



Income Tax Act (R.S.C. (Revised Statutes of Canada), 1985, c. 1 (5th Supp.))

Act current to 2026-04-28 and on 2026-04-01.

PART XVI

Tax Avoidance (continued)

Benefit conferred on a person

246 (1) Where at any time a person confers a benefit, either directly or indirectly, by any means whatever, on a taxpayer, the amount of the benefit shall, to the extent that it is not otherwise included in the taxpayer's income or taxable income earned in Canada under Part I and would be included in the taxpayer's income if the amount of the benefit were a payment made directly by the person to the taxpayer and if the taxpayer were resident in Canada, be

(a) included in computing the taxpayer's income or taxable income earned in Canada under Part I for the taxation year that includes that time; or

(b) where the taxpayer is a non-resident person, deemed for the purposes of Part XIII to be a payment made at that time to the taxpayer in respect of property, services or otherwise, depending on the nature of the benefit.

Arm's length

(2) Where it is established that a transaction was entered into by persons dealing at arm's length, *bona fide* and not pursuant to, or as part of, any other transaction and not to effect payment, in whole or in part, of an existing or future obligation, no party thereto shall be regarded, for the purpose of this section, as having conferred a benefit on a party with whom the first-mentioned party was so dealing.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; 1970-71-72, c. 63, s. 1“246”; 1984, c. 45, s. 91; 1988, c. 55, s. 186.

PART XVI.1

Transfer Pricing

Definitions

247 (1) The definitions in this subsection apply in this section.

actual conditions, in respect of a transaction or series of transactions, means the conditions that actually apply between any of the participants in the transaction or series. (*conditions réelles*)

arm's length allocation [Repealed, 2026, c. 3, s. 93]

arm's length conditions, in respect of a transaction or series of transactions, means the conditions that would have applied had the participants been dealing at arm's length in comparable circumstances, including the possibility that no transaction or series, or a different transaction or series, would have been concluded had the participants been dealing at arm's length in comparable circumstances. (*conditions de pleine concurrence*)

arm's length transfer price [Repealed, 2026, c. 3, s. 93]

documentation-due date for a taxation year or fiscal period of a person or partnership means

(a) in the case of a person, the person's filing-due date for the year; or

(b) in the case of a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period or would be required to be so filed if that section applied to the partnership. (*date limite de production*)

economically relevant characteristics, in respect of a transaction or series of transactions, includes

(a) to the extent that the following contractual terms are not inconsistent with the actual conduct of the participants in the transaction or series,

(i) the contractual terms of the transaction or series, and

(ii) the contractual terms of each other transaction or series that is relevant to the transaction or series and that involves at least one of the participants or any other member of the multinational enterprise group;

(b) the actual conduct of the participants in the transaction or series, and in particular the functions performed by those participants, taking into account

(i) assets used and risks assumed,

(ii) how those functions relate to the wider generation of value by the multinational enterprise group to which the participants belong,

(iii) circumstances surrounding the transaction or series, and

(iv) industry practices;

(c) the characteristics of any property transferred or service provided;

(d) the economic circumstances of the participants and of the market in which the participants operate; and

(e) the business strategies pursued by the participants.

(caractéristiques économiquement pertinentes)

multinational enterprise group means the group made up of the taxpayer or the partnership, or member of the partnership, and the non-resident person (or a partnership of which the non-resident person is a member) who are participants in a transaction or series

of transactions referred to in subsection (2), as well as any other person that does not deal at arm's length with at least one of the participants. (*groupe d'entreprises multinationales*)

qualifying cost contribution arrangement means an arrangement under which reasonable efforts are made by the participants in the arrangement to establish a basis for contributing to, and to contribute on that basis to, the cost of producing, developing or acquiring any property, or acquiring or performing any services, in proportion to the benefits which each participant is reasonably expected to derive from the property or services, as the case may be, as a result of the arrangement. (*arrangement admissible de participation au coût*)

tax benefit [Repealed, 2026, c. 3, s. 93]

transaction includes an arrangement or event. (*opération*)

transfer price [Repealed, 2026, c. 3, s. 93]

transfer pricing capital adjustment of a taxpayer for a taxation year means the total of

(a) all amounts each of which is

(i) 1/2 of the amount, if any, by which the adjusted cost base to the taxpayer of a capital property (other than a depreciable property) is reduced in the year because of an adjustment made under subsection (2.02), or

(ii) [Repealed, 2016, c. 12, s. 62]

(iii) the amount, if any, by which the capital cost to the taxpayer of a depreciable property is reduced in the year because of an adjustment made under subsection (2.02); and

(b) all amounts each of which is that proportion of the total of

(i) 1/2 of the amount, if any, by which the adjusted cost base to a partnership of a capital property (other than a depreciable property) is reduced in a fiscal period that ends

in the year because of an adjustment made under subsection (2.02), and

(ii) [Repealed, 2016, c. 12, s. 62]

(iii) the amount, if any, by which the capital cost to a partnership of a depreciable property is reduced in the period because of an adjustment made under subsection (2.02),

that

(iv) the taxpayer's share of the income or loss of the partnership for the period

is of

(v) the income or loss of the partnership for the period,

and where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be \$1,000,000 for the purpose of determining a taxpayer's share of the partnership's income for the purpose of this definition. (*redressement de capital*)

transfer pricing capital setoff adjustment of a taxpayer for a taxation year means the amount, if any, that would be the taxpayer's transfer pricing capital adjustment for the year if the references, in the definition ***transfer pricing capital adjustment***, to "reduced" were read as "increased". (*redressement compensatoire de capital*)

Transfer Pricing Guidelines means

(a) if no text is prescribed under paragraph (b), the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, as adopted by the Committee on Fiscal Affairs on January 7, 2022; or

(b) any text prescribed by regulation. (*Principes applicables en matière de prix de transfert*)

transfer pricing income adjustment of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2.02) (other than an adjustment included in determining a transfer pricing capital adjustment of the taxpayer for a taxation year) would result in an increase in the taxpayer's income for the year or a decrease in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2.02).

(redressement de revenu)

transfer pricing income setoff adjustment of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, by which an adjustment made under subsection (2.02) (other than an adjustment included in determining a transfer pricing capital setoff adjustment of the taxpayer for a taxation year) would result in a decrease in the taxpayer's income for the year or an increase in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2.02). *(redressement compensatoire de revenu)*

Delineation of transaction or series

(1.1) For the purposes of this section, a transaction or series of transactions is to be analyzed and determined with reference to the economically relevant characteristics of the transaction or series.

Interpretation of conditions

(1.2) For the purposes of the definitions *actual conditions* and *arm's length conditions* in subsection (1), the word "conditions" is to be interpreted broadly, and includes, but is not limited to, price, rate, gross margin, net margin, the division of profit, contributions to costs and any commercial or financial information relevant to the determination of the quantum or nature of initial amounts or adjusted amounts, as the case may be.

Transfer pricing adjustment — application

(2) Subsection (2.02) applies to a taxpayer or a partnership in respect of a transaction or series of transactions if

(a) the taxpayer or the partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in the transaction or series; and

(b) the transaction or series includes actual conditions different from arm's length conditions.

Transfer pricing adjustment — deeming rule

(2.01) For the purposes of paragraph (2)(b), a transaction or series of transactions is deemed to include actual conditions different from arm's length conditions if a condition does not exist in respect of the transaction or series, but would have existed had the participants in the transaction or series been dealing at arm's length in comparable circumstances.

Transfer pricing adjustment

(2.02) If this subsection applies to a taxpayer or a partnership in respect of a transaction or series of transactions, any amounts (in this section referred to as the "initial amounts") that would be determined for the purposes of applying the provisions of this Act (if this Act were read without reference to this section and section 245) in respect of the taxpayer or the partnership for a taxation year or fiscal period are to be adjusted (in this section referred to as an "adjustment") to the quantum or nature of the amounts (in this section referred to as the "adjusted amounts") that would have been determined if arm's length conditions in respect of the transaction or series had applied.

Transfer Pricing Guidelines

(2.03) For the purposes of determining the effect of this Part in relation to a taxpayer or a partnership, each of the analysis and determination of a transaction or series of transactions under subsection (1.1), the identification of arm's length conditions under paragraph (2)(b) and the determination of amounts under subsection (2.02) are to be made so as to best achieve consistency with the Transfer Pricing Guidelines.

Most appropriate method

(2.04) For the purposes of this Part, whether a transaction or series of transactions includes actual conditions that differ from arm's length conditions is to be determined through an analysis where the most appropriate method is selected and applied in accordance with the Transfer Pricing Guidelines.

Ordering

(2.1) For the purpose of applying subsection (2.02) in the context of the other provisions of this Act, the following order is to be applied:

- (a)** first determine each of the initial amounts;
- (b)** then make the adjustments, if any, to each of the initial amounts; and
- (c)** then apply each of the provisions of this Act (other than subsection (2.02) and, for greater certainty, including section 245) using the adjusted amounts.

Penalty

(3) A taxpayer (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) is liable to a penalty for a taxation year equal to 10% of the amount determined under paragraph 247(3)(a) in respect of the taxpayer for the year, where

- (a)** the amount, if any, by which

(i) the total of

(A) the taxpayer's transfer pricing capital adjustment for the year, and

(B) the taxpayer's transfer pricing income adjustment for the year

exceeds the total of

(ii) the total of all amounts each of which is the portion of the taxpayer's transfer pricing capital adjustment or transfer pricing income adjustment for the year that can reasonably be considered to relate to a particular transaction or series of transactions, where

(A) the transaction or series is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine amounts that are based on arm's length conditions in respect of the transaction or series, and to use those amounts for the purposes of this Act, and

(iii) the total of all amounts, each of which is the portion of the taxpayer's transfer pricing capital setoff adjustment or transfer pricing income setoff adjustment for the year that can reasonably be considered to relate to a particular transaction or series, where

(A) the transaction or series is a qualifying cost contribution arrangement in which the taxpayer or a partnership of which the taxpayer is a member is a participant, or

(B) in any other case, the taxpayer or a partnership of which the taxpayer is a member made reasonable efforts to determine amounts that are based on arm's length conditions in respect of the transaction or series, and to use those amounts for the purposes of this Act,

is greater than

(b) the lesser of

(i) 10% of the amount that would be the taxpayer's gross revenue for the year if this Act were read without reference to subsection (2.02), subsections 69(1) and (1.2) and section 245, and

(ii) \$10,000,000.

Contemporaneous documentation

(4) For the purposes of subsection (3) and the definition *qualifying cost contribution arrangement* in subsection (1), a taxpayer or a partnership is deemed not to have made reasonable efforts to determine and use amounts that are based on arm's length conditions in respect of a transaction or series of transactions or not to have participated in a transaction or series that is a qualifying cost contribution arrangement, unless the taxpayer or the partnership, as the case may be,

(a) makes or obtains, on or before the taxpayer's or partnership's documentation-due date for the taxation year or fiscal period, as the case may be, in which the transaction or series is entered into, records or documents that provide a description that is complete and accurate in all material respects of

(i) the property or services to which the transaction or series relates,

(ii) the contractual terms of the transaction or series and their relationship, if any, to the contractual terms of each other transaction or series that is relevant to the transaction or series and that involves at least one of the participants or any other member of the multinational enterprise group,

(iii) the identity of the participants and their relationship to each other at the time the transaction or series was entered into,

(iv) the functions performed by each of the participants in the transaction or series, based on their actual conduct, taking into account

(A) assets used and risks assumed,

(B) how those functions relate to the wider generation of value by the multinational enterprise group to which the participants belong,

(C) circumstances surrounding the transaction or series, and

(D) industry practices,

(v) the data and methods considered and the analysis performed to determine amounts that are based on arm's length conditions and to select and apply the most appropriate method in accordance with the Transfer Pricing Guidelines in respect of the transaction or series, and

(vi) the economic circumstances, assumptions, policies and business strategies, if any, that influenced the determination of the amounts that are based on arm's length conditions in respect of the transaction or series;

(b) for each subsequent taxation year or fiscal period, if any, in which the transaction or series continues, makes or obtains, on or before the taxpayer's or partnership's documentation-due date for that year or period, as the case may be, records or documents that completely and accurately describe each material change in the year or period to the matters referred to in any of subparagraphs (a)(i) to (vi) in respect of the transaction or series; and

(c) provides the records or documents described in paragraphs (a) and (b) to the Minister within 30 days after service, made personally or by registered or certified mail, of a written request therefor.

Contemporaneous documentation simplification measures

(4.1) Subsection (4) does not apply to a taxpayer or partnership for a particular taxation year or fiscal period in respect of a transaction or series if the taxpayer or partnership

(a) meets prescribed conditions; and

(b) makes, obtains and provides prescribed documentation in prescribed manner.

Partner's gross revenue

(5) For the purpose of subparagraph 247(3)(b)(i), where a taxpayer is a member of a partnership in a taxation year, the taxpayer's gross revenue for the year as a member of the partnership from any activities carried on by means of the partnership is deemed to be that proportion of the amount that would be the partnership's gross revenue from the activities if it were a taxpayer (to the extent that amount does not include amounts received or receivable from other partnerships of which the taxpayer is a member in the year), for a fiscal period of the partnership that ends in the year, that

(a) the taxpayer's share of the income or loss of the partnership from its activities for the period

is of

(b) the income or loss of the partnership from its activities for the period,

and where the income and loss of the partnership from its activities are nil for the period, the income of the partnership from its activities for the period is deemed to be \$1,000,000 for the purpose of determining a taxpayer's share of the partnership's income from its activities for the purpose of this subsection.

Deemed member of partnership

(6) For the purposes of this section, where a person is a member of a partnership that is a member of another partnership,

(a) the person is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

Exclusion — loans to certain controlled foreign affiliates

(7) Where, in a taxation year of a corporation resident in Canada, a non-resident person owes an amount to the corporation, the non-resident person is a controlled foreign affiliate of the corporation for the purpose of section 17 throughout the period in the year during which the amount is owing and it is established that the amount owing is an amount owing described in paragraph 17(8)(a) or (b), subsection (2.02) does not apply to adjust the amount of interest paid, payable or accruing in the year on the amount owing.

Exclusion — certain guarantees

(7.1) Subsection (2.02) does not apply to adjust an amount of consideration paid, payable or accruing to a corporation resident in Canada (in this subsection referred to as the “parent”) in a taxation year of the parent for the provision of a guarantee to a person or partnership (in this subsection referred to as the “lender”) for the repayment, in whole or in part, of a particular amount owing to the lender by a non-resident person, if

(a) the non-resident person is a controlled foreign affiliate of the parent for the purposes of section 17 throughout the period in the year during which the particular amount is owing; and

(b) it is established that the particular amount would be an amount owing described in paragraph 17(8)(a) or (b) if it were owed to the parent.

(8) [Repealed, 2021, c. 23, s. 60]

Anti-avoidance

(9) For the purposes of determining a taxpayer’s gross revenue under subparagraph 247(3)(b)(i) and subsection 247(5), a transaction or series of transactions is deemed not to have occurred, if one of the purposes of the transaction or series was to increase the taxpayer’s gross revenue for the purpose of subsection 247(3).

No adjustment unless appropriate

(10) An adjustment (other than an adjustment that results in or increases a transfer pricing capital adjustment or a transfer pricing income adjustment of a taxpayer for a taxation year) shall not be made under subsection (2.02) unless, in the opinion of the Minister, the circumstances are such that it would be appropriate that the adjustment be made.

Provisions applicable to Part

(11) Sections 152, 158, 159, 162 to 167 and Division J of Part I apply to this Part, with such modifications as the circumstances require.

Deemed dividends to non-residents

(12) For the purposes of Part XIII, if a particular corporation that is a resident of Canada for the purposes of Part XIII would have a transfer pricing capital adjustment or a transfer pricing income adjustment for a taxation year, if the particular corporation, or a partnership of which the particular corporation is a member, had undertaken no transactions or series of transactions other than those in which a particular non-resident person, or a partnership of which the particular non-resident person is a member, that does not deal at arm's length with the particular corporation (other than a corporation that was for the purposes of section 17 a controlled foreign affiliate of the particular corporation throughout the period during which the transaction or series of transactions occurred) was a participant,

(a) a dividend is deemed to have been paid by the particular corporation and received by the particular non-resident person immediately before the end of the taxation year; and

(b) the amount of the dividend is the amount, if any, by which

(i) the amount that would be the portion of the total of the particular corporation's transfer pricing capital adjustment and transfer pricing income adjustment for the taxation year that could reasonably be considered to relate to the particular non-resident person if

(A) the only transactions or series of transactions undertaken by the particular corporation were those in which the particular non-resident person was a participant,

(B) the definition *transfer pricing capital adjustment* in subsection (1) were read without reference to the references therein to “1/2 of”, and

(C) the definition *transfer pricing income adjustment* in subsection (1) were read as follows: “of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, that would result, from an adjustment made under subsection (2.02) (other than an adjustment included in determining a transfer pricing capital adjustment of the taxpayer for a taxation year), in an increase in the taxpayer’s income for the year or a decrease in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2.02)”

exceeds

(ii) the amount that would be the portion of the total of the particular corporation’s transfer pricing capital setoff adjustment, and transfer pricing income setoff adjustment, for the taxation year that could reasonably be considered to relate to the particular non-resident person if

(A) the only transactions or series of transactions undertaken by the particular corporation were those in which the particular non-resident person was a participant,

(B) the definition *transfer pricing capital adjustment* in subsection (1) were read without reference to the references therein to “1/2 of”,

(C) the definition *transfer pricing income adjustment* in subsection (1) were read as follows: “of a taxpayer for a taxation year means the total of all amounts each of

which is the amount, if any, that would result, from an adjustment made under subsection (2.02) (other than an adjustment included in determining a transfer pricing capital adjustment of the taxpayer for a taxation year), in an increase in the taxpayer's income for the year or a decrease in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2.02)", and

(D) the definition *transfer pricing income setoff adjustment* in subsection (1) were read as follows: "of a taxpayer for a taxation year means the total of all amounts each of which is the amount, if any, that would result, from an adjustment made under subsection (2.02) (other than an adjustment included in determining a transfer pricing capital set-off adjustment of the taxpayer for the taxation year), in a decrease in the taxpayer's income for the year or in an increase in a loss of the taxpayer for the year from a source if that adjustment were the only adjustment made under subsection (2.02)".

Repatriation

(13) If a dividend is deemed by subsection (12) to have been paid by a corporation and received by a non-resident person, and a particular amount has been paid with the concurrence of the Minister by the non-resident person to the corporation,

(a) the amount of the dividend may be reduced by the amount (in this subsection referred to as the "reduction") that the Minister considers appropriate, having regard to all the circumstances, and

(b) subsections 227(8.1) and (8.3) apply as if

(i) the amount of the dividend were not reduced, and

(ii) on the day on which the particular amount was paid, the corporation paid to the Receiver General an amount equal to the amount that would be required to be withheld and remitted under Part XIII in respect of the reduction.

Repatriation — interest

(14) If the amount of a dividend is reduced under paragraph (13)(a), the amount of interest payable by a taxpayer because of paragraph (13)(b) may be reduced to the amount that the Minister considers appropriate, having regard to all the circumstances, including the provision of reciprocal treatment by the country in which the non-resident person referred to in subsection (13) is resident.

Non-application of provisions

(15) Section 15, subsections 56(2) and 212.3(2) and section 246 do not apply in respect of an amount to the extent that a dividend is deemed by subsection (12) (determined without reference to subsection (13)) to have been paid in respect of the amount.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; 1998, c. 19, s. 238; 1999, c. 22, s. 79; 2001, c. 17, s. 187; 2005, c. 19, s. 53; 2012, c. 31, s. 54; 2013, c. 40, s. 88; 2016, c. 12, s. 62; 2021, c. 23, s. 60; 2026, c. 3, s. 93.

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