

INDEX

References are to page number.

A

Accounting fees

- deductibility, 512, 518, 564

Accumulations

- perpetuities and accumulations, 29-32

Administration

- assessments and reassessments, 457
- estate, 44-46
- executor's year, *see* Executor's year
- interest and penalties, 451-452
- notice of objection, 458-462
- T3 filing requirements, 450-451, 457, 597-615
 - given 75(2) attribution, 202-204
 - how to file, 449-450
 - liability of trustees, 447-448, 452-454
 - when filing not required, 447-448
 - where to file, 448-449

Affiliated persons

- arm's length, 147
- general principles, 147
- interpretive rules, 147

Age forty trusts, *see* Minors

Agency

- distinguished from trust, 23

AgriInvest Fund 2, 503

Alberta trusts, *see* Jurisdiction shopping

Alter ego trusts

- avoiding resealing and bonding, 352
- charitable, remainder trust concurrently, 80-82
- confidentiality, 350
- control of capital, 350
- creditor-proofing, 351
- deemed realization, 354
- dependants' relief legislation, 351
- incapacity planning, 349
- jurisdiction shopping, 352
- opting out, 354
- probate avoidance, 349
- requirements, 77-78
- successor trusts not testamentary, 77
- taxation of, 348

Allowable business investment loss

- bad debts, 516
- defined, 516

Amendment, *see* Variation

Association rules

- deemed ownership, 150
- estates, 153
- *inter vivos* trusts, 156
- minor beneficiaries, 151
- summary, 150
- testamentary trusts and estates, 158

Index

Attribution

- contributor controlling capital [75(2)]
 - alter ego trusts, 355
 - charitable remainder trusts, 366-369
 - contributor's circumstances, 207-213
 - control over destination, 204-205
 - drafting to avoid, 214-216
 - freezing shares, 213
 - gate keeping, 205-207, 212-213
 - generally, 201-202
 - impact on rollouts, 209, 215
 - income beneficiaries, 244
 - indirect contributions, 212
 - joint partner trusts, 349
 - jurisdiction shopping, 353
 - replacement property, 213
 - reversion of capital, 202-204
 - spousal trusts, 331-332
 - steps to end attribution, 214-216
 - types of income, 214
- minor, non-arm's length beneficiaries, [74.1(2)], 336
 - ending at majority, 336
 - generally, 337-341
 - inadequate consideration, 339
 - income designation over-riding, 337
 - second generation income, 338
 - *Sommerer* decision [75(2)], 207-209
 - substituted property, 338
 - transferor's circumstances, 339-340
 - type of income, 338-339

- type of property, 339
- rules
 - attribution of income, 426
 - corporate, 427
 - interest-free loan, 427
 - reversionary, 426
- spouse or partner beneficiary [74.3(1)], 329-330
 - death/divorce ending, 79, 329
 - generally, 329-330
 - income designation over-riding, 329
- marriage commencing, 209

B

Bailment

- distinguished from trust, 23

Bankrupt estate, *see* Estate

Bare Trust

- defined, 25
- distinguished from agency, 23
- generally, 23, 541
- liability for capital gains, 541

Beneficial interest

- additional allowed by trust, 229
- definition, 131-133
- distinguished from legal, 11-13
- timing of shift in estate, 20-23

Beneficiaries

- addition allowed by trust, 230
- Canadian, taxation of, 419
- capital vs. income, 6
- contingent vs. vested, 6-7
- defined, 4-5
- hidden, 7

Index

- Beneficiaries (*cont'd*)
- Indian Band, 5
 - “kiddie tax”, 162, 344
 - minors, 77, 336-349
 - non-resident, 199-200, 427
 - party to trust, as, 4
 - preferred beneficiary election, *see* Preferred beneficiary election
 - resident beneficiary, 420
 - • taxation of, 420-422
 - • • calculation of, 162
 - secret, 7
 - sole beneficiary as sole trustee, 150
 - TOSI rules, 162, 345-347
- Benefits**
- as income, 166
- Blind trust**, *see* Self benefit trust
- Bonding**, *see* Estate
- C**
- Capital gains**
- \$800,000 capital gains deduction, 271
 - • alter ego trust, opting out, 354
 - • beneficiaries using on flow through, 182-186
 - • requirements for flow through, 184-185
 - • reserves, applicable to, 552
 - deemed gains at death, 189, 226-228
 - deemed realization, 221
 - flow-through to beneficiary of trust
 - • attributed to minor under 104(18), 336-349
 - • charity as beneficiary, 114-116
 - • example given QSBC, 271
 - • generally, 182-184
 - • line 47 of trust return, 520
 - • preferred beneficiary election, 174-180
 - • schedule 9 to trust return, 567
 - land, 543-545
 - “qualified farm property”, 543
 - qualifying small business corporation shares, 542
 - reserves, 489, 553
- Capital gains exemption**, *see* Capital gains
- Capital interests**
- cost to taxpayer, 254
 - disclaimer of interest, 59-60
 - gift of capital interest to charity, *see* Charitable remainder trusts
- Capital losses**
- 164(6) election, 282, 490, 507, 524, 547
 - affiliated persons rules, 146
 - • *inter vivos* trusts, 254
 - • minor beneficiaries, 336-349
 - • settlor, under subsection 75(2), 207-209
 - • spouse beneficiary, 328
 - deemed losses at death, 279
 - utilization of capital losses, 302-305
 - year of death, 279, 283, 285
- Capital property**
- deemed realization, *see* Deemed realizations
 - depreciable, 546
 - dispositions of, 535
 - proceeds of disposition, 213, 220, 540
 - real estate, 543, 546

Index

- Capital property (*cont'd*)
- spouse and spousal trust, rollover, 321, 330
 - tax treatment on death, 536, 541
 - utilization of losses, 301-305
- Certainties of a trust**
- “in trust” accounts, 347-348
 - intention, 15-16, 20
 - objects, 16
 - subject matter, 16
- Charitable gifts**, *see also* Charitable remainder trusts
- by will, 100
 - capital gains on property to qualified donee, 103
 - deferred by administrative delay, 108
 - deferred by terms of trust, *see* Charitable remainder trusts
 - defined, 95
 - discretionary transfers, 98, 105
 - general principles, 95
 - income distributions to charities, 112
 - made without authority, 108
 - mandatory and discretionary transfers distinguished, 97
 - mandatory transfers, 98
 - perfected by variation, contingency or disclaimer, 111
 - rogue gifts, 108
 - rules applicable to end of 2015, 96
 - rules applicable to 2016 *et seq.*, 97
 - valuation, 80, 110, 359
 - where donation receipt unusable, 99
 - year of death, 96
- Charitable remainder trusts**, *see also* Charitable gifts
- access to capital, 357
 - administrative powers, 358
 - alter ego, 365
 - capital gains flow through, 366-367
 - capital gains inclusion rate, 366-367
 - claiming deduction or credit, 365-366
 - conceptual background, 358
 - concurrent strategies, 369
 - documentation, impact on donee, 370
 - even hand rule, impact, 370
 - gifts of income interests, 371
 - *inter vivos*, 366, 372
 - joint spousal, 366
 - multiple capital beneficiaries, 371
 - multiple contributions, 357
 - multiple income beneficiaries, 372
 - origin of, 357
 - planning, conservative, 369
 - planning with couples, 368
 - practical steps, 372
 - present value calculations, 362, 373
 - remainder, distinct from trust, 104
 - requirements to qualify, 80-82, 357
 - settled with shares, 356, 358, 361, 363
 - spousal, 367
 - summarized, 356
 - tax holiday, 368
 - testamentary, 366
 - triggering events other than death, 370
 - types of property inserted, 361
 - types of trusts qualifying, 366

Index

- Charitable remainder trusts (*cont'd*)
- U.S. charity, 80
 - valuation issues, 359
 - vesting requirement, 81
- Children**, *see* Minors
- Clearance certificate**, 455
- Committeeship**
- distinguished from trust, 24
- Common-law partner trusts**, *see* Joint spousal trust; Spousal trusts
- Community property claims**
- life insurance may avoid, 390-391
 - shareability of trust interests, 33-35
- Community property law**, 33-35
- Confidentiality**
- alter ego trusts, 350
 - insurance trusts, 387
 - secret and half-secret trusts, 6-7
- Constructive trusts**
- as defensive measure, 328
 - between spouses, 328
 - generally, 15-17
- Contract**
- distinguished from trust, 25
 - impact on spouse trust, 317
 - trust created by, 8
- Contributions**
- by living person, 48-49
 - settlor, 7-8, 207-209, 251-253
 - testamentary trusts, 39-48
- Contributor**, *see* Attribution
- Cottage**
- holding in trust, 257-261
 - principal residence exemption, 116-121
- Creation of trusts**
- by express words or conduct, 20
 - by judicial intervention, 17-19
 - by law, 16
 - by operation of statute, 17
 - by will, 40
 - tax deferral, 313, 331-332
- Cy-près jurisdiction**
- amending terms of charitable trust, 27-28
 - designation of charity as beneficiary, 6
- D**
- Death of taxpayer**
- capital losses, 278, 282, 284
 - capital losses; 164(6) election, 284-285, 490, 507, 524, 547
 - capital property, 253, 363
 - charitable gifts, 97, *see also* Charitable gifts
 - reserves, 552
 - rollovers, 321, 330-331
- Deductible expenses**
- accounting fees, 512, 518, 564
 - legal, 503, 513
 - other, 518
 - trustees and executors' fees, 514
- Deductions**
- allowable business investment losses, 516
 - carrying charges and interest expenses, 509
 - other carrying charges and expenses, 511

Index

Deductions (*cont'd*)

- trustee fees, 514

Deemed realization at death

- estate, 44-46
- principal residence, 149
- reserves for year of death, 225
- spousal rollover, 225

Deemed realizations

- 21-year rule, *see* Twenty-one year deemed disposition
- amendment to trust, 229-231
- at death, *see* Deemed realization at death
- designation to beneficiaries, 193
- distribution to beneficiary, 184-185, 199-200
- emigration of trust, 227
- flow through, *see* Distributions
- *inter vivos* trusts, 222-224
- planning for disposition of trust assets, 222-224
- trust property, 222-224
- when occur, 222-224

Deemed resident trust

- attribution rules, 426
- commonly used structures, 430
- connected contributor, 416, 420, 421, 442
- contribution, defined, 405
- contributor, 403
- disposition of taxable Canadian property, 611
- electing contributor, 400, 424
- electing trust, 421
- exempt foreign trust, 399
- extended transfer rules, 409

- foundation, 400
- joint and several liability, 428
- joint contributor, 418
- non-resident beneficiary, 425
- planning, 429
- resident beneficiary, 396, 418, 425
- resident contributor, 403
- resident portion, 398
- successor beneficiary, 420
- summary, 441
- tax filings, 607
- transfer rules, 409
- transferor, 396
- transitional rules, becoming resident, ceasing to be resident, 428
- treaty considerations, 401
- withholding tax, 399

Dependants' relief legislation

- avoiding, 348, 350, 390
- trusts arising, 43-44, 319

Designated income, *see* Designations

Designations, *see also* Flow through of income

- designated beneficiary, 521, 529
- distinguishing between capital gains and flow through, 194-195
- RRSP designation, 366
- subsections 104(13.1) and (13.2), 94, 169-174, 333, 337, 520
 - capital losses, utilizing, 301-303
 - estates, 170
 - exception to income treatment, 93
 - generally, 170
 - *inter vivos* trusts, 170
 - jurisdiction shopping, 352
 - line 47 of T3, 520

Index

Designations (*cont'd*)

- • loss carryforward, 169
- • mechanics, 187
- • minor beneficiary, overriding attribution, 336
- • payment of the taxes, 170, 340
- • preferred beneficiary election, interaction, 174-180
- • retroactive availability, 170
- • schedule 9 to return, 567
- • spousal trusts, 170, 328
- • terms of trust arrangement, 186
- • testamentary trusts, 170

Disability

- Henson-style trust, 30, 42-43
- lifetime benefit trust, 42
- preferred beneficiary election, 174-175
- qualified disability trust, 83
- rollover for registered investments, 42

Disclaimer

- impact on spousal trust, 323, 328
- perfecting charitable gift, 113-115

Discretion

- defined, 9-10
- gifts to charity, 80-82
- income distributions, 114-115, 161-164

Distributions

- capital to non-resident beneficiaries, 245
- deemed realizations, *see* Deemed realizations
- disposition of income interest in trust, 179, 217-218, 243
- *inter vivos* trust, 49

- personal trusts, 218-221
- shares to beneficiaries, 242-245
- spousal trusts, 217-218
- testamentary trusts, 27, 39-48
- to charity, *see* Charitable gifts
- withholding tax, 245, 609

Dividends

- designation of taxable, 195-197
- flow-through to beneficiary, 181, 487
- “kiddie tax”, 344
- taxable, 267, 269, 488
- TOSI rules, 162, 345-347

Division of ownership

- generally, 11-14
- sole trustee as sole beneficiary, 172

E

Elections

- bequests of capital property, 551
- capital gains exemption, 544
- preferred beneficiary election, 174-180
- principal residence, 118-120, 144
- qualified farm property, 223, 543

Emigration

- attribution, 208
- deemed realization, 227
- deemed resident, 474
- residence, 87-91, 469

Establishing a trust, 16-20

Estate

- administration, 18, 44-46, 234-235, 469-471, 514
- beneficiary, *see* Beneficiaries

Index

- Estate (*cont'd*)
- bonding, 352
 - clearance certificate, 453
 - distinguished from trust, 20-22, 39-42
 - distribution of property, 217-218, 607
 - executor's year, *see* Executor's year
 - fiscal period, 473
 - holding vacant dwelling unit, 134-137
 - insolvent, 453-454
 - probate avoidance, 314, 384
 - probate fees impacting ACB, 134-135
 - residency, 87-91, 469
 - taxation of, 44-46
 - windup, 231
- Estate freeze**
- defined, 256
 - investment portfolio, 261-264
 - private company shares, 264-266
- Even hand rule**
- relating to investment, 370
- Executor's year**
- delayed administration, 44-46, 171
 - generally, 44-46
 - income becoming payable, 116-117
- Executors, *see* Personal representative**
- Expenses, *see* Deductible expenses**

F

Failure to create trust

- other relationships, 23-25

Farm or fishing property

- designation of gains, 190-192
- "qualified farm or fishing property", 543

Federal foreign tax credit

- foreign income or profit tax, 574

Fees, *see* Personal representative

Filing requirements, *see*

Administration

Flow through of income

- capital gains, 116-117, 182-194, 268, 520
- death benefits, 182
- deferred profit sharing plans, 183, 493
- dividends, 181, 183-184, 269-271, 496, 520
- eligible pension income, 494, 568
- foreign source income, 94, 181, 511
- general remarks on flow through, 181-182, 267-272
- registered investments, 41-43, 182

Foreign investment income

- foreign source income, 94, 181, 499

Foreign reporting

- beneficiaries, 429, 615
- contributor, 615
- penalties, 621
- summary table, 623
- trust, 475, 616

Foundation, 400

G

GAAR

- charitable remainder trust (and 118.1(18)), 363

Index

- GAAR (*cont'd*)
- jurisdiction shopping (provincial), 30, 352
 - kiddie tax (surplus stripping), 344
 - TOSI rules, 162, 344
- Gifts**
- attribution, 214-216, 336, 445
 - charitable, *see* Charitable gifts and Charitable remainder trusts
 - defined, 24, 97
 - distinguished from trust, 24, 97
 - *inter vivos* trusts, 250-253
 - tax consequences, 253-254
 - will gifts, 24, 39, 75, 374
- Graduated Rate Estate**, 32, 37, 470
- H**
- Henson-style trusts**, 30, 42-43
- I**
- Income**
- attribution, *see* Attribution
 - benefits as form of income
 - generally, 166
 - line 43 of T3, 519
 - triggering filing requirement, 448
 - business income, 500
 - designations, *see* Designations
 - dividend, 61, 198, 267-270, 333, 521
 - entitlement to, *see* Income, payable
 - estate, computation, 44-46, 451
 - farming income, 501
 - fishing income, 501
 - foreign investment income, 499, 511, 563
 - general rules for inclusion and deduction, 93
 - exceptions to, 94-95
 - other, line 19, 505
 - outlays for upkeep of property, as form of, 167
 - payable
 - discretionary distributions, 217
 - non-discretionary distributions, 163-164
 - payable to minor beneficiary, 166, 340-345
 - payable to non-resident beneficiaries, 398
 - property income, 214, 266, 336-341, 500
 - rental income, 502
- Income-splitting**
- attribution, 336, 344
 - insurance trusts, 391
- Indefeasible vesting**, *see* Spousal trusts
- Indian band**
- beneficiary, as, 5
- Infants**, *see* Minors
- Information Returns**
- completion of, 465
- Insolvent estate**, *see* Estate
- Instalment taxes**
- *inter vivos* trust, 256
 - testamentary trust, 530
- Insurance trusts**
- avoiding dependants' relief claims, 390
 - avoiding family property claims, 389

Index

- Insurance trusts (*cont'd*)
- beneficiary designation, 374-378
 - confidentiality or secrecy, 387
 - creditor proofing, 389
 - form of designation, 374-378
 - funded with life insurance proceeds at death, 75-77, 374
 - insurance policy, proper fit, 390
 - *inter vivos* insurance trusts, 384, 391
 - last will and testament, establishing in, 39, 378
 - overview, 82-83
 - planning considerations, 383
 - probate avoidance, 385
 - status as testamentary, 39-44, 383
 - summarized, 41, 373
 - terms of trust, contained in, 377
 - trust deed, indenture or agreement, establishing in, 378, 387
 - trust holding insurance policies, 391
- “In terrorem” clauses**, *see* Spousal trusts
- “In-trust” accounts**
- whether qualify as trusts, 346
- Inter vivos trusts**
- attribution, 255-256, 339
 - deemed realization, 221
 - defined, 46-48, 50-51
 - distribution of capital, 49
 - distribution to testamentary trust, 49
 - minimum tax, 92-93, 527, 565, 579
 - overview, 249-250
 - planning, 158-159, 249-276
 - preferred beneficiary election, 174-180
 - sale or gift to, 250-253

- taxation, 253-256, 327, 340-341

J

Joint and several liability [94(3)(d)], 429-430

Joint ownership

- principal residence, 129
- resulting trusts, 18-19

Joint spousal trust, *see also* Alter ego trusts

- deemed realization, 222, 354-355
- distribution of capital, 221
- divorce, impact of, 78-79
- income allocations and designations, 520
- planning, 369-370
- preferred beneficiary election, 179-180
- principal residence, 120-121, 140-143
- requirements, 78-79
- summary, 77

Jurisdiction shopping

- anti-avoidance issues, 89-91, 352
- residency of trust, 87-91

K

“Kiddie tax”, *see* Tax on split income

L

Land inventory

- deemed disposition, 505
- deemed realization, 221
- designated income, 529

Laws

- provincial variation, 26-31

Index

Laws (*cont'd*)

- trust law distinguished from tax law, 31-32

Lawyer's trust accounts, 16-17

Legal fees

- added to ACB, 134
- deductibility, 502, 513
- paid to administer estate, 513, 518
- paid to collect income (deductible), 513
- paid to establish trust, 513
- paid to object to taxation (deductible), 513, 518

Life estate

- defined, 24-25
- distinguished from trust, 23-25
- principal residence exemption, 122

Life insurance, *see also* Insurance trusts

- beneficiary designations, 374
- preferred and family beneficiaries, 377
- segregated funds, 551
- tainting spousal trust, 63

Life interest

- beneficiary, 223
- distributions, 75-76
- supporting principal residence exemption, 122, 132

Life tenant and remainder person

- distinguished from trust, 24-25

Lifetime benefit trusts, 42

Loss carry back

- utilizing capital losses in general, 95, 523

M

Marital breakdown, *see* Community property claims

Merger

- blended testamentary trusts, 40
- deemed realization, 232

Minimum tax

- basic exemption, 93, 579
- *inter vivos* trusts, 92-93, 527, 579
- notice of objection, not applicable, 458
- overview, 92-93
- testamentary trusts, 92-93, 591
- when applicable, 92-93, 527
- when not applicable, 92

Minors

- age forty trusts, 188
- attribution of income, 336-341
- in-trust accounts, 347-349
- "kiddie tax", 345-347
- pent up income, 341-345
- promissory note, 162
- summary, 77, 336-337
- TOSI rules, 162, 345

Multiple wills, 349

Mutual funds, 62, 224, 345, 359, 405

N

No-contest clauses, 324-325

Non-resident beneficiaries

- Part XIII tax, 200, 246
- withholding taxes, 246, 530, 571

Non-resident trusts

- attribution rules, 426
- becoming resident [94(3)(c)], 428

Index

- Non-resident trusts (*cont'd*)
- ceasing to be resident [94(5)], 429
 - common law test, 393
 - commonly-used structures, 430
 - deemed resident, 396, 429
 - electing contributors, 418
 - filing, 467, 615
 - joint contributor, 418
 - principal residence exemption unavailable, 118-120
 - resident beneficiary, 418
 - • connected contributor, 419
 - • defined, 419
 - • successor beneficiary, 420
 - resident contributor, 403
 - • contribution, 405
 - • contributor, 404
 - • extended transfer rules, 409
 - • • death [94(2)(j)], 413
 - • • guarantees, financial assistance [94(2)(d)], 410
 - • • inadequate consideration [94(2)(a)], 409
 - • • indirect transfers [94(2)(c)], 410
 - • • interest of trust [94(2)(q), (r)], 417
 - • • loan by financial institution [94(2)(v)], 417
 - • • obligation to transfer [94(2)(i)], 413
 - • • partnership to trust contribution [94(2)(o)], 416
 - • • services [94(2)(f)], 411
 - • • share subscriptions [94(2)(g)], 411
 - • • transfer for services [94(2)(k.1)], 414
 - • • transfer to corporation [94(2)(m)], 414
 - • • transfers involving others [94(2)(k), (l)], 413
 - • • transfers required by securities law [94(2)(s)], 417
 - • • trust to trust contribution [94(2)(n)], 415
 - • specified time, 404
 - taxation of, 420
 - • electing trust, 421
 - • foreign tax credit and deduction, 422
 - • income tax paid and payable to beneficiary, 423
 - • income taxed in trust, 421
 - taxation of electing contributors, 424
 - treaty considerations, 401, 610
- O**
- Overholding spouse trust**, *see* Spousal trusts
- P**
- Payable**, *see* Income
- Percentage trusts**, 333
- Perpetuities**
- charitable discretion offending, 29-31
 - *Saunders v. Vautier*, 26-29
- Personal representative**
- bonding requirement, 352
 - certification of return, 533
 - clearance certificate, 453
 - executor distinguished from trustee, 22

Index

- Personal representative (*cont'd*)
- executor's year, *see* Executor's year
 - fees
 - characterizing P.R. income, 514
 - deductibility against estate income, 514
 - fees masquerading as gifts, 515
 - increasing ACB, 514
 - not disqualifying testamentary trust, 40
 - requirement for T4A, 449, 515
 - timing of income for P.R., 515
 - liability for tax, 451
 - mechanics of filing
 - T3 return, 447
 - T3 summary and slips, 595
 - obligation to make tax filings
 - deadlines, 451
 - exception where income low, 448
 - given 75(2) attribution, 448
 - in general, 447-448
 - interest and penalties, 451-452
 - paying estate expenses, 40
 - reassessments, 457
 - responsibility to file, 447-448
- Personal trust, defined, *see* Trusts**
- Pipeline strategies, *see* Post mortem planning**
- Post mortem planning**
- allocation of assets, 278-280
 - buy-sell agreements, 310
 - capital losses of estate, 281
 - Canadian private corporation, 282
 - capital property, 282
 - depreciable property, 287
 - foreign corporation, 290
 - other properties, 289
 - partnership, 289
 - part-ownership, 291
 - special rules, 286
 - stock options, 288
 - time of disposition by graduated rate estate, 282
- combining the strategies, 302
 - distributions to beneficiaries, 311
 - estate freeze, 312
 - general, 279
 - overview of planning objectives, 279
 - pipeline strategy
 - capital gains exemption and, 301
 - description and example, 301
 - share redemption on death, 306
 - step-up strategy, 294
 - stop-loss rules, 306
 - summary, 309
 - testamentary trusts, 312
 - utilization of capital loss, 303
- Power of appointment**
- distinguished from trust, 23-24
- Power of attorney**
- attorney establishing in trust, 9
 - distinguished from trust, 24
- Preferred beneficiary election**
- calculations, 178
 - capital gains, 180
 - impairment, nature of, 177
 - late filing, 181
 - life insurance preferred beneficiary, 377
 - mechanics, 180
 - qualifying beneficiary, 176

Index

- Preferred beneficiary election (*cont'd*)
- relationship to settlor, 176
 - summary, 175
- Principal residence exemption**
- alter ego trust, 137
 - beneficially interested, 129
 - change in use, 133
 - competing designation, 135
 - conditions for use of, 116
 - contiguous land, 120
 - definition of principal residence, 115
 - delay in making designation, 145
 - estate
 - leaving unit vacant, 132
 - postponing sale, 127
 - estate claiming principal residence, 127
 - foreign property, 119
 - houseboat, 118
 - housing unit, 118
 - included land, 120
 - inserting principal residence into trust, 137
 - joint ownership, 127
 - joint spousal and joint partner trusts, 138
 - land exceeding one-half hectare, 120
 - leasehold interest, 119
 - life interest
 - as legal life tenant, 120
 - beneficiary under trust, 128
 - distinguished from life estate, 23-25
 - “mansions”, 124
 - mixed use, 125-126
 - mobile home, 118
 - ordinarily inhabited, 128
 - ownership, 126
 - renting out principal residence, 133
 - residency of trust, 116, 133
 - share in co-operative housing corporation, 116, 120, 127
 - size, 120
 - spousal trust, 138
 - subjacent land, 120
 - summary, 115
 - transferring principal residence out of trust, 138
 - type of property, 118
 - used up by specified beneficiary, 128, 135, 141, 144
 - vacant land, 118
 - zoning restrictions, *see* land exceeding one-half hectare
- Probate avoidance**
- alter ego and joint spousal or common-law partner trust, 348
 - insurance trusts, 383
 - protector, 10-11
 - RRSP trusts, 41-43
 - spouse, 314
- Promissory note**
- capital property disposed of by trust, 545
 - corroborating discretionary distribution, 159
 - formal requirements for note, 160
 - minor involved, 160
 - reserve for proceeds not due, 489
 - supporting designation of capital gain, 187
- Provincial considerations**
- conflict of laws, 32

Index

Provincial considerations (*cont'd*)

- generally, 26, 32
- perpetuities and accumulations, 29-31
- *Saunders v. Vautier*, 26-29

Purpose trusts

- charity, 5-6
- *cy-près* doctrine, 6, 27
- pets, funeral monuments, 5

Q

Qualified disability trusts, 83, 470

R

Rectification

- generally, 28-29
- *Juliar v. Canada*, 28
- spousal trust, 325

Registered investments

- income eligible for designation, 555
- rollover into lifetime benefit trust, 42
- RRSP trusts, 41-43, 506
- tax treatment on death, 505
- taxes payable by estate, 450

Remuneration of executors, 514-516

Resealing, *see* Estate

Reserves

- capital property, 551
- proceeds not due, 489-490
- spouse or spousal trust, 490
- year of death, 490

Resettlement

- as deemed realization, 225

Residency

- appointment of managing trustee, 87-91
- capital gains designations, requirement, 185
- common law test, 393
- completing return, inserting residence, 469
- dual residency, not applicable, 87-91
- filing where resident, 448-449
- generally, 87-91
- jurisdiction shopping, 352
- non-resident, 87-91
- resident contributor, 403
- treaty considerations, 401
- trust company, as trustee, 91-92

Resulting trusts

- as defensive measure, 328
- between spouses, 328
- generally, 15, 17-19

Returns

- information, completion of, 465

Rollouts

- avoiding capital gains, 232-233
- concurrent with debt payment, 232-233
- shares, of, 255-256
- unavailable if 75(2) attribution, 214

Rollovers

- alter ego and joint spousal or common-law partner trusts, 352
- interest in family farm partnership, 543
- principal residence, 137
- qualified farm property, 543

Index

- Rollovers (*cont'd*)
- reserves, spouse or spousal trust, 490
 - shares of family farm corporations, 543
- RRSP/RRIF**, *see* Registered investments
- S**
- Secret trusts**, 387
- Self benefit trust**, 77-78, 79, 541
- Settlor**
- attribution of income, *see* Attribution
 - defined, 8-10
 - First Nation, 8
 - resident contributor, 398
 - tax consequences, 251
- Shareability of trust interests**, *see* Community property claims
- Shareholders agreement**
- spouse trust, impact on, 68
- Small business corporation shares**
- \$800,000 capital gains deduction, 188, 192, 271-273
 - designating capital gains to beneficiaries, 170-175
 - qualified small business corporation shares (QSBC), 191-192, 542-543
- Sole trustee**, *see* Trusts
- Specified beneficiary**, *see* Principal residence exemption
- Spousal (and common-law) trusts**
- attribution to settlor spouse, 329-330
 - building capital within trust, 333-336
 - capital
 - capital, 333-336
 - encroachments, 183
 - gains deduction, 334
 - gains income, 334
 - reserved to spouse, 334-335
 - restricting spouse's access, 319
 - community property applications, 319
 - "consequence of death," requirement, 65-66, 320
 - constructive and resulting trusts, 329-330
 - continuing trust ("overholding"), 322
 - court order, impact of, 326-329
 - death of survivor, 322
 - debts, payment by trust, 323-324, 327-328
 - deemed realization at death of survivor, 322-323
 - dependants' relief
 - attack by spouse, 318-320
 - establishing trust under, 320-321
 - designating income under 104(13.1) and (13.2), 94, 333
 - disclaimer
 - by non-spouse, 70, 326
 - by spouse, 59, 60, 326-334
 - discretion to retain income, 55-59
 - dividend income, 61
 - divorce, ending attribution, 331-332
 - drafting
 - common errors, 322
 - demarcation between estate and trust, 58-59
 - discretion to retain income, 59-60

Index

- Spousal (and common-law) trusts (*cont'd*)
 - • division into spousal and other trusts, 313-321
 - • retaining income, 333
 - • timing of vesting, 74-75
 - entitlement to income, 55-62
 - established “by will”, 76-77
 - expenses, payment by trust, 40, 62
 - funding considerations, 313-315
 - generally, 52
 - harvesting losses, 315
 - holding company, 238-239, 334
 - income
 - • attribution, 331
 - • discretion to recapitalize, 59-60
 - • entitlement to, 55-56
 - • exceptions, 61-62
 - • must be reserved to spouse, 63-64
 - • splitting, 313-321
 - • use prior to vesting, 56-59
 - indefeasible vesting, *see* vest indefeasibly
 - independent legal advice, 319
 - insurance trust, 385-386
 - *in terrorem* clauses, 324-325
 - *inter vivos*, requirements for, 52-53
 - investments, selecting, 333-336
 - lending money, 65
 - life insurance on surviving spouse, 63-65
 - loss of status by later events, 332
 - merger with other trust, 231-232
 - minimum tax, exempt from, 94-96
 - multiple trusts, *see* Multiple trusts
 - opting out of rollover, 330-331
 - overholding assets, 322
 - planning
 - • dependants’ relief legislation, 320-321
 - • graduated rate estate, 313
 - • harvesting losses, 315
 - • income splitting no longer available, 313
 - • proper funding, 313-315
 - • second marriages, 318-320
 - • two-headed and three-headed structures, 315-318
 - principal residence exemption, 142-143
 - probate fees, 314
 - proposed change re registered investments, 333
 - quit claim deeds, 318
 - registered investments, 333-336
 - remarriage clauses, 318-320
 - renting out property, 64
 - requirements
 - • *inter vivos*, 52-53
 - • testamentary, 53-54
 - rollout of assets out of trust, 232-233
 - rollover of assets into trust, 321, 349
 - second marriages, 318-320
 - shareholders agreements, 305-308
 - tainting
 - • express definition of net income, 324
 - • other beneficiaries, 62-65
 - • remarriage clause, 318-320
 - • three-headed, 315-318
 - • testamentary, requirements for, 53-55

Index

- Spousal (and common-law) trusts (*cont'd*)
- “transferred or distributed” requirement, 75-76
 - trust busting, 324-325
 - twenty-one year realization, exempt, 321
 - two-headed, 315-318
 - untainting, 325
 - variation, not curing tainted trust, 331-332
 - variation, not tainting qualifying trust, 331-332
 - vest indefeasibly
 - administrative delay, 74
 - allocation into parts, 58-59
 - by court order, 71-73
 - by disclaimer, 70-71
 - by courts, 73-74
 - conveyance not required, 69-70
 - extension of deadline, 73-74
 - generally, 66-69
 - impact of shareholders agreement, 68
 - quit claim deeds, 318-319
 - survivor dying prior, 322-323
 - terms of will, 75
 - timing of, 73
 - withholding capital gains, 61-62
 - withholding dividends, 61-62
- Statute of Frauds**, 20
- Successive trusts**
- testamentary, 40
- T**
- Tax credits**, 530, 599, 608
- Tax deferred rollouts**, 218
- Tax on split income**
- “kiddie tax”, 166, 344
- Taxable distributions**, 219
- Taxation year**
- calendar year, 91-92
 - graduated rate estate, 92
- Testamentary instruments**, 8, 20, 42, 202
- Testamentary trusts**, *see also* Estate
- arising on death, 22
 - attributing losses to terminal return, 283
 - blended, 40
 - definition, 37, 39-48, 470
 - designated income, 528
 - fiscal period, 472
 - graduated rate estates, 37-39
 - taxation year, 92
 - loss of status, 48-50
 - minimum tax, 92-93, 579
 - multiple trusts, *see* Multiple trusts
 - qualifying and non-qualifying, 40
 - reassessment, 455
 - selecting trustees, 158, 250
 - successive testamentary trusts, 40
- Trustees**
- bankrupt person as, 11
 - bare, 22-23
 - defined, 10-11
 - delegation of duties, 469
 - duties, 11
 - exemption clauses, 10
 - protector role, 11
 - residency, *see* Residency
 - selecting, 158, 250

Index

Trustees (*cont'd*)

- trustee fees, 514

Trusts

- amended slips, 603
- as relationships, 3-4
- charitable gifts, *see* Charitable gifts
- charitable purposes, 356
- constructive, 328
- creation of, 16-20
- creditor proofing, 41, 351
- defined, 3
- discretionary and non-discretionary, 159
- distinguished from other relationships, 20-25
- division of ownership, 11-14
- insurance trusts, *see* Insurance trusts
- multiple testamentary, *see* Testamentary trusts
- parties to, 4
- personal trusts, defined, 471
- preferred beneficiary election, *see* Preferred beneficiary election
- purpose trusts, 5-6
- qualified disability trust, *see* Qualified disability trust
- residency, 89-91, 393, 469, *see also* Residency
- resulting trusts, 17-20, 328
- special purpose trusts, 51-62
- spousal trusts, *see* Spousal trusts
- tainted spousal trusts, *see* Spousal trusts
- tax-deferred rollouts, 218
- taxable distributions, 219
- testamentary, *see* Testamentary trusts

- three certainties, 14-16
- twenty-one year deemed disposition, *see* Twenty-one year deemed disposition
- variation, *see* Variations
- winding up, *see* Winding up of a trust

Twenty-one year deemed disposition

- alter ego trusts, exempt, 353
- confusion with perpetuities rule, 29-31
- designating gain to beneficiary, 114, 183
- generally, 223
- indefeasibly vested interests, exempt, 224
- joint conjugal trusts, exempt, 353
- line 11 of return, 504
- merging multiple trusts, 230
- planning for deemed realization, 232
- preferred beneficiary election, designation, 175
- rollouts to avoid, *see* Rollouts
- spousal trusts, exempt, 52, 222, 317
- weathering the deemed realization, 240

V

Variations, *see also* Rectification

- generally, 26-29, 44-46, 234
- loss of status as testamentary, 48-50
- resurrecting testamentary trusts, 26-29
- *Saunders v. Vautier*, 26-29
- tainting pre-1971 *inter vivos* trusts, 477
- triggering capital gains, 225, 228, 476

Index

Verbal trusts, 20

Vest indefeasibly, *see* Spousal trusts

W

Wealth preservation

- loan to beneficiary, 276-277
- overview, 273-275
- use of property by beneficiary, 275

Wills, *see also* Testamentary trusts

- demarcation between estate and trusts, 58-59
- discretion to retain income, 59-60
- division into spousal and other trusts, 311
- drafting errors, spousal trust, 63, 322
- encroachment clauses, 186
- “gift by will”, 99, 100
- insurance trust, establishing, 374-393
- multiple wills, 349
- residency of executors, 10-11
- successive trusts, 40
- timing of vesting, 74-75

Winding up of a trust

- clearance certificate, 455
- distributing shares, 244
- final return, 242
- generally, 231
- income versus capital beneficiaries, 243
- non-resident beneficiaries, 245
- planning for deemed realization, 232
- roll-outs, 232
- tax consequences to beneficiary, 242

Withholding taxes

- distributions from deemed resident trusts, 396
- foreign business income tax paid, 579
- Part XII.2 tax, 95-96, 608
- Part XIII tax, 609
- receiving income, 611
- schedule 10, 571