INDEX

References are to page number.

Α

Accounting fees, deductibility, 535-536, 541-542

Accumulations, perpetuities and, 30-32

Administration

- amending, cancelling or issuing duplicate T3 slips, 633-634
- amending T3 summary, 634
- assessments and reassessments, 477-478
- bare trusts, 470
- clearance certificates, 475-476
- completing T3 slips, 625-632
- completing T3 summary, 621-624
- estate, 44-45
- executor's year, see Executor's year
- · filing returns
- • filing requirements and deadlines, 469
- • how to file
- • Internet filing, 467-468
- • paper return, 468
- • interest and penalties, 471-472
- • liability of trustees and personal representatives, 473-474
- • where to file, 468
- • who should file, 465-466
- filing T3 summary and T3 slips, 633

- new trust reporting requirements, 469-471
- notice of objection, 481
- notifiable transactions, 476-477
- summary, 482
- trust account number, application, 485-491

Affiliated persons

- arm's length test, 143
- common beneficiary and contributor, 144
- interpretive rules, 143-144
- losses
- • efficient use of, 144
- • pregnant losses, 144
- • stop loss provisions, 145
- sole beneficiary, 143
- general principles, 141-144
- spouse of sole beneficiary, 144
- trustee, affiliation with, 144

Age forty trusts, see Minors

Agency, distinguished from trust, 24

AgriInvest Fund, 228, 527-528

Alter ego trusts

- attribution of income to settlor, 367-368
- · avoiding resealing and bonding, 364
- cannot fund testamentary trust, 367
- confidentiality, 362
- control of capital, 362

Alter ego trusts (cont'd)

- creditor-proofing, 363
- deemed disposition, 379
- dependants' relief legislation, 363
- distinguished from self-benefit trust, 360
- donation limits, 369
- generally, 77-80
- incapacity planning, 362-363
- jurisdiction shopping, 364
- no deemed disposition at twenty-one years, 366-367
- no disposition at insertion, 365-366
- opting out of rollover, 366
- planning, 360-361
- · principal residence exemption, 368
- probate planning, 360-362
- requirements, 78
- taxation of, 360

Allowable business investment loss, 540-541

Amendment, see Variation

Association rules

- deemed ownership, 145-146
- estates, 148-152
- generally, 145
- inter vivos trusts, 152-153
- minor beneficiaries, 146-148
- testamentary trusts and estates, 154

Attribution

- contributor controlling capital [75(2)]
- • alter ego trusts, 367
- • contributor's circumstances, 205-211
- • control over destination, 203

- • drafting to avoid, 215
- • factors relating to property, 212
- • freezing shares, 212
- gate keeping, 204-205, 211
- • generally, 199-200, 214-216
- • impact on rollouts, 205, 214-216
- income beneficiaries, 244-245
- • indirect contributions, 214
- • joint partner trusts, 360
- jurisdiction shopping, 364
- • loan of income-producing property, 210-211
- • replacement property, 213
- • reversion of capital, 200-203
- sale to trust, 209-210
- Sommerer decision [75(2)], 208-209
- spousal trusts, 341-342
- • types of income, 212-213
- minor, non-arm's length beneficiaries, [74.1(2)]
- ending at majority, 349
- • generally, 348-352
- • inadequate consideration, 350
- • income designation over-riding, 348
- • second generation income, 349-
- • substituted property, 351
- • transferor's circumstances, 349
- • type of income, 349-350
- types of property, 350-351
- rules
- attribution of income, 444-446
- corporate, 445-446
- • interest-free loan, 445
- • reversionary, 444-445

Attribution (cont'd)

- spouse or partner beneficiary [74.3(1)]
- • death/divorce ending, 79, 343
- • generally, 342-343
- • marriage commencing, 208

В

Bailment, distinguished from trust, 24

Bankrupt estate, see Estate

Bare trust

- administration, 470
- · defined, 26
- · distinguished from agency, 24
- generally, 24, 567
- liability for capital gains, 567

Beneficial interest

- additional allowed by trust, 229
- definition, 124-127
- distinguished from legal, 12, 14
- timing of shift in estate, 21-22

Beneficiaries

- · addition allowed by trust, 229
- Canadian, taxation of, 443
- capital vs. income, 6
- contingent vs. vested, 7
- defined, 4-5
- hidden, 7-8
- Indian Band, 5
- "kiddie tax", 159, 347, 356-357
- minors, 77, 347-359
- non-resident, 197-198, 443-444
- party to trust, as, 4
- preferred beneficiary election, *see* Preferred beneficiary election

- resident beneficiary, taxation of, 435-436
- • calculation of, 159
- secret, 7
- TOSI rules, 159-163, 356-357

Benefits, as income, 163-165

Blind trust, see Self benefit trust

Bonding, see Estate

C

Calculating taxes owing

- amount enclosed, line 71, 558-559
- · certification, 559
- name and address of person or company, 559
- · net income
- allowable business investment losses (ABIL), line 25, 540-541
- carrying charges and interest expense, line 14, 533-537
- • other deductions from total income, line 19, 541-542
- • total deductible income allocations, line 28, 543-544
- total gross-up amount of dividend retained or not designated, line 30, 544-545
- • total taxable benefits, line 24, 543
- • trust's net income, line 31, 545-546
- • trustee fees deductible from income, line 17, 537-540
- • upkeep, maintenance and taxes of property used or occupied by beneficiary, line 22, 542-543
- • value of other benefits to beneficiary, line 23, 543
- net tax deductible, line 49, 556

Calculating taxes owing (cont'd)

- other credits, lines 54-61, 557-558
- Part XII.2 tax credit, line 53, 556
- Part XII.2 tax payable, line 46, 554
- provincial or territorial tax payable, line 45, 553-554
- refund code, line 72, 559
- refund or balance owing, line 70, 558
- refundable investment tax credit, line 51, 556
- refundable Quebec abatement, 556
- tax paid by instalments, line 48, 556
- · taxable income
- • net capital losses of other years, line 52, 548-549
- • non-capital losses of other years, line 33, 547-548
- • other deductions to arrive at taxable income, line 42, 550
- • request for loss carryback by a trust, Form T3A, 549-550
- • trust's taxable income, line 43, 550
- total federal tax payable, line 33, 553
- · total income
- AgriInvest Fund 2, line 10, 527-528
- • business income, line 6, 524-525
- • deemed disposition, income or losses, 528-529
- • dividends from taxable Canadian corporations, line 3, 518-520
- • farming or fishing income, line 7, 525-526
- • foreign investment income, line 4, 523
- • other income, line 19, 541-542

- • other investment income, line 5, 523-524
- pension income, line 2, 518
- • rental income, line 9, 526-527
- • taxable capital gains, line 1, 511-512
- • trust's total income, line 12, 531

Capital gains

- \$800,000 capital gains deduction, 275
- • alter ego trust, opting out, 366
- beneficiaries using on flow through, 186
- • requirements for flow through, 186
- • reserves, applicable to, 577
- deemed gains at death, 191-192
- designation
- • capital gains, 180-198
- • taxable dividends, 193-197
- flow-through of income
- • attributed to minor under 104(18), 347
- designation of capital dividends, 197
- • designation of capital gains
- • beneficiary, considerations relating to, 185-186
- • capital losses, 190
- • dispositions of qualified farm or fishing property, 188-190
- dispositions of qualified small business corporation shares, 188-190
- distinguishing between designation of capital gains and flow through of income, 192-193

Capital gains (cont'd)

- • gains from deemed realizations, 191
- • generally, 180-181
- • making the designation, 186-188
- • qualifying, 182-183
- • special rules for alter ego, spousal and similar trusts, 191
- • terms and conditions of trust arrangement, 183-185
- • designation of taxable dividends, 193-197
- • example given QSBC, 278-279
- • generally, 179-180
- • preferred beneficiary election, 175-178
- • schedule 9 to trust return, 594-598
- land, 574
- qualified farm property, 188-190, 560-571
- qualified small business corporation shares, 188-190, 568-569
- reserves, 513-514, 577
- trust law versus tax purposes, 517-518

Capital gains exemption, see Capital gains

Capital interests

- cost to taxpayer, 256
- disclaimer of interest, 59-60
- gift of capital interest to charity, see Charitable remainder trusts

Capital losses

- 164(6) election, 286, 515-516, 531, 578
- affiliated persons rules, 144-145

- • inter vivos trusts, 255-256
- minor beneficiaries, 348-350
- • settlor, under subsection 75(2), 205-211
- • spouse beneficiary, 340
- · deemed losses at death, 285
- utilization of capital losses, 311-314
- year of death, 284, 285, 289

Capital property

- deemed realization, see Deemed realizations
- depreciable, 572-574
- dispositions of, 554
- proceeds of disposition, 212, 220, 512-513
- real estate, 572-574
- spouse and spousal trust, rollover, 340-341
- tax treatment on death, 562, 567
- utilization of losses, 311-314

Certainties of a trust

- in trust accounts, 347, 358
- intention, 15-16, 20
- objects, 17
- subject matter, 16

Charitable gifts, *see also* Charitable remainder trusts

- capital gains on property to qualified donee, 109-110
- deferred by administrative delay, 107-108
- deferred by terms of trust, *see* Charitable remainder trusts
- defined, 103
- discretionary transfers, 100, 105-106
- donation limits, 346-347, 369
- generally, 100-101

Charitable gifts (cont'd)

- income distributions to charities, 108-109
- made without authority, 107
- mandatory and discretionary transfers distinguished, 100, 103
- mandatory transfers, 100, 103-105
- rogue gifts, 106-107
- rules applicable to end of 2015, 101-102
- rules applicable to 2016 et seq., 102-103
- valuation, 81, 108, 370
- where donation credit unusable, 102
- year of death, 101-102

Charitable remainder trusts, see also Charitable gifts

- access to capital, 371-373
- administrative powers, 372
- alter ego trust as, 382
- · capital gains flow through, 380
- capital gains inclusion rate, 380
- claiming deduction or credit, 378-379
- concurrent strategies, 385
- even hand rule, impact, 386-387
- generally, 369-370
- gifts of income interest, 387
- gifts perfected by variation, contingency or disclaimer, 382-384
- inter vivos trust, 367, 379, 381, 388
- joint spousal trust as, 382
- multiple capital beneficiaries, 387-388
- multiple contributions, 370
- multiple income beneficiaries, 387-388
- ongoing taxation, 380-381

- other tax consequences for settlor, 379-380
- planning, conservative, 385-386
- planning with couples, 384-385
- present value calculations, 376, 386
- requirements to qualify, 80-83, 369-371
- setting up trust, 388-389
- settled with shares, 373
- · tax holiday, 384
- testamentary trust, as, 381
- triggering events other than death, 386
- types of property inserted, 377-378
- types of trusts qualifying, 381-382
- US charity, 81
- valuation issues, 373-376
- vesting requirement, 82

Children, see Minors

Clearance certificate, 170, 233, 473, 475-476

Committeeship, distinguished from trust, 25

Common-law partner trusts, see Joint spousal trust; Spousal or common-law partner trusts

Community property claims

- life insurance may avoid, 405-406
- shareability of trust interest, 34-36

Community property law, 34-36

Confidentiality

- alter ego trusts, 360
- insurance trusts, 389, 400
- secret and half-secret trusts, 7

Constructive trusts

• between spouses, 339-340

Constructive trusts (cont'd)

- defensive measure, 339
- generally, 15-16, 18

Contract

- distinguished from trust, 26
- impact on spouse trust, 329-330
- trust created by, 8

Contributions

- by living person, 48
- settlor, 8-10, 205-208, 255-256
- testamentary trusts, 39-47

Contributor, see Attribution

Cottage

- holding in trust, 254-255, 260-263
- principal residence exemption, 110-141

Creation of trusts

- express words or conduct, 20-21
- judicial intervention, 18-20
- law, 17
- operation of statute, 17-18
- tax deferral, 327, 331
- will, 40

Cy-près jurisdiction

- amending terms of charitable trust, 27-28
- designation of charity as beneficiary, 6

D

Death of taxpayer, *see also* Deemed realization at death

- capital losses, 283, 286-298
- capital losses; 164(6) election, 286, 291-292, 515-516, 531, 548, 578
- capital property, 254, 375

- charitable gifts, 101-103, *see also* Charitable gifts
- rollovers, 340-341

Deductible expenses

- accounting fees, 535-536, 541-542
- carrying charges, 535
- interest, 533-534
- legal, 536-537, 541-542
- re-loaned funds, 535
- trustees' and executors' fees, 537-540

Deductions

- allowable business investment losses, 540-541
- carrying charges and interest expenses, 535
- other carrying charges and expenses, 535
- trustee fees, 537-540

Deemed realization at death, *see* also Death of taxpayer

- alter ego, joint spousal and joint common-law partner trusts, 227
- estate, 45-47
- principal residence, 137
- spousal trusts, 231

Deemed realizations

- 21-year rule, *see* Twenty-one year deemed disposition
- amendment to trust, 228-230
- at death, see Deemed realization at death
- designation to beneficiaries, 191-192
- emigration of trust, 228
- flow through, see Distributions
- generally, 222-224
- planning for, 234-243

Deemed realizations (cont'd)

• trust transfers or mergers, 231-232

Deemed resident trust

- attribution rules, 444-445
- commonly used structures, 448-460
- connected contributor, 436-437, 460
- contribution, defined, 421-425
- contributor, 421
- disposition of taxable Canadian property, 641-642
- electing contributor, 414, 442-443
- electing trust, 439-440
- exempt foreign trust, 415
- extended transfer rules, 425
- foundation, 417
- generally, 460
- joint and several liability, 414, 446-447
- joint contributor, 414, 435
- non-resident beneficiary, 415
- resident beneficiary, 412-413, 415, 421, 429-430, 435-437
- resident contributor, 419-420
- resident portion, 414
- rules
- new rules, 413-417
- • old rules, 412-413
- successor beneficiary, 437
- tax filings, 637-639, 641-642
- transfer rules, 416, 425
- transferor, 412-413
- transitional rules, becoming resident, ceasing to be resident, 448
- treaty considerations, 417-419
- withholding tax, 415-416

Dependants' relief legislation

- avoiding, 363, 406
- trusts arising, 43, 330-331

Designated income, see Designations

Designations, *see also* Flow through of income

- designated beneficiary, 530, 555
- distinguishing between capital gains and flow through, 192-193
- RRSP designation, 380, 530-531
- subsections 104(13.1) and (13.2), 96, 167-172, 343, 348, 543
- capital losses, utilizing, 311-314
- • estates, 169
- exception to income treatment, 97-98
- • generally, 167-172
- • inter vivos trusts, 168
- jurisdiction shopping, 364
- • line 28 of T3, 543-544
- loss carryforward, 167
- • making designation, 186-188
- • minor beneficiary, overriding attribution, 348
- payment of the taxes, 170, 351
- • preferred beneficiary election, interaction, 172-179
- • schedule 9 to return, 594-598
- • spousal trusts, 169, 343
- • terms of trust arrangement, 183-
- • testamentary trusts, 169

Disability

- Henson-style trust, 31, 43
- lifetime benefit trust, 42-43
- preferred beneficiary election, 173
- qualified disability trust, 51, 84-85

Disability (cont'd)

• rollover for registered investments, 42-43

Disclaimer

- perfecting charitable gift, 382-384
- tainted spousal trust, and, 336-337
- vesting by, spousal trust, 70-71

Discretion

- defined, 11
- gifts to charity, 100
- incomes distributions, 108-109, 155-159
- transfers, 103, 105-106

Distributions

- capital to non-resident beneficiaries, 246-249
- deemed realizations, see Deemed realizations
- disposition of income interest in trust, 217-218, 245
- inter vivos trust, 48-49
- personal trusts, 218-222
- shares to beneficiaries, 245-246
- spousal trusts, 217-218
- to charity, see Charitable gifts
- withholding tax, 246, 556, 599, 641

Dividends

- · designation of taxable, 193-197
- flow through to beneficiary, 182, 511
- "kiddie tax", 159, 356
- taxable, 265, 271-274, 511
- TOSI rules, 159, 356-357

Division of ownership, 12-14

Ε

Elections

- bequests of capital property, 578
- capital gains exemption, 570-571
- loss carryback, 548
- preferred beneficiary election, 172-179
- principal residence, 111, 122, 138, 140-141
- qualified farm property, 224, 569

Emigration

- attribution, 207
- deemed realization, 228
- · deemed resident, 494
- residence, 89-94

Establishing a trust, 17-21

Estate

- administration, 21, 44-45, 234-243, 494-495, 539-540
- beneficiary, see Beneficiaries
- bonding, 364
- clearance certificate, 475-476
- distinguished from trust, 21-23, 39-47
- distribution of property, 617
- executor's year, see Executor's year
- fiscal period, 493
- holding vacant dwelling unit, 128
- insolvent, 473-474
- probate avoidance, 324, 400
- probate fees impacting ACB, 128
- residency, 89-94, 494
- taxation of, 44-45
- windup, 232-233

Estate freeze

· defined, 259-260

Estate freeze (cont'd)

- investment portfolio, 263-267
- private company shares, 267-270

Even hand rule, relating to investment, 386-387

Executor's year

- delayed administration, 44-45, 170
- generally, 44-45

Executors, see Personal representative

Expenses, see Deductible expenses

F

Failure to create trust

- contract, 26
- precatory language, 25

Farm or fishing property

- designation of gains, 188-190
- qualified farm or fishing property, 569-571

Federal foreign tax credit, 602

Fees, *see* Legal fees, Personal representative

Filing requirements, see Administration

Flow through of income

- capital gains, 180-181, 274-277
- death benefits, 180, 529-530
- deferred profit sharing plans, 180
- dividends, 179, 271-274, 545, 595
- eligible pension income, 595
- foreign source income, 180
- generally, 179-180, 270-271
- registered investments, 41-43, 180, 530-531
- trusts as conduit, 270-277

Foreign investment income, 523, 590

Foreign reporting

- beneficiaries, 449, 645-646
- contributor, 645
- penalties, 652-653
- summary table, 654
- trust, 449, 647-651

Foundation, 417

G

GAAR

- charitable remainder trust (and 118.1(18)), 377
- jurisdiction shopping (provincial), 30-31, 364
- kiddie tax (surplus stripping), 357
- TOSI rules, 357

Gifts

- attribution, 214, 350
- charitable, *see* Charitable gifts and Charitable remainder trusts
- conditional gift as fee for executor,
 539
- defined, 25, 100-101
- distinguished from trust, 25, 100-101
- income interest, 387
- inter vivos trusts, 252-255
- tax consequences, 255-256, 408
- will gifts, 25, 75, 539

Graduated rate estate

- capital losses, 286, 291-293
- charitable donations, 101-103, 106, 108
- defined, 37-38, 495

Graduated rate estate (cont'd)

- estate must qualify as testamentary trust, 39-40, 83
- fiscal period, 493
- flow through of income, 179-180
- loss of status, 40, 47-50
- minimum tax, 95-96
- multiple testamentary trusts prior to 2016, 54
- net capital losses, 98
- Part XII.2 exemption, 99, 171
- preferential tax treatment, 37-38
- principal residence exemption, 123, 128
- qualified disability trust, and, 85
- spousal trust, 326-328
- taxation year, 94, 137
- wind up of estate, and, 45, 169

Н

Henson-style trusts, 31, 43

1

Income

- attribution, see Attribution
- · benefits as form of income
- • generally, 163-165
- • total taxable benefits, line 24, 543
- • triggering filing requirement, 465-466
- business income, 524-525
- designations, see Designations
- dividend, 61-62, 193-197, 271-274, 344, 544-545
- entitlement to, see Income, payable
- farming income, 525-526
- fishing income, 525-526

- foreign investment income, 523, 535, 590
- general rules for inclusion and deduction, 96-97
- • exceptions, 97-98
- investment income, 523-524
- other, line 19, 541-542
- outlays for upkeep of property, as form of, 165-167
- payable, 155
- discretionary distributions, 155-157, 218
- non-discretionary distributions, 157-159
- payable to minor beneficiary, 165, 352-356
- payable to non-resident beneficiaries, 415
- property income, 213, 270, 349, 524, 527
- rental income, 526-527

Income-splitting

- attribution, 348
- insurance trusts, 407-408
- preferred beneficiary election, 172-173

Indefeasible vesting, *see* Spousal or common-law partner trusts

Indian band, as beneficiary, 5

Infants, see Minors

Information returns, completion of, 493-510

Insolvent estate, 473-474

Instalment taxes

- inter vivos trust, 258
- testamentary trust, 556

Insurance trusts

- avoiding dependants' relief claims, 406
- avoiding family property claims, 405-406
- beneficiary designation, 390-393
- confidentiality or secrecy, 403-405
- creditor proofing, 405
- funded with life insurance proceeds at death, 83-84, 390-407
- generally, 41, 83-84, 389-390
- insurance policy, proper fit, 406-407
- inter vivos insurance trusts, 400, 407
- last will and testament, establishing in, 41, 394-395
- planning considerations, 399-407
- probate planning, 401-402
- spousal trust, 400-401
- status as testamentary, 41, 399-400
- terms of trust, 394-399
- trust holding insurance policies, 407-408

In terrorem clauses, 335-336

In-trust accounts as trusts, 358-359

Inter vivos trusts

- attribution, 257-258, 342-343
- deemed realization, 222-224
- defined, 45-47, 50
- · distribution of capital, 48-49
- distribution to testamentary trust, 48-49
- establishing, 9-10
- generally, 251-252
- gift, 252-253
- minimum tax, 95-96, 553, 560, 607
- planning, 152-153, 251-259

- preferred beneficiary election, 173
- taxation, 255-259, 342, 354-355
- trusts settled with property from, 45-47

J

Joint and several liability [94(3)(d)], 446-447

Joint ownership, resulting trusts, and, 18-20

Joint spousal trust, *see also* Alter ego trusts

- deemed realization, 222-224, 366-367
- distribution of capital, 217-218
- divorce, impact of, 79
- donation limits, 369
- generally, 77-78
- income allocations and designations, 596
- planning, 384-385
- preferred beneficiary election, 173, 175-178
- principal residence, 133-137
- requirements, 77-79

Jurisdiction shopping, 364

Κ

"Kiddie tax", 159, 347, 356-357

L

Land inventory

- deemed disposition, 528-529
- deemed realization, 223
- · designated income, 555

Laws

- determining applicable provincial law, 33
- provincial variation, 26-32
- trust law distinguished from tax, law, 32-33

Lawyer's trust accounts, 17-18

Legal fees

- added to ACB, 128, 512, 573
- deductibility, 536-437, 541-542
- paid to administer estate, 541-542
- paid to collect income (deductible), 541-542
- paid to establish trust, 541
- paid to object to taxation (deductible), 541

Life estate

- defined, 25-26
- distinguished from trust, 25-26
- principal residence exemption, 115

Life insurance, *see also* Insurance trusts

- beneficiary designations, 390-393
- preferred and family beneficiaries, 393, 399
- proceeds
- new rules, 315-316
- • old rules, 314-315
- segregated funds, 577
- tainting spousal trust, 63

Life interest

- qualifying for principal residence exemption, 115
- supporting principal residence exemption, 115, 125

Life tenant and remainder person, distinguished from trust, 25-26

Lifetime benefit trusts, 42-43

Loss carryback

 utilizing capital losses in general, 98-99, 549, 551

M

Marital breakdown, see Community property claims

Merger

- blended testamentary trusts, 40-41
- · deemed realization, 231-232

Minimum tax

- basic exemption, 95-96, 607
- generally, 95-96
- inter vivos trusts, 94, 553, 607
- notice of objection, not applicable, 481
- testamentary trusts, 94, 607
- when applicable, 553

Minors

- age forty trust, 186
- attribution of income, 348-357
- generally, 77, 348
- in-trust accounts, 358-359
- "kiddie tax", 159, 347, 356-357
- pent up income, 352-356
- promissory note, 157
- TOSI rules, 159, 356-357

Mutual funds, 61, 188, 224, 229, 266, 371, 421

N

No-contest clauses, 335

Non-resident beneficiaries

- Part XIII tax, 198, 246, 599
- withholding taxes, 246, 555, 599-601

Non-resident trusts

- attribution rules, 444
- becoming resident [94(3)(c)], 447-448
- ceasing to be resident [94(5)], 448
- common law test, 402-412
- · commonly used structures
- close connections trust, 459-461
- • immigrant trust, 450-452
- inbound trust, 449-450
- • no connections trust, 458-459
- • offshore trust, Canadian beneficiaries, 456-457
- • outbound trust, 452-55, 461
- deemed resident, 412-417, 436-437
- electing contributors, 434-435
- filing, 465-466, 638-641
- joint contributor, 435
- resident beneficiary
- • connected contributor, 436-437
- • defined, 435
- • successor beneficiary, 437
- resident contributor
- • contribution, 421-425
- contributor, 421
- • extended transfer rules
- • death [94(2)(j)], 429-430
- • generally, 425
- guarantees, financial assistance, [94(2)(d)], 426-427
- • inadequate consideration [94(2)(a)], 425-426

- ••• indirect transfers [94(2)(c)], 426
- • interest of trust [94(2)(q), (r)], 433-434
- • loan by financial institution [94(2)(v)], 434
- • obligation to transfer [94(2)(i)],
- partnership to trust contribution [94(2)(o)], 432-433
- • services [94(2)(f)], 427
- • share subscriptions [94(2)(g)], 428-429
- • transfer for services [94(2)(k.1)], 431
- • transfer to corporation [94(2)(m)], 431
- ••• transfers involving others [94(2)(k), (1)], 430-431
- • transfers required by securities law [94(2)(s)], 434
- • trust to trust contribution [94(2)(n)], 431-432
- • generally, 419-420
- • specified time, 420
- · taxation of
- • electing trust, 439-440
- • foreign tax credit and deduction, 440
- • generally, 437-438
- income tax paid and payable to beneficiary, 440-442
- • income taxed in trust, 438
- tax filings
- • deemed resident trust, 637-639
- disposition of taxable Canadian property, 641-643
- • generally, 637
- • non-resident trust, 639-641

Non-resident trusts (cont'd)

• treaty consideration, 417-419, 641-642

0

Overholding, *see* Spousal or commonlaw partner trusts

P

Perpetuities

• Saunders v. Vautier, 27-30

Personal representative

- bonding requirement, 365
- clearance certificate should be obtained, 473
- conditional gift as fee, 539
- executor distinguished from trustee, 22
- executor's year, see Executor's year
- fees of, 338, 541-542
- · fees incurred by
- • deductibility against estate income, 541-542
- liability, 473-474
- residency of, 11

Personal trust defined, see Trusts

Pipeline strategies, *see also* Postmortem planning

- capital gains exemption and, 307-308
- description and example, 305-307
- non-residents and, 308-309

Post-mortem planning

- buy-sell agreements, 319-320
- · capital losses of estate
- Canadian private corporation, 287-290

- • capital property, 286
- • depreciable property, 292
- • foreign corporation, 295
- • other property, 293
- • partnership, 293-294
- • part-ownership, 295-298
- special rules, 290-292
- stock options, 292-293
- • time of disposition by graduated rate estate, 286
- combining the strategies, 309-311
- distributions to beneficiaries, 320-321
- estate freeze, 321
- generally, 283-284, 317-319
- pipeline strategy
- • capital gains exemption and, 307-
- description and example, 305-307
- • non-residents, 308-309
- planning objectives, 283-284
- share redemption on death, 314-317
- step-up strategy, 298-305
- stop-loss rules, 145, 314-317
- testamentary trusts, 321
- utilization of capital loss, 311-314

Power of appointment, distinguished from trust, 24

Power of attorney

- attorney establishing in trust, 8-10
- distinguished from trust, 24-25

Preferred beneficiary election

- calculations, 175-177
- · capital gains, 183
- generally, 172-173
- impairment, nature of, 174

Preferred beneficiary election (cont'd)

- late filing, 178
- life insurance preferred beneficiary, 393
- making election, 177-179
- qualifying beneficiary, 173-175
- relationship to settlor, 172
- TOSI, and, 178-179

Principal residence exemption

- alter ego trust, 111, 136-137
- beneficially interested, 113, 124-127
- change in use, 111, 129-131
- competing designation, 131-133
- conditions for use of, 112-113
- contiguous land, 116
- designation of, 140-141
- estate claiming principal residence, 123
- foreign property, 114
- generally, 110-111
- · houseboat, 114
- housing unit, 114-115
- included land, 116-121
- inserting principal residence into trust, 133-134
- joint ownership, 123
- joint spousal trusts, 136-137
- land exceeding one-half hectare, 117-118
- leasehold interest, 115
- life interest, 115
- • distinguished from life estate, 25-26
- mansions, 120
- minor beneficiary trust, 112
- mixed use, 121-122
- mobile home, 112

- ordinarily inhabited, 127-131
- ownership, 122-124
- personal trusts eligible, 111-112
- principal residence defined, 110
- · qualified disability trust, 112
- renting out principal residence, 129
- · required for infrastructure, 118
- share in co-operative housing corporation, 115, 123
- size of lot, 118
- spousal trust, 111, 133-137
- subjacent land, 116
- transferring principal residence out of trust, 134-137
- type of property, 114-115
- used by specified beneficiary, 124, 129-131, 137-140
- · vacant land, 114
- vacant unit, 128
- · vacation use, 129
- zoning restrictions, *see* land exceeding one-half hectare

Probate avoidance

- alter ego and joint spousal trust, 360-361
- insurance trusts, 400
- protector, 11-12
- RRSP trusts, 41-43

Promissory note

- capital property disposed of by trust, 571-572
- · discretionary distribution, 156
- formal requirements for note, 156
- minor involved, 157
- reserve for proceeds not due, 513-514

Promissory note (cont'd)

• supporting designation of capital gain, 184

Provincial considerations

- conflict of laws, 33
- generally, 26-32
- perpetuities and accumulations, 30-32
- Saunders v. Vautier, 27-30

Purpose trusts

- charity, 6
- cy-près doctrine, 6, 28
- pets, funeral monuments, 5

Q

Qualified disability trusts, 84-85, 112, 495

R

Rectification

- · generally, 28-29
- Juliar v. Canada, 29
- spousal trust, 333, 337

Registered investments

- rollover into lifetime benefit trust, 42-43
- RRSP
- calculating taxes owing, 530
- • trusts, 41-43

Remuneration of executors, 537-540

Resealing, 364

Reserves

- capital gains, 617
- capital property, 577
- proceeds not due, 513-514
- proceeds not due, 513

Resettlement as deemed realization, 230

Residency

- appointment of managing trustee, 92
- common law test, 409-412
- completing return, inserting residence, 494
- filing where resident, 465
- generally, 31, 89-94
- jurisdiction shopping, 364
- resident contributor, 419-420
- treaty considerations, 417-419
- trust company as trustee, 93

Resulting trusts

- between spouses, 339-340
- defensive measure, 339
- generally, 15, 18-20

Returns, information, completion of, 493-510

Rollouts

- deemed realization, planning for, 235
- principal residence exemption, and, 135-136
- spousal trusts, 217-218, 232
- taxable distributions, and, 219-222
- tax-deferred, personal trusts, 218-222
- unavailable if 75(2) attribution, 214-215

Rollovers

- interest in family farm partnership, 569
- opting out, 366
- principal residence, 133-137
- qualified farm property, 569

Rollovers (cont'd)

- qualified fishing property, 569
- shares of family farm corporations, 569

RRSP/RRIF, *see* Registered investments

S

Saunders v. Vautier, 27-30

Secret trusts, 7, 403-405

Self-benefit trust

- distinguished from alter ego trust, 360
- generally, 80, 254
- transfer of property to, 567

Settlor

- attribution of income, *see* Attribution
- defined, 8-10
- First Nation, 8
- generally, 3, 4
- hidden beneficiaries, and, 7
- resident contributor, 414
- tax consequences, 255-256

Shareability of trust interests, *see* Community property claims

Shareholders agreement, impact on spousal trust, 68

Small business corporation shares

- \$800,000 capital gains deduction, 186, 189, 277
- designating capital gains to beneficiaries, 181
- qualified small business corporation shares (QSBC), 188-190, 224, 278-279, 568-569

Sole trustee, see Trusts

Spousal trusts

- attribution to settlor spouse, 342-343
- capital
- building capital, 343-346
- encroachments, 183
- • restricting spouse's access, 329-330
- community property applications, 329
- consequence of death requirement, 65-66, 330
- constructive and resulting trusts, 339-340
- continuing trust (overholding), 332
- court order, impact of, 336-337
- death of survivor, deemed realization at, 332-333
- debts, payment by trust, 334, 338-339
- · dependants' relief
- • attack by spouse, 329-330
- establishing trust under, 330-331
- designating income under 104(13.1) and (13.2), 96, 343
- disclaimer
- • non-spouse, by, 70-71, 336
- • spouse, by, 70-71, 336-337
- discretion to retain income, 59-60
- dividend income, 61-62
- divorce, ending attribution, 343
- donation limits, 346-347
- drafting
- common errors, 333-335
- • demarcation between estate and trust, 58
- • retaining income, 341-342

Spousal trusts (cont'd)

- • timing of vesting, 74-75
- entitlement to income, 51-62
- established by will, 77-79
- expenses, payment by trust, 39, 49, 63
- funding considerations, 324-325
- harvesting losses, 325
- holding company, 238-239, 344-346
- income
- • attribution, 342-343
- • discretion to recapitalize, 59-60
- • entitlement to, 51-62
- • exceptions, 61-62
- • must be reserved to spouse, 62-65
- • splitting, 323, 327-328
- • use prior to vesting, 56-59
- indefeasible vesting, *see* vest indefeasibly
- independent legal advice, 329
- insurance trust, 400-401
- in terrorem clauses, 335-336
- inter vivos, requirements for, 52
- investments, selecting, 343-344
- lending money, 65
- life insurance on surviving spouse, 63-64
- loss of status, 341-342
- merger with other trust, 231-232
- minimum tax, exempt from, 95-96
- multiple trusts, see Multiple trusts
- opting out of special tax treatment, 340-341
- overholding assets, 332
- planning
- • dependants' relief legislation, 330-331

- • graduated rate estate, 323
- • harvesting losses, 325
- • income splitting no longer available, 323
- marginal tax brackets, 323
- • proper funding, 324-325
- • second marriages, 328-330
- • two-headed and three-headed structures, 326-328
- probate fees, 324
- quit claim deeds, 329-330
- renting out property, 65
- · requirements
- • Canadian residency, 54
- inter vivos, 52
- • testamentary, 52-54
- rollout of assets out of trust, 218-219
- · rollover of assets into trust, 340-341
- second marriages, 328-330
- shareholders' agreements, 314
- tainting
- express definition of net income, 334-335
- • other beneficiaries, 62-65
- untainting, 336-339
- testamentary, requirements for, 52-54
- three-headed, 326-328
- transferred or distributed requirement, 75
- trust busting, 335
- twenty-one year realization, exempt,
- two-headed, 326-328
- variation, not curing tainted trust, 336-337

Spousal trusts (cont'd)

- · vest indefeasibly
- • administrative delay, 74-75
- • allocation into parts, 58
- • conveyance not required, 70
- • court order, by, 71-73
- • disclaimer, by, 70-71
- • generally, 66-69
- • judgments, 71-73
- • quit claim deeds, 329-330
- shareholders agreement, impact of, 68
- survivor dying prior, 332
- • terms of will, 76-77
- • timing of, 74-75
- withholding capital gains, 68

Statute of Frauds, 20

Stop-loss rules, 145, 314-317

Successive testamentary trusts, 40

Т

Tax credits, 545, 556-558, 602, 641

Tax deferred rollouts, 218-219

Tax on split income (TOSI)

• "kiddie tax", 159-162, 347, 356-357

Taxable distributions, 219-222

Taxation year

- · calendar year, 94
- graduated rate estate, 94

Testamentary instruments, 8, 20, 42, 201

Testamentary trusts, see also Estate

- alter ego trust cannot fund, 367
- arising on death, 23
- blended, 40-41

- defined, 37, 39-47
- designated income, 554-555
- graduated rate estates, 37-38
- • taxation year, 94
- loss of status, 47-50
- minimum tax, 95-96, 560, 607
- multiple trusts, see Multiple trusts
- qualifying and non-qualifying, 39
- reassessment, 477-478
- selecting trustees, 154, 254
- successive testamentary trusts, 40

TOSI rules, 159-162, 181, 194, 241-242, 258-259, 265-266, 268, 271, 274, 327, 345, 350, 351-352, 356-357

Trust schedules and forms

- beneficial ownership information, Schedule 15, 614-616
- cumulative net investment loss, Schedule 4, 584-586
- dispositions of capital property, Schedule 1
- • bonds, debentures, promissory notes, 571-572
- capital gains from gifts of other capital property, 577-578
- • capital gains (or losses) from reserves, 577
- disposition defined, 566-568
- generally, 561-565
- • information slips, 577
- • listed personal property, (LPP), 576-577
- • mutual fund units and other shares, 571
- • personal use property, 576
- • principal residence, 574-575

Trust schedules and forms (cont'd)

- • qualified farm or fishing property, 569-571
- qualified small business corporation shares (QSBC), 568-569
- • real estate and depreciable property, 572-574
- total capital losses transferred under 164(6), 578
- • valuation day considerations, 575-576
- eligible taxable capital gains, Schedule 3, 581-583
- federal income tax, Schedule 11, 602-606
- generally, 617-618
- income allocations and designations to beneficiaries, Schedule 9, 594-598
- investment income, carrying charges, and gross-up amount of dividends retained by trust, Schedule 8, 590-593
- minimum tax, Schedule, 12, 607-613
- Part XII.2 tax and Part XIII nonresident withholding tax, Schedule 10, 599-601
- pension income allocations and designations, Schedule 7, 587-589
- reserves on dispositions of capital property, Schedule 2, 579-580

Trustees

- bankrupt person as, 11
- bare, 24, 26
- defined, 10-12
- delegation of duties, 494
- duties, 10-11

- exemption clauses, 10
- protector role, 11-12
- · residency, see Residency
- selecting, 154, 254
- trustee fees, 537-540

Trusts

- amended slips, 633
- charitable gifts, see Charitable gifts
- constructive, 339-340
- creation of, 17-21
- creditor proofing, 41, 237, 360, 363, 405
- defined, 3
- discretionary and non-discretionary, 155-159
- distinguished from other relationships, 21-26
- division of ownership, 12-14
- insurance trusts, see Insurance trusts
- multiple testamentary, *see* Testamentary trusts
- parties to, 4
- personal trusts, defined, 495
- preferred beneficiary election, *see* Preferred beneficiary election
- purpose trusts, 5-6
- qualified disability trust, see Qualified disability trust
- residency, 31, 89-94, 409-419, *see also* Residency
- resulting trusts, 18-20, 339-340
- special purpose trusts, 51-85
- spousal trusts, see Spousal or common-law partner trusts
- tainted spousal trusts, see Spousal or common-law partner trusts
- tax-deferred rollouts, 218-219

Trusts (cont'd)

- taxable distributions, 219-222
- testamentary, *see* Testamentary trusts
- three certainties, 14-17
- twenty-one year deemed disposition, see Twenty-one year deemed disposition
- variation, see Variations
- winding up, see Winding up of a

Twenty-one year deemed disposition

- alter ego trusts, exempt, 367
- confusion with perpetuities rule, 31-32
- designating gain to beneficiary, 191
- generally, 224-226
- indefeasibly vested interests, exempt, 225
- joint spousal trusts, exempt, 366-367
- line 11 of return, 529
- merging multiple trusts, 231-232
- planning for deemed realization, 234-243
- preferred beneficiary election, designation, 177-178
- rollouts to avoid, see Rollouts
- spousal trusts, exempt, 51, 225, 332
- weathering the deemed realization, 242

٧

Variations, see also Rectification

- generally, 27-30, 235-236
- loss of status as testamentary, 47-50

- Saunders v. Vautier, 27-30
- tainting pre-1971 *inter vivos* trusts, 501
- triggering capital gains, 229-230, 496

Verbal trusts, 20

Vest indefeasibly, *see* Spousal or common-law partner trusts

W

Wealth preservation

- generally, 277-279
- · loan to beneficiary, 280-281
- use of property by beneficiary, 279-280

Wills, see also Testamentary trusts

- demarcation between estate and trusts, 58
- discretion to retain income, 59-60
- drafting errors, spousal trust, 63, 333-335
- encroachment clauses, 183-185
- insurance trust, establishing, 390-407
- residency of executors, 11
- successive trusts, 40
- timing of vesting, 74-75

Winding up of a trust

- clearance certificate, 475-476
- distributing shares, 245-246
- final return, 496-498
- generally, 232-233
- income vs. capital beneficiaries, 244-245

Winding up of a trust (cont'd)

- non-resident beneficiaries, 246-249
- planning for deemed realization, 234-243
- rollouts, 232-233
- tax consequences to beneficiary, 243-244

Withholding taxes

• distributions from deemed resident trusts, 417

- foreign business income tax paid, 628
- Part II.2 tax, 99, 640
- Part XIII tax, 641
- receiving income, 641
- schedule 10, 599-601