

New legislative proposals for trusts – dealing with the subsection 104(13.4) problem

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On [Nov. 16, 2015](#), I wrote about the ongoing saga regarding subsection 104(13.4) and some good news that was released by the Department of Finance. Today, the Department of Finance released [legislative proposals](#) as a follow-up and are seeking comments on such proposals no later than Feb. 15, 2016. While we are still absorbing some of the material, here are the very quick observations:

1. New paragraph 104(13.4)(b.1) – This new paragraph will, in effect, “turn off” the application of subsection 104(13.4) unless an election is made to have it apply under very narrow circumstances. In plain English, if a “life interest trust” (such as a spousal trust or alter ego trust) has a deemed disposition of its assets because of the death of the applicable person, then any resulting gains will now be taxed in the trust. Without this “fix”, the resulting gain would have been taxed in the deceased’s hands as I have written about many times before. This proposed change would apply for the 2016 taxation years and forward. This is great news and I applaud the Department of Finance for proposing this change.
2. Extension of time to make testamentary gifts for Graduated Rate Estates (“GRE”) – Astute readers will know that the testamentary tax rules for charitable gifts have been completely changed for 2016 forward. For gifts by will, one of the effects of the new rules is that gifts made by will can be utilized by the estate or deemed to have been made by the individual in the year of death or the preceding year as long as the underlying transfer of property is made to the charity during the time that an estate is considered a GRE – no more than 36 months after the death of the individual. The 36-month time restriction has been the subject of a lot of criticism since it may not be a lot of time to make the transfer of property to the charity in order to benefit from the new gift by will taxation regime. Proposals released today to subsection 118.1(5.1) extend the 36-month transfer restriction to no more than 60 months. Such proposals, if passed, would apply to the 2016 and subsequent taxation years. Again, this is welcome news.

There are other amendments contained in the proposals... we’ll comment on them soon after we have had a chance to reflect. In the meantime, I again commend the Department of Finance for listening to the tax and trust community and responding appropriately.