax account number or business number, as the case may be
- the name of the issuer, carrier or promoter of the registered plan and the plan number
- the amount of tax for which a waiver is being requested and the years involved
- a full description of the investment and any income or other related transactions that gave rise to the tax, including name of the investment entity, percentage ownership, date of acquisition, date of disposition, cost, proceeds of disposition, fair market value of prohibited investment at March 22, 2011, or March 22, 2017 (if, and as, applicable)
- a complete history of events including what measures were taken, and when they were taken, to resolve the non-compliance
- the facts and reasons showing that the transactions that gave rise to the tax were mainly caused by factors beyond the taxpayer's control or by reasonable error
- confirmation of the extent to which the transactions that gave rise to the tax also gave rise to another tax

Requests for relief should be sent to the address listed in the applicable form referred to in ¶2.25.

2.38 The CRA administers the waiver provisions in a fair and flexible manner in order to promote voluntary compliance with these rules and to encourage taxpayers to come forward and correct situations that do not conform to these rules. Each waiver request will be considered on its own merits.

Example 4

The following example illustrates a situation in which the CRA may give favourable consideration to a request that the 100% advantage tax be waived.

Martin holds 5% of the common shares of a private company in his TFSA and another 4% of the shares outside of his TFSA. The shares are a qualified investment and are not a prohibited investment for the TFSA.

The company subsequently redeems a significant number of shares held by the principal shareholder. Martin had no involvement with or any influence over the decision to redeem the shares. As a result of the share redemption, Martin (directly and in his TFSA) holds 12% of the company's common shares.

Upon learning of the share redemption later that year, Martin immediately swaps the shares out of the TFSA for fair market value consideration. From the time the shares became prohibited to the time the shares are swapped out of the TFSA, the shares appreciate in value by $11,000.

Result

Martin's 12% interest of the company's common shares constitutes a significant interest in the company. This means the shares became a prohibited investment for his TFSA.

Although Martin qualifies for a refund of the 50% prohibited investment tax (see ¶2.20), the portion of the capital gain that accrued while the shares are a prohibited investment constitutes an advantage and is subject to the 100% advantage tax.

Martin withdraws the $11,000 amount from his TFSA without delay and submits a waiver request which the CRA approves. The amount withdrawn from the TFSA will be included in Martin's income pursuant to paragraph 12(1)(z.5) and section 207.061. Although a detailed discussion of TFSAs is beyond the scope of this Chapter and this Example, it is worth noting that the amount will not be added to his TFSA contribution limit. This is because, as a specified distribution, it is expressly excluded from variable C in the formula in the definition excess TFSA amount in subsection 207.01(1).

Application

This updated Chapter, which may be referenced as S3-F10-C2, is effective May 28, 2024.

This Chapter was first published on September 2, 2016. The history of updates to this Chapter can be viewed in the Chapter History page.

Except as otherwise noted, all statutory references in this Chapter are references to the provisions of the Income Tax Act, R.S.C., 1985, c.1 (5th Supp.), as amended and all references to a Regulation are to the Income Tax Regulations, C.R.C. 1978, c. 945, as amended.

Links to jurisprudence are provided through CanLII.

Income tax folios are available in electronic format only.

Reference

Sections 207.01, 207.04 and 207.05, and subsection 4900(15) of the Regulations.

Date modified:
2024-05-28