

LEGISLATIVE PROPOSALS CONCERNING SPECIFIED INVESTMENT FLOW-THROUGH TRUSTS AND PARTNERSHIPS

1. (1) Subparagraph 53(2)(h)(i.1) of the *Income Tax Act* is amended by striking out the word “or” at the end of clause (A) and by adding the following after clause (A):

(A.1) that was deemed by subsection 104(16) to be a dividend received by the taxpayer, or

(2) Subsection (1) applies to taxation years that end after 2006.

2. (1) The definition “eligible dividend” in subsection 89(1) of the Act is replaced by the following:

“eligible dividend” means

“eligible dividend”
« dividende déterminé »

(a) a taxable dividend that is received by a person resident in Canada, paid after 2005 by a corporation resident in Canada and designated, as provided under subsection (14), to be an eligible dividend, and

(b) in respect of a person resident in Canada, an amount that is deemed by subsection 96(1.11) or 104(16) to be a taxable dividend that is received by the person;

(2) Subsection (1) applies to taxation years that end after 2006.

3. (1) Section 96 of the Act is amended by adding the following after subsection (1.1):

(1.11) If a SIFT partnership is liable to tax for a taxation year under Part IX.1,

Deemed dividend of SIFT partnership

(a) paragraph (1)(f) is to be read as if the expression “the amount of the income of the partnership for a taxation year from any source or from sources in a particular place” were read as the expression “the amount, if any, by which the income of the partnership for a taxation year from any source or from sources in a particular place exceeds, in respect of each such source, the portion of the partnership’s taxable non-portfolio earnings for the taxation year that is applicable to that source”; and

(b) the partnership is deemed to have received a dividend in the taxation year from a taxable Canadian corporation equal to the amount by which the partnership’s taxable non-portfolio earnings for the taxation year exceeds the tax payable by the partnership for the taxation year under Part IX.1.

(2) Subsection (1) applies in respect of taxation years of a partnership that end after 2006, except that subsection (1) does not apply in respect of a partnership for its taxation years that end before 2011 if interests in or other securities of the partnership were, before November 1, 2006, listed on a stock exchange or other public market.

4. (1) The portion of subparagraph 104(6)(b)(i) of the Act before clause A is replaced by the following:

(i) such part (in this section referred to as the trust's "adjusted distributions amount" for the taxation year) of the amount that, but for

(2) Paragraph 104(6)(b) of the Act is amended by striking out the word "and" at the end of subparagraph (ii.1), by adding the word "and" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) where the trust is a SIFT trust for the taxation year, the amount, if any, by which

(A) its adjusted distributions amount for the taxation year

exceeds

(B) the amount, if any, by which

(I) the amount that would, if this Act were read without reference to this subsection, be its income for the taxation year

exceeds

(II) its non-portfolio earnings for the taxation year.

(3) Section 104 of the Act is amended by adding the following after subsection (15):

(16) If an amount (in this subsection and section 122 referred to as the trust's "non-deductible distributions amount" for the taxation year) is determined under subparagraph (6)(b)(iv) in respect of a SIFT trust for a taxation year

(a) each beneficiary under the SIFT trust to whom at any time in the taxation year an amount became payable by the trust is deemed to have received at that time a taxable dividend that was paid at that time by a taxable Canadian corporation;

(b) the amount of a dividend described in paragraph (a) as having been received by a beneficiary at any time in a taxation year is equal to the amount determined by the formula

$$A/B \times C$$

where

A is the amount that became payable at that time by the SIFT trust to the beneficiary,

B is the total of all amounts, each of which became payable in the taxation year by the SIFT trust to a beneficiary under the SIFT trust, and

C is the SIFT trust's non-deductible distributions amount for the taxation year;

(c) the amount of a dividend described in paragraph (a) in respect of a beneficiary under the SIFT trust is deemed for the purpose of subsection (13) not to be an amount payable to the beneficiary; and

(d) for the purposes of applying Part XIII in respect of each dividend described in paragraph (a) the SIFT trust is deemed to be a corporation resident in Canada that paid the dividend.

SIFT deemed
dividend

(4) Subsection 104(24) of the Act is replaced by the following:

Amount payable

(24) For the purposes of subparagraph 53(2)(h)(i.1), paragraph (c) of the definition “specified charity” in subsection 94(1), subsection 94(8) and subsections (6), (7), (7.01), (13), (16) and (20), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

(5) Subsections (1) to (4) apply in respect of taxation years of a trust that end after 2006, except that those subsections do not apply in respect of a trust for its taxation years that end before 2011 if units in or other securities of the trust were, before November 1, 2006, listed on a stock exchange or other public market.

5. (1) Subsection 120(3) of the Act is amended by striking out the word “and” at the end of paragraph (b), by adding the word “and” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) in the case of a SIFT trust, the amount, if any, by which its income for the year determined without reference to this paragraph exceeds its taxable SIFT trust distributions (as defined in subsection 122(3)) for the year.

(2) Subsection (1) applies in respect of taxation years of a trust that end after 2006, except that it does not apply in respect of a trust for its taxation years that end before 2011 if units in or other securities of the trust were, before November 1, 2006, listed on a stock exchange or other public market.

6. (1) Subsection 122(1) of the Act is replaced by the following:

Tax payable by *inter vivos* trust

122. (1) Notwithstanding section 117, the tax payable under this Part for a taxation year by an *inter vivos* trust is the total of:

(a) 29% of its amount taxable for the taxation year, and

(b) if the trust is a SIFT trust for the taxation year, the positive or negative amount determined by the formula

$$A \times B$$

where

A is the positive or negative decimal fraction determined by the formula

$$C + D - E$$

where

C is the net corporate income tax rate in respect of the SIFT trust for the taxation year,

D is the provincial SIFT tax factor for the taxation year, and

E is the decimal fraction equivalent of the percentage rate of tax provided in paragraph (a) for the taxation year, and

B is the SIFT trust’s taxable SIFT trust distributions for the taxation year.

Amount deemed paid (1.01) If the amount determined under subsection (1) in respect of a trust (other than a trust that is exempt from tax under this Part) for a taxation year is a negative amount, the absolute value of the amount is deemed to have been paid on account of the tax payable under this Part by the trust for the taxation year on the trust's balance-due day for the taxation year.

(2) Section 122 of the Act is amended by adding the following after subsection (2):

Definitions (3) The following definitions apply in this section.

“non-deductible distributions amount” “non-deductible distributions amount” for a taxation year has the meaning assigned by subsection 104(16).

« *montant de distribution non déductible* »

“taxable SIFT trust distributions” “taxable SIFT trust distributions” of a SIFT trust for a taxation year means the lesser of

« *montant de distribution imposable* »

(a) its amount taxable for the taxation year, and

(b) the amount determined by the formula

$$A/(1 - (B + C))$$

where

A is its non-deductible distributions amount for the taxation year,

B is the net corporate income tax rate in respect of the SIFT trust for the taxation year, and

C is the provincial SIFT tax factor for the taxation year.

(3) Subsections (1) and (2) apply in respect of taxation years of a trust that end after 2006, except that those subsections do not apply in respect of a trust for its taxation years that end before 2011 if units in or other securities of the trust were, before November 1, 2006, listed on a stock exchange or other public market.

7. (1) The Act is amended by adding the following after section 122:

SIFT trust distributions: definitions

122.1 The following definitions apply in this section and in sections 104 and 122.

“entity”
« *entité* »

“entity” means a corporation, trust or partnership.

“equity value”
« *valeur des capitaux propres* »

“equity value”, of an entity at any time, means the total fair market value at that time of

	<p>(a) if the entity is a corporation, all of the issued and outstanding shares of the capital stock of the corporation;</p> <p>(b) if the entity is a trust, all of the income or capital interests in the trust; or</p> <p>(c) if the entity is a partnership, all of the interests in the partnership.</p>
<p>“investment” « placement »</p>	<p>“investment”, in a trust or partnership, means</p> <p>(a) a property that is a security of the trust or partnership; or</p> <p>(b) a right which may reasonably be considered to replicate a return on, or the value of, a security of the trust or partnership.</p>
<p>“non-portfolio earnings” « gains hors portefeuille »</p>	<p>“non-portfolio earnings”, of a SIFT trust for a taxation year, means the total of</p> <p>(a) the amount, if any, by which</p> <p>(i) the total of all amounts each of which is the SIFT trust’s income for the taxation year from a business carried on by it in Canada or from a non-portfolio property, other than income that is a taxable dividend received by the SIFT trust, exceeds</p> <p>(ii) the total of all amounts each of which is the SIFT trust’s loss for the taxation year from a business carried on by it in Canada or from a non-portfolio property, and</p> <p>(b) the amount, if any, by which</p> <p>(i) the total of</p> <p>(A) all taxable capital gains of the SIFT trust from dispositions of non-portfolio properties during the taxation year, and</p> <p>(B) one-half of the total of all amounts each of which is deemed under subsection 131(1) to be a capital gain of the SIFT trust for the taxation year in respect of a non-portfolio property of the SIFT trust for the taxation year exceeds</p> <p>(ii) the total of the allowable capital losses of the SIFT trust for the taxation year from dispositions of non-portfolio properties during the taxation year.</p>
<p>“non-portfolio property” « bien hors portefeuille »</p>	<p>“non-portfolio property” of a trust or a partnership for a taxation year means a property, held by the trust or partnership at any time in the taxation year, that is</p> <p>(a) a security of a subject entity, if at that time the trust or partnership holds</p> <p>(i) securities of the subject entity that have a total fair market value that is greater than 10% of the equity value of the subject entity, or</p>

	<p>(ii) securities of the subject entity that, together with all of the securities that the trust or partnership holds of entities affiliated with the subject entity, have a total fair market value that is greater than 50% of the equity value of the trust or partnership;</p> <p>(b) a Canadian real, immovable or resource property, if at any time in the taxation year the total fair market value of all properties held by the trust or partnership that are Canadian real, immovable or resource properties is greater than 50% of the equity value of the trust or partnership; or</p> <p>(c) a property that the trust or partnership or a person, or a partnership, with whom the trust or partnership does not deal at arm's length uses at that time in the course of carrying on a business in Canada.</p>
<p>“public market” « <i>marché public</i> »</p>	<p>“public market” includes any trading system or other organized facility through which securities that are qualified for public distribution may be exchanged, but does not include a facility that is operated solely to carry out the issuance of a security or its redemption, acquisition or cancellation by its issuer.</p>
<p>“real estate investment trust” « <i>fiducie de placement immobilier</i> »</p>	<p>“real estate investment trust”, for a taxation year, means a trust that is resident in Canada throughout the taxation year, if</p> <p>(a) the trust at no time in the taxation year holds any non-portfolio property other than real or immovable properties situated in Canada;</p> <p>(b) the total of the trust's incomes for the taxation year from properties and its taxable capital gains from dispositions of real or immovable properties in the taxation year is not less than 95% of its income for the taxation year;</p> <p>(c) the total of the trust's incomes for the taxation year that are directly or indirectly attributable to real or immovable properties situated in Canada or to mortgages, or hypothecs, on real or immovable properties situated in Canada, and its taxable capital gains from dispositions of real or immovable properties situated in Canada, is not less than 75% of its income for the taxation year; and</p> <p>(d) at no time in the taxation year is the total fair market value of all properties held by the trust, each of which is a real or immovable property situated in Canada, cash, or a property described in clause 212(1)(b)(ii)(C), less than 75% of the equity value of the trust at that time.</p>
<p>“real or immovable property” « <i>bien immeuble ou réel</i> »</p>	<p>“real or immovable property”, of a taxpayer,</p> <p>(a) includes a security held by the taxpayer, if the security is a security of a trust that satisfies (or of any other entity that would, if it were a trust, satisfy) the conditions set out in paragraphs (a) to (d) of the definition “real estate investment trust”; but</p>

	(b) does not include any depreciable property that is property of a prescribed class of the taxpayer in respect of which the rate allowed by the regulations made for the purpose of paragraph 20(1)(a) is greater than 5%.
“security” « titre »	<p>“security” of a particular entity means any right, whether absolute or contingent, conferred by the particular entity or by an entity that is affiliated with the particular entity, to receive, either immediately or in the future, an amount that can reasonably be regarded as all or any part of the capital, of the revenue or of the income of the particular entity, or as interest paid or payable by the particular entity, and for greater certainty includes</p> <p>(a) a liability of the particular entity;</p> <p>(b) if the particular entity is a corporation;</p> <p>(i) a share of the capital stock of the corporation, and</p> <p>(ii) a right to control in any manner whatever the voting rights of a share of the capital stock of the corporation,</p> <p>(c) if the particular entity is a trust, an income or a capital interest in the trust;</p> <p>(d) if the particular entity is a partnership, an interest as a member of the partnership; and</p> <p>(e) a right to, or to acquire, anything described in any of paragraphs (a) to (d) and this paragraph.</p>
“SIFT trust” « fiducie intermédiaire de placement déterminée »	<p>“SIFT trust”, being a specified investment flow-through trust, for a taxation year means a trust (other than a trust that is a real estate investment trust for the taxation year) if, at any time during the taxation year,</p> <p>(a) the trust is resident in Canada;</p> <p>(b) investments in the trust are listed on a stock exchange or other public market; and</p> <p>(c) the trust holds one or more non-portfolio properties.</p>
“subject entity” « entité déterminée »	<p>“subject entity” means a person or partnership that is</p> <p>(a) a corporation resident in Canada;</p> <p>(b) a trust resident in Canada;</p> <p>(c) a Canadian resident partnership; or</p> <p>(d) a non-resident person, or a partnership that is not described in paragraph (c), the principal source of income of which is one or any combination of sources in Canada.</p> <p>(2) Subsection (1) applies in respect of taxation years that end after 2006, except that</p> <p>(a) if interests in or other securities of a partnership were, before November 1, 2006, listed on a stock exchange or other public market, subsection (1) does not apply in respect of the partnership or its members for its taxation years that end before 2011; and</p>

(b) if units in or other securities of a trust were, before November 1, 2006, listed on a stock exchange or other public market, subsection (1) does not apply in respect of the trust for its taxation years that end before 2011.

8. (1) Section 126 of the Act is amended by adding the following after subsection (7):

Deemed
dividend —
partnership

(8) If an amount is deemed by subsection 96(1.11) to be a taxable dividend received by a person in a taxation year of the person in respect of a partnership, and it is reasonable to consider that all or part of the amount (in this subsection referred to as the “foreign-source portion”) is attributable to income of the partnership from a source in a country other than Canada, the person is deemed for the purposes of this section to have an amount of income from that source for that taxation year equal to the amount determined by the formula

$$A \times B/C$$

where

A is the total amount included under subsection 82(1) in computing the income of the person in respect of the taxable dividend for that taxation year;

B is the foreign-source portion; and

C is the amount of the taxable dividend deemed to be received by the person.

(2) Subsection (1) applies in respect of taxation years of a partnership that end after 2006, except that if interests in or other securities of a partnership were, before November 1, 2006, listed on a stock exchange or other public market, subsection (1) does not apply in respect of the partnership or its members for its taxation years that end before 2011.

9. (1) The Act is amended by adding the following after section 196:

Part IX.1

Tax on SIFT Partnership

Definitions

197. (1) The following definitions apply in this Part and in section 96.

“non-portfolio
earnings”
« gains hors
portefeuille »

“non-portfolio earnings” of a SIFT partnership for a taxation year means the amount that would, if the SIFT partnership were a SIFT trust, be its non-portfolio earnings for the taxation year as determined under section 122.1.

“SIFT
partnership”
« société de
personnes
intermédiaire
de placement
déterminée »

“SIFT partnership”, being a specified investment flow-through partnership, for any taxation year, means a partnership if, at any time during the taxation year,

(a) the partnership is a Canadian resident partnership;

(b) investments (within the meaning assigned by section 122.1) in the partnership are listed on a stock exchange or other public market; and

	(c) the partnership holds one or more non-portfolio properties.
“taxable non-portfolio earnings” « gains hors portefeuille imposables »	“taxable non-portfolio earnings” of a SIFT partnership, for a taxation year, means the lesser of
	(a) the amount that would, if the SIFT partnership were a taxpayer for the purposes of Part I, be its income for the taxation year as determined under section 3, and
	(b) its non-portfolio earnings for the taxation year.
Tax on partnership income	(2) Every partnership that is a SIFT partnership for a taxation year is liable to a tax under this Part equal to the amount determined by the formula
	$A \times (B + C)$
	where
	A is the taxable non-portfolio earnings of the SIFT partnership for the taxation year;
	B is the net corporate income tax rate in respect of the SIFT partnership for the taxation year; and
	C is the provincial SIFT tax factor for the taxation year.
Ordering	(3) This Part and section 122.1 are to be applied as if this Act were read without reference to subsection 96(1.11).
Partnership to file return	(4) Every member of a partnership that is liable to pay tax under this Part for a taxation year shall — on or before the day on or before which the partnership return is required to be filed for the year under section 229 of the <i>Income Tax Regulations</i> — file with the Minister a return for the taxation year under this Part in prescribed form containing an estimate of the tax payable by the partnership under this Part for the taxation year.
Authority to file return	(5) For the purposes of subsection (4), if, in respect of a taxation year of a partnership, a particular member of the partnership has authority to act for the partnership,
	(a) if the particular member has filed a return as required by this Part for a taxation year, each other person who was a member of the partnership during the taxation year is deemed to have filed the return; and
	(b) a return that has been filed by any other member of the partnership for the taxation year is not valid and is deemed not to have been filed by any member of the partnership.
Provisions applicable to Part	(6) Subsection 150(2), sections 152, 156, 156.1, 158, 159, 161 to 167 and Division J of Part I apply to this Part, with any modifications that the circumstances require, and for greater certainty,
	(a) a notice of assessment referred to in subsection 152(2) in respect of tax payable under this Part is valid notwithstanding that a partnership is not a person; and

	<p>(b) notwithstanding subsection 152(4), the Minister may at any time make an assessment or reassessment of tax payable under this Part or Part I to give effect to a determination made by the Minister under subsection 152(1.4), including the assessment or reassessment of Part I tax payable in respect of the disposition of an interest in a SIFT partnership by a member of the partnership.</p>
Payment	<p>(7) Every SIFT partnership shall pay to the Receiver General, on or before its SIFT partnership balance-due day for each taxation year, its tax payable under this Part for the taxation year.</p> <p>(2) Subsection (1) applies in respect of taxation years of a partnership that end after 2006, except that it does not apply in respect of a partnership for its taxation years that end before 2011 if interests in or other securities of the partnership were, before November 1, 2006, listed on a stock exchange or other public market.</p> <p>10. (1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:</p>
<p>“Canadian real, immovable or resource property” « <i>bien immeuble ou réel ou avoir minier au Canada</i> »</p>	<p>“Canadian real, immovable or resource property” means</p> <p>(a) a property that would, if this Act were read without reference to the definition “real or immovable property” in section 122.1, be a real or immovable property situated in Canada,</p> <p>(b) a Canadian resource property,</p> <p>(c) a timber resource property,</p> <p>(d) a share of the capital stock of a corporation, an income or a capital interest in a trust or an interest in a partnership, if more than 50% of the fair market value of the share or interest is derived directly or indirectly from one or any combination of properties described in paragraphs (a) to (c), or</p> <p>(e) any right to or interest in — or, for civil law, any right to or in — any property described in any of paragraphs (a) to (d);</p>
<p>“Canadian resident partnership” « <i>société de personnes résidant au Canada</i> »</p>	<p>“Canadian resident partnership” means a partnership that, at any time in respect of which the expression is relevant,</p> <p>(a) is a Canadian partnership,</p>

	<p>(b) would, if it were a corporation, be resident in Canada (including, for greater certainty, a partnership that has its central management and control in Canada), or</p> <p>(c) was formed under the law of a province;</p>
<p>“net corporate income tax rate” « <i>taux net d'imposition du revenu des sociétés</i> »</p>	<p>“net corporate income tax rate” in respect of a SIFT trust or SIFT partnership for a taxation year means the amount, expressed as a decimal fraction, by which</p> <p>(a) the percentage rate of tax provided under paragraph 123(1)(a) for the taxation year exceeds</p> <p>(b) the total of</p> <p>(i) the percentage that would, if the SIFT trust or SIFT partnership were a corporation, be its general rate reduction percentage, within the meaning assigned by subsection 123.4(1), for the taxation year, and</p> <p>(ii) the percentage deduction from tax provided under subsection 124(1) for the taxation year;</p>
<p>“non-portfolio property” « <i>bien hors portefeuille</i> »</p>	<p>“non-portfolio property” has the meaning assigned by section 122.1;</p>
<p>“provincial SIFT tax factor” « <i>facteur fiscal provincial</i> »</p>	<p>“provincial SIFT tax factor” for a taxation year means the decimal fraction 0.13;</p>
<p>“public market” « <i>marché public</i> »</p>	<p>“public market” has the meaning assigned by section 122.1;</p>
<p>“SIFT partnership” « <i>société de personnes intermédiaire de placement déterminée</i> »</p>	<p>“SIFT partnership” has the meaning assigned by Part IX.1;</p>
<p>“SIFT partnership balance-due day” « <i>date d'échéance du solde</i> »</p>	<p>“SIFT partnership balance-due day”, in respect of a taxation year of a SIFT partnership, means the day on or before which the partnership is required to file a return for the taxation year under section 229 of the <i>Income Tax Regulations</i>;</p>

“SIFT trust”
« fiducie
intermédiaire
de placement
déterminée »

“SIFT trust” has the meaning assigned by section 122.1;

(2) Subsection (1) applies in respect of taxation years that end after 2006, except that

(a) if interests in or other securities of a partnership were, before November 1, 2006, listed on a stock exchange or other public market, subsection (1) does not apply in respect of the partnership or its members for its taxation years that end before 2011; and

(b) if units in or other securities of a trust were, before November 1, 2006, listed on a stock exchange or other public market, subsection (1) does not apply in respect of the trust for its taxation years that end before 2011.

11. (1) Subsection 249(1) of the Act is amended by striking out the word “and” at the end of paragraph (b), by adding the word “and” at the end of paragraph (c) and by adding the following after paragraph (c):

(d) in the case of a Canadian resident partnership, a fiscal period.

(2) Subsection (1) applies in respect of taxation years of a partnership that end after 2006, except that if interests in or other securities of a partnership were, before November 1, 2006, listed on a stock exchange or other public market, subsection (1) does not apply in respect of the partnership or its members for its taxation years that end before 2011.

AMENDMENTS TO THE INCOME TAX REGULATIONS

12. (1) The portion of section 229 of the *Income Tax Regulations* before paragraph (a) is replaced by the following:

229. (1) Every member of a partnership that carries on a business in Canada, or that is a Canadian partnership or a SIFT partnership, at any time in a fiscal period of the partnership shall make for that period an information return in prescribed form containing the following information

(2) Subsection (1) applies in respect of taxation years of a partnership that end after 2006, except that if interests in or other securities of a partnership were, before November 1, 2006, listed on a stock exchange or other public market, subsection (1) does not apply in respect of the partnership or its members for its taxation years that end before 2011.

13. (1) Part XXVI of the Regulations is amended by adding the following after section 2607:

2608. For the purposes of this Part, if the individual is a SIFT trust, a reference to income earned in a taxation year shall be read as a reference to the amount that would, if this Part were read without reference to this section, be the amount, if any, by which its income for the taxation year exceeds its taxable SIFT trust distributions for the taxation year.

Partnership
Return

SIFT trusts

(2) Subsection (1) applies after 2006.