Income Tax Folio S5-F2-C1, Foreign Tax Credit

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Chapter 1: Foreign Tax Credit

Summary

Section 126 of the Act makes a foreign tax credit available to a taxpayer who at any time in a year is a resident of Canada, or in certain limited circumstances is a former resident of Canada. References in this chapter to a **year** include a **taxation year** as defined by section 249. A foreign tax credit is a deduction from the taxpayer's Canadian tax otherwise payable that may be claimed in respect of foreign **income or profits tax** paid by the taxpayer for the year. A foreign tax credit can provide a taxpayer with relief from double taxation on certain income, that is, relief from having to otherwise pay full tax to both Canada and another country on that income. In calculating the amount of a foreign tax credit, the taxpayer must determine the particular countries to which their income, gains, and losses should be allocated.

The taxpayer must make separate foreign tax credit calculations for:

- foreign non-business-income tax; and
- foreign business-income tax.

Furthermore, within each of these categories, a separate foreign tax credit calculation is required for each foreign country a taxpayer has paid an **income or profits tax**.

The maximum amount of each foreign tax credit that the taxpayer may claim with respect to either foreign non-business-income tax or business-income tax is essentially equal to the lesser of two amounts:

- the applicable foreign income or profits tax paid for the year; and
- the amount of Canadian tax otherwise payable for the year that pertains to the applicable foreign income.

A further limitation, which occurs only in the calculation of a foreign tax credit for foreign business-income tax, ensures that the taxpayer's foreign tax credit claims for the year concerning foreign non-business-income taxes are deducted first. This ordering rule is designed to allow the taxpayer to maximize foreign tax credit claims over the years, taking into account a rule that only the portion of foreign business-income taxes that is not deductible as a foreign tax credit for the year can be carried over for purposes of a foreign tax credit in other years.

This chapter does not describe the complete details of the foreign tax credit provisions, as the main purpose of the chapter is to give interpretations with respect to some of the most commonly encountered requirements contained in these provisions. For the full details of the provisions referred to in this chapter, please refer to the Act.

This chapter also briefly refers to the following:

- the special foreign tax credit that can apply if the taxpayer is subject to the minimum tax;
- a provision which, if needed, can enable a corporation to maximize its foreign tax credits for the year by means of an elected addition to taxable income for the year, with a corresponding amount of non-capital loss being created for use in other years;
- the deferral of taxation in Canada, in certain situations, in order to provide relief from double taxation that could otherwise occur if Canada taxed the income resulting from a particular transaction in the year it occurs while another country defers its taxation with respect to that transaction; and
- the no economic profit and short-term security acquisitions rules in the foreign tax credit provisions.

It should be noted that the primary subject of this chapter is the foreign tax credit provisions in Canada's domestic income tax law. Although it contains comments regarding certain provisions in tax treaties between Canada and other countries, this chapter does not purport to deal with all treaty provisions that could apply.

The following topics are also outside the scope of this chapter:

- modifications to the foreign tax credit rules that apply to authorized foreign banks
- modifications to the foreign tax credit rules that apply to resource companies

The Canada Revenue Agency (CRA) issues income tax folios to provide 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 the comments in a particular paragraph in a folio may relate to provisions of the law in force at the time they were made, such comments are not a substitute for the law. The reader should, therefore, consider such comments in light of the relevant provisions of the law in force for the particular tax year being considered.

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Discussion and interpretation

General overview

1.1 Residents of Canada are generally taxed on their worldwide income. For many, this includes income earned from business, property, or employment in another country. In most cases, income earned abroad will be subject to taxes in the jurisdiction where it is earned. To ensure that foreign income is not subject to double taxation, the foreign tax credit provisions found in section 126 of the Act provide for a method whereby the income taxes paid to a foreign jurisdiction offset Canadian income tax otherwise payable.

1.2 The foreign tax credit available under section 126 of the Act can operate either in conjunction with or independently of tax treaties, which also reduce double taxation. Where foreign taxes have been paid to a jurisdiction that has a tax treaty with Canada, special attention must be paid to that treaty as it may affect how section 126 applies.

1.3 Before determining the amount of foreign tax credit available to a taxpayer, consideration must be given to the type of income earned. This is because there are two types of foreign tax credit available under section 126: a foreign tax credit for foreign **business-income** taxes and a foreign tax credit for foreign **non-business income** taxes. Additionally, the foreign tax credit is calculated on a country-by-country basis which requires taxpayers to categorize their income based on where the income was earned as well as how it was earned. Another consideration that must be taken into account before calculating the amount of the foreign tax credit available is the nature of the foreign taxes paid. Once a taxpayer's income for a year has been properly categorized, calculated, attributed to the relevant countries where it was earned, and the foreign taxes examined for eligibility, this information may be used to apply for a foreign tax credit when filing a tax return for the year.

Abbreviations and definitions used

1.4 The following abbreviations and definitions are used in this Chapter:

BIT – Business-income tax as defined in subsection 126(7).

CTOP(a) – Canadian tax otherwise payable as calculated under paragraph (*a*) of the subsection 126(7) definition of the term **tax for the year otherwise payable under this Part**.

CTOP(b) – Canadian tax otherwise payable as calculated under paragraph (*b*) of the subsection 126(7) definition of the term **tax for the year otherwise payable under this Part**.

CTOP(c) – Canadian tax otherwise payable as calculated under paragraph (*c*) of the subsection 126(7) definition of the term **tax for the year otherwise payable under this Part**.

CTOP(FBI) – Canadian tax otherwise payable that pertains to the foreign business income from a particular foreign business country.

CTOP(FNBI) – Canadian tax otherwise payable that pertains to the foreign non-business income from a particular country

FBI – Foreign business income. This is the taxpayer's total income for the year from **businesses carried on in** the foreign business country by the taxpayer as calculated in accordance with subparagraph 126(2.1)(*a*)(i).

FNBI – Foreign non-business income. This is the total of the taxpayer's foreign non-business income for the year from sources in a particular foreign country as determined by the amount by which their qualifying income exceeds their qualifying losses as outlined in subsection 126(9) and adjusted in accordance with subparagraph 126(1)(*b*)(i).

FTP – Foreign tax paid.

FTP(BIT) – Foreign tax paid for the year but restricted to business-income tax as defined in subsection 126(7). More specifically, it is such part as the taxpayer may claim of the total business-income tax paid by the taxpayer for the year in respect of businesses carried on by the taxpayer in the particular foreign business country, plus the taxpayer's eligible unused foreign tax credits in respect of the particular foreign business country.

FTP(NBIT) – Foreign tax paid, but restricted to non-business-income tax as defined in subsection 126(7). More specifically, it is such part as the taxpayer may claim of any non-business-income tax paid by the taxpayer for the year to the particular foreign country excluding any tax that may be reasonably regarded as having been paid by a corporate taxpayer in respect of income from the share of capital stock of a foreign affiliate of the taxpayer.

Foreign business country – Any particular country other than Canada in which the taxpayer carries on business.

NBIT – Non-business-income tax as defined in subsection 126(7).

SFTC – Special foreign tax credit as defined in subsection 127.54(2). This is a deduction available to individuals subject to minimum tax under section 127.5 and who may not claim a foreign tax credit under section 126.

UFTC – Unused foreign tax credit as defined in subsection 126(7).

WI – Worldwide income for the year.

WI(1) – Worldwide income for the year as adjusted by subparagraph 126(1)(*b*)(ii).

WI(2) – Worldwide income for the year as adjusted by subparagraph 126(2.1)(*a*)(ii).

Foreign income or profits tax

1.5 In order to qualify for the purposes of a foreign tax credit, an amount paid to a foreign jurisdiction must be a tax, not any other type of payment that might be made to the foreign jurisdiction. In general terms, a **tax** is a levy of general application for public purposes enforceable by a governmental authority. A levy imposed by a governmental authority will not be considered a tax if it is a charge meant to recoup the costs for services directly rendered or to finance a specific regulatory scheme. Examples of payments to governmental authorities that do not qualify as payments of a tax include the following:

- user fees
- regulatory charges payments made to acquire a specific right or privilege
- voluntary contributions to governmental authorities

1.6 To qualify for foreign tax credit purposes, a payment of tax:

- must be made to the government of a foreign country or to the government of a state, province or other political subdivision of a foreign country;
- cannot be conditional on the availability of a foreign tax credit in Canada, or a deduction in respect of a dividend received from a foreign affiliate under section 113; and
- must be an **income or profits tax**.

1.7 In determining whether a particular foreign tax qualifies as an **income or profits tax**, the name given to the tax by the foreign jurisdiction is not the deciding factor. Rather, the basic scheme of application of the foreign tax is compared with the scheme of application of the income and profits taxes imposed under the Act. Generally, if the basis of taxation is substantially similar, the foreign tax is accepted as an income or profits tax. To be substantially similar, the foreign tax must be levied on net income or profits (but not necessarily as would be computed for Canadian tax purposes) unless it is a tax similar to that imposed under Part XIII of the Act. Since taxable capital gains are included in a taxpayer's income for Canadian income tax purposes, a foreign tax on what would be considered a capital gain under the Act is also considered to be an income or profits tax for the purposes of section 126.

1.8 If a particular tax imposed by a foreign country is specifically identified in an elimination of double tax article of an income tax treaty between Canada and that country, as a tax for which Canada must grant a deduction from Canadian taxes on profits, income or gains which arose in that other country and which gave rise to the foreign tax in question, the foreign tax will qualify as an income or profits tax when applying section 126 in conjunction with that treaty article. (See, for example, the United States taxes referred to in paragraph 2(*a*) of Article XXIV of the Convention Between Canada and the United States of America, as amended by the protocols to that convention.)

1.9 Examples of taxes that are **not** levied on net income or profits, and therefore generally will **not** qualify for a foreign tax credit under section 126 include the following:

- resource royalties
- sales, commodity, consumption, or turnover taxes
- succession duties or inheritance taxes
- property or real estate taxes
- customs or import duties
- excise taxes or duties
- gift taxes
- capital or wealth taxes
- documentary or stamp taxes

Despite not qualifying as income or profits taxes, some treaties may specifically provide for a deduction in respect of such foreign taxes paid from Canadian taxes otherwise payable independently of section 126. (See, for example, paragraph 6 of Article XXIX B of the Canada-United States Income Tax Convention, which addresses certain taxes imposed by reason of death.)

1.10 A unitary tax of a state of the United States cannot be regarded as an income or profits tax if it is not computed on the basis of net business income. The following are instances where a unitary tax does not qualify as an income or profits tax:

- The tax represents an annual minimum franchise tax.
- The tax is applicable even when there is no income.
- The calculation of the tax does not attempt to allocate income to the particular state.
- The tax is in the nature of a capital tax.

1.11 A decision as to whether a particular state's unitary tax can be regarded as an income or profits tax for purposes of claiming a foreign tax credit can be made only after a review of the applicable state legislation. (See also the comments regarding a unitary tax in ¶1.18 and 1.38 .) A unitary tax that does not qualify as an income or profits tax for purposes of claiming a foreign tax credit would likely be deductible in computing the taxpayer's income pursuant to subsection 9(1) as an expense for the purpose of earning income.

1.12 Where it is clear that an amount of tax has been paid to a foreign governmental authority, a foreign tax levy based on net income as calculated under a prescribed formula is considered to be an income or profits tax if the following conditions are met:

- it can be considered that the formula produces a reasonable approximation of actual net income in typical situations; and
- an attempt to compute actual net income would be significantly affected by arbitrary or estimated expense allocations.

1.12.1 In addition, a foreign tax levied on gross revenue is considered to be an income or profits tax if, after a review of the applicable legislation, it is determined that the tax on gross revenue is part of a comprehensive income tax regime and is tightly linked and subordinate to what would otherwise be accepted as an income or profits tax.

The following factors would be considered when determining whether a particular foreign tax on gross revenue is part of a comprehensive income tax regime and is tightly linked and subordinate to what would otherwise be accepted as an income or profits tax:

- The contextual relationship of the taxes. For example, a single statute containing an option between a tax on gross revenue and a tax on net income may demonstrate that such a tax on gross revenue is part of a comprehensive income tax regime. Furthermore, the ability to elect annually, under a single statute, between a tax on gross revenue and a tax on net income may demonstrate that such a tax on gross revenue is tightly linked to what would otherwise be accepted as an income or profits tax.

- The interaction of their provisions. For example, the elective nature of an annual choice between a tax on gross revenue and a tax on net income, which effectively results in the tax on gross revenue option being capped at what would otherwise be the amount of tax had the taxpayer's tax liability been computed under the tax on net income option, may demonstrate that such a tax on gross revenue is subordinate to what would otherwise be accepted as an income or profits tax. However, if the rate of tax on the tax on net income option is so unreasonably high that it effectively removes the elective nature of a taxpayer's choice to be taxed on gross revenue, such a tax on gross revenue would not be considered to be subordinate to what would otherwise be accepted as an income or profits tax. Moreover, if the ability to elect out of a tax on gross revenue option is irrevocable, such a tax on gross revenue would not be considered to be subordinate to what would otherwise be accepted as an income or profits tax.

When, based on the factors noted above, a particular foreign tax levied on gross revenue is determined to be part of a comprehensive income tax regime and is tightly linked and subordinate to what would otherwise be accepted as an income or profits tax, it is the CRA's view that such a tax on gross revenue would be indirectly determined by reference to a taxpayer's income or profits and, therefore, qualifies as an income or profits tax for the purposes of the Act.

1.13 It should also be noted that an amount which by nature is not an income or profits tax can nevertheless be deemed to have been paid as an income or profits tax to a foreign jurisdiction. For example, see subsection 126(5), which (in conjunction with related definitions and provisions in the Act), deems certain foreign oil and gas levies to have been paid as an income or profits tax to a foreign jurisdiction.

1.14 Once it is established that the amount paid to the foreign jurisdiction is an income or profits tax, the next step is to determine if the tax paid was in regard to business income or non-business income.

Business-income tax

1.15 An income or profits tax paid by the taxpayer to a foreign jurisdiction will generally (subject to the no economic profit and short-term security acquisitions rules discussed at ¶1.29) qualify as business-income tax (BIT) with respect to the foreign business country to the extent that it is a tax:

- that can reasonably be regarded as being in respect of income from any business carried on by the taxpayer in that country; and
- paid to any foreign jurisdiction.

1.16 Note from the above that the foreign country containing the jurisdiction to which the tax is paid and the foreign business country (that is, the country in respect of which the foreign tax credit is claimed) do not have to be the same country. For example, a Canadian corporation that carries on business in a second country through a permanent establishment from which it earns income from the rental of industrial equipment to a business in a third country and the third country imposes a tax on the rental income.

1.17 A foreign income or profits tax is recognized as BIT **only** to the extent that it pertains to income from a business carried on outside Canada. Whether (or the extent to which) the taxpayer is carrying on a business in or outside Canada is essentially a question of fact to be determined in each particular case. For purposes of deciding this question, consideration should be given to any relevant case law. For the purposes of determining where a business is carried on, see the guidelines starting at ¶1.53.

1.18 It may be possible for a unitary tax of a state of the United States to qualify as BIT if it is an income or profits tax (see ¶1.5 - 1.13) that is computed on a Canadian corporation's net business income from carrying on a business in that state. However, in a case where the Canadian corporation would not be liable for the unitary tax on its sales in the particular state if it were not for the activities of its U.S. affiliate or affiliates in that state, it would be arguable that the tax is in respect of the Canadian corporation's investment in its U.S. affiliates rather than in respect of income from any business carried on by the Canadian corporation in the United States, in such a case the tax would not qualify as BIT. See also the comments regarding a unitary tax starting at ¶1.10 and also at ¶1.38 .

1.19 Some taxes that would otherwise qualify as BIT are specifically excluded from the BIT definition. One of these exclusions is any tax that may reasonably be regarded as relating to an amount received or receivable by any other person or partnership from the foreign jurisdiction to which the tax is paid. This excluded tax may qualify, however, as non-business-income tax for the purpose of a subsection 20(12) deduction (but not a NBIT for foreign tax credit purposes) – for further comments, see ¶1.25 .

Non-business-income tax

1.20 For the purpose of claiming a foreign tax credit, any amount of income or profits tax (subject to the exclusions discussed in ¶1.29) paid by a taxpayer to a foreign jurisdiction is included in the taxpayer's non-business-income tax, as defined in subsection 126(7), with respect to the country in which that jurisdiction is located, as long as the amount is not specifically excluded from the definition. The following paragraphs discuss some of these exclusions.

1.21 Any tax (or portion of the tax) that qualifies under subsection 126(7) as business-income tax is not considered to be a NBIT (see ¶1.15 - 1.19). On the other hand, a foreign income or profits tax (or portion of the tax) that might otherwise be considered to be business-related but that does not qualify as BIT is not excluded from the definition, and may therefore be considered a NBIT. Examples of the latter are given in ¶1.27 .

1.22 NBIT cannot include any portion of a foreign income or profits tax that is deductible under subsection 20(11). This exclusion, which is provided for in paragraph (*b*) of the NBIT definition, applies regardless of whether or not the amount qualifying for deduction under subsection 20(11) is actually deducted by the taxpayer when reporting income (for detailed information on subsection 20(11) deductions see Interpretation Bulletin IT-506, Foreign income taxes as a deduction from income). It should be noted that only foreign income or profits tax paid by an individual (which includes a trust) in respect of foreign-source income from a property, other than real or immovable property, which is in excess of 15% of such income as calculated under the Act (that is, the gross income under the Act, not the income net of foreign taxes), is deductible under subsection 20(11). This means that for the purposes of claiming a foreign tax credit, NBIT can include (subject to the other applicable rules in section 126) the following:

- in the case of an individual (which includes a trust):
  - foreign income or profits tax in respect of foreign-source income from property, other than real or immovable property, up to an amount which does not exceed 15% of such income as calculated under the Act (that is, the gross income under the Act, not the income net of foreign taxes); and
  - all foreign income or profits tax in respect of foreign-source income from the disposition or rental of real or immovable property; and
- in the case of any other taxpayer, all foreign income or profits tax in respect of foreign-source income from any property (only individuals, which includes trusts, are subject to the above-mentioned 15% limitation).

1.23 For purposes of claiming a foreign tax credit, NBIT cannot include any amount that is deducted under subsection 20(12). This exclusion is provided for in paragraph (*c*) of the definition of NBIT and reflects the fact that an amount that qualifies as NBIT can be used either for purposes of a subsection 126(1) foreign tax credit or for the purposes of claiming a deduction from income under subsection 20(12). The following should be noted:

- The taxpayer must first calculate income, taking into account any amounts **deducted** under subsection 20(11) (see ¶1.22) and subsection 20(12). These deductions may in fact result in nil income.
- If an amount of income does exist, the taxpayer then determines whether there is any taxable income. (See the comments at ¶1.93 regarding the addition of an amount in computing taxable income as permitted by section 110.5.)
- If there is an amount of taxable income, the taxpayer then determines CTOP(a) , which will be used in the calculation of CTOP(FNBI) (see ¶1.74).
- Finally, the taxpayer determines the amount of foreign tax credits to be claimed. For this purpose, paragraph (*c*) of its definition requires that any amount deducted under subsection 20(12) be excluded from NBIT. Thus, for the purpose of calculating the amount of a foreign tax credit under section 126(1), any amount deducted under subsection 20(12) is excluded from FTP(NBIT) . Also, the amounts, if any, deducted under subsections 20(11) and 20(12):
  - reduce the amount calculated for FNBI in the foreign tax credit formula (for further particulars, see ¶1.80 - 1.82); and
  - have an effect on other variables in ¶1.74 - 1.77.

1.24 If CTOP(FNBI) is less than FTP(NBIT), it is not possible to claim the full amount of FTP(NBIT) as a subsection 126(1) foreign tax credit. This could occur because either CTOP(a) or FNBI is too low. (A situation where FNBI could be nil—even though foreign tax has been paid—is described in ¶1.48 .) Furthermore, any portion of FTP(NBIT) for a particular tax year that cannot be, or is not, claimed as a subsection 126(1) foreign tax credit for the tax year, cannot be carried over and claimed as a foreign tax credit for another year. If an amount of what would otherwise qualify as NBIT for purposes of a foreign tax credit cannot be claimed as such, and dollar-for-dollar tax relief through a reduction to Canadian tax otherwise payable is not obtained, subsection 20(12) provides relief through a deduction in computing income.

1.25 NBIT for foreign tax credit purposes cannot include any foreign income or profits tax (or portion of the tax) paid by the taxpayer that may reasonably be regarded as relating to an amount that any other person or partnership has received, or is entitled to receive, from the foreign jurisdiction to which the tax was paid. For example, if a foreign country's tax is withheld on income from property paid to a taxpayer resident in Canada, but a portion of the tax is refunded or refundable to the foreign payer of the income, such portion of the tax is excluded from the taxpayer's FTP(NBIT) when calculating the amount of foreign tax credit available (see ¶1.74). However, such portion of the tax may qualify for inclusion in the taxpayer's NBIT for the purpose of a subsection 20(12) deduction.

1.26 If an individual claims an overseas employment tax credit under subsection 122.3(1), the individual's NBIT cannot include any foreign income tax (or portion of the tax) that may reasonably be regarded as attributable to the taxpayer's income from employment to the extent of the lesser of the amounts determined under paragraphs 122.3(1)(*c*) and (*d*) in respect of that income for the year. If the individual is entitled to, but does not claim the overseas employment tax credit, the full amount of foreign income tax on the relevant overseas employment income can be included in the calculation of the individual's NBIT (subject, of course, to the other exclusion rules in the definition of NBIT). This means, for example, that the individual typically can choose to include foreign income tax on this type of income in the calculation of NBIT where the overseas employment tax credit would be rendered ineffective because of the application of the minimum tax under section 127.5 (a special foreign tax credit can be claimed against the minimum tax—see ¶1.70). Note that amendments to section 122.3 effective for 2013 and future years phase out the availability of the overseas employment tax credit in most situations causing it to be unavailable for 2016 and subsequent tax years.

1.27 The following are examples of foreign taxes that cannot qualify as a BIT because they are not taxes paid by the taxpayer on income from the taxpayer carrying on a business in a country other than Canada (as discussed in ¶1.5 - 1.13 above), however, they may qualify as NBIT (see ¶1.21):

- United States tax on income from a business carried on by a U.S. subchapter S corporation (also known as an S Corp. which is taxed as a flow-through entity (that is, similar to a partnership) for US tax purposes) but paid by its principal shareholder, a U.S. citizen resident in Canada, because the business was not carried on by the person who paid the tax
- foreign tax paid in respect of a capital gain on the sale of a property used by the taxpayer in carrying on a business in a foreign country, because a capital gain is not income from carrying on a business
- foreign tax paid to the extent that it is in respect of a business (or a part of a business) that is carried on in Canada (see, however, ¶1.48).

1.28 A foreign income or profits tax which meets the subsection 126(7) definition of NBIT will nevertheless fail to qualify for purposes of a subsection 126(1) foreign tax credit to the extent that the tax may reasonably be regarded as having been paid by a corporation in respect of its income from shares of the capital stock in its foreign affiliates, as indicated in the description of FTP(NBIT). (See, however, the relief from double taxation provided for in section 113, subsections 91(4) and 91(5).) If an amount representing a return of capital on a Canadian corporation's shares in the capital stock of a foreign affiliate is considered to be a dividend under the United States *Internal Revenue Code* earnings and profits rules, U.S. taxes paid by the Canadian corporation on that amount are considered to be in respect of its income from such shares and thus these taxes do not qualify for inclusion in FTP(NBIT).

No economic profit and short-term securities acquisitions

1.29 Subsection 126(4.1) limits the availability of a foreign tax credit for taxes in respect of property (other than capital property) in cases where it is not reasonable to expect that the taxpayer will realize an **economic profit** as defined in subsection 126(7). The evaluation of expected profitability is made as of the time the property is acquired. Profitability is estimated over the entire period for which it is expected that the property will be continuously held. If it is reasonably expected that there will be no economic profit, the foreign tax paid in respect of the property and related transactions is not included in the taxpayer's BIT or NBIT for any tax year. Where subsection 126(4.1) denies the credit, a deduction from income may still be available under subsection 20(12.1) for the foreign tax paid. If a related transaction involves the acquisition of another property, subsection 126(4.1) is not applied independently in respect of the other property.

1.30 If a taxpayer disposes of a share or debt obligation which was held for less than one year, the BIT or NBIT that the taxpayer may claim is limited to the amount of Canadian tax that would be payable at a notional rate on the gross income from the security for the period which it was held. The formula to calculate the maximum BIT or NBIT and the properties to which the formula does not apply are found in subsections 126(4.2) and (4.3), respectively.

1.31 Subsection 126(4.4) provides that certain dispositions and acquisitions of property that are either deemed to be made by certain provisions of the Act or made in the course of certain rollover transactions are not dispositions or acquisitions for the purposes of subsections 126(4.1) and (4.2).

Amount paid by the taxpayer for the year

1.32 Before an amount of foreign tax can be used in the calculation of a foreign tax credit (as either FTP(NBIT) or FTP(BIT)), it must be **paid…for the year**, whether paid before, during or after the year in question. The words, **for the year** relate to the year for which the taxpayer is liable to pay tax (that is, when it is exigible) to the foreign jurisdiction for the income which is considered to have been earned under the foreign jurisdiction’s tax law, even though the income may not be realized in Canada during the same tax year. Where a foreign country uses a tax year different than the tax year used in Canada, the foreign taxes actually paid must be prorated to match the Canadian tax year. For example, in the case of individuals, where a foreign country uses a tax year other than a calendar year, the tax paid by the taxpayer for the year in the foreign jurisdiction is the taxes actually paid prorated on a calendar year basis.

1.33 Once paid, the Canadian dollar equivalent of the foreign tax (converted into Canadian currency in accordance with whichever method and rate of exchange described in ¶1.42 - 1.44 may be appropriate in the circumstances) may be taken into account in computing a foreign tax credit for the tax year to which the foreign tax relates. Any portion of a taxpayer’s foreign tax which is paid but which will be, or is, refunded to the taxpayer is not considered to be tax paid for the year. In other words, the foreign tax paid for the year for purposes of claiming a foreign tax credit cannot be more than the applicable finally-determined foreign tax liability (that is, the Canadian dollar equivalent of that amount).

1.34 As discussed in ¶1.5, voluntary contributions to governmental authorities are not considered a tax and therefore cannot contribute to the amount of foreign tax paid. If a resident of Canada voluntarily pays to a foreign jurisdiction an amount that, according to the domestic law of that country can be levied as tax but according to the terms of a treaty between Canada and that country cannot be so levied, the amount is considered to have been paid voluntarily and cannot be considered to be foreign tax paid for the year for purposes of a foreign tax credit. Any refund of such voluntary payment in a subsequent year would not reduce any amount of foreign tax paid for that subsequent year.

1.35 If, for example, a resident of Canada receives income from sources in another country which has been subject to withholding tax at a rate in excess of the rate specified in a treaty between Canada and that country, such excess is not considered to be foreign tax paid for the year for purposes of the foreign tax credit. The maximum credit allowed will be determined on the basis of the treaty rate and the taxpayer should seek a refund of the excess withholding tax from the foreign revenue authorities.

1.36 An initial allowance of, or an adjustment to, a foreign tax credit in respect of foreign taxes paid for the year may be included in an assessment, reassessment or additional assessment of tax for the year, or in a notification that no tax is payable for the year. See section 152 for the time frames and conditions under which an assessment, reassessment or additional assessment of tax, or a notification that no tax is payable can be issued.

1.37 A taxpayer’s foreign tax credit calculation can include only a foreign income or profits tax that is paid by the taxpayer. Subject to ¶1.32 - 1.35 above, the recipient of foreign-source income is considered to have paid any amount withheld and remitted by the payer of the income on account of, or in settlement of, the recipient’s foreign tax liability. Payment is considered to have been made at the time the amount was withheld.

1.38 A tax is not considered to be paid by the taxpayer for foreign tax credit purposes if the actual liability for the tax lies with another person. For example, a unitary tax of a state of the United States does not qualify as being paid by a Canadian corporation, for purposes of that corporation’s claiming a foreign tax credit, if the actual liability for the tax lies with one or more of its U.S. affiliates (see also the comments regarding a unitary tax starting at ¶1.10 and at ¶1.18).

1.39 The appropriate share of the foreign taxes paid by a partnership of which the taxpayer is a member is considered to be tax paid by the taxpayer. For the purposes of claiming a foreign tax credit, the amount of the foreign income must be calculated in accordance with section 96 and all other applicable provisions of the Act. The taxpayer's appropriate share of the foreign taxes paid is generally the same proportion of the total foreign taxes paid by a partnership as the taxpayer's share of income is to the total income of the partnership. These amounts may not necessarily match the amounts calculated under the tax laws of the foreign jurisdiction.

1.39.1 Where a taxpayer's direct or indirect share of a partnership's income, as calculated under the relevant foreign tax law, is less than their direct or indirect share as calculated under the Act, any income or profit taxes paid to a foreign jurisdiction in respect of the income of the partnership cannot be taken into account in computing the taxpayer's BIT, NBIT, FTP(BIT) or FTP(NBIT), except where any exception listed under subsection 126(4.12) is applicable. A foreign tax credit is generally denied where an investment in a partnership is characterized as an equity investment under the Act but is considered a debt instrument under the relevant foreign tax law.

1.40 The payment of an amount of foreign tax by an agent on behalf of a Canadian resident taxpayer is equivalent to a payment by the taxpayer. Whether a principal/agent relationship exists is a question of fact based on Canadian law and is not affected by the treatment of the relationship by foreign tax authorities. Thus, foreign tax paid by an agent of a resident of Canada can qualify for the foreign tax credit of the principal even though the agent was assessed the foreign tax on the basis that the activities were for the agent's own account, provided that the tax can in fact be considered to be that of the principal. The following are examples of situations where the tax typically can be considered to be that of the principal:

- The agent can recover the tax paid from the principal.
- The tax is paid by the agent from sales made by the agent on behalf of the principal and the amount of the tax paid is included in the gross amount of the sales income of the principal.

1.41 If two individuals, one or both of which is resident in Canada, have paid a foreign income tax on a community income basis (for example, spouses filing a joint return in the United States), an appropriate share of the foreign tax paid may be included in the foreign tax credit calculation of each individual resident in Canada. The amount paid is generally allocated to each such individual in the proportion that such individual's respective foreign income is of all the income that gave rise to the foreign tax, rather than the amounts actually paid by each individual.

1.42 For the purpose of claiming a foreign tax credit, the income taxes payable to a foreign government in a foreign currency should be converted to Canadian dollars at the same rate at which the income itself was converted. For business income, this conversion could be done monthly, quarterly, semi-annually or annually, using the average rate for the period, depending on the taxpayer's normal method of reporting income. For investment income which was subject only to a tax similar to that imposed by Part XIII of the Act, the conversion rate should be the rate applicable on the date of receipt of the income, although use of the average rate for the month or the mid-month rate would usually be acceptable. For other types of income, such as salaries and wages, the average rate for the months in which they are earned is the most appropriate rate. For capital gains, the rate should approximate the rate applicable at the time the gain was realized. Taxpayers may also choose to use the relevant spot rates for the days on which the particular amounts of foreign income and foreign tax arose in accordance with paragraph 261(2)(*b*). Whichever method the taxpayer chooses, it should be consistently applied from one year to all others.

1.43 The rules in subsection 39(2) will apply to gains or losses arising from the currency conversion of the amounts of foreign income and the foreign taxes (just as in the case of a foreign exchange gain or loss on the payment of any other debt denominated in a foreign currency) due to a fluctuation in the exchange rates causing a difference between:

- the Canadian dollar equivalent of the amount of the foreign tax liability used for purposes of the foreign tax credit, as determined in accordance with ¶1.42 above; and
- the Canadian dollar equivalent of the amount (or amounts) paid in settlement of the foreign tax liability determined as of the date (or dates) of payment.

1.44 If the taxpayer has overpaid the tax, the overpayment is not allowable as a foreign tax credit (see ¶1.32 - 1.35). The overpayment should be converted to Canadian dollars under the rules discussed in ¶1.42, and any difference between this figure and the Canadian dollar value of a refund of the overpayment, computed as of the day of its receipt, will be a gain or loss on exchange to which the rules in subsections 39(1) to (2.1) will apply.

1.45 Evidence of the payment of foreign tax is to accompany each return in which a foreign tax credit is claimed. If a taxpayer's foreign tax liability is settled by an amount withheld by the payer of the related income (that is, in a way which is analogous to tax under Part XIII of the Act), a copy of the foreign tax information slip is usually satisfactory. In most other cases, a copy of the tax return filed with the foreign government is required together with copies of receipts or documents establishing payment. The CRA should be notified of any increase or decrease in the amount of foreign tax paid as a result of a subsequent assessment or reassessment by the foreign tax authority, and the rules discussed in ¶1.32 - 1.35 , and ¶1.42 - 1.44 should be followed to the extent they are applicable. If the foreign assessment or reassessment results in additional foreign tax paid, proof of payment should be provided.

Foreign business income

1.46 The total amount of a taxpayer's income from businesses carried on by the taxpayer in a particular foreign country is included in the calculation of FBI, in the foreign tax credit formula with respect to that country. Amounts that could otherwise be regarded as income from property are included in FBI as business income if such income amounts pertain to or are incident to the foreign business activities of the taxpayer. FBI cannot include income from carrying on a business in Canada (see the comments in ¶1.15 - 1.19, and ¶1.53 - 1.56 with regard to the question of whether a business is carried on in Canada or in a foreign country).

1.47 Tax-exempt income cannot qualify for inclusion in FBI, in the foreign tax credit formula. See the comments in ¶1.66 - 1.68 for more information regarding tax-exempt income and foreign tax credits.

Foreign non-business income

1.48 The FNBI, in the foreign tax credit formula represents the taxpayer's income from sources in a particular foreign country, as calculated in accordance with subparagraph 126(1)(*b*)(i). The calculation made in subparagraph 126(1)(*b*)(i) is subject to certain assumptions and adjustments. One of these assumptions is that "**no businesses** were carried on by the taxpayer **in that country**." Although income from carrying on a business in Canada is not explicitly excluded from FNBI by that assumption, such income generally cannot be included in FNBI because such income is not income from a source in a foreign country as required by subparagraph 126(1)(*b*)(i). Sections 3 and 4 reflect, among other things, that a business is a source of income for purposes of Part I of the Act. It follows that, for purposes of subparagraph 126(1)(*b*)(i), the location or locations where a business exists as a source of income is the location or locations where the business is carried on. Therefore, to the extent that income is derived from carrying on a business in Canada, it is considered to be income from a source in Canada, not income from a source in a foreign country, and thus it cannot be included in FNBI.

1.48.1 However, where in computing a taxpayer's income from a business carried on in Canada, an amount is included in respect of interest paid or payable after February 27, 2004 to the taxpayer by a person resident in a country other than Canada, and the taxpayer has paid to the government of that other country NBIT for the year with respect to the amount, this amount is deemed to be income from a source in that other country under paragraph 126(6)(*d*), such that the income can be included in FNBI.

1.49 Also, for purposes of granting a foreign tax credit for foreign income taxes paid, as referred to in an elimination of double tax article of an income tax treaty between Canada and a foreign country, what would otherwise be income from a source in Canada but which is deemed to be income from a source in that foreign country (see, for example, paragraph 3 of Article 21 of the Convention Between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland) is income included in FNBI for that country. For example, the net income derived from a loan made to a non-resident by a lending institution that is resident in Canada in the course of its business carried on in Canada can be included in FNBI if such income is:

- subject to income tax in the foreign country in which that non-resident resides; and
- deemed, in the manner and for the purposes described above, by the income tax treaty between Canada and that country to be income from a source in that country.

1.50 By virtue of subparagraph 126(1)(*b*)(i), a corporation's foreign non-business income (that is, the **corporation's** FNBI, in the foreign tax credit formula) does not include income of the corporation from shares of the capital stock of a foreign affiliate of the corporation. This is consistent with the fact that a corporation's foreign non-business-income tax in respect of such income does not qualify for purposes of a subsection 126(1) foreign tax credit—see FTP(NBIT) in the definitions, and also ¶1.28.

1.51 Unlike a corporation, an **individual's** foreign non-business income (that is, the individual's FNBI, in the foreign tax credit formula) does include the individual's income from a share of the capital stock of a foreign affiliate (and the individual's NBIT in respect of that income is not excluded from FTP(NBIT)). Note that subparagraph 126(1)(*b*)(i) provides that a subsection 91(5) deduction in respect of dividends received will not be taken into account when calculating the foreign non-business income, that is, it will not reduce the FNBI in the foreign tax credit formula.

Determination of the location of a source of income

1.52 If there is an applicable tax treaty between Canada and a country in which the taxpayer has a source of income, the treaty may deem the income to arise in one of either Canada or the foreign country for the purposes of eliminating double taxation under that treaty. An example of such a treaty-based sourcing rule is discussed in ¶1.49 above. Such sourcing rules are specific to the treaty in which they are found and do not alter the determination of the location of a source of income for purposes beyond that treaty's scope.

Business income

1.53 While a determination of the place where a particular business (or a part of the business) is carried on (that is, the location of the source of the business income — see the comments starting at ¶1.48) necessarily depends upon all the relevant facts, such place is generally the place where the operations in substance, or profit generating activities, take place. For the following particular types of business, the following factors (among others) should be given consideration:

- development and sale of real or immovable property – the place where the property is situated;
- merchandise trading – the place where the sales are habitually completed, but other factors, such as the location of the stock, the place of payment or the place of manufacture, are considered relevant in particular situations;
- transportation or shipping – the place of completion of the contract for carriage, and the places of shipment, transit and receipt;
- trading in intangible property, or for civil law incorporeal property (for example, stocks and bonds) – the place where the purchase or sale decisions are normally made;
- money lending – the place where the loan arrangement is in substance completed;
- personal or movable property rentals – the place where the property available for rental is normally located;
- real or immovable property rentals – the place where the property is situated; and
- service – the place where the services are performed.

1.54 Other factors which are also relevant, but generally given less weight than the factors listed above include, but are not limited to:

- the place where the contract for the sale of property or the provision of services is formed or entered into;
- the place where payment is received;
- the place where assets of the business are located; and
- the intent of the taxpayer to do business in the particular jurisdiction.

1.55 In the case of a single business comprised of more than one of the above-mentioned activities, each activity is considered separately for purposes of determining in which country or countries the business is carried on (this situation should not be confused with the situation in which the taxpayer has separate businesses—see Interpretation Bulletin IT-206R, Separate businesses). If, however, one activity of a business is clearly incidental to a predominant one, the incidental activity is not considered when determining in which country or countries the business is carried on. For example, if a vendor of machinery provides customers with an engineer to supervise the installation of the machinery, this service would generally be considered to be incidental to the activity of selling the machinery; however, this type of service could in some cases be considered to be a significant activity on its own, depending on the machinery being sold, the nature of the installation service, and the terms of the contract with the customer.

1.56 If a business is carried on in more than one country, a reasonable proportion of the net income from the business must be allocated to each country. For this purpose, see the comments in ¶1.80 - 1.88 regarding the determination of net income from a source or sources in a particular foreign country.

Employment income

1.57 The location of the source of an individual's office or employment is considered to be the physical place where he or she normally performs the related duties. If those duties require the individual to spend a significant part of the time in a country other than Canada, the individual may be subject to tax in that foreign country on a portion of his or her remuneration. In such cases, an apportionment of the individual's regular salary or wages based on the number of working days spent in Canada, and in that other country, is usually considered appropriate in determining the foreign-source income from the employment for the purpose of the foreign tax credit calculation. Director fees are generally considered to be earned where the director meetings are held, and commission income is earned in the country in which the effort was expended for the purpose of gaining such remuneration.

Income from property

1.58 If interest is earned and the interest is income from property rather than income from business as described in ¶1.46 , the residence of the debtor ordinarily determines the location of the source of the income. Other factors that may help determine the location of the source of interest income include: where the contract giving rise to the interest income was formed, where payments are made, where any loaned funds are put to use or where any property securing a loan is located. In most situations these additional factors will have less weight than the residence of the debtor.

1.59 If a resident of Canada receives a dividend on shares of a corporation which is resident in a foreign country and not resident in Canada, the dividend will normally be recognized as being from a source in that foreign country. In determining a dividend-paying corporation's country of residence for purposes of a foreign tax credit, the possible impact of the following should be considered:

- the provisions in an income tax treaty (if any) between Canada and the particular foreign country in question, that can determine the corporation's residence for the purposes of the treaty; and
- subsection 250(5), which (in conjunction with such a treaty) may deem the corporation to be not resident in Canada.

1.60 If income is derived from the rental of tangible property, or for civil law corporeal property, and the income is income from property rather than income from business as in ¶1.46 and ¶1.53 - 1.54, the location of the source of the income is considered to be:

- in the case of income from the rental of real or immovable property, the country where the property is located; and
- in the case of income from the rental of other tangible or corporeal property, the country where the property is used.

1.61 The location of the source of a royalty payment is the country in which the related right is used or exploited. For example, a royalty payment received by a resident of Canada on the amount of ore extracted from a mine situated in a foreign country is income from a source in that foreign country. As a further example, a royalty payment received by a resident of Canada from a resident of a foreign country, on a written work created in Canada and copyright-protected in that foreign country under its copyright laws, is income from a source in that foreign country.

Capital gains

1.62 In determining the country to which a taxpayer's capital gain or capital loss on a disposition of real or immovable property (land and buildings) should be allocated, the major factor to be considered is the geographic location of the property. In the case of capital property other than real or immovable property, the country to which the capital gain or capital loss should be allocated is usually based on the geographic location at which the sale or disposition took place and title was transferred. However, in certain situations, the nature of the property sold and the factors discussed in ¶1.53 - 1.54 may also be informative. (See ¶1.65 for example, in the case of stocks or bonds).

1.63 If there has been a deemed disposition of property under the Act, any resulting capital gain or capital loss is allocated to Canada rather than to a foreign country, regardless of the geographic location of the property at the time of the deemed disposition. For example, where a taxpayer has ceased to be resident in Canada, a taxable capital gain resulting from a deemed disposition of property under paragraph 128.1(4)(*b*) is considered to be Canadian-source income, which therefore cannot be included in the FNBI in the foreign tax credit formula for purposes of claiming a foreign tax credit under subsection 126(1). The resulting pre-departure Canadian taxes may, however, be reduced by a foreign tax credit, under subsection 126(2.21), for a portion of any post-departure foreign taxes resulting from a subsequent actual disposition of the property.

1.64 A different result for a deemed disposition can sometimes occur by means of a tax treaty:

Example

Ms. X emigrated on January 31, 2012, from Canada to the United States. Because of the operation of paragraph 128.1(4)(*b*) of the Act, Ms. X had a capital gain from a deemed disposition of land she owned in the United States, at fair market value on January 31, 2012. Using paragraph 7 (in conjunction with paragraph 1) of Article XIII of the Convention Between Canada and the United States of America, Ms. X elected to be taxed in 2012 by the United States (in accordance with the U.S. *Internal Revenue Code*) on the capital gain accruing on the land up to January 31, 2012. Under subparagraph 3(*a*) of Article XXIV of the Convention, the capital gain so taxed by the United States became a U.S.-source capital gain for purposes of clause 2(*a*)(i) of Article XXIV. As a result, Ms. X included the taxable capital gain that occurred under the Canadian Act in the FNBI for 2012. This allowed Ms. X to claim a subsection 126(1) foreign tax credit against her Canadian tax otherwise payable for the 2012 tax year. (On December 15, 2013, Ms. X, at that time a non-resident of Canada, sold the land and paid tax to the United States as a result of the capital gain accruing from February 1, 2012, to December 15, 2013. This post-departure foreign tax did not qualify for a foreign tax credit under subsection 126(2.21) of the Act as no part of the gain accrued while she was resident in Canada.)

1.65 Generally, the place where a stock or bond is sold is the securities or stock exchange in which it is sold, regardless of the location of the security issuer’s transfer office. Where a sale is not made through a securities or stock exchange, a number of factors (weighted in favour of those factors less susceptible to manipulation) must be considered in establishing where the sale is made. These include:

- the location, residence, or place of business of:
  - the issuer;
  - the issuer’s transfer office;
  - the owner of the security; or
  - the owner’s selling agent;
  - where the title is transferred;

- where the contract is negotiated, signed, and executed;
- where the shares are located;
- where payment is made; and
- any relevant provisions in the governing corporate statutes.

Tax-exempt income

1.66 Income that is tax-exempt income is not counted for the purposes of a foreign tax credit since it is income already protected from double taxation by a tax treaty. Therefore, any income that is tax-exempt income cannot be included in the foreign tax credit formula variables, FNBI or FBI. **Tax-exempt income** is defined in subsection 126(7) as income from a source in a country where the following two conditions are met in respect of that income:

- First, the taxpayer is entitled to an exemption, because of a tax treaty between Canada and the other country, from all income or profits taxes, imposed in that country, to which the treaty applies; and
- Second, no income or profits tax to which the treaty does not apply is imposed in any country other than Canada.

1.67 In the case of a disposition resulting in a foreign-source allowable capital loss which would otherwise have resulted in a foreign-source capital gain that was tax-exempt income, the allowable capital loss is not subtracted when calculating FNBI.

Example

Mr. A, who is a resident of Canada, has a taxable capital gain from the sale of shares. The sale occurred on a stock exchange in a foreign country and the taxable capital gain is considered to have its source in that foreign country. However, under the terms of the tax treaty between the foreign country and Canada, the gain is exempt from income or profits taxes imposed by the foreign country (for example, Article 13 of the treaty states that the gain is taxable only where the alienator is resident and the alienator, Mr. A, is resident in Canada and is not resident in the foreign country for the purposes of the treaty). Furthermore, the gain is not subject to an income or profits tax by a political subdivision of that foreign country or by any other foreign jurisdiction. Therefore, Mr. A’s taxable capital gain is tax-exempt income and he cannot include it in the FNBI for that country when calculating the amount of a foreign tax credit.

1.68 If, for example, a taxpayer resident in Canada is exempt from income or profits taxes levied by a foreign country because of a tax treaty but pays an income or profits tax to a political subdivision of that country (income tax treaties typically do not cover taxes levied by a political subdivisions, for example, states, provinces, cities, and counties), the second condition above would not be fulfilled. As a result, the income on which the political subdivision’s tax is paid would not be tax-exempt income and such income would qualify for inclusion in the FNBI in the foreign tax credit formula.

TFSAs and RRSPs

1.69 Income earned in a tax free savings account or in a registered retirement savings plan is not counted for the purposes of a foreign tax credit. Likewise, any foreign taxes paid on foreign income earned on qualifying investments held in an RRSP or through a TFSA arrangement is not counted for the purposes of a foreign tax credit. When determining the amount of an available foreign tax credit, a taxpayer should exclude the foreign taxes paid in respect of his or her TFSA and RRSP holdings from the calculation of FTP(NBIT) and any foreign income earned in his or her RRSP or TFSA arrangement should be excluded from the calculation of WI(1) and FNBI.

Minimum tax

1.70 If an individual who is subject to minimum tax under section 127.5 pays income or profits taxes to a foreign jurisdiction during a particular tax year, that individual may not claim a foreign tax credit under section 126 as a deduction from the federal minimum tax payable for that year. However, section 127.5 provides for the deduction of a special foreign tax credit in computing the federal minimum tax payable in this situation. The SFTC may be claimed using Form T691, Alternative Minimum Tax. The SFTC can be equal to, or in certain circumstances be greater than, the foreign tax credit to which the individual would normally be entitled under section 126. The SFTC, which is defined in subsection 127.54(2), is calculated as being the greater of:

a) the total of all amounts deductible under section 126 from the individual’s tax for the year, and

b) the lesser of:

- the individual’s foreign taxes for the year; and
- the individual’s foreign income for the year multiplied by the appropriate percentage for the tax year.

1.71 For the purpose of the SFTC, **foreign taxes** and **foreign income** for a tax year are defined in subsection 127.54(1). Foreign taxes may be described as the BITs (see ¶1.15 - 1.19) paid by the individual for the year in respect of businesses carried on in foreign countries plus two-thirds of the NBITs (see ¶1.20 - 1.28) paid by the individual for the year to foreign jurisdictions. The two-thirds amount takes into account the fact that the provinces provide a foreign tax credit in respect of foreign taxes on foreign non-business income. Foreign income is the total of the individual’s income for the year from his or her carrying on businesses in countries other than Canada and all income from countries other than Canada for which he or she has paid NBIT to foreign jurisdictions. The appropriate percentage for a tax year is the lowest percentage referred to in subsection 117(2) that is applicable in determining tax payable under Part I for the year.

1.72 For more information on the minimum tax see Guide 5000-G, General Income Tax and Benefit Guide, for the year and Form T691.

Tax sparing

1.73 A tax treaty between Canada and a foreign country typically contains a provision (referred to here as the double tax relief provision) under which Canada is required to give a resident of Canada (the taxpayer) relief from double taxation by allowing a deduction, from the taxpayer’s Canadian tax, in respect of an income or profits tax payable by the taxpayer to the foreign country. The double tax relief provision typically is made subject to the laws of Canada regarding such a deduction from Canadian tax, which are chiefly, the foreign tax credit rules in the Act. Such a double tax relief provision is contained, for example, in paragraph 2(*a*) of Article 23 of the Canada-India Income Tax Agreement (the Canada-India treaty). The treaty may also contain a tax sparing provision under which, for purposes of the double tax relief provision, income or profits tax payable to the foreign country by the taxpayer is deemed or considered to include any such taxes (the spared taxes) that would have been so payable if it had not been for an exemption from, or reduction of, tax having been granted by the foreign country (as specified in the tax sparing provision—see, for example, paragraph 4 of Article 23 of the Canada-India treaty). Such a tax sparing provision in a treaty generally causes the spared taxes to be taken into account—as if they had been paid to the foreign country—for purposes of calculating a foreign tax credit. (It may be possible in some cases for greater tax relief to be obtained in respect of the spared taxes—see Interpretation Bulletin IT-506, for further comments.)

The foreign tax credit formula

Full-year residents of Canada

Non-business income

1.74 For each foreign jurisdiction to which a taxpayer pays a NBIT, a separate foreign tax credit is calculated under subsection 126(1). Foreign NBIT includes any foreign taxes paid on foreign-source capital gains since capital gains are not considered to be business income for Canadian taxation purposes. The amount of foreign tax credit that is available under subsection 126(1), for NBIT paid by a Canadian resident taxpayer throughout the tax year to a particular country other than Canada, is equal to the lesser of the two amounts FTP(NBIT) and CTOP(FNBI) . The second amount, CTOP(FNBI) is determined using the formula:

CTOP(FNBI) = FNBI ÷ WI(1) x CTOP(a)

Example

A resident of Canada has worldwide income, WI(1), for the year of $50,000. Of that total, $30,000 is the foreign non-business income, FNBI, for a particular foreign country and the taxpayer's foreign tax paid on the non-business-income, FTP(NBIT), to that country is $6,500. The taxpayer's Canadian tax otherwise payable, CTOP(a), of $10,000 (in the calculation of which the full $50,000 of world income is taken into account) is reduced to $4,000 by a foreign tax credit of $6,000, this amount being the lesser of the $6,500 FTP(NBIT) and the Canadian tax otherwise payable that pertains to the foreign non-business income from that particular country, CTOP(FNBI).

Applying the formula, **FNBI ÷ WI(1) x CTOP(a):**

= $30,000 ÷ $50,000 x $10,000

= $6,000

Business-income

1.75 For each foreign jurisdiction to which a taxpayer pays a BIT a separate foreign tax credit is calculated. The amount of foreign tax credit that is available under subsection 126(2), for BIT paid by a Canadian resident taxpayer throughout the year in respect of businesses carried on in a particular foreign business country, is least of the three amounts FTP(BIT), CTOP(FBI), and X (described in ¶1.77).

1.76 The second amount, CTOP(FBI), is determined using the formula:

CTOP(FBI) = (FBI ÷ WI(2) x CTOP(c)) + Y

Where Y is the portion (as determined under paragraph 126(2.1)(*b*)) of any subsection 120(1) tax for the tax year (on income that is income not earned in a province) that pertains to the income from businesses carried on in the particular foreign business country.

1.77 The third amount, X, takes into account a rule that, if the taxpayer's FTP(NBIT) **cannot** be fully claimed as a foreign tax credit for the year (because the CTOP(FNBI) in ¶1.74 is a lower amount), the unused portion of the FTP(NBIT) cannot be carried over and used in another year while any portion of FTP(BIT) that cannot be deducted as a foreign tax credit may qualify as an UFTC and be applied to other tax years. The amount, X, ensures that the taxpayer's subsection 126(1) NBIT foreign tax credit claims are deducted before any subsection 126(2) BIT foreign tax credits. This ordering rule is designed to allow the taxpayer to maximize both the foreign tax credits deducted for the tax year and the amount of UFTC for the year that can be applied to other years. Amount X is determined using the formula:

X = CTOP(b) – Z

Where Z is the total of all subsection 126(1) NBIT foreign tax credits claimed for the year.

1.78 Corporations claiming a foreign tax credit pursuant to section 126 should use the Form T2 Schedule 21, Federal and Provincial or Territorial Foreign Income Tax Credits and Federal Logging Tax Credit. Other taxpayers claiming a foreign tax credit should use Form T2209, Federal Foreign Tax Credits.

Part-year residents

1.79 If an individual (which includes a trust) is resident in Canada throughout part of the year and non-resident throughout another part of the year, section 114 applies. If section 114 applies, WI(1) in ¶1.74 and WI(2) in ¶1.76 will be modified pursuant to subparagraphs 126(1)(*b*)(ii) and 126(2.1)(*a*)(ii), respectively. WI(1) will be calculated in a manner which reflects the taxpayer's non-Canadian income only while he or she was a resident of Canada. WI(2) will be calculated in a manner which reflects the taxpayer's non-Canadian income only while he or she was resident in Canada and will also alter the availability of certain deductions applicable to his or her Canadian-source income, for the purposes of calculating the foreign tax credit.

Calculation of the amount of net income from sources in a foreign country

General

1.80 The income amounts that are used for FNBI and FBI in the foreign tax credit formula are **net income** amounts determined in accordance with the provisions of the Act, not under the laws of the foreign jurisdiction (see ¶1.83 - 1.86). Thus, both mandatory and permissive deductions (where taken) must be included when calculating FNBI and FBI. Common deductions applicable in most cases will include direct costs as well as reasonable allocations of overhead expenses.

1.81 For example, when determining the amount of a foreign tax credit for NBIT, if an amount of foreign income or profits tax is deducted under subsection 20(11) or 20(12) and if the income (from the same source as the source of the income to which that tax pertains) is included in the foreign tax credit formula variable, FNBI, with respect to the foreign country in question, the amount of that tax must also be deducted when calculating the FNBI. In other words, any amount of foreign tax deducted under subsections 20(11) or 20(12) cannot be represented in the claim for a foreign tax credit. This arises from the operation of subsections 20(11) or 20(12), as the case may be, in conjunction with subsection 4(3) (see ¶1.85, and Interpretation Bulletin IT-506 , for a discussion of subsections 20(11) and 20(12)) and is consistent with the following rules:

- The amount deducted under subsection 20(11) or 20(12) is also deducted when calculating the foreign tax credit formula variable, WI(1) . This is because a subsection 20(11) or 20(12) deduction is a deduction for purposes of calculating section 3 income.
- The amount deductible under subsection 20(11) or the amount deducted under subsection 20(12) is excluded from FTP(NBIT) in the foreign tax credit formula (see ¶1.22 - 1.24) with respect to the particular foreign country in question.

1.82 For purposes of calculating the net income amount to be used for FNBI or FBI in the foreign tax credit formulas, the possible impact of an income tax treaty between Canada and the foreign country should also be considered. For example, see paragraph 3 of Article XXIV of the Convention Between Canada and the United States of America.

1.83 Income from sources in a foreign country is computed under the rules given in sections 3 and 4 of the Act, subject to the additional rules contained in subparagraphs 126(1)(*b*)(i) or 126(2.1)(*a*)(i), as the case may be. Where profits or losses arise from multiple jurisdictions they should be allocated between jurisdictions in a manner that reflects the contribution of the activities in each jurisdiction that gave rise to those profits or losses, which may not necessarily be the way tax legislation of the foreign jurisdiction allocates the income. For purposes of calculating FNBI or FBI for a particular foreign country, amounts of net income or net loss from each applicable source in that country are added together or netted, as the case may be. Also, certain amounts in respect of taxable capital gains and allowable capital losses from sources in that country are taken into account when calculating FNBI.

1.84 The rules provided by section 4 apply to the calculation of the net income (or loss) from a particular source of income, or from sources of income in a particular place, for the purpose of (among other things) calculating a foreign tax credit under section 126. Subject to the specific rules contained in subsection 4(3) (see ¶1.85), each type of allowable deduction (including an outlay or expense) in arriving at a taxpayer's total income under section 3 is, theoretically, allocable in whole or in part to a source of income in a particular country. Ordinarily such an allocation can be made on the basis of a factual relationship between the particular deduction and the gross income arising from a source in a particular country. This is not always the case, however, and some types of deductions that frequently present apportionment problems are discussed in ¶1.87 - 1.88.

1.85 For purposes of a foreign tax credit under section 126, subsection 4(3) generally provides that all deductions permitted in computing a taxpayer's income for the year under Part I of the Act apply, either wholly or in part, to a particular source of income or to sources in a particular place. The reference to a **particular place** would, of course, include a place in a foreign country. However, subsection 4(3) contains some exceptions to this general rule. Each deduction applied in calculating the taxpayer's total income under section 3 that is not specifically referred to in the exceptions in subsection 4(3) must be allocated on a **reasonable** basis among all sources of income to which they can reasonably be applied, including those in foreign countries. The deduction amounts allocated in this manner to income from a particular source in a particular foreign country must be deducted when calculating either FNBI or FBI in the foreign tax credit formulas, as the case may be, for that country.

1.86 An allocation of expenses to a source of gross income in a particular foreign country for financial statement purposes is normally accepted for the purpose of computing a foreign tax credit for that country, provided that the rules of subsection 4(3), as discussed above, are satisfied. Once a basis for allocation has been established, future allocations are expected to be made on a consistent basis.

1.87 Various methods of allocating interest expenses to sources of income are accepted in particular situations. For example, a specific tracing method is appropriate when funds are borrowed and used for an identifiable purpose related to the earning of income in a particular country. For interest on general purpose borrowing, an allocation based on relative net asset values in different countries may be appropriate in some cases. An allocation of interest expenses based on the relationship of gross incomes in different countries is accepted only when a less arbitrary method is not readily evident. The location of property assigned as security for an amount borrowed is not necessarily an indication that the funds obtained were for the purpose of earning income from a source in the same country in which the property is located.

1.88 The total amount of capital cost allowance claimed by a taxpayer for a tax year must be allocated among the countries to which it relates. The allocation cannot exceed the allowable maximums under Part XI of the Regulations in respect of property situated in a particular country. In particular, the limitation in the case of rental properties must be respected on a country-by-country basis. Subject to these conditions, capital cost allowance deductions may be arbitrarily allocated to income sources in various countries.

Capital gains and losses

1.89 Subject to the exceptions for tax-exempt income, the taxpayer should include all foreign-source taxable capital gains arising in the particular country in the foreign tax credit formula variable, FNBI, and his or her worldwide taxable capital gains in the variable WI(1). In calculating these variables, the taxpayer should subtract any applicable foreign-source allowable capital losses to the extent that such losses are deductible in calculating the taxpayer's income under section 3 of the Act. The taxpayer should also deduct any capital gains deduction claimed under section 110.6 from both FNBI and WI(1), and any foreign taxes paid in respect of such a deducted amount should not be included in the taxpayer's FTP(NBIT). This Canadian tax treatment would not be affected by a different treatment under the tax law of the particular foreign jurisdiction to which the capital gain or loss is allocated by the taxpayer. For example, the capital gain or loss so allocated might be considered by the foreign jurisdiction to be a gain or loss of a business nature, whether or not the capital property disposed of was used in the business of the taxpayer at the time of its disposition. Any tax in the nature of an income, gains, or profits tax that is paid for the year to a foreign jurisdiction in respect of a capital gain should be included in the non-business-income tax paid to that jurisdiction.

1.90 Net capital losses from other tax years claimed under paragraph 111(1)(*b*) when computing the taxpayer's taxable income do not reduce the foreign tax credit formula variable FNBI, but are deducted in calculating the variable WI(1).

1.91 Separate foreign tax credit calculations under subsection 126(1) must be made for each country to which NBIT is paid. Accordingly, in a situation where a taxpayer has a taxable capital gain allocated to one foreign country and an allowable capital loss allocated to another foreign country, the taxable capital gain is included in computing the foreign tax credit formula variable FNBI for the first country and the allowable capital loss is subtracted in computing FNBI for the second country to the extent that such allowable capital loss is deductible in computing the taxpayer's income for the year under section 3.

Example

Assume the following income details for Taxpayer A:

Description	Canada ($)	Country X ($)	Country Y ($)	Total ($)
Taxable capital gains	2,000	10,000	NIL	12,000
Allowable capital losses	NIL	NIL	(15,000)	(15,000)
Other non-business income	NIL	28,000	21,500	49,500
Business income	23,000	21,000	22,000	66,000

The calculation of Taxpayer A's FNBI for each foreign country is as follows:

Description	Country X ($)	Country Y ($)
Taxable capital gains	10,000	NIL
Allowable capital losses	N/A	(12,000)*
Other non-business income	**28,000**	**21,500**
FNBI	**38,000**	**9,500**

The calculation of Taxpayer A's WI(1) (which is used in his or her foreign tax credit calculations for both foreign countries) is as follows:

Description	$
Taxable capital gains	12,000
Allowable capital losses	(12,000)*
Other non-business income	49,500
Business income	**66,000**
WI(1)	**115,500**

* The amount of allowable capital losses that is subtracted in calculating the above variables under subsection 126(1) is limited to $12,000. This is because only $12,000 of the $15,000 allowable capital losses incurred in the year is deductible in computing Taxpayer A’s income for the year under section 3 of the Act. That is, the amount of the taxpayer’s allowable capital losses for the year deductible under subparagraph 3(*b*)(ii) cannot exceed the taxpayer’s $12,000 taxable capital gains for the year included under subparagraph 3(*b*)(i), because the net amount calculated under paragraph 3(*b*) cannot be less than nil.

1.92 The taxpayer may have allowable capital losses for more than one foreign country. In such a situation, where the total allowable capital losses for all countries (including Canada) exceeds the amount of such losses that is deductible in computing the taxpayer's income under section 3, the taxpayer may allocate the foreign-source portion of the deductible losses among the foreign countries, for purposes of calculating FNBI for each respective country, in such a way that:

- the amount of allowable capital losses allocated to any particular foreign country does not exceed the allowable capital losses actually incurred in that country; and
- the aggregate of the Canadian portion (if any) of the allowable capital losses and the various amounts allocated to the foreign countries is equal to the total amount of allowable capital losses that is deductible in calculating the taxpayer's income under section 3 of the Act.

Example

Assume the following income details for Taxpayer B:

Description	Country X $	Country Y $	Country Z $	Foreign Total $	Canada $	Total $
Taxable capital gains	3,000	1,000	2,000	6,000	3,500	9,500
Allowable capital losses	(5,000)	(1,500)	(1,000)	(7,500)	(7,000)	(14,500)
Other non-business income	3,500	NIL	4,200	7,700	NIL	7,700
Business income	1,200	2,400	1,600	5,200	1,800	7,000

Taxpayer B calculates FNBI for each foreign country as follows:

Description	Country X $	Country Y $	Country Z $
Taxable capital gains	3,000	1,000	2,000
Allowable capital losses, as allocated by the taxpayer*	(4,000)*	(1,000)	(1,000)
Other non-business income	3,500	NIL	4,200
FNBI	**2,500**	**NIL**	**5,200**

The calculation of Taxpayer B's WI(1) (which is used in Taxpayer B's foreign tax credit calculations for all foreign countries) is as follows:

Description	$
Taxable capital gains	9,500
Allowable capital losses	(9,500)
Other non-business income	7,700
Business income	7,000
WI(1)	**14,700**

* Of the $14,500 allowable capital losses incurred by Taxpayer B for the year, only $9,500 is deductible under subparagraph 3(*b*)(ii) for purposes of computing income for the year under section 3 of the Act, because taxable capital gains included under subparagraph 3(*b*)(i) are only $9,500. For purposes of subsection 126(1), the $9,500 deductible allowable capital losses are deducted in calculating Taxpayer B's WI(1). The Canadian-source portion of the $9,500 deductible losses is $3,500 (even though the actual Canadian-source allowable capital losses are $7,000), because the Canadian-source taxable capital gains included under subparagraph 3(*b*)(i) are only $3,500. Therefore, the foreign-source portion of the $9,500 deductible allowable capital losses is $6,000, which is allocated among the three foreign countries. The amount allocated to each country is subtracted in calculating Taxpayer B's FNBI for that country. Taxpayer B can allocate the $6,000 among the three foreign countries in any manner, as long as the rules given in ¶1.92 are met.

The comments in this example are subject to the rules concerning tax-exempt income as discussed under the heading Tax-exempt income above.

Addition to taxable income to prevent reduction to foreign tax credit

1.93 For the purpose of claiming a foreign tax credit for a particular year, in certain situations where a corporation would not otherwise be able to fully utilize the foreign income or profits taxes that it has paid, section 110.5 may make it possible to do so. An example where such a situation would occur is if a loss for the year reduced the corporation's total income to an amount less than its foreign source income and the resulting CTOP(FNBI) was less than FTP(NBIT) in the foreign tax credit formula for foreign non-business-income taxes, or the resulting CTOP(FBI) was less than FTP(BIT) in the foreign tax credit formula for foreign business-income taxes.

1.94 Section 110.5 allows a corporation to add any extra amount in computing its taxable income, to the extent that this causes an increase to any amount deductible by the corporation as a foreign tax credit under subsection 126(1) or (2) but does not cause any increase to an amount deductible by the corporation in a provision set out in paragraph 110.5(*b*). The corporation may add an amount of extra income which increases an amount deductible under subsection 126(1) or (2) as well an amount deductible under a provision listed in paragraph 110.5(*b*) as long as the deduction under an increased 110.5(*b*) provision is not claimed. The amount added under section 110.5 in computing taxable income is added in the calculation of WI(1) or WI(2) in the foreign tax credit formulas, as the case may be. This is provided for in the adjustments in subparagraphs 126(1)(*b*)(ii) and 126(2.1)(*a*)(ii), respectively.

1.95 Effective use of section 110.5 occurs when:

- the additional amount added in computing taxable income causes CTOP(a) or CTOP(c), as the case may be, in the foreign tax credit formula to increase;
- this in turn causes CTOP(FNBI) or CTOP(FBI) to increase; and
- this in turn allows more, or all, of the FTP(NBIT) or the FTP(BIT) to be deducted as a foreign tax credit under subsection 126(1) or (2).

1.96 The amount added under section 110.5 in computing the corporation's taxable income is also added in calculating its non-capital loss for the year, which may be carried over to and used in other tax years (see Interpretation Bulletin IT-232R3, Losses – Their Deductibility in the Loss Year or in Other Years). In other words, the additional foreign taxes that are used in the year (in the form of an increase to the foreign tax credit for the year by means of section 110.5) are effectively converted into the potential for tax savings for other years by the creation of a non-capital loss (or increase to an existing non-capital loss) for the year that can be used in those other years.

Relief from double tax by taxing on a deferred basis

1.97 A foreign tax credit under section 126 must be in respect of foreign taxes paid for the year—see ¶1.32. Double taxation may occur if Canada and another country levy tax in different tax years with respect to a particular transaction and the taxpayer thus cannot make proper use of the foreign tax credit provisions. However, relief from such double taxation may be possible in some cases by means of a provision in a reciprocal tax treaty between Canada and the other country (see, for example, paragraph 8 of Article XIII of the Convention Between Canada and the United States of America) in conjunction with section 115.1 of the Act. Further particulars on this topic may be found in the current versions of the following:

- Interpretation Bulletin IT-173R2, Capital Gains Derived in Canada by Residents of the United States , and Interpretation Bulletin IT-173R2SR, Capital Gains Derived in Canada by Residents of the United States (special release revision)
- Interpretation Bulletin IT-420R3, Non-Residents – Income Earned in Canada, and Interpretation Bulletin IT-420R3SR, Non-Residents - Income Earned in Canada (special release revision)
- Information Circular 71-17R5, Guidance on Competent Authority Assistance Under Canada's Tax Conventions

Carryforward and carryback

General

1.98 Some taxpayers who earned foreign business income may not be able to claim all of their FTP(BIT) for a particular foreign business country in a particular tax year as a foreign tax credit in that same year. Paragraph 126(2)(*a*) permits a taxpayer resident in Canada at any time in a year who carried on a business in a foreign country in that year, to include in the amount available as a foreign tax credit for that year all or a portion of the **unused foreign tax credit** (UFTC) associated with that country from other years. The amount of UFTC that may be claimed in the current year must come from the ten immediately preceding tax years or the next three immediately following tax years (see ¶1.102). Note that for tax years that ended on or before March 22, 2004, the carryforward period is only seven tax years.

1.99 The definition of UFTC in subsection 126(7) provides that UFTC is to be calculated separately for each foreign country in which business is carried on and for each tax year (that is, calculated on a country-by-country and year-by-year basis). The UFTC of a taxpayer for a tax year is the amount by which the BIT exceeds the amount of such BIT that is deductible as a foreign tax credit for the year in respect of that country.

1.100 The effect of the word **deductible** in the definition of UFTC means that where the business-income tax is not deducted to the full extent possible as a foreign tax credit in the year to which it relates, any deductible portion not so claimed will not be available for carryover but will be lost.

1.101 If a taxpayer deducts, from their tax otherwise payable for a particular year, an amount as a foreign tax credit for the year which is less than the least of the three amounts discussed in ¶1.75, the portion of the BIT paid equal to the difference between the amount deducted and the least of the three amounts will be lost by virtue of paragraph (*b*) of the definition of UFTC in subsection 126(7) of the Act and cannot form part of the UFTC for the particular year.

1.102 The effect of the inclusion of UFTC in paragraph 126(2)(*a*) is that a Canadian resident taxpayer may carry UFTC from the current year back into the three immediately preceding tax years or forward into the next ten immediately following tax years, subject to the rules in subsection 126(2.3). These rules provide that:

- the amount of foreign tax credit claimed under paragraph 126(2)(*a*) for a tax year is considered first to be in respect of BIT for that year with any remainder considered to be a deduction in respect of UFTC;
- UFTCs must be utilized against Part I tax in the order in which they arose (for example, UFTC in respect of a particular country for the 2009 tax year must be applied before UFTC for 2010 in respect of that country); and
- an amount of UFTC for a year deducted against Part I tax in one year may not be deducted again in a subsequent year.

Prescribed form

1.103 If a taxpayer wishes to claim UFTC of the current year in one of the preceding tax years, paragraph 152(6)(*f*.1) requires that the taxpayer elect to do so in prescribed form. For corporate taxpayers, this election is made on Part 4 (Request for a federal foreign business income tax credit carryback) of T2 Schedule 21, Federal and Provincial or Territorial Foreign Income Tax Credits and Federal Logging Tax Credit. Individual taxpayers wishing to apply UFTCs in one of the preceding tax years should use Form T1-ADJ, T1 Adjustment Request, and trusts should use Form T3-ADJ, T3 Adjustment Request. The election to claim an amount of UFTC must be filed with the CRA no later than the day on which the taxpayer's income tax return for the current year is due. Without the filing of a timely election, the benefits of the UFTC carryback provisions are unavailable. For corporate taxpayers, Part 3 (Continuity of unused federal foreign business income tax credits) of Schedule 21 of the T2 return provides a schedule in which to calculate unused federal foreign business income tax credits to be carried forward to future years.

Ceasing or commencing business

1.104 Paragraph 126(2)(*a*) permits a taxpayer to make a claim for UFTC carryforward or carryback in any year during which that taxpayer carried on business in the foreign country (subject to the ten year carryforward limit and the three year carryback limit). Thus, if a taxpayer does not carry on a business in a foreign country during a tax year, that taxpayer may not claim UFTC carryforward or UFTC carryback in that particular tax year.

Amalgamation

1.105 When an amalgamation of two or more taxable Canadian corporations qualifies under section 87 and one or more of the predecessor corporations to the amalgamation had UFTC available at the time of the amalgamation, paragraph 87(2)(*z*) contains rules for calculating the following:

- the UFTC of the amalgamated corporation (Amalco); and
- any reduction in the amount that may be claimed under paragraph 126(2)(*a*) by Amalco as a foreign tax credit by virtue of subsection 126(2.3).

1.106 The rules deem Amalco to be the same corporation as, and a continuation of, each relevant predecessor corporation to enable any UFTC of that predecessor corporation to be carried forward by Amalco. Thus, if one of the predecessor corporations had UFTC to carry forward for its tax year ending immediately before the amalgamation, this amount could be carried forward into Amalco's first ten tax years subject to the restrictions contained in paragraph 126(2)(*a*) and subsection 126(2.3). Paragraph 87(2)(*z*) also provides that the above rules shall in no respect affect:

- the fiscal period of Amalco or any of its predecessor corporations; or
- the tax payable under the Act by any predecessor corporation. Thus UFTC of Amalco may not be carried back and applied as a credit against tax otherwise payable by a predecessor corporation.

Winding-up

1.107 Where subsection 88(1) applies on a winding-up, paragraph 88(1)(*e*.7) permits the parent corporation to claim the UFTC of its subsidiary following the winding-up. To the extent that a subsidiary's UFTC for a year has not been deducted, it will be considered to be the parent's UFTC for the parent's tax year in which the subsidiary's tax year ended. This rule ensures that on a winding-up, the carryforward period for the subsidiary's unused foreign tax credit for any particular tax year will be maintained in the parent corporation.

Application

This updated Chapter, which may be referenced as S5-F2-C1, is effective December 1, 2015.

When it was first published on March 28, 2013, this Chapter replaced and cancelled Interpretation Bulletin IT–270R3, *Foreign Tax Credit*, Interpretation Bulletin IT–395R2, *Foreign Tax Credit – Foreign-Source Capital Gains and Losses* and Interpretation Bulletin IT–520(consolidated), *Unused Foreign Tax Credits – Carryforward and Carryback*.

The history of updates to this Chapter as well as any technical updates from the cancelled interpretation bulletins can be viewed in the Chapter History page.

Except as otherwise noted, all statutory references herein 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., c. 945, as amended.

Links to jurisprudence are provided through CanLII.

Income tax folios are available in electronic format only.

Reference

Sections 126 (Also sections 3, 4, 110.5, 115.1, 122.3, 127.5, 127.54, subsections 39(2), 20(11), 20(12), and paragraphs 87(2)(*z*), 88(1)(*e*.7), 111(1)(*b*), 128.1(4)(*b*), 152(6)(*f*.1)), and 249.

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