

# INCOME TAX ACT

## An Act Respecting Income Taxes

REVISED STATUTES OF CANADA 1985, c. 1 (5TH SUPPLEMENT), AS AMENDED BY 1994, cc. 7, 8, 13, 21, 28, 29, 38, 41; 1995, cc. 1, 3, 11, 17, 18, 21, 38, 46; 1996, cc. 6, 11, 21, 23; 1997, cc. 10, 12, 25, 26; 1998, cc. 19, 21, 34; 1999, cc. 10, 17, 22, 26, 31; 2000, cc. 9, 12, 14, 19, 30; 2001, cc. 16, 17, 27, 41; 2002, cc. 8, 9; 2003, cc. 15, 19, 28; 2004, cc. 11, 22, 24, 25, 26; 2005, cc. 19, 21, 30, 33, 34, 35, 38, 47, 49; 2006, cc. 1, 4, 9, 12; 2007, cc. 2, 16, 29, 35, 36; 2008, c. 28; 2009, cc. 2, 31; 2010, cc. 12, 25; 2011, cc. 15, 24; 2012, cc. 19, 27, 31; 2013, cc. 33, 34, 40; 2014, cc. 12, 13, 20, 39; 2015, cc. 20, 36, 41; 2016, cc. 7, 11, 12, 14; 2017, cc. 12, 20, 33.

REVISED STATUTES OF CANADA 1952, c. 148, PARTS I TO IIIA, V TO VII WERE REPEALED BY 1970-71-72, c. 63, s. 1 (PART I) AND NEW PARTS I TO XVII WERE SUBSTITUTED (THE "AMENDED ACT"), APPLICABLE BY s. 9 TO THE 1972 AND SUBSEQUENT TAXATION YEARS. THE AMENDED ACT HAS BEEN AMENDED BY 1972, c. 9; 1973-74, cc. 14, 29, 30, 44, 45, 49, 51; 1974-75-76, cc. 26, 50, 58, 71, 87, 88, 95, 106; 1976-77, c. 4, 10; 1977-78, cc. 1, 4, 32, 41, 42; 1978-79, c. 5; 1979, c. 5; 1980-81-82-83, cc. 40, 47, 48, 68, 102, 104, 109, 140, 158, 161, 167; 1984, c. 1; 1984, cc. 6, 19, 29, 31, 45; 1985, cc. 22, 45; 1986, cc. 2, 6, 24, 40, 44, 55, 58; 1987, cc. 3, 23, 34, 45, 46; 1988, cc. 28, 55, 65; 1990, cc. 1, 34, 35, 39, 42, 45; 1991, cc. 22, 47, 49; 1992, cc. 1, 24, 27, 29, 48; 1993, cc. 24, 27.

REVISED STATUTES OF CANADA 1952, c. 148, APPLICABLE TO THE 1953 AND SUBSEQUENT TAXATION YEARS (THE "FORMER ACT"), WAS AMENDED BY 1952-53, c. 40; 1953-54, c. 57; 1955, cc. 54, 55; 1956, c. 39; 1957, c. 29; 1957-58, c. 17; 1958, c. 32; 1959, c. 45; 1960, c. 43; 1960-61, cc. 17, 49; 1962-63, c. 8; 1963, cc. 21, 41; 1964-65, cc. 13, 26, 54; 1965, cc. 12, 18; 1966-67, cc. 25, 47, 69, 82, 84, 91, 96, 97; 1967-68, c. 38; 1968-69, cc. 28, 33, 44; 1969-70, c. 8; 1970-71-72, cc. 1, 11, 30, 48, 63, 64.

**1. Short title** — This Act may be cited as the *Income Tax Act*.

## PART I — INCOME TAX

### DIVISION A — LIABILITY FOR TAX

**2. (1) Tax payable by persons resident in Canada** — An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

**Related Provisions:** 2(2) — Calculation of taxable income; 94(3)(a)(i) — Application to trust deemed resident in Canada; 96 — Partnerships and their members; 104 — Trusts and estates; 114 — Residence for part of year; 126 — Foreign tax credit; 127.5 — Alternative minimum tax; 149 — Exempt persons; 250 — Extended meaning of resident.

**Selected Cases [subsec. 2(1)]:** *Black v. R.*, [2014] 3 C.T.C. 2237 (TCC) (Convention does not affect status under Canadian law for non-Convention purposes); *Elliott v. R.*, [2013] 3 C.T.C. 2021 (TCC) ("Closer connection" for purposes of residency tie-breaker rules in treaty is not arithmetic or mechanical; calls for focus on personal and economic relations or ties); *Garron Family Trust (Trustee of) v. R.*, [2012] 3 C.T.C. 265 (SCC) (Residence of trust not necessarily residence of trustee, but where central management and control take place); *Hausser v. R.*, [2006] 4 C.T.C. 193 (FCA) (Pilot residing in Bahamas, but based in Canada for purposes of employment ordinarily resident in Canada); *Harris-Eze v. R.*, [2002] 1 C.T.C. 2174 (TCC) (Indicia of taxpayer's attachments to Canada insufficient to result in being "ordinarily resident"); *Kadrie v. R.*, [2001] 4 C.T.C. 2551 (TCC) (OECD concept of "centre of vital interests" rejected in determination of residence); *Fischer v. R.*, [1995] 1 C.T.C. 2011 (TCC) (Factors considered where connections with both Japan and Canada); *Wassick v. R.*, [1994] 2 C.T.C. 2235 (TCC) (Factors considered by Court in determination of residence); *R. v. Bergelt*, [1986] 1 C.T.C. 212 (FCTD) (Taxpayer severed residential ties by taking permanent job in U.S.); *R. v. Gurd's Products Co. Ltd.*, [1985] 2 C.T.C. 85 (FCA) (Wholly owned Canadian subsidiary carrying on business in Canada deemed to be resident despite central management and control in U.S.); *Thibodeau Family Trust v. R.*, [1978] C.T.C. 539 (FCTD) (Trust non-resident where majority of trustees reside in Bermuda; trust cannot be resident in two places); *MNR v. Stickel*, [1974] C.T.C. 416 (SCC) (Retention of U.S. residence for purposes of treaty exemption from Canadian tax related to period of employment as teacher, not to length of visit); *Zehnder & Co. v. MNR*, [1970] C.T.C. 85 (Exch.) (Taxpayer company resident when authority vested in Canadian directors despite non-resident shareholders); *Bedford Overseas Freighters Ltd. v. MNR*, [1970] C.T.C. 69 (Exch.) (Taxpayer company resident when authority vested in Canadian directors); *MNR v. Crossley Carpets (Canada) Ltd.*, [1968] C.T.C. 570 (Exch.) (Where central management and control exercised in two countries, corporation had dual residence); *Schujahn v. MNR*, [1962] C.T.C. 364 (Exch.) (Intention not relevant; residence is question of fact).

**Income Tax Folios:** S5-F1-C1: Determining an individual's residence status [replaces IT-221R3]; S6-F1-C1: Residence of a trust or estate [replaces IT-447].

**Interpretation Bulletins:** IT-106R3: Crown corporation employees abroad.

**(2) Taxable income** — The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C.

**Related Provisions:** 3 — Income for taxation year; 15.1(2)(c) — Issuer of small business development bond; 110.5 — Additions for foreign tax deductions; 248(1) — "Taxable income" may not be less than nil; 261(7) — Functional currency reporting.

**(3) Tax payable by non-resident persons** — Where a person who is not taxable under subsection (1) for a taxation year

- (a) was employed in Canada,
- (b) carried on a business in Canada, or
- (c) disposed of a taxable Canadian property,

at any time in the year or a previous year, an income tax shall be paid, as required by this Act, on the person's taxable income earned in Canada for the year determined in accordance with Division D.

**Related Provisions [subsec. 2(3)]:** 18(4) — Thin capitalization rule applies to non-resident corporation; 40(3)(e) — Deemed disposition of property when its ACB goes negative; 40(3.1)(b) — Deemed disposition of partnership interest when its ACB goes negative; 94(3)(a)(i) — Application to trust deemed resident in Canada; 96(1.6) — Members of partnership deemed carrying on business in Canada; 114 — Residence for part of year; 115(2)(d) — Non-resident deemed employed in Canada; 115(2.1), (2.2) — Non-resident actors; 115(2.3) — Non-resident Olympic athletes and officials; 120(1) — Federal surtax on non-resident's income not earned in a province; 150(1)(a), 150(1)(b) — Requirements for non-residents to file returns; 212-219 — Tax on non-residents; 217(3)(a) — Non-resident making election is deemed employed in Canada; 250.1 — Taxation year and income of non-resident person; 253 — Extended meaning of carrying on business in Canada; Canada-U.S. Tax Treaty: Art. VII — Business profits of U.S. resident.

**Selected Cases [subsec. 2(3)]:** *Beame v. R.*, [2004] 2 C.T.C. 265 (FCA); rev'g [2003] 2 C.T.C. 2140 (TCC) ("Capital gain" in Canada-U.K. Agreement refers to "taxable capital gain"); *Hertel (M.) v. MNR*, [1993] 2 C.T.C. 2050 (TCC) (Dual resident was German resident under treaty); *Placrefid Ltd. v. MNR*, [1992] 2 C.T.C. 198 (FCTD) (Payment to cancel settlement agreement not proceeds of disposition of option); *Randall v. R.*, [1985] 1 C.T.C. 268 (FCTD) (Inactive non-resident partner taxable on profit participation); *Pullman v. R.*, [1983] C.T.C. 52 (FCTD) (Non-resident not taxable if not carrying on business in Canada); *Loeck v. R.*, [1982] C.T.C. 64 (FCA) (Real estate transactions carried out by agent for non-resident constitute adventure in nature of trade); *Rutenberg v. MNR*, [1979] C.T.C. 459 (FCA) (U.S. resident's transactions through Canadian broker not sheltered by Canada-U.S. Tax Convention); *Abed v. MNR*, [1978] C.T.C. 5 (FCTD) (Non-resident taxable when carrying on business in Canada despite no permanent establishment); *Masri v. MNR*, [1973] C.T.C. 448 (FCTD) (U.S. resident carrying on business in Canada exempt under Canada-U.S. Tax Convention where no permanent establishment in Canada); *Tara Exploration and Development Co. Ltd. v. MNR*, [1972] C.T.C. 328 (SCC) (Adventure in the nature of trade taxable despite no permanent establishment in Canada).

**Income Tax Folios [subsec. 2(3)]:** S5-F1-C1: Determining an individual's residence status [replaces IT-221R3].

**Interpretation Bulletins [subsec. 2(3)]:** IT-113R4: Benefits to employees — stock options; IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-171R2: Non-resident individuals — computation of taxable income earned in Canada and non-refundable tax credits (cancelled); IT-176R2: Taxable Canadian property — Interests in and options on real property and shares; IT-262R2: Losses of non-residents and part-year residents; IT-298: Canada-U.S. Tax Convention — number of days “present” in Canada (cancelled); IT-379R: Employees profit sharing plans — allocations to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-420R3: Non-residents — income earned in Canada; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-434R: Rental of real property by individual.

**Forms [subsec. 2(3)]:** NR73: Determination of residency status (leaving Canada); NR74: Determination of residency status (entering Canada); T1-NT12: Residency information for tax administration agreements; T1248 Sched. D: Information about your residency status; T4058: Non-residents and temporary residents of Canada [guide].

**Definitions [s. 2]:** “business” — 248(1); “carried on a business in Canada” — 253; “employed” — 248(1); “employed in Canada” — 115(2)(d); “non-resident”, “person”, “property” — 248(1); “resident in Canada” — 94(3)(a), 250; “taxable Canadian property” — 248(1); “taxable income” — 2(2), 248(1); “taxable income earned in Canada” — 115(1), 248(1); “taxation year” — 249, 250.1(a); “taxpayer” — 248(1).

## DIVISION B — COMPUTATION OF INCOME

### Basic Rules

**3. Income for taxation year** — The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer’s income for the year determined by the following rules:

(a) determine the total of all amounts each of which is the taxpayer’s income for the year (other than a taxable capital gain from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer’s income for the year from each office, employment, business and property,

(b) determine the amount, if any, by which

(i) the total of

(A) all of the taxpayer’s taxable capital gains for the year from dispositions of property other than listed personal property, and

(B) the taxpayer’s taxable net gain for the year from dispositions of listed personal property,

exceeds

(ii) the amount, if any, by which the taxpayer’s allowable capital losses for the year from dispositions of property other than listed personal property exceed the taxpayer’s allowable business investment losses for the year,

(c) determine the amount, if any, by which the total determined under paragraph (a) plus the amount determined under paragraph (b) exceeds the total of the deductions permitted by subdivision e in computing the taxpayer’s income for the year (except to the extent that those deductions, if any, have been taken into account in determining the total referred to in paragraph (a)), and

(d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the total of all amounts each of which is the taxpayer’s loss for the year from an office, employment, business or property or the taxpayer’s allowable business investment loss for the year,

and for the purposes of this Part,

(e) where an amount is determined under paragraph (d) for the year in respect of the taxpayer, the taxpayer’s income for the year is the amount so determined, and

(f) in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.

**Related Provisions:** 94(3)(a)(ii) — Application to trust deemed resident in Canada; 115(1)(b), (b.1), (c) — Application of s. 3 to a non-resident; 146.2(7) — No tax on income received in TFSA.

**History:** That portion of s. 3 following para. (d) substituted by 1994, c. 7, Sch. II (1991, c. 49), s. 1, applicable to 1990 *et seq.* That portion formerly read:

and the amount, if any, determined under paragraph (d) is the taxpayer’s income for the year for the purposes of this Part.

**Selected Cases [s. 3]:** *Johnson v. R.*, [2013] 1 C.T.C. 10 (FCA) (Receipts from Ponzi scheme were profits from investment and subject to tax); *Garron Family Trust (Trustee of) v. R.*, [2011] 2 C.T.C. 7 (FCA); aff’d [2012] 3 C.T.C. 265 (SCC) (Residence of trust to be determined by location of management and control); *Laurin v. R.*, [2008] 3 C.T.C. 100 (FCA) (Deference to findings of fact in determining residence); *Hiscock v. R.*, [2007] 1 C.T.C. 2516 (TCC) (Provincial legislation reserved issue of residency to provincial superior court); *Dumas v. R.*, [2001] 1 C.T.C. 2490 (TCC) (Underlying nature of claim will determine taxability; courts free to examine pleadings in relevant court proceedings); *Fortino v. R.*, [2000] 1 C.T.C. 349 (FCA); aff’d [1997] 2 C.T.C. 2184 (TCC) (Non-competition agreements not a source of income); *Kennedy v. R.*, [2000] 1 C.T.C. 2475 (TCC) (Characterization of income is made under Canadian, not foreign, law); *R. v. Robson*, [1999] 2 C.T.C. 171 (Ont CA) (Secret commissions are income); *Endres v. R.*, [1998] 1 C.T.C. 2259 (TCC) (Absence of visa and maintenance of Canadian medicare coverage did not affect non-resident status); *Boston v. R.*, [1998] 1 C.T.C. 2217 (TCC) (Residence outside Canada even though wife remained in Canada); *Mastri v. R.*, [1997] 3 C.T.C. 234 (FCA) (No “source” of income if no reasonable expectation of profit); *Schwartz v. Canada*, [1996] 1 C.T.C. 303 (SCC) (Provision contemplates taxability of income from unenumerated sources); *Bellingham v. Canada*, [1996] 1 C.T.C. 187 (FCA) (“Additional” interest in expropriation not income property nor income from a “source” and not taxable); *R. v. Fries*, [1990] 2 C.T.C. 439 (SCC) (Strike pay from union defence fund not income); *Beique v. R.*, [1981] C.T.C. 75 (FCA) (Attempt to split income between husband and wife under Quebec law not allowed).

**Definitions [s. 3]:** “allowable business investment loss” — 38(c), 248(1); “allowable capital loss” — 38(b), 248(1); “amount”, “business” — 248(1); “Canada” — 255; “employment” — 248(1); “foreign resource property” — 66(15), 248(1); “listed personal property” — 54, 248(1); “office”, “property” — 248(1); “taxable capital gain” — 38(a), 248(1); “taxable net gain” — 41(1), 248(1); “taxation year” — 11(2), 249; “taxpayer” — 248(1).

**I.T. Application Rules:** 20(3)(c), 20(5)(c).

**Income Tax Folios:** S1-F3-C1: Child care expense deduction [replaces IT-495R3]; S3-F9-C1: Lottery winnings, miscellaneous receipts, and income (and losses) from crime [replaces IT-185R, IT-213R, IT-256R, IT-334R2]; S4-F3-C1: Price adjustment clauses [replaces IT-169]; S5-F2-C1: Foreign tax credit [replaces IT-270R3, IT-395R2, IT-520]; S4-F8-C1: Business investment losses [replaces IT-484R2].

**Interpretation Bulletins:** IT-98R2: Investment corporations (cancelled); IT-206R: Separate businesses; IT-232R3: Losses — their deductibility in the loss year or other years; IT-262R2: Losses of non-residents and part-year residents; IT-365R2: Damages, settlements and similar receipts; IT-377R: Director’s, executor’s or juror’s fees (cancelled); IT-381R3: Trusts — capital gains and losses and the flow-through of taxable capital gains to beneficiaries; IT-393R2: Election re tax on rents and timber royalties — non-residents; IT-420R3: Non-residents — income earned in Canada; IT-434R: Rental of real property by individual; IT-490: Barter transactions.

**Advance Tax Rulings:** ATR-40: Taxability of receipts under a structured settlement; ATR-50: Structured settlement; ATR-68: Structured settlement.

**Forms:** T776: Statement of real estate rentals.

### Withdrawn Proposed Addition — 3.1 — REOP requirement

**Note:** [Draft legislation of Oct. 31, 2003 would have introduced s. 3.1, requiring a reasonable expectation of profit (REOP) to claim a loss from business or property (and related amendments at 3(d), 9(3), 111(8) “non-capital loss” A:E). In Nov. 2014, Finance announced ([tinyurl.com/fin-outstand](http://tinyurl.com/fin-outstand)) that these proposals are withdrawn, and it appears Finance has abandoned work on this issue. For the text of proposed 3.1 and related 2003-05 news releases and budget announcements, see up to SITA 56th ed. — ed.]

**4. (1) Income or loss from a source or from sources in a place** — For the purposes of this Act,

(a) a taxpayer’s income or loss for a taxation year from an office, employment, business, property or other source, or from sources in a particular place, is the taxpayer’s income or loss, as the case may be, computed in accordance with this Act on the assumption that the taxpayer had during the taxation year no income or loss except from that source or no income or loss except from those sources, as the case may be, and was allowed no deductions in computing the taxpayer’s income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that source or to those sources, as the case may be, and except such part of any other deductions as may reasonably be regarded as applicable thereto; and

(b) where the business carried on by a taxpayer or the duties of the office or employment performed by the taxpayer was carried on or were performed, as the case may be, partly in one place and partly in another place, the taxpayer's income or loss for the taxation year from the business carried on, or the duties performed, by the taxpayer in a particular place is the taxpayer's income or loss, as the case may be, computed in accordance with this Act on the assumption that the taxpayer had during the taxation year no income or loss except from the part of the business that was carried on in that particular place or no income or loss except from the part of those duties that were performed in that particular place, as the case may be, and was allowed no deductions in computing the taxpayer's income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that part of the business or to those duties, as the case may be, and except such part of any other deductions as may reasonably be regarded as applicable thereto.

**Related Provisions:** 96(1)(f) — Source of income preserved when flows through partnership; 108(5) — Source of income lost when flows through trust.

**Selected Cases [subsec. 4(1)]:** *Johnson v. R.*, [2012] 2 C.T.C. 2080 (TCC); rev'd [2013] 1 C.T.C. 10 (FCA) (Ponzi scheme returns were not income from a "source" and not taxable); *Interprovincial Pipe Line Co. v. MNR*, [1968] C.T.C. 156 (SCC) (To determine income from a source, taxpayer required to deduct interest paid to Canadian lenders from interest received from U.S. subsidiary).

**Interpretation Bulletins:** IT-362R: Patronage dividends.

**(2) Idem** — Subject to subsection (3), in applying subsection (1) for the purposes of this Part, no deductions permitted by sections 60 to 64 apply either wholly or in part to a particular source or to sources in a particular place.

**History:** Subsec. 4(2) substituted by 1994, c. 21, subsec. 1(1), applicable to 1989 *et seq.* That subsec. formerly read:

(2) Subject to subsection (3), in applying subsection (1) for the purposes of this Part, no deductions permitted by sections 60 to 63 are applicable either wholly or in part to a particular source or to sources in a particular place, as the case may be.

**(3) Deductions applicable** — In applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126,

(a) subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (z), apply either wholly or in part to a particular source or to sources in a particular place; and

(b) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada.

**History:** Para. 4(3)(a) amended to substitute "apply" for "shall apply", by 2013, c. 34, s. 169, applicable to 2002 *et seq.* (see History to 152(4.2) for late reassessment), except that, for taxation years that end before 2007, it is to be read as follows:

(a) subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (x), apply either wholly or in part to a particular source or to sources in a particular place; and

Para. 4(3)(a) amended by 2007, c. 35, s. 101, to substitute "(v) to (z)" for "(v) to (w)", applicable to 2007 *et seq.*

Subsec. 4(3) substituted by 1994, c. 21, subsec. 1(2), applicable to taxation years ending after November 12, 1981, except that for taxation years that begin before 1993, the subsec. shall be read as follows:

(3) The following rules apply for the purposes of this Act:

(a) in applying paragraph (1)(b) for the purposes of sections 115 and 126, subject to paragraph (b), all deductions permitted in computing a taxpayer's income for a taxation year for the purposes of this Part shall apply either wholly or in part to a particular source or to sources in a particular place; and

(b) in applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126,

(i) any deduction permitted by any of paragraphs 60(b) to (o), (p), (r) and (v) to (w) shall not apply either wholly or in part to a particular source or to sources in a particular place, and

(ii) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada.

Subsec. 4(3) formerly read:

(3) **Deductions applicable** — In applying paragraph (1)(b) for the purposes of sections 115 and 126, all deductions allowed in computing the income of a taxpayer for a taxation year for the purposes of this Part, except any deduction permitted by paragraph 60(b), (c), (d) or (i), shall be deemed to be applicable either wholly or in part to a particular source or to sources in a particular place, as the case may be.

**Income Tax Folios:** S5-F2-C1: Foreign tax credit [replaces IT-270R3, IT-395R2, IT-520].

**(4) [Repealed]**

**History:** Subsec. 4(4) repealed by 1996, c. 21, s. 2, applicable to taxation years that end after July 19, 1995. The subsec. formerly read:

(4) **Limitation respecting inclusions and deductions** — Unless a contrary intention is evident, no provision of this Part shall be read or construed to require the inclusion or to permit the deduction, either directly or indirectly, in computing a taxpayer's income for a taxation year or the taxpayer's income or loss for a taxation year from a particular source or from sources in a particular place, of any amount to the extent that that amount has been directly or indirectly included or deducted, as the case may be, in computing such income or loss for the year or any preceding taxation year under, in accordance with or because of any other provision of this Part.

Subsec. 4(4) amended by 1994, c. 7, Sch. II (1991, c. 49), s. 2, to add "either directly or indirectly," and "directly or indirectly", and "for the year or any preceding taxation year", applicable to 1990 *et seq.*

**Selected Cases [s. 4]:** *Société générale valeurs mobilières inc. v. R.*, [2016] 5 C.T.C. 2152 (TCC) (Treaty was clear that Act, including source rules, applied and credit was based on actual taxes paid on net foreign income); *Garber v. R.*, [2014] 4 C.T.C. 2077 (TCC) (Scheme so fraudulent that no business and no source of income existed).

**Definitions [s. 4]:** "amount", "business" — 248(1); "Canada" — 255; "employment", "office", "property" — 248(1); "taxation year" — 11(2), 249; "taxpayer" — 248(1).

**Income Tax Folios [s. 4]:** S3-F9-C1: Lottery winnings, miscellaneous receipts, and income (and losses) from crime [replaces IT-185R, IT-213R, IT-256R, IT-334R2].

**Interpretation Bulletins [s. 4]:** IT-377R: Director's, executor's or juror's fees (cancelled); IT-420R3: Non-residents — income earned in Canada.

## Subdivision a — Income or Loss from an Office or Employment

### Basic Rules

**5. (1) Income from office or employment** — Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

**Related Provisions:** 4(1) — Income or loss from a source; 6 — Amounts included as income from office or employment; 8(1)(n) — Reimbursement of salary for periods when not employed; 56.4(4)(a) — Amount paid by purchaser for non-compete agreement deemed to be wages paid to employee; 87(2)(k) — Amalgamations — Amount received by employee from new corporation; 110(1)(f)(v) — Deduction for Canadian Forces personnel and police on high-risk missions; 110.2(1) "qualifying amount" — Retroactive spreading of certain lump-sum payments over prior years; 115(1)(a)(i) — Non-resident's taxable income earned in Canada; 149(1)(a), (b) — Exempt individuals; 153(1)(a) — Withholding; 248(7) — Payment to employee deemed received when mailed; Canada-U.S. Tax Treaty: Art. XV, XVI — Taxation of employment income.

**Selected Cases [subsec. 5(1)]:** *P.S.A.C. v. Canada (Revenue Agency)*, [2011] 3 C.T.C. 87 (FC); aff'd [2012] 2 C.T.C. 221 (FCA) (Taxation of interest on award in pay equity dispute properly included in income); *Dhillon v. R.*, [2002] 4 C.T.C. 2648 (FCA) (Net amount of allowance after mandatory training expenses taxable); *Bure v. R.*, [2000] 1 C.T.C. 2407 (TCC) (Payment by club of agent's fees was taxable benefit to player); *Romeril v. R.*, [1999] 1 C.T.C. 2535 (TCC) (Predominant purpose of trip governs); *Gernhart v. R.*, [1998] 2 C.T.C. 102 (FCA); aff'd [1996] 3 C.T.C. 2369 (TCC) (Tax equalization payments part of remuneration for services); *Shultz v. Canada*, 1996 CarswellNat 2795 (TCC) (Bonus payment received in respect of period when taxpayer was non-resident was taxable. Compare *Hewitt*); *Placer Dome Inc. v. Canada*, [1992] 2 C.T.C. 99 (FCA) (Payments by employer into employees' stock purchase plan governed by subsec. 7(3); not deductible remuneration); *Canada v. G.R. Chrapko*, [1988] 2 C.T.C. 342 (FCA) (Cashier required to include cash shortfalls withheld from wages); *McNeill v. R.*, [1986] 2 C.T.C. 352 (FCTD) (Relocation allowance is not income when unrelated to contract of employment and services rendered); *Nowegijick v. R.*, [1983] C.T.C. 20 (SCC) (Income from services performed by Indian off reserve for corporation with head office on reserve was not taxable); *Lawson v. R.*, [1982] C.T.C. 368 (FCTD) (Payment for settlement of wrongful dismissal claim taxable); *Dauphinée v. R.*, [1980] C.T.C. 332 (FCTD) (Award for inventions made in the course of employment taxable); *Loeb v. R.*, [1978] C.T.C. 460 (FCA) (Payment for picketing during

strike was income from employment); *Morin v. R.*, [1975] C.T.C. 106 (FCTD) (Provincial income taxes deducted from salary included in income).

**Income Tax Folios:** S1-F1-C3: Disability supports deduction [replaces IT-519R2]; S1-F2-C1: Education and textbook tax credits [replaces IT-515R2]; S1-F2-C3: Scholarships, research grants and other education assistance [replaces IT-340R]; S2-F3-C1: Payments from employer to employee [replaces IT-196R2 and its SR]; S3-F9-C1: Lottery winnings, miscellaneous receipts, and income (and losses) from crime [replaces IT-185R, IT-213R, IT-256R, IT-334R2].

**Interpretation Bulletins:** IT-113R4: Benefits to employees — stock options; IT-167R6: Registered pension plans — employee's contributions; IT-202R2: Employees' or workers' compensation; IT-257R: Canada Council grants; IT-266: Taxation of members of provincial legislative assemblies (cancelled); IT-292: Taxation of elected municipal officers; IT-316: Awards for employees' suggestions and inventions (cancelled); IT-365R2: Damages, settlements and similar receipts; IT-389R: Vacation-with-pay plans established under collective agreements; IT-470R: Employees' fringe benefits.

**Registered Charities Newsletters:** *Charities Connection 2* (payroll and income taxes).

**Advance Tax Rulings:** ATR-21: Pension benefit from an unregistered pension plan; ATR-45: Share appreciation rights plan; ATR-64: Phantom stock award plan.

**Forms:** T1 General return, Line 101.

**(2) Loss from office or employment** — A taxpayer's loss for a taxation year from an office or employment is the amount of the taxpayer's loss, if any, for the taxation year from that source computed by applying, with such modifications as the circumstances require, the provisions of this Act respecting the computation of income from that source.

**Related Provisions:** 4(1) — Income or loss from a source or from sources in a place; 8(13) — Loss from home office disallowed; 111(1)(a), 111(8) "non-capital loss" — Carryover of loss from employment to prior or later years.

**Selected Cases [subsec. 5(2)]:** *McIlhargey v. Canada*, [1991] 2 C.T.C. 52 (FCTD) (Forgiveness of loan to employee for share purchase taxable; subsequent loss on sale not deductible from employment income).

**Selected Cases [s. 5]:** *Whitney v. R.*, [2002] 3 C.T.C. 476 (FCA) (Amounts received pursuant to collective agreement are income from employment, not compensation received under compensation law).

**Definitions [s. 5]:** "amount", "employment", "office" — 248(1); "taxation year" — 249; "taxpayer" — 248(1).

## Inclusions

**6. (1) Amounts to be included as income from office or employment** — There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

(a) **value of benefits** — the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer, or by a person who does not deal at arm's length with the taxpayer, in the year in respect of, in the course of, or by virtue of the taxpayer's office or employment, except any benefit

(i) derived from the contributions of the taxpayer's employer to or under a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a pooled registered pension plan, a private health services plan, a registered pension plan or a supplementary unemployment benefit plan,

(ii) under a retirement compensation arrangement, an employee benefit plan or an employee trust,

(iii) that was a benefit in respect of the use of an automobile,

(iv) derived from counselling services in respect of  
(A) the mental or physical health of the taxpayer or an individual related to the taxpayer, other than a benefit attributable to an outlay or expense to which paragraph 18(1)(l) applies, or

(B) the re-employment or retirement of the taxpayer,

(v) under a salary deferral arrangement, except to the extent that the benefit is included under this paragraph because of subsection (11), or

(vi) that is received or enjoyed by an individual other than the taxpayer under a program provided by the taxpayer's employer that is designed to assist individuals to further their

education, if the taxpayer deals with the employer at arm's length and it is reasonable to conclude that the benefit is not a substitute for salary, wages or other remuneration of the taxpayer;

**Related Provisions:** 6(1)(e) — Standby charge for automobile; 6(1)(e.1) — Group sickness or accident insurance plan — whether premiums taxable; 6(1)(f) — Insurance benefits received by employer; 6(1)(g) — Employment benefit plan; 6(1)(i) — Salary deferral arrangement payments; 6(1)(k), (l) — Automobile operating expense benefits; 6(1.1) — Parking costs are taxable benefits; 6(4) — Group term life insurance — taxable benefit; 6(6) — Employment at special work site or remote location; 6(7) — Cost of property or service includes taxes; 6(11)–(14) — Salary deferral arrangement; 6(15), (15.1) — Forgiveness of employee debt; 6(16) — Disability-related employment benefits; 6(18)(a) — No benefit from top-up disability payments where insurer insolvent; 6(19)–(22) — Benefit from reimbursement for loss in value of housing; 6(23) — Benefit from housing subsidy; 7(3) — No benefit from stock option agreement except as provided under s. 7; 15(5) — Automobile benefit to shareholder; 20.01 — Deduction to self-employed person for private health services plan premiums; 56(1)(a) — Amounts included in income; 56(1)(w) — Salary deferral arrangement; 56(1)(x)–(z) — Retirement compensation arrangement; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; 153(1)(a) — Withholding of tax by employer; 248(1) — "retiring allowance" excludes counselling services.

**History:** Para. 6(1)(a) amended by 2013, c. 34, subsecs. 170(1), 426(2), applicable in respect of benefits received or enjoyed after October 30, 2011 (see History to 152(4.2) for late reassessment); subpara. (a)(i) in force December 14, 2012. Para. 6(1)(a) formerly read:

(a) **value of benefits** — the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, except any benefit

(i) derived from the contributions of the taxpayer's employer to or under a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a pooled registered pension plan, a private health services plan, a registered pension plan or a supplementary unemployment benefit plan,

(ii) under a retirement compensation arrangement, an employee benefit plan or an employee trust,

(iii) that was a benefit in respect of the use of an automobile,

(iv) derived from counselling services in respect of

(A) the mental or physical health of the taxpayer or an individual related to the taxpayer, other than a benefit attributable to an outlay or expense to which paragraph 18(1)(l) applies, or

(B) the re-employment or retirement of the taxpayer, or

(v) under a salary deferral arrangement, except to the extent that the benefit is included under this paragraph because of subsection (11);

Subpara. 6(1)(a)(i) amended by 2012, c. 31, subsec. 2(1), in force December 14, 2012 (proclamation of 2012, c. 16, the *Pooled Registered Pension Plans Act*, P.C. 2012-1743). It formerly read:

(i) derived from the contributions of the taxpayer's employer to or under a deferred profit sharing plan, an employee life and health trust, a group sickness or accident insurance plan, a group term life insurance policy, a private health services plan, a registered pension plan or a supplementary unemployment benefit plan,

Subpara. 6(1)(a)(i) amended by 2010, c. 25, subsec. 2(1), applicable after 2009. It formerly read:

(i) derived from the contributions of the taxpayer's employer to or under a registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit sharing plan or group term life insurance policy,

Subpara. 6(1)(a)(iii) substituted by 1994, c. 21, subsec. 2(1), applicable to 1993 *et seq.* That subpara. formerly read:

(iii) that was a benefit in relation to the use of an automobile, except to the extent that the benefit related to the operation of the automobile,

Subpara. 6(1)(a)(v) added by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(1), applicable to 1986 *et seq.*

**Selected Cases [para. 6(1)(a)]:** *Shaw v. R.*, [2013] 6 C.T.C. 2016 (TCC) ("Gift" from former shareholder tied to continuing employment was taxable); *Vachon (Succession de) v. R.*, [2012] 1 C.T.C. 172 (FCA) (Benefits for "volunteering" by union members were taxable); *Spence v. R.*, [2011] 5 C.T.C. 188 (FCA) (Benefits (reduced school tuition fees) to be valued at FMV, not cost to employer of providing them); *Long v. R.*, [2010] 5 C.T.C. 2185 (TCC) (No benefit from sporadic free parking, where no assigned place and infrequent use); *Bartley v. R.*, [2009] 2 C.T.C. 73 (FCA) (Scholarship awards to children of employees not a taxable benefit to employees); *Rachfalowski v. R.*, [2009] 1 C.T.C. 2073 (TCC) (Golf club membership unwanted by employee not a taxable benefit); *Henley v. R.*, [2008] 1 C.T.C. 295 (FCA); aff'g [2006] 5 C.T.C. 2459 (TCC) (Warrants not the same as stock options; taxable as benefit from employment); *Adler v. R.*, [2007] 4 C.T.C. 2205 (TCC) (Free parking conferred measurable economic advantage); *Tsiaprailis v. R.*, [2005] 2 C.T.C. 1 (SCC) (Surrogatum

principle applied to tax arrears portion of disability insurance receipts); *Stauffer v. R.*, [2002] 4 C.T.C. 2608 (TCC) (Costs to provide parking spaces equal to charges; no benefit); *Siftar v. R.*, [2002] 1 C.T.C. 2071 (TCC) (Damages were non-taxable general damages, not paid pursuant to contract of insurance); *Fry v. R.*, [2001] 4 C.T.C. 2388 (TCC) (Para. 6(1)(a) not applicable if disability benefits escape taxation under para. 6(1)(f)); *Dumas v. R.*, [2001] 1 C.T.C. 2490 (TCC) (Underlying nature of claim will determine taxability; courts free to examine pleadings in relevant court proceedings); *Bure v. R.*, [2000] 1 C.T.C. 2407 (TCC) (Payment by club of agent's fees was taxable benefit to player); *Romeril v. R.*, [1999] 1 C.T.C. 2535 (TCC) (Predominant purpose of trip governs); *Gernhart v. R.*, [1998] 2 C.T.C. 102 (FCA); aff'd [1996] 3 C.T.C. 2369 (TCC) (Tax equalization payments part of remuneration for services); *Guay v. R.*, [1997] 3 C.T.C. 276 (FCA); rev'g [1996] 3 C.T.C. 2384 (TCC) (Relationship of expenses reimbursed to employment led to non-taxability of reimbursement payments); *Shultz v. Canada*, 1996 CarswellNat 2795 (TCC) (Bonus payment received in respect of period when taxpayer was non-resident was taxable. Compare *Hewitt*); *Lowe v. Canada*, [1996] 2 C.T.C. 33 (FCA) (No benefit if pleasure portion of business trip is incidental); *Leduc (succession de) v. Canada*, [1996] 1 C.T.C. 2873 (TCC) (Costs of transporting food to remote location were taxable benefits); *Detchon v. Canada*, [1996] 1 C.T.C. 2475 (TCC) (Amount of benefit for free schooling was average cost to school of educating student); *Krull et al. v. Canada (A.-G.)*, [1996] 1 C.T.C. 131 (FCA) (Mortgage differential payment for limited time not a taxable benefit); *Mommersteeg and Griffin v. Canada*, [1995] 2 C.T.C. 2767 (TCC) (Airline mileage travel was taxable benefit where tickets giving rise to mileage paid by employer); *Blanchard v. Canada*, [1995] 2 C.T.C. 262 (FCA) (Source of payment of benefit not relevant so long as there is connection with employment); *Klein v. Canada*, [1995] 1 C.T.C. 2980 (TCC) (Loan forgiveness was part of single severance package); *Oster v. Canada*, [1995] 1 C.T.C. 2224 (TCC) (Transfer allowances equal to one month's pay were taxable benefits and not moving expenses); *Hoefele v. Canada*, [1995] 1 C.T.C. 2177 (TCC) (Interest subsidy on increased portion of mortgage over ten year period was reimbursement of expense, not increase in employee's remuneration); *Clemiss v. MNR*, [1992] 2 C.T.C. 232 (FCTD) (Reimbursement of legal fees incurred in defence of criminal prosecution for alleged conspiracy to defraud company was income); *McIlhargey v. Canada*, [1991] 2 C.T.C. 52 (FCTD) (Forgiveness of loan to employee for share purchase taxable; subsequent loss on sale not deductible from employment income); *Huffman v. Canada*, [1990] 2 C.T.C. 132 (FCA) (Undercover police officer's reimbursement for cost of special clothes not benefit); *Splane v. Canada*, [1990] 2 C.T.C. 199 (FCTD); aff'd 92 D.T.C. 6021 (FCA) (Mortgage interest differential paid to relocated employee not benefit); *Robertson v. R.*, [1988] 1 C.T.C. 111 (FCTD); aff'd [1990] 1 C.T.C. 114 (FCA) (Profit from exercise of option was benefit from employment); *McNeill v. R.*, [1986] 2 C.T.C. 352 (FCTD) (Without evidence of uncompensated losses suffered, "social disruption allowance" for relocation was a benefit from employment); *Dauphinée v. R.*, [1980] C.T.C. 332 (FCTD) (National Research Council of Canada award for invention was employment income); *R. v. Harman*, [1980] C.T.C. 83 (FCA) (Where automobile used for business and personal purposes, benefit from employment only to extent of personal use; no standby charge); *Phaneuf Estate v. R.*, [1978] C.T.C. 21 (FCTD) (Difference between par value and market value of shares was gift, not taxable benefit); *Philp et al. v. MNR*, [1970] C.T.C. 330 (Exch.) (Trip with expenses paid by supplier for employment performance resulted in taxable benefit of 50%); *Waffle v. MNR*, [1968] C.T.C. 572 (Exch.) (Cruise for employee and wife paid for by supplier was fully taxable benefit).

**Regulations:** 200(2)(g), 200(3) (information returns).

**Remission Orders:** *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

**Income Tax Folios:** S1-F2-C3: Scholarships, research grants and other education assistance [replaces IT-340R]; S2-F1-C1: Health and welfare trusts [replaces IT-85R2]; S3-F9-C1: Lottery winnings, miscellaneous receipts, and income (and losses) from crime [replaces IT-185R, IT-213R, IT-256R, IT-334R2].

**Interpretation Bulletins:** IT-54: Wage loss replacement plans — changes in plans established before June 19, 1971 (cancelled); IT-63R5: Benefits, including standby charge for an automobile, from the personal use of a motor vehicle supplied by an employer; IT-113R4: Benefits to employees — stock options; IT-160R3: Personal use of aircraft (cancelled); IT-167R6: Registered pension plans — employee's contributions; IT-339R2: Meaning of "private health services plan"; IT-357R2: Expenses of training; IT-365R2: Damages, settlements and similar receipts; IT-389R: Vacation-with-pay plans established under collective agreements; IT-421R2: Benefits to individuals, corporations and shareholders from loans or debt; IT-428: Wage loss replacement plans; IT-432R2: Benefits conferred on shareholders; IT-470R: Employees' fringe benefits; IT-502: Employee benefit plans and employee trusts; IT-529: Flexible employee benefit programs.

**I.T. Technical News:** 6 (payment of mortgage interest subsidy by employer); 12 (1998 deduction limits and benefit rates for automobiles); 13 (employer-paid educational costs); 15 (Christmas parties and employer-paid special events; employer payment of professional membership fees); 22 (employee benefits); 25 (health and welfare trusts); 40 (administrative policy changes: loyalty programs; vehicles required to be taken home at night; non-cash gifts and awards; surface transit passes).

**Registered Charities Newsletters:** 25 (volunteers).

**Provincial Income Allocation Newsletters:** 4 (salaries and wages — inclusion of taxable benefits).

**CRA Audit Manual:** 12.2.0: Auditing employee benefits; 27.10.0: Employee and shareholder benefits.

**Advance Tax Rulings:** ATR-8: Self-insured health and welfare trust fund; ATR-21: Pension benefit from an unregistered pension plan; ATR-23: Private health services plan; ATR-45: Share appreciation rights plan.

**Forms:** T4130: Employer's guide — taxable benefits.

(b) **personal or living expenses [allowances]** — all amounts received by the taxpayer in the year as an allowance for personal or living expenses or as an allowance for any other purpose, except

(i) travel, personal or living expense allowances

(A) expressly fixed in an Act of Parliament, or

(B) paid under the authority of the Treasury Board to a person who was appointed or whose services were engaged pursuant to the *Inquiries Act*, in respect of the discharge of the person's duties relating to the appointment or engagement,

(ii) travel and separation allowances received under service regulations as a member of the Canadian Forces,

(iii) representation or other special allowances received in respect of a period of absence from Canada as a person described in paragraph 250(1)(b), (c), (d) or (d.1),

(iv) representation or other special allowances received by a person who is an agent-general of a province in respect of a period while the person was in Ottawa as the agent-general of the province,

(v) reasonable allowances for travel expenses received by an employee from the employee's employer in respect of a period when the employee was employed in connection with the selling of property or negotiating of contracts for the employee's employer,

(v.1) allowances for board and lodging of the taxpayer, to a maximum total of \$300<sup>1</sup> for each month of the year, if

(A) the taxpayer is, in that month, a registered participant with, or member of, a sports team or recreation program of the employer in respect of which membership or participation is restricted to persons under 21 years of age,

(B) the allowance is in respect of the taxpayer's participation or membership and is not attributable to services of the taxpayer as a coach, instructor trainer, referee, administrator or other similar occupation,

(C) the employer is a registered charity or a non-profit organization described in paragraph 149(1)(l), and

(D) the allowance is reasonably attributable to the cost to the taxpayer of living away from the place where the employee would, but for the employment, ordinarily reside,

(vi) reasonable allowances received by a minister or clergyman in charge of or ministering to a diocese, parish or congregation for expenses for transportation incident to the discharge of the duties of that office or employment,

(vii) reasonable allowances for travel expenses (other than allowances for the use of a motor vehicle) received by an employee (other than an employee employed in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling away from

(A) the municipality where the employer's establishment at which the employee ordinarily worked or to which the employee ordinarily reported was located, and

(B) the metropolitan area, if there is one, where that establishment was located,

in the performance of the duties of the employee's office or employment,

(vii.1) reasonable allowances for the use of a motor vehicle received by an employee (other than an employee employed

<sup>1</sup> Indexed by 117.1(1) after 2007 — ed.

S. 6(1)(b)(vii.1)

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in connection with the selling of property or the negotiating of contracts for the employer) from the employer for travelling in the performance of the duties of the office or employment,

(viii) [Repealed]

(ix) allowances (not in excess of reasonable amounts) received by an employee from the employee's employer in respect of any child of the employee living away from the employee's domestic establishment in the place where the employee is required by reason of the employee's employment to live and in full-time attendance at a school in which the language primarily used for instruction is the official language of Canada primarily used by the employee if

(A) a school suitable for that child primarily using that language of instruction is not available in the place where the employee is so required to live, and

(B) the school the child attends primarily uses that language for instruction and is not farther from that place than the community nearest to that place in which there is such a school having suitable boarding facilities;

and, for the purposes of subparagraphs (v), (vi) and (vii.1), an allowance received in a taxation year by a taxpayer for the use of a motor vehicle in connection with or in the course of the taxpayer's office or employment shall be deemed not to be a reasonable allowance

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);

**Related Provisions:** 6(6) — Employment at special work site or remote location; 6(16) — Disability-related employment benefits; 8(1) — Deductions allowed; 8(1)(c) — Clergyman's residence; 8(1)(f) — Salesman's expenses; 8(1)(g) — Transport employee's expenses; 8(1)(h), (h.1) — Travelling expenses; 8(11) — GST rebate deemed not a reimbursement; 18(1)(r) — Limitation on employer deductibility — automobile expenses; 81(3.1) — No tax on allowance or reimbursement for part-time employee's travel expenses; 81(4) — Exemption for payment to volunteer firefighter or emergency worker; 117.1(1) — Inflation indexing of amount in 6(1)(b)(v.1); 153(1)(a) — Withholding of tax by employer.

**History:** Subpara. 6(1)(b)(v.1) added by 2007, c. 16, s. 1, applicable to taxation years that end after June 22, 2007.

Subpara. 6(1)(b)(viii) repealed by 1999, c. 22, subsec. 2(1), applicable to 1998 *et seq.* The subpara. formerly read:

(viii) such part of the total of allowances received by a person who is a volunteer fireman from a government, municipality or other public authority for expenses incurred by the person in respect of, in the course of, or by virtue of the discharge of the person's duties as a volunteer fireman, as does not exceed \$500, or

Subpara. 6(1)(b)(xi) substituted by 1994, c. 21, subsec. 2(2), applicable to 1993 *et seq.* That subpara. formerly read:

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or parking, toll or ferry charges and the amount of the allowance is determined without reference to those reimbursed expenses);

That portion of subpara. 6(1)(b)(vii) preceding cl. (A), and subpara. (vii.1), amended by 1994, c. 7, Sch. II (1991, c. 49), subsecs. 3(2), (3), to substitute, in each, "reasonable allowances" for "allowances (not in excess of reasonable amounts)", and "the negotiating" for "negotiating", applicable to 1990 *et seq.*

That portion of para. 6(1)(b) following cl. (ix)(B) substituted by 1994, c. 7, Sch. II (1991, c. 49), subsec. 3(4), that portion between cl. (ix)(B) and subpara. (x) applicable to 1990 *et seq.*, and subparas. (x) and (xi) applicable to 1988 *et seq.*, except that those subparas. are not applicable to the 1988 and 1989 taxation years of an individual who so elects by notifying the Minister of National Revenue in writing. That portion formerly read:

and, for the purposes of subparagraphs (v), (vi) and (vii.1), an allowance received in the year by the taxpayer for use of a motor vehicle in connection with

or in the course of the taxpayer's office or employment shall be deemed to be in excess of a reasonable amount

(x) where the measurement of the use of the vehicle for the purpose of the allowance is not based solely on the number of kilometres for which the vehicle is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of the use of the vehicle in connection with or in the course of the office or employment and is reimbursed in whole or in part for expenses in respect of the same use;

**Selected Cases [para. 6(1)(b)]:** *MacDonald v. Canada*, [1994] 2 C.T.C. 48 (FCA) (Monthly housing subsidy for RCMP officer was taxable allowance); *R. v. Eggert*, [1985] 2 C.T.C. 343 (FCTD) (Fixed monthly allowance for expenses, not determined according to time spent travelling, nor in connection with selling or negotiating, was taxable benefit); *R. v. Paradis*, [1985] 2 C.T.C. 3 (FCTD) (Lump sum for meals, not determined according to time spent travelling, was taxable); *R. v. Demers*, [1981] C.T.C. 282 (FCTD) (Allowance intended to compensate employee for working in another country was taxable benefit); *R. v. Lavers*, [1978] C.T.C. 341 (FCTD) (Fixed mileage allowance for use of own car, not determined directly according to time spent travelling, was taxable benefit).

**Remission Orders:** *Ice Storm Employee Benefits Remission Order*, P.C. 1998-2047.

**Income Tax Folios:** S1-F2-C2: Tuition tax credit [replaces IT-516R2].

**Interpretation Bulletins:** IT-168R3: Athletes and players employed by football, hockey and similar clubs; IT-470R: Employees' fringe benefits; IT-518R: Food, beverages and entertainment expenses; IT-522R: Vehicle, travel and sales expenses of employees.

**I.T. Technical News:** 40 (administrative policy changes: meal and travel allowances).

**Registered Charities Newsletters:** 25 (volunteers).

**Forms:** T4130: Employer's guide — taxable benefits.

(c) **director's or other fees** — director's or other fees received by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment;

**Related Provisions:** 153(1)(a) — Withholding of tax by employer; 248(7)(a) — Payment deemed received when mailed.

**Interpretation Bulletins:** IT-377R: Director's, executor's or juror's fees (cancelled); IT-468R: Management or administration fees paid to non-residents; IT-470R: Employees' fringe benefits; IT-518R: Food, beverages and entertainment expenses.

**Forms:** T4001: Employers' guide — payroll deductions and remittances [guide]; T4061: Non-resident withholding tax guide.

(d) **allocations, etc., under [employees] profit sharing plan** — amounts allocated to the taxpayer in the year by a trustee under an employees profit sharing plan as provided by section 144 except subsection 144(4), and amounts required by subsection 144(7) to be included in computing the taxpayer's income for the year;

**Related Provisions:** 8(1)(o.1) — Deduction for forfeited amounts; 12(1)(n) — Inclusion of benefits; 128.1(10) "excluded right or interest"(a)(v) — No deemed disposition of rights on emigration; 144(9) — Deductions for forfeited amounts; 153(1)(a) — Withholding of tax at source.

**Interpretation Bulletins:** IT-379R: Employees profit sharing plans — allocations to beneficiaries.

**Registered Plans Compliance Bulletins:** 7 (pensionable earnings from an EPSP).

(e) **standby charge for automobile** — where the taxpayer's employer or a person related to the employer made an automobile available to the taxpayer, or to a person related to the taxpayer, in the year, the amount, if any, by which

(i) an amount that is a reasonable standby charge for the automobile for the total number of days in the year during which it was made so available

exceeds

(ii) the total of all amounts, each of which is an amount (other than an expense related to the operation of the automobile) paid in the year to the employer or the person related to the employer by the taxpayer or the person related to the taxpayer for the use of the automobile;

**Related Provisions:** 6(1)(a)(iii) — Automobile benefits excluded from general inclusion of benefits; 6(1)(k), (l) — Operating expense benefit; 6(2) — Calculation of reasonable standby charge; 6(2.1) — Reduced standby charge for automobile salesman; 6(7) — Cost of automobile includes GST effective 1996; 8(1)(f)(vii) — Salesman's expenses; 12(1)(y) — Partnerships — auto provided to partner or employee of partner; 15(5) — Automobile benefit to shareholder; 153(1)(a) — Withholding by employer.