

BETWEEN:

FIDUCIE FINANCIÈRE SATOMA

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on October 27 and 28, 2016, at Montréal, Quebec.

Before: The Honourable Madam Justice Lamarre, Associate Chief Justice

Appearances:

Counsel for the Appellant:	Vincent Dionne Wilfrid Lefebvre
Counsel for the Respondent:	Natalie Goulard Sara Jahanbakhsh

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**JUDGMENT**

The appeals from the assessments issued under the *Income Tax Act* for the 2005, 2006 and 2007 taxation years are dismissed, with costs in favour of the respondent.

The parties may, if they wish, make submissions regarding the costs, which must be submitted within 30 days of the signing of the judgment; otherwise, the respondent will be entitled to costs in accordance with Tariff B of the *Tax Court of Canada Rules (General Procedure)*.

Signed at Ottawa, Canada, this 1st day of June 2017.

“Lucie Lamarre”  
\_\_\_\_\_  
Associate Chief Justice Lamarre

Translation certified true  
on this 31<sup>st</sup> day of January 2018.

François Brunet, Revisor

Citation: 2017 TCC 84  
Date: 20170601  
Docket: 2014-3800(IT)G

BETWEEN:

FIDUCIE FINANCIÈRE SATOMA

Appellant,

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**REASONS FOR JUDGMENT**

Associate Chief Justice Lamarre

[1] Fiducie financière Satoma (**the Appellant** or **Fiducie Satoma**) is appealing from assessments issued by the Canada Revenue Agency (**CRA**) for the 2005, 2006, and 2007 taxation years.

[2] The assessments under appeal are based on the CRA's application of the General Anti-Avoidance Rule (**GAAR**) set out in section 245 of the *Income Tax Act* (**ITA**),<sup>1</sup> in response to the tax planning orchestrated by the appellant's advisors, whereby the application of subsection 75(2) of the ITA (a specific anti-avoidance rule) was voluntarily triggered.

[3] More specifically, at issue is the payment to the appellant of dividends totalling \$6,250,100 by 9163-9682 Québec Inc. (**9163**) during the years at issue.

[4] The appellant did not redistribute those dividends to its beneficiaries. Consequently, the appellant should normally have been taxed on the funds received from 9163 during the years at issue.

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<sup>1</sup> All provisions of the ITA referred to in these reasons for judgment are included in Appendix III at the end of these reasons.

[5] However, under subsection 75(2) of the ITA, those dividends were attributed to one of the appellant's beneficiaries, 91341024 Québec Inc. (**9134**), on a tax-free basis for Fiducie Satoma and, as will be seen further on, for its other beneficiaries as well.

[6] In a partial agreed statement of facts filed as Exhibit A-1, the parties related all the transactions that were conducted to transfer the total amount of \$6,250,100 to the appellant, which is the amount at issue here. This partial agreement of facts is attached to these reasons in Appendix 1. A simplified diagram of the structure set up (Appendix II) is also included after the partial agreement to help explain the issue.

[7] Applying subsection 75(2) of the ITA, 9134, which had included the dividends in its income, was able to claim the deduction under subsection 112(1) of the ITA for intercorporate dividends (applying subsections 104(13) and 104(19) of the ITA), thereby bringing the taxable income from those dividends to zero.

[8] Through that strategy, the appellant was able to retain the full amount of the dividends received tax-free and that amount could not be taxed if it were eventually distributed to the beneficiaries.

[9] The evidence showed that those funds initially came from Gennium produits pharmaceutiques Inc. (**Gennium**), whose shares were held by Louis Pilon and Fiducie familiale Louis Pilon. Gennium is a corporation that specialized in generic drug distribution.

[10] Louis Pilon wanted to use Gennium's profits to expand his activities to include drug manufacturing.

[11] From the start, the intention was to completely separate Gennium's distribution activities from the manufacturing activities, given the high risk of litigation in that field.

[12] Fiducie Satoma, the appellant, was created with the intent that, as a trust, it would invest the funds from Gennium in new corporations to be created for drug manufacturing activities. By investing through Fiducie Satoma, the goal was to shield the assets from any potential lawsuits from creditors.

[13] Mr. Pilon explained that he gave his tax advisor, François Proulx, a mandate to set up an organizational structure to be able to transfer funds from Gennium to

the new entities to be created, while minimizing the tax payable and ensuring the protection of assets.

[14] Thus, although Fiducie familiale Louis Pilon already existed, Mr. Proulx initiated the tax planning to transfer the profits from Gennium to another trust, Fiducie Satoma, on a tax-free basis. Fiducie Satoma then invested the majority of those funds in corporations created for drug manufacturing.

[15] It is worth noting here that all the plan was based on the creation of a reversionary trust (Fiducie Satoma) (which Fiducie familiale Louis Pilon was not) with the intention of voluntarily triggering the application of subsection 75(2) of the ITA. Under this provision of the ITA the trust income must be attributed to the person who transferred the property to the trust if the property can revert to that person or if it can be transferred to a person of his or her choice. This is an attribution rule that stipulates that any income resulting from the transferred property and from any property substituted therefor is deemed to belong to the person who transferred the property to the trust.

[16] If we carefully analyze the tax plan, Gennium distributed dividends to Fiducie familiale Louis Pilon (which, I repeat, is not, itself, a reversionary trust to which subsection 75(2) of the ITA would apply).

[17] Fiducie familiale Louis Pilon distributed those dividends, in the year they were received, to 9134, one of its beneficiaries, which had not engaged in any commercial activity since 2005. Fiducie familiale Louis Pilon then used the deduction under subsection 104(6) of the ITA, such that it did not have to pay tax on those dividends.

[18] In turn, 9134 included those dividends in its income, in accordance with subsection 104(13) of the ITA, but claimed the deduction for intercorporate dividends in subsection 112(1) of the ITA, by applying subsection 104(19) of the ITA, which allows the beneficiary to process the income, based on the nature of the income, on behalf of the trust (dividend income).

[19] The appellant created 9134, which is also its beneficiary. Louis Pilon is 9134's only shareholder.

[20] Corporation 9134 then gave the appellant a gift of \$100, which the appellant used to acquire Class F shares from 9163 (another corporation with no commercial activities)—the shares from 9163 becoming the substituted property. This gift

triggered the application of subsection 75(2) of the ITA, such that all income from the substituted property (dividends on shares held by the appellant in 9163) had to be attributed, for tax purposes, to 9134 (the person who transferred the property without consideration while retaining the right of reversion, as a beneficiary.)

[21] The corporation 9134 then contributed to 9163's capital by paying, as a contributed surplus, the funds from the dividends it received from Fiducie familiale Louis Pilon.

[22] The corporation 9163 then paid those funds to the appellant as dividends.

[23] The appellant did not have to include those dividends in its income because, under subsection 75(2) of the ITA, 9134 had to include them in its income. That corporation claimed the deduction for dividends in subsection 112(1) of the ITA and therefore did not pay any tax on those amounts.

[24] The result of the transactions described above (paragraphs 17 to 21) was that 9134 was stripped of its assets in favour of the appellant, without paying any tax.

[25] The appellant subsequently invested \$4,575,000 in shares of various companies to engage in drug manufacturing activities (4273702 Canada Inc. (427)—which in turn, invested in JAMP Pharma Corporation (**JAMP**) and Nutralife—and Technologie & Services RX Inc. (**RX**)).

[26] To date, the appellant has not made any payments to the beneficiaries.

[27] It is not disputed that the appellant is a reversionary trust and that the conditions have been met for the application of subsection 75(2) of the ITA.

[28] It is also important to note that when a trust's income did not become payable to a beneficiary during the year (as is the case here where no funds were actually paid to any of the appellant's beneficiaries), it accumulates in the trust for the beneficiaries. Normally, this income is taxable in the trust and any subsequent distribution of this accumulated income will be deemed a non-taxable distribution of the trust's capital (Marc Cuerrier, "L'impôt des fiducies", *Revue de planification fiscale et successorale*, 1996, vol. 18, no 4, 802-872). (Tab 23 of the Respondent's book of authorities).

[29] If this income is taxable in the hands of the person who transferred the property to the trust with a right of reversion, by applying subsection 75(2) of the

ITA, the CRA does not consider this amount taxable in the hands of the trust's beneficiary if the trust subsequently redistributes this revenue. This is explained by the fact that the income was already included in the income of the person who, under subsection 75(2) of the ITA, is deemed to have earned the income and that income is therefore considered part of the trust's capital (CRA Views, Taxnet Pro, document 9411115 - Attribution). (Tab 7 of the Appellant's book of authorities).

[30] However, it should be noted that subsection 75(2) does not expressly provide that the income attributed in this way to the person who transferred the property is deemed not to be income for the trust, as is the case for other provisions of the ITA that deal with attribution rules (see, for example, section 74.1 of the ITA, that pertains to attribution rules in the case of a transfer between spouses or common-law partners). However, the CRA confirmed in its Tax Interpretation Bulletin, IT-369R, that any income to which subsection 75(2) of the ITA applies is not deemed to be the beneficiary's revenue (Brenda L. Crockett, "Subsection 75(2): The Spoiler" in "Personal Tax Planning" (2005) 53:3 Canadian Tax Journal 831. "Subsection 75(2): The Spoiler" in "Personal Tax Planning" (2005) 53:3 Canadian Tax Journal 806. (Tab 25, page 11 of 21) of the Respondent's book of authorities).

[31] Paragraph 10 of Interpretation Bulletin 369R states that an amount which has been attributed to a person under subsection 75(2) is normally to be excluded from the income of a beneficiary of the trust to whom it was paid or payable in the year, and from the income of the trust where it was not paid or payable to the beneficiary of the trust.

[32] Moreover, the Federal Court of Appeal ruled in *Sommerer v. Canada*, 2012 FCA 207, [2014] 1 FCR 379, at paragraph 55, that nothing in subsection 75(2) contemplates an outcome involving the attribution of the same gain to more than one person. The Court of Appeal added: "This double application of subsection 75(2) cannot be avoided by a discretionary use of subsection 75(2), because it is not a discretionary provision. It applies automatically to every situation it describes."

[33] In this context, the CRA did not tax Fiducie Satoma (the appellant) on the dividend income in accordance with the tax rules applicable to trusts, but, instead, decided to invoke the GAAR to include the dividend income attributed to 9134 in the appellant's income, in spite of the fact that, in its Interpretation Bulletin, it took the position of avoiding double taxation.

[34] According to the CRA, the intentional use of subsection 75(2) to attribute dividend income to a corporation which claims a dividend deduction under subsection 112(1) of the ITA, resulting in neither the trust nor its beneficiaries being taxed on the dividend income, constitutes tax avoidance within the meaning of subsection 245(2) of the ITA (Maria Elena Hoffstein and Michelle Lee, “Revisiting the Attribution Rules” 2012 Ontario Tax Conference, Toronto, Canadian Tax Foundation, 2012) 9 : 1-40). (Tab 28, page 27 of 44 of the Respondent’s book of authorities).

[35] According to the respondent, the appellant obtained a clear tax benefit by completely avoiding all forms of taxation. The respondent claims that this benefit is the result of a series of transactions leading to a clear abuse of subsections 75(2) and 112(1) of the ITA and therefore the GAAR should be applied.

[36] According to the appellant, this case does not involve a tax benefit at this stage. The appellant submits that the tax benefit will only be obtained if it distributes the untaxed funds to its beneficiaries, more specifically, if the funds are distributed to a beneficiary who is an individual.

[37] The appellant is not disputing that, if there were a tax benefit, it would be the result of a series of transactions leading to avoidance.

[38] However, the appellant submits that it is not reasonable to consider that this series of transactions entailed an abuse of subsections 75(2) and 112(1) of the ITA.

### **Analysis**

[39] At issue is whether or not the GAAR should be applied.

[40] In the words of the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 SCR 601, 2005 SCC 54, at paragraph 16, “The GAAR draws a line between legitimate tax minimization and abusive tax avoidance. The line is far from bright. The GAAR’s purpose is to deny the tax benefits of certain arrangements that comply with a literal interpretation of the provisions of the Act, but amount to an abuse of the provisions of the Act.”

[41] Thus, in response to the appellant’s argument that it simply applied the provisions of subsections 75(2) and 112(1) of the ITA and therefore complied with the law, *i.e.* the provisions of the ITA, the respondent argues that the tax plan carried out crossed the line into tax avoidance.



[42] The appellant submits that by invoking the GAAR, the respondent is indirectly doing what it cannot do directly, as it is taxing two taxpayers on the same amount, which is contrary to the doctrine propounded by the Federal Court of Appeal in *Sommerer*, above. Given that 9134 already included the dividend amount distributed to the appellant in its income, it submits that the respondent cannot include that income in the appellant's income a second time.

[43] The Supreme Court of Canada has responded to that argument, for instance, in *Cophorne Holdings Ltd. v. Canada*, [2011] 3 SCR 721, 2011 SCC 63 at paragraph 66: "The GAAR is a legal mechanism whereby Parliament has conferred on the court the unusual duty of going behind the words of the legislation to determine the object, spirit or purpose of the provision or provisions relied upon by the taxpayer. While the taxpayer's transactions will be in strict compliance with the text of the relevant provisions relied upon, they may not necessarily be in accord with their object, spirit or purpose."

[44] I would add that the GAAR was not at issue in *Sommerer*, above.

[45] However, the application of the GAAR is a remedy of last resort (*Cophorne*, paragraph 66), which is why a rigorous analysis, as provided for in section 245 of the ITA, is necessary.

[46] As stated in *Trustco*, at paragraph 17, the application of the GAAR involves three steps. The first step is to determine whether there is a "tax benefit" arising from a "transaction" under s. 245(1) and (2) of the ITA. The second step is to determine whether the transaction is an avoidance transaction under s. 245(3), in the sense of not being "arranged primarily for bona fide purposes other than to obtain the tax benefit". The third step is to determine whether the avoidance transaction is abusive under s. 245(4). The burden is on the taxpayer to rebut the first two conditions and on the respondent to show that the third condition is not (*Trustco*, paragraph 66).

### **Tax benefit**

[47] The phrase "tax benefit" is defined in subsection 245(1) of the ITA as follows:

"tax benefit" means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act. It includes a reduction, avoidance or deferral of tax or other amount that

would be payable under this Act but for a tax treaty or an increase in a refund of tax or other amount under this Act as a result of a tax treaty;

[48] The issue of whether there is a tax benefit is a question of fact (*Trustco*, paragraph 19). If the tax benefit is not clearly established, it will be established by comparison with an alternative arrangement. In all cases, it must be determined whether the taxpayer reduced, avoided or deferred tax payable under the under the ITA (*Trustco*, paragraph 20).

[49] In comparing the taxpayer's situation with the situation that would have resulted from an alternative arrangement, the latter must be one that might reasonably have been carried out but for the existence of the tax benefit (*Cophorne*, paragraph 35).

[50] In this case, the respondent submits that the tax benefit is obvious because the appellant received \$6,250,100 in tax-free dividends through the voluntary application of the specific anti-avoidance rule in subsection 75(2) of the ITA.

[51] As for the appellant, it submits that there is no tax benefit, as long as the appellant does not distribute the funds to its beneficiaries. On the basis of the comments of Justice Rothstein, of the Federal Court of Appeal at the time, in *OSFC Holdings Ltd. v. Canada*, [2002] 2 FCR 288, 2001 FCA 260, at paragraph 42, the appellant argues that even if all the transactions that were carried out were part of a plan through which a person could potentially obtain a tax benefit, those transactions entail no tax benefit for that person if the person was not involved in the series of transactions.

[52] According to the appellant, there is, at most, a potential tax benefit, in that the appellant could choose to distribute the funds to its beneficiaries, who are individuals that would receive those funds on a tax-free basis. However, this type of benefit would not exist if the trust chose to distribute those funds to its beneficiaries that are corporations because shareholders of those corporations would pay the tax when they received dividends from those corporations.

[53] Thus, as the appellant argues, there might never be any distribution to individual shareholders and that no one would obtain an actual tax benefit. Moreover, the appellant points out that no funds have been distributed to the beneficiaries to date. Rather, the appellant invested in the underlying corporations that were created to engage in commercial activities not engaged in by Gennium.

[54] The appellant also submits that it could have achieved the same result by returning the dividends received to 9134, which could have either invested the funds in the trust or invested them directly in 427 and RX. In that case, the CRA would not have invoked the GAAR because the appellant would have distributed the funds to one of its beneficiaries.

[55] Another possibility presented by the appellant was that 9134 could just as well have made a much larger donation instead of going through 9163, or simply made a donation to Fiducie familiale Louis Pilon, so that the latter would itself invest in the new corporations that were created, 427 and RX. It submits that such cases would involve a contribution to the appellant's capital or Fiducie familiale Louis Pilon's capital, and that the CRA would not have deemed those amounts to be taxable for that trust.

[56] In my opinion, none of those examples hold water.

[57] The evidence shows that Mr. Pilon wanted to add a trust to the organizational chart to protect his assets.

[58] However, Fiducie familiale Louis Pilon already existed for that purpose. In spite of everything, the decision was made to create a new trust (Fiducie Satoma, the appellant) in order to take advantage of a reversionary trust to make use of the anti-avoidance rule provided for in subsection 75(2).

[59] It is clear that this new trust was created to reduce to zero the tax impact of transferring funds from Gennium to the assets of this new trust. The new trust could then dispose of them as it chose. It could invest in the new corporations to be created to manufacture drugs, but it could also distribute the funds to its beneficiaries on a tax-free basis for the beneficiaries.

[60] Were it not for the need to go through a trust, it is true that Gennium could have transferred the money into other corporations without any tax consequences, which would not have been a problem. Indeed, under the integration theory, the ITA allows intercorporate dividends to be paid on a tax-free basis until they leave the hands of the corporation and are paid to shareholders who are not corporations and who will pay the tax at that time (Paul Bleiwas and John Hutson, *Taxation of Private Corporations and Their Shareholders*, 4th ed., Toronto, Canadian Tax Foundation, 2010, « Theory of integration », p. 2:4).

[61] From the moment the decision is made to withdraw the money from the companies' regime, the income belonging to an individual—including a trust, which is deemed to be an individual with respect to the trust's property under subsection 104(2) of the ITA—that comes from a corporation must be taxed in the hands of that individual<sup>2</sup>.

[62] If it is the trust that receives the income from the corporation, it can claim a special deduction under subsection 104(6) for any income it attributes and that will be payable in the year to its beneficiaries, who will there be taxed on that income. If that income has not become payable to the beneficiaries in the year, it will accumulate in the trust and will be taxable in the trust. Any subsequent distribution to the beneficiaries of that accumulated income will be deemed a non-taxable distribution of the trust's capital.

[63] In this case, subsection 75(2) of the ITA was used so that neither the appellant nor its beneficiaries would pay tax on those dividends if the funds were eventually distributed because those amounts were, in a sense, capitalized in Fiducie Satoma by the attribution of income to 9134 without that corporation receiving or being entitled to those dividends.

[64] As soon as subsection 75(2) was applied, regardless of how the trust used the funds (whether it invested them in the corporations being operated, retained them or distributed them to its beneficiaries), tax was no longer payable by either the trust or its beneficiaries at that stage of operations.

[65] The fact that the trust could eventually decide to attribute those funds to the beneficiary corporations instead of to an individual, and that the shareholders of those corporations would then have to pay tax on the dividends they received, in no way changes the tax benefit received by the appellant.

[66] On the one hand, whether the appellant does or does not pay tax on the dividends received from 9163, in all cases, an individual who is a shareholder of a beneficiary corporation within the meaning of the ITA must pay tax on dividends received from that corporation, unless those dividends are non-taxable under specific provisions of the ITA.

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<sup>2</sup> I am excluding any distribution of dividends that may not be taxable in the hands of the shareholder under the terms of a provision of the ITA (such as, for example, a dividend from the corporation's capital account under section 89 of the ITA).

[67] On the other hand, the appellant's argument is based on the fact that there can be no question of stripping a corporation's funds from their source, as long as those funds have not actually been distributed to the corporation's own beneficiaries who are individuals. The problem with this reasoning is that it is unrealistic to think that once the dividends were capitalized in the trust, the trust would redistribute them to the beneficiary corporations controlled by individuals who are also beneficiaries of the trust. Why take that course of action if those dividends could be distributed directly to individual beneficiaries without paying tax? It is clear to me that those funds will never be paid to the beneficiary corporations. It is also clear that although no funds have been distributed to date, the trust can pay the capitalized amounts to the individuals who are its beneficiaries at any time.

[68] That is why the appellant's argument that the tax benefit cannot be invoked until the trust pays the funds to its beneficiaries does not hold water. The tax benefit was triggered as soon as subsection 75(2) was applied, by the decision of 9134's sole shareholder to strip the corporation's assets by going through 9163, which he indirectly controls, to capitalize them in Fiducie Satoma.

[69] This situation differs from that in *OSFC*, to which the appellant refers. In that case, OFSC had to intervene in the series of transactions (by acquiring an interest in a partnership to be able to benefit from its losses) to obtain a tax benefit.

[70] The beneficiaries did not have to do anything else. All transactions were conducted according to the tax plan, such that neither the trust nor its beneficiaries would be taxed once taxation for those amounts was attributed to another person (in this case, 9134) which itself claimed the deduction under subsection 112(1) to avoid paying tax.

[71] As for the appellant's arguments that a different course of action could have achieved the same result, as shown by the examples provided, they do not change my conclusion.

[72] On the one hand, as the Federal Court of Appeal pointed out in *Perrault v. The Queen*, [1979] 1 F.C. 155, page 163, cited by the appellant, the tax obligation must be determined in the context of what was actually done and not on the basis of various other methods that could have allowed the appellant to avoid being taxed.

[73] On the other hand, the examples given of cases where funds were invested directly in a corporation, instead of going through a trust, are not valid comparisons. The tax system differs depending on whether the transactions are between corporations or with individuals (including trusts). Once the evidence shows that the trust was an essential part of the plan, it cannot be shown that the result would have been the same without the use of a trust. A valid comparison could have been an investment made directly by Fiducie familiale Louis Pilon, without paying the dividends received from Gennium to 9134. In that case, the results would not have been the same since that family trust would have been taxed on the dividends it did not distribute to its beneficiaries, as it was not a reversionary trust.

[74] Finally, in the examples that involved 9134 simply donating the amounts in question either to Fiducie familiale Louis Pilon or to Fiducie Satoma, without going through 9163, or reinvesting the funds in Fiducie Satoma after the trust returned the funds, subsection 75(2) would not have applied. In such cases, it is 9134's sole shareholder, Louis Pilon, who would most likely have been taxed on the shareholder benefits, under section 15 of the ITA, if a transfer were made to either of the trusts of which he was a beneficiary. Therefore, no comparison can be made with another arrangement that could have reasonably been used were it not for the tax benefit, as the Supreme Court of Canada did in *Copthorne*, above, at paragraph 35. It is not reasonable to think that this other arrangement proposed by the appellant could have been seriously considered, given the taxation in the hands of Louis Pilon that such a transfer of funds in the trusts of which he was a beneficiary would entail under section 15 of the ITA.

[75] In my opinion, it is therefore clear that the primary goal of the proposed plan, from the moment subsection 75(2) was engaged, was to avoid the payment of any tax by the trust and any beneficiary of the trust. In all cases, I consider that a tax benefit within the meaning of subsection 245(1) of the ITA.

**Series of transactions resulting in a tax benefit: avoidance transaction**

[76] The appellant is not disputing that a series of transactions was conducted for the purpose of obtaining a tax benefit (to the extent that I find that a tax benefit exists), and that this is therefore an avoidance transaction within the meaning of subsection 245(3) of the ITA.

### **Abusive tax avoidance**

[77] Under subsection 245(4) of the ITA, a taxpayer will be denied a tax benefit resulting from an avoidance transaction when the transaction directly or indirectly involves an abusive application of the provisions of the ITA. It is the respondent's burden to prove that on the balance of probabilities.

[78] The Supreme Court of Canada propounded the appropriate procedure in *Trustco*, at paragraphs 44 to 62.

[79] The first task is to interpret the provisions giving rise to the tax benefit to determine their object, spirit and purpose. The next task is to determine whether the avoidance transaction promotes or frustrates that purpose. There will be an abuse if the taxpayer relies on specific provisions of the ITA in order to achieve an outcome that those provisions seek to prevent.

[80] Moreover, an abuse may also result from an arrangement that circumvents the application of anti-avoidance rules, in a manner that is contrary to the object, spirit or purpose of those provisions. (*Trustco*, paragraph 44-45).

[81] In that case, the tax benefit is a result of the application of subsection 75(2) and 112(1) of the ITA. The first provision is an attribution rule and the second is a so-called integration rule.

[82] Thus, according to paragraph 57 of the respondent's written argument, by triggering subsection 75(2) of the ITA, and attributing the taxable dividends to a corporation that could benefit from subsection 112(1) of the ITA, the appellant received Gennium's surpluses in the form of dividends totalling \$6,250,100 without paying any tax on that amount.

[83] I will therefore first analyze the object, spirit and purpose of the provisions in question. Second, I will examine the question of whether there was an abusive application of those provisions.

#### *1) The object, spirit and purpose of subsections 75(2) and 112(1) of the ITA*

[84] For this, it is necessary to determine the intention of the legislator by considering the language, context and purpose of those provisions (*Lipson v. Canada*, [2009] 1 SCR 3, 2009 SCC 1, paragraph 26, which references *Trustco*,

paragraph 42, and *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, [2006] 1 SCR 715, 2006 SCC 20, paras. 21-23).

### **The language**

[85] As to the wording of subsection 75(2), it attributes a trust's income, losses, taxable capital gains and allowable capital losses from property it received (or property substituted therefor), to the originator of that donation. This is an attribution rule that automatically applies when the conditions set out in that provision are met.

[86] In this case, there is no dispute that all the conditions required under subsection 75 (2) were met. They are as follows:

- 1) Fiducie Satoma resides in Canada.
- 2) It was created on December 22, 2005 (after 1934).
- 3). It holds "property," \$100 that it received from 9134 under the terms of a donation agreement.
- 4) The property comes from a person, *i.e.* corporation 9134.
- 5) The appellant used this \$100 to subscribe to 100 Class F shares of the capital stock of the corporation 9163. Those shares represent the "property substituted" for the initial donation of \$100.
- 6) Because Fiducie Satoma's trust document stipulates that 9134 is its beneficiary, there is a possibility that the substituted property could revert to 9134, the originator of the donation.

[87] Those conditions being satisfied, they resulted in the attribution to 9134 of dividend income generated by the Class F shares of 9163's capital stock paid to Fiducie Satoma, without the dividends actually being paid to 9134.

[88] Specifically, each time 9163 declared and paid its shareholder (the appellant) dividends, which totalled \$6,250,100 over the years at issue, they were also attributed to 9134 for tax purposes.



[89] Moreover, it is trite law that the person to whom income must be attributed under subsection 75(2) can be either an individual or a corporation such as 9134, according to the definition of “person” found in subsection 248(1) of the ITA.

[90] Also, even if subsection 75(2) automatically applies, the language of this provision must be consulted with respect to the GAAR analysis. The Supreme Court of Canada made the following comments in *Copthorne*, in paragraph 88:

**88** In any GAAR case the text of the provisions at issue will not literally preclude a tax benefit the taxpayer seeks by entering into the transaction or series. This is not surprising. If the tax benefit of the transaction or series was prohibited by the text, on reassessing the taxpayer, the Minister would only have to rely on the text and not resort to the GAAR. However, this does not mean that the text is irrelevant. In a GAAR assessment the text is considered to see if it sheds light on what the provision was intended to do.

[91] As to subsection 112(1) of the ITA, it provides that, where a corporation in a taxation year has received a taxable dividend from “a taxable Canadian corporation [. . .] or a corporation resident in Canada [. . .] and controlled by it,” an amount equal to the dividend may be deducted from the income of the receiving corporation for the year for the purpose of computing its taxable income.

[92] The result of the application of these two provisions is that 9134 included all the dividend income, totalling \$6,250,100, but did not pay tax on that income in the light of the deduction under 112(1). Fiducie Satoma was not taxed on those dividends in the light of the application of subsection 75(2), though it retained at its disposal the entire amount generated by those dividends.

### **Context**

[93] That part of the analysis examines other provisions of the ITA that are related to the one in issue. The Supreme Court made the following comments in *Copthorne*, in paragraph 91:

**91** The consideration of context involves an examination of other sections of the Act, as well as permissible extrinsic aids (Trustco, in paragraph 55). However, not every other section of the Act will be relevant in understanding the context of the provision at issue. Rather, relevant provisions are related “because they are grouped together” or because they “work together to give effect to a plausible and coherent plan” (R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 361 and 364).

[94] I agree with the respondent that the relevant context in this case includes the ITA regime with respect to the taxation of trusts and corporations.

[95] I have already explained hereinabove how the trust taxation regime works. To summarize, in general, the trust is taxable under the rules applicable to individuals because it is deemed to be an individual under subsection 104(2) of the ITA. That being said, if the trust's income becomes payable to its beneficiaries during the year, the trust can remove it from its income for tax purposes and that income will then be taxable in the hands of its beneficiaries, under subsections 104(6) and 104(13) of the ITA. If that is not the case, the trust is taxed on that income, and any subsequent distribution to its beneficiaries will be considered a non-taxable distribution of the trust's capital.

[96] As to of the corporate tax regime, the corporation will first be taxed on its income and the shareholder who receives a dividend from that corporation will also be taxed on that dividend.

[97] If the dividend is paid to an individual, the ITA provides for an integration arrangement. The dividend will first be grossed up and the grossed-up dividend will be included in the shareholder's income. The shareholder will then be entitled to a dividend tax credit as compensation for the tax already paid by the corporation. This system was established to ensure that the combined tax paid by the corporation and the shareholder on the corporation's income is equal to what would have been paid if the income had been earned by the shareholder directly (Paul Bleiwas and John Hutson, *Taxation of Private Corporations and Their Shareholders*, above, "Theory of Integration", at p. 2:4). (Tab 24 of the Respondent's book of authorities).

[98] To avoid double taxation of the same income, intercorporate dividends are subject to the deduction provided for in subsection 112(1) of the ITA (Report of the Technical Committee on Business Taxation (Mintz Committee Report on Business Taxation), December 1997, section 7.8: "The Inter-corporate Dividend Deduction" (Tab 27 of the Respondent's book of authorities)).

[99] According to the integration theory, the dividend will only be taxable at the very end of the process, when the individual receives this amount. It can therefore be said that subsection 112(1) is necessary to allow a Canadian corporation to distribute its income to its shareholders without double taxation in the case of intermediary corporations, assuming, of course, that all the conditions in section 112 are met.

## Object

[100] This step “seeks to ascertain what outcome Parliament intended a provision or provisions to achieve, amidst the myriad of purposes promoted by the Act.” (*Copthorne*, paragraph 113)

[101] Subsection 75(2) finds its origin in subsection 32(3) of the *Income War Tax Act* (**IWTA**), which was introduced in 1936. This new subsection read as follows:

[TRANSLATION] When a person transfers property to a trust and stipulates that the trust corpus must revert either to the donor or to individuals that he or she can designate at a later date, or when a trust stipulates that, during the life of the donor, the property in the trust cannot be disposed of or otherwise processed without written or other consent from the donor, that person may still be subject to tax on the income generated by the property transferred to the trust or the property substituted therefor, as if the transfer had not been made. (S.C. 1936, ch. 38, section 13) (See the respondent’s written arguments, page 22, paragraph 84.

[102] In paragraph 85 of its written arguments, the respondent explains the development of this section as follows:

85. [TRANSLATION] In 1948, subsection 32(3) of the IWTA was amended and became subsection 22(2) of the Act, which, in turn, became the current subsection 75(2) in 1970. Since 1948, subsection 22(2), which became 75(2), has undergone certain amendments, specifically to include capital gains and losses and to clarify certain terms. Overall, aside from those amendments, the structure and wording of the subsection have remained the same since 1948.<sup>32</sup>

32 Brenda L. Crockett, “Subsection 75(2): The Spoiler” in “Personal Tax Planning” (2009) vol. 53 No. 3, *Canadian Tax Journal*, 806-820, p. 2).

[103] In *Sommerer*, above, the Federal Court of Appeal made the following comments regarding subsection 75(2): “subsection 75(2) generally is intended to ensure that a taxpayer cannot avoid the income tax consequences of the use or disposition of property by transferring it to another person in trust while retaining a right of reversion or a right of disposition with respect to the property or property for which it may be substituted. A common example of the application of subsection 75(2) is the settlement of a trust where the settlor is also a beneficiary with an immediate or contingent right to a distribution of the trust property. In that situation, and in many other situations contemplated by paragraphs 75(2)(a) and (b), subsection 75(2) achieves its intended purpose.” (paragraph 48).

[104] Subsection 75(2) is a specific anti-avoidance section of the ITA, which provides that the transfer of property to a trust by a potential beneficiary will attribute income, loss and capital gains, or capital losses back to that beneficiary (*Brent Kern Family Trust c. Canada*, 2013 TCC 327, TCJ no. 286 (QL), paragraph 10, *aff'd* 2014 CAF 230).

[105] The British Columbia Court of Appeal also addressed the object of subsection 75(2) in *Re Pallen Trust*, 2015 BCCA 222 (British Columbia Court of Appeal), in paragraph 5:

5 [...] Obviously, s. 75(2) is intended to ensure that a taxpayer may not use the vehicle of a trust to shield the transferor of income-producing property from tax on such income, if that person may under the terms of the trust direct that the property revert to him or her, or any other person named by him or her. The provision itself, then, is an 'anti-avoidance' measure.

[106] Thus, subsection 75(2) of the ITA is an attribution rule that was introduced to prevent income splitting. If the property transferred to the trust can revert to the settlor on a tax-free basis, the income from the property so transferred will be attributed to the settlor (Elie S. Roth and Tim Youdan, "Subsection 75(2): Is the CRA's Interpretation Appropriate?" Report on Proceedings of the Sixty-Second Tax Conference, 2010 Conference Report, Toronto, (Canadian Tax Foundation), 34:1). (Tab 26 of the Respondent's book of authorities.)

[107] Regarding the object of subsection 112(1), as was previously seen, the ITA's intent is to ensure a certain neutrality and to avoid double taxation when intercorporate dividends are paid.

2) *Can there be an abusive application of subsections 75(2) and 112(1) within the meaning of subsection 245(4) of the ITA?*

[108] The issue now is to determine whether the avoidance transactions 1) produced an outcome that the legislative provisions invoked (those mentioned above) seek to prevent, 2) frustrated the rationale of those provisions, or 3) circumvented the application of those provisions in a manner that was contrary to the object, spirit or purpose of those provisions (*Copthorne*, paragraph 72; *Trustco*, paragraph 45; *Lipson*, paragraph 40). One or more of these conditions may be met in a given case, which will lead to a finding of abuse.

[109] Moreover, the GAAR can only be applied to deny a tax benefit when the abusive nature of the transaction is clear (*Trustco*, paragraph 50).

[110] In this case, the whole plan was intended to create a tax benefit through the interaction of subsection 75(2) and subsection 112(1).

[111] The creation of a second trust, Fiducie Satoma, by one of its beneficiaries, who are essentially the same as Fiducie familiale Louis Pilon's beneficiaries, is central to the tax planning undertaken to transfer funds from Gennium with no tax impact.

[112] Louis Pilon emphasized the importance of sheltering those funds from creditors by going through a trust. In the light of that priority, it was no longer possible to simply transfer funds from one corporation to another (for example, directly from 9134 to 427) while claiming the intercorporate dividend deduction.

[113] As soon as funds are transferred from a corporation to a trust, the ITA requires either the trust or its beneficiaries to pay tax on the transferred funds.

[114] However, by moving the funds through a reversionary trust (whose beneficiary corporation had the income attributed to it) the system applicable to corporations was being used while money was being taken out of the system applicable to corporations and placed in a trust, without either the trust or its beneficiaries paying their fair share of taxes.

[115] Only by taking advantage of the introduction of the reversionary trust created by a beneficiary corporation could Fiducie Satoma obtain Gennium's profits with no tax impact, through the combined application of the attribution rules in subsection 75(2) and the dividend deduction for corporations in subsection 112(1) of the ITA.

[116] In my view, this is clearly a situation where the interaction of an anti-avoidance provision (subsection 75(2)) and a provision that only applies to corporations (subsection 112(1)) were used to facilitate abusive tax avoidance.

[117] The interaction of those two provisions created a tax benefit, in that Gennium stripped itself of its surplus in favour of a trust at zero tax cost, which is contrary to the object, spirit and purpose of those two provisions.

[118] Concretely, subsection 75(2) seeks to prevent income splitting by a settlor who transfers property to a trust while retaining the right to recover that property. Subsection 112(1) seeks to prevent the taxation of intercorporate dividends.

[119] The object, spirit and purpose of those two provisions are not to allow a total tax reduction by transferring funds from a corporation to a trust. The avoidance transactions in question defeat the underlying rationale of those provisions.

[120] In *Lipson*, above, at paragraph 42, the Supreme Court of Canada decided that the use of an attribution rule (subsection 74.1(1) of the ITA, which is an attribution rule between spouses) to reduce the tax payable by one spouse were it not for the use of this attribution rule frustrates the object of attribution rules. The Court found that an anti-avoidance rule was used to facilitate abusive tax avoidance.

[121] I have reached the same conclusion, and I find that the avoidance transactions in question were clearly abusive and that the appellant is not entitled to the tax benefit sought.

[122] Consequently, the CRA added to the appellant's income the dividends received during the years at issue in accordance with paragraph 12(1)(j), section 82 and subsection 245(5) of the ITA. The appellant submitted that this mode of establishing its assessment involved double taxation of the same amount because 9134, even if it had claimed the deduction in subsection 112(1), had, nonetheless, included those dividends in its income.

[123] I am of the view that, in the circumstances, the CRA reasonably determined the tax consequences in order to deny the tax benefit in accordance with subsection 245(5) of the ITA.

[124] The appeals are dismissed with expenses in favour of the respondent.

[125] The parties may, if they wish, make submissions regarding the costs, which must be submitted within 30 days of the signing of the judgment, otherwise, the

respondent will be entitled to costs in accordance with Tariff B of the *Tax Court of Canada Rules (General Procedure)*.

Signed at Ottawa, Canada, this 1st day of June 2017.

“Lucie Lamarre”  
\_\_\_\_\_  
Associate Chief Justice Lamarre

Translation certified true  
on this 31<sup>st</sup> day of January 2018.

François Brunet, Revisor

APPENDIX I

2014-3800(IT)G

TAX COURT OF CANADA

BETWEEN:

FIDUCIE FINANCIÈRE SATOMA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

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PARTIAL AGREED STATEMENT OF FACTS

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The parties agree on the following facts:

1. The corporation 9134-1024 Québec inc. was created on September 25, 2003, under Part IA of the Quebec *Companies Act*.<sup>3</sup> Its sole shareholder is Louis Pilon, who holds 100 Class A shares of its capital stock.<sup>4</sup>
2. The corporation Gennium Produits Pharmaceutiques inc. (Gennium), formerly 4258843 Canada inc., was created on November 15, 2004 under the *Canada Business Corporations Act*.<sup>5</sup> Its shareholders are Louis Pilon and Fiducie Familiale Louis Pilon, which hold, respectively, 1000 multiple voting shares and 100 Class A shares of its capital stock.<sup>6</sup>

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<sup>3</sup> Certificate of Incorporation and Appendix to Articles of Incorporation for 9134-1024 Québec inc., dated September 29, 2003, **Appendix A**.

<sup>4</sup> Shareholders' ledger for 9134-1024 Québec inc., **Appendix B**.

<sup>5</sup> Certificate of Incorporation and Articles of Incorporation for 4258843 Canada inc., dated November 15, 2004, **Appendix C**; Certificate of Amendment and Articles of Amendment for 4258843 Canada inc., dated December 6, 2004, **Appendix D**; Certificate of Amendment and Articles of Amendment for Gennium Produits Pharmaceutiques inc., dated December 23, 2004, **Appendix E**; Certificate of Amendment and Articles of Amendment for 4258843 Canada inc., dated November 3, 2015, **Appendix F**.

<sup>6</sup> Shareholders' ledger for Gennium Produits Pharmaceutiques inc., **Appendix G**.



3. Fiducie Familiale Louis Pilon (Fiducie Louis Pilon) was constituted on December 6, 2004, by Bruno Barette. Its trustees are Louis, François and André Pilon. Its beneficiaries are Louis Pilon, his spouse, his descendants, any company controlled by him, by his spouse, or by one or more of his descendants, and any trust for the exclusive benefit of one or more from among Louis Pilon, his spouse, or his descendants.<sup>7</sup>
4. Through Gennium, Louis Pilon operated a generic drug distribution company. On January 5, 2005, Gennium signed a Subdistribution Agreement with Gennium Pharma inc. for the distribution of certain Genpharm products in Quebec.<sup>8</sup> Gennium ceased the distribution of the Genpharm products in May 2008.<sup>9</sup>
5. On June 9, 2005, Gennium reported a dividend of \$1,000,000 on its 100 Class A shares, payable on June 10, 2005, to Fiducie Louis Pilon, which paid or made payable this amount to 9134-1024 Québec inc. during the same year.<sup>10</sup>
6. On July 21, 2005, Gennium reported a dividend of \$1,000,000 on its 100 Class A shares, payable on July 22, 2005, to Fiducie Louis Pilon, which paid or made payable this amount to 9134-1024 Québec inc. during the same year.
7. The corporation 9163-9682 Québec inc. was created on December 21, 2005.<sup>11</sup> Its shareholders are: 9134-1024 Québec inc., which holds 100 Class A shares; the appellant, which holds 100 Class F shares; and, Louis Pilon, who holds 10,000 Class C shares.<sup>12</sup>
8. On December 22, 2005, the corporation 9134-1024 Québec inc. constituted the appellant by issuing a one-hundred-dollar banknote to the trust estate. Its trustees are Louis, François and André Pilon. Its beneficiaries are Louis Pilon, his spouse, his descendants,

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<sup>7</sup> Trust deed for Fiducie Familiale Louis Pilon, dated December 6, 2004, **Appendix H**.

<sup>8</sup> “Subdistribution Agreement” between Gennium Pharma inc. and Gennium Produits Pharmaceutiques inc., dated January 5, 2005, **Appendix I**.

<sup>9</sup> Income tax returns and financial statements for Gennium Produits Pharmaceutiques inc., for the years 2005 and 2006, **Appendices J, K and L**.

<sup>10</sup> Income tax returns for the years 2005 and 2006 and financial statements for the years 2005, 2006 and 2007 for 9134-1024 Québec inc., **Appendices M, N, O, P and Q**.

<sup>11</sup> Certificate of Incorporation and Articles of Incorporation for 9163-9682 Québec inc., dated December 21, 2005, **Appendix R**.

any company controlled by him, by his spouse, or by one or more of his descendants, and any trust for the exclusive benefit of one or more from among Louis Pilon, his spouse, or his descendants.<sup>13</sup>

9. On December 22, 2005, a donation agreement was entered into between 9134-1024 Québec inc. and the appellant, under which 9134-1024 Québec inc. made a \$100 donation to the appellant. The appellant used this \$100 to subscribe to 100 Class F shares of the capital stock of 9163-9682 Québec inc.
10. On December 22, 2005, 9134-1024 Québec inc. contributed to 9163-9682 Québec inc.'s surplus for an amount of \$2,000,000.
11. On December 22, 2005, 9163-9682 Québec inc. reported and paid a dividend in the amount of \$2,000,000 to the appellant, as a holder of its Class F shares.<sup>14</sup>
12. On January 17, 2006, Gennium reported and paid a dividend of \$2,000,000 on its 100 Class A shares to Fiducie Louis Pilon, which paid or made payable this amount to 9134-1024 Québec inc. during the same year.
13. On March 4, 2006, Fiducie Louis Pilon advanced \$200,000 to Jamp Pharma Corporation.
14. The corporation 4273702 Canada inc. was created on March 16, 2006, under the *Canada Business Corporations Act*.<sup>15</sup> Its shareholders are the appellant and 9163-9682 Québec inc.<sup>16</sup>
15. On March 16, 2006, the appellant purchased 200,000 Class F shares in 4273702 Canada inc., payable via transfer of the \$200,000 admissible claim by Jamp Pharma Corporation.<sup>17</sup>

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<sup>12</sup> Shareholders' ledger for 9163-9682 Québec inc., **Appendix S**.

<sup>13</sup> Trust deed for Fiducie Financière Satoma, dated December 22, 2005, **Appendix T**.

<sup>14</sup> Income tax returns for the year 2006 and financial statements for the years 2006 and 2007 for 9163-9682 Québec inc., **Appendices U, V and W**.

<sup>15</sup> Certificate of Incorporation and Articles of Incorporation for 4273702 Canada inc., dated March 16, 2006, **Appendix X**.

<sup>16</sup> Shareholders' ledger for 4273702 Canada inc., **Appendix Y**.

16. On March 29, 2006, Fiducie Financière Louis Pilon paid \$1,030,600 and \$1,826,010 to its beneficiary 9134-1024 Québec inc.
17. On March 29, 2006, 9134-1024 Québec inc. contributed \$2,000,000 to 9163-9682 Québec inc.'s surplus.
18. On March 29, 2006, 9163-9682 Québec inc. reported and paid a dividend in the amount of \$2,000,000 to the appellant, as a holder of its Class F shares.
19. On March 29, 2006, the appellant purchased 2,000,000 Class F shares of the capital stock of 4273702 Canada inc. for an amount of \$2,000,000.
20. On March 30, 2006, 4273702 Canada inc. purchased 3,266,650 Class B common shares and 3,266,240 Class A preferred shares of the capital stock of Jamp Pharma Corporation, for the respective amounts of \$769,295 and \$705.
21. On March 30, 2006, 4273702 Canada inc. purchased 1,911,240 Class B common shares and 1,911,240 Class A preferred shares of the capital stock of Nutralife, for the respective amounts of \$477,810 and \$2,190.<sup>18</sup>
22. On April 3, 2006, Fiducie Louis Pilon paid \$1,000,000 to its beneficiary, 9134-1024 Québec inc.
23. On May 1, 2006, the appellant purchased 400,000 Class F shares of the capital stock of 4273702 Canada inc. for an amount of \$400,000.
24. On May 5, 2006, 4273702 Canada inc. purchased 4,030,272 Class B common shares and 4,030,272 Class A preferred shares of the capital stock of Jamp Pharma Corporation, for the respective amounts of \$949,130 and \$870.<sup>19</sup>

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<sup>17</sup> Income tax returns and financial statements for the years 2006 and 2007 for 4273702 Canada inc., **Appendices Z, AA, BB and CC.**

<sup>18</sup> Nutralife's income tax return and financial statements for the year 2007, **Appendices DD and EE.**

<sup>19</sup> Jamp Pharma Corporation's income tax return and financial statements for the year 2007, **Appendix FF.**

25. On May 26, 2006, the appellant purchased 625,000 Class F shares of the capital stock of 4273702 Canada inc. for an amount of \$625,000.
26. On June 20, 2006, Gennium reported and paid a dividend of \$1,000,000 on its 100 Class A shares to Fiducie Louis Pilon, which paid or made payable this amount to 9134-1024 Québec inc. during the same year.
27. On July 10, 2006, the appellant purchased 300,000 Class F shares of the capital stock of 4273702 Canada inc. for an amount of \$300,000.
28. On August 2, 2006, the appellant purchased 300,000 Class F shares of the capital stock of 4273702 Canada inc. for an amount of \$300,000.
29. On December 22, 2006, 9134-1024 Québec inc. contributed \$2,000,000 to 9163-9682 Québec inc.'s surplus.
30. On December 22, 2006, 9163-9682 Québec inc. reported and paid a dividend in the amount of \$1,000,000 to the appellant, as a holder of its Class F shares.
31. On February 27, 2007, the appellant purchased 100 Class A shares of the capital stock of Technologie & Services RX inc. for an amount of \$100.
32. On May 22, 2007, Gennium reported and paid a dividend of \$1,000,000 on its 100 Class A shares to Fiducie Louis Pilon, which paid or made payable this amount to 9134-1024 Québec inc. during the same year.
33. On June 13, 2007, 9134-1024 Québec inc. contributed to 9163-9682 Québec inc.'s surplus for an amount of \$1,250,000.
34. On June 13, 2007, 9163-9682 Québec inc. reported and paid a dividend in the amount of \$1,250,000 to the appellant, as a holder of its Class F shares.
35. On September 13, 2007, the appellant purchased 500,000 Class B shares of the capital stock of Technologie & Services RX inc. for an amount of \$500,000.

36. On October 18, 2007, the appellant purchased 250,000 Class B shares of the capital stock of Technologie & Services RX inc. for an amount of \$250,000.
37. On December 31, 2007, the appellant's bank account balance was \$1,421,956.
38. The appellant included the \$6,250,100 in dividends received in its income for the years 2005, 2006 and 2007, then later excluded them, indicating that it had attributed them to 9134-1024 Québec inc.<sup>20</sup>
39. 9134-1024 Québec inc. included the \$6,250,100 in dividends received by the appellant (as described in paragraphs 11, 18, 30 and 34) in its income, under subsection 75(2) of the *Income Tax Act*, then later deducted them under subsection 112(1) of the Act.
40. As of this date, the appellant's trustees have not distributed any capital thus obtained and/or income in favour of any of the beneficiaries.
41. On March 2, 2011, the Canada Revenue Agency issued the appellant notices of assessment for the 2005, 2006 and 2007 taxation years.<sup>21</sup>
42. The appellant duly objected to the notices of assessment<sup>22</sup> and the CRA confirmed them on July 28, 2004.<sup>23</sup>

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<sup>20</sup> Appellant's income tax returns for the years 2006 and 2007, **Appendices GG and HH.**

<sup>21</sup> Notices of assessment for the 2005, 2006 and 2007 taxation years, **Appendix II.**

<sup>22</sup> Appellant's Notice of Objection for its 2005, 2006 and 2007 taxation years, **Appendix JJ.**

<sup>23</sup> Notice of Confirmation, dated July 28, 2014, **Appendix KK.**

Montréal, October 21, 2016

Montréal, October 21, 2016

William F. Pentney, Q.C.  
Deputy Attorney General of Canada  
Counsel for the Respondent

By:            (signature)

By:            (signature)

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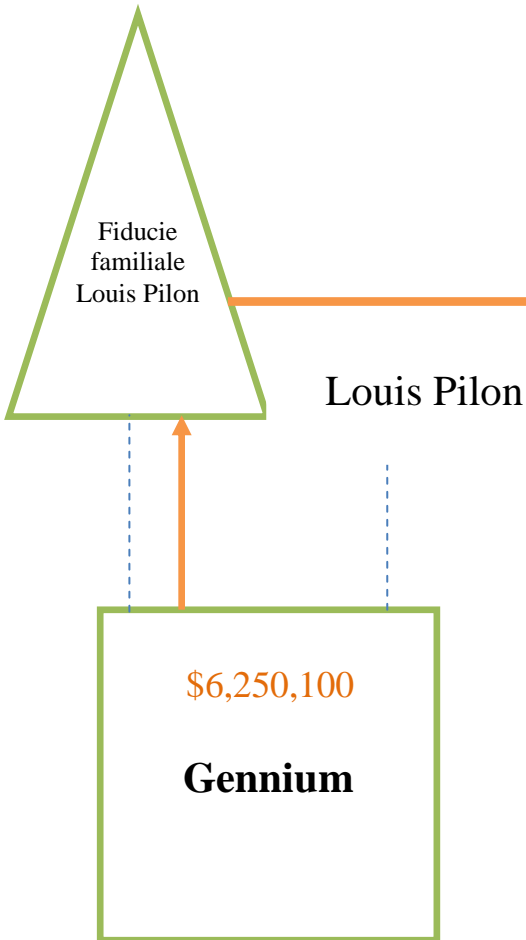
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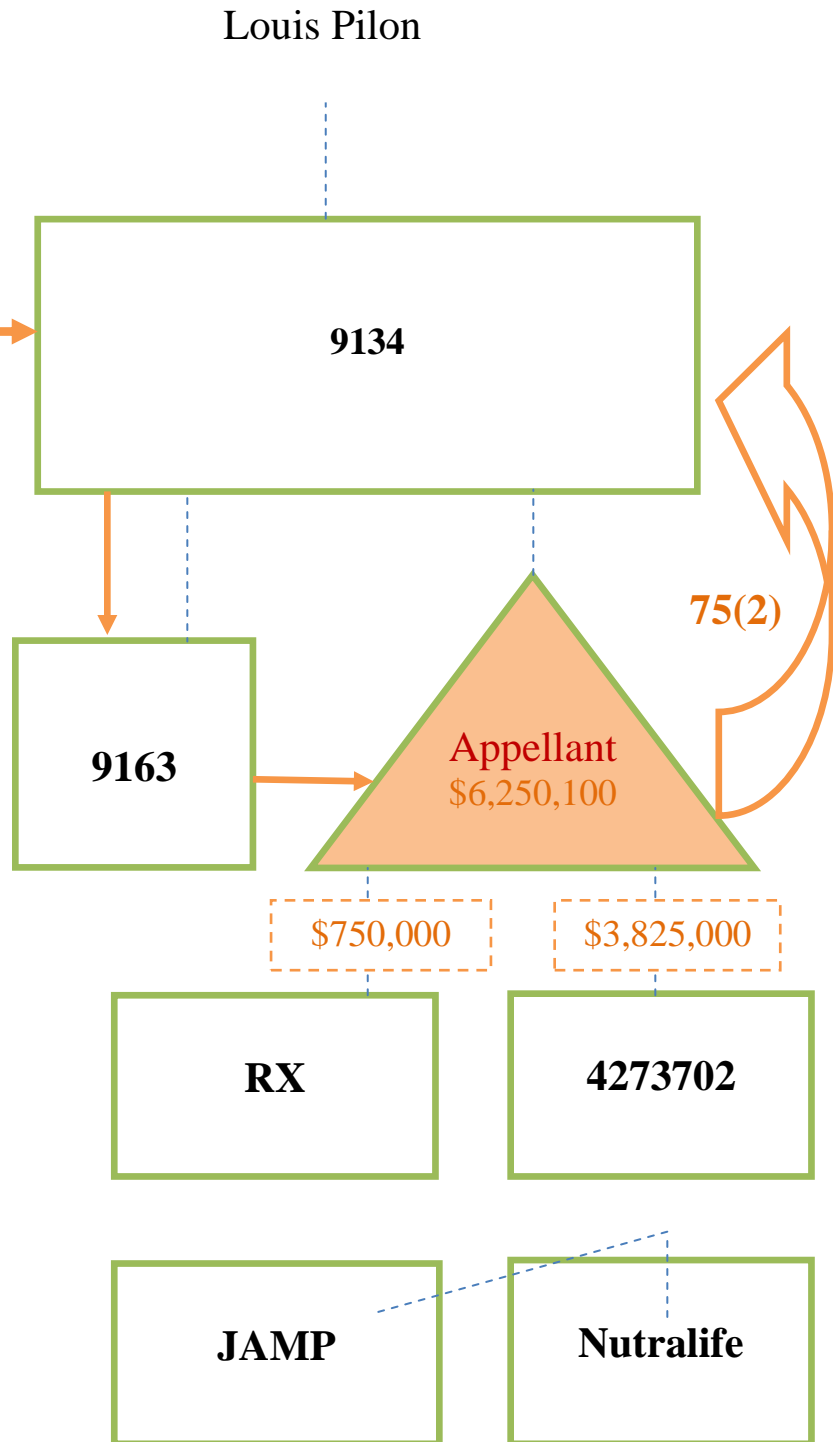
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APPENDIX II

**Structure A**  
(initial structure)



**Structure B**  
(final structure)



## APPENDIX III LEGISLATIVE PROVISIONS

### **Income inclusions**

12(1) There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable:

...

### **Dividends from resident corporations**

(j) any amount required by subdivision h to be included in computing the taxpayer's income for the year in respect of a dividend paid by a corporation resident in Canada on a share of its capital stock;

### **Benefit conferred on shareholder**

**15 (1)** Where at any time in a taxation year a benefit is conferred on a shareholder, or on a person in contemplation of the person becoming a shareholder, by a corporation otherwise than by

(a) the reduction of the paid-up capital, the redemption, cancellation or acquisition by the corporation of shares of its capital stock or on the winding-up, discontinuance or reorganization of its business, or otherwise by way of a transaction to which section 88 applies,

(b) the payment of a dividend or a stock dividend,

(c) conferring, on all owners of common shares of the capital stock of the corporation at that time, a right in respect of each

### **Sommes à inclure dans le revenu**

12(1) Sont à inclure dans le calcul du revenu tiré par un contribuable d'une entreprise ou d'un bien, au cours d'une année d'imposition, celles des sommes suivantes qui sont applicables :

[...]

### **Dividendes de sociétés résidant au Canada**

j) les sommes à inclure, en application de la sous-section h, dans le calcul du revenu du contribuable pour l'année au titre des dividendes versés par une société résidant au Canada sur une action de son capital-actions ;

### **Avantages aux actionnaires**

**15 (1)** La valeur de l'avantage qu'une société confère, à un moment donné d'une année d'imposition, à un actionnaire ou à une personne en passe de le devenir est incluse dans le calcul du revenu de l'actionnaire pour l'année — sauf dans la mesure où cette valeur est réputée par l'article 84 constituer un dividende — si cet avantage est conféré autrement que :

a) par la réduction du capital versé, le rachat, l'annulation ou l'acquisition, par la société, d'actions de son capital-actions ou à l'occasion de la liquidation, cessation ou réorganisation de son entreprise, ou par une opération à laquelle l'article 88 s'applique;

b) par le paiement d'un dividende ou d'un dividende en actions;

c) par l'octroi à tous les propriétaires d'actions ordinaires du capital-actions de la société à ce moment d'un droit, relatif à



common share, that is identical to every other right conferred at that time in respect of each other such share, to acquire additional shares of the capital stock of the corporation, and, for the purpose of this paragraph,

(i) where

(A) the voting rights attached to a particular class of common shares of the capital stock of a corporation differ from the voting rights attached to another class of common shares of the capital stock of the corporation, and

(B) there are no other differences between the terms and conditions of the classes of shares that could cause the fair market value of a share of the particular class to differ materially from the fair market value of a share of the other class,

the shares of the particular class shall be deemed to be property that is identical to the shares of the other class, and

(ii) rights are not considered identical if the cost of acquiring the rights differs, or

(d) an action described in paragraph 84(1)(c.1), 84(1)(c.2) or 84(1)(c.3),

the amount or value thereof shall, except to the extent that it is deemed by section 84 to be a dividend, be included in computing the income of the shareholder for the year.

### **Transfers and loans to spouse or common-law partner**

**74.1(1)** Where an individual has transferred or lent property (otherwise than by an assignment of any portion of a retirement pension pursuant to section 65.1 of the

chaque action ordinaire et identique à chacun des autres droits conférés à ce moment relativement à chacune des autres semblables actions, d'acquérir d'autres actions du capital-actions de la société; pour l'application du présent alinéa :

(i) les actions ordinaires d'une catégorie donnée du capital-actions d'une société sont réputées être identiques aux actions ordinaires d'une autre catégorie du capital-actions de la société dans le cas où, à la fois :

(A) les droits de vote rattachés à la catégorie donnée d'actions diffèrent de ceux rattachés l'autre catégorie d'actions,

(B) les modalités des catégories d'actions ne présentent pas d'autres différences qui pourraient donner lieu à un important écart entre la juste valeur marchande d'une action de la catégorie donnée et la juste valeur marchande d'une action de l'autre catégorie,

(ii) des droits ne sont pas considérés comme identiques si leur coût d'acquisition diffère;

(d) par une opération visée à l'alinéa 84(1)c.1), ch.2) ou ch.3).

### **Transfert ou prêt à l'époux ou conjoint de fait**

**74.1(1)** Dans le cas où un particulier prête ou transfère un bien — sauf par la cession d'une partie d'une pension de retraite conformément à l'article 65.1 du *Régime de*

*Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act or of a prescribed provincial pension plan), either directly or indirectly, by means of a trust or by any other means whatever, to or for the benefit of a person who is the individual's spouse or common-law partner or who has since become the individual's spouse or common-law partner, any income or loss, as the case may be, of that person for a taxation year from the property or from property substituted therefor, that relates to the period in the year throughout which the individual is resident in Canada and that person is the individual's spouse or common-law partner, shall be deemed to be income or a loss, as the case may be, of the individual for the year and not of that person.

### **Trusts**

75(2) Where, by a trust created in any manner whatever since 1934, property is held on condition

(a) that it or property substituted therefor may

(i) ) revert to the person from whom the property or property for which it was substituted was directly or indirectly received (in this subsection referred to as "the person"), or

(ii) pass to persons to be determined by the person at a time subsequent to the creation of the trust, or

(b) that, during the existence of the person, the property shall not be disposed of except with the person's consent or in accordance with the person's direction,

any income or loss from the property or from property substituted for the property, and any

*pensions du Canada* ou à une disposition comparable d'un régime provincial de pensions au sens de l'article 3 de cette loi ou d'un régime provincial de pensions visé par règlement —, directement ou indirectement, par le biais d'une fiducie ou par tout autre moyen, à une personne qui est son époux ou conjoint de fait ou qui le devient par la suite ou au profit de cette personne, le revenu ou la perte de cette personne pour une année d'imposition provenant du bien ou d'un bien y substitué et qui se rapporte à la période de l'année tout au long de laquelle le particulier réside au Canada et tout au long de laquelle cette personne est son époux ou conjoint de fait est considéré comme un revenu ou une perte, selon le cas, du particulier pour l'année et non de cette personne.

### **Fiducies**

75(2) Lorsque, en vertu d'une fiducie créée de quelque façon que ce soit depuis 1934, des biens sont détenus à condition :

a) soit que ces derniers ou des biens qui leur sont substitués puissent:

(i) ou bien revenir à la personne dont les biens ou les biens qui leur sont substitués ont été reçus directement ou indirectement (appelée « la personne » au présent paragraphe),

(ii) ou bien être transportés à des personnes devant être désignées par la personne après la création de la fiducie;

b) soit que, pendant l'existence de la personne, il ne soit disposé des biens qu'avec son consentement ou suivant ses instructions,

tout revenu ou toute perte résultant des biens ou de biens y substitués, ou tout gain en

taxable capital gain or allowable capital loss from the disposition of the property or of property substituted for the property, shall, during the existence of the person while the person is resident in Canada, be deemed to be income or a loss, as the case may be, or a taxable capital gain or allowable capital loss, as the case may be, of the person.

**SUBDIVISION H — Corporations Resident in Canada and their Shareholders**

**Taxable dividends received**

82(1) In computing the income of a taxpayer for a taxation year, there shall be included the total of the following amounts:

(a) the amount, if any, by which

(i) the total of all amounts, other than eligible dividends and amounts described in paragraph (c), (d) or (e), received by the taxpayer in the taxation year from corporations resident in Canada as, on account of, in lieu of payment of or in satisfaction of, taxable dividends,

exceeds

(ii) if the taxpayer is an individual, the total of all amounts paid by the taxpayer in the taxation year that are deemed by subsection 260(5) to have been received by another person as eligible dividends (other than eligible dividends);

(a.1) the amount, if any, by which

(i) the total of all amounts, other than amounts included in computing the income of the taxpayer because of paragraph (c), (d) or (e), received by the taxpayer in the taxation

capital imposable ou toute perte en capital déductible provenant de la disposition des biens ou de biens y substitués, est réputé, durant l'existence de la personne et pendant qu'elle réside au Canada, être un revenu ou une perte, selon le cas, ou un gain en capital imposable ou une perte en capital déductible, selon le cas, de la personne.

**SOUS-SECTION H — Les sociétés résidant au Canada et leurs actionnaires**

**Dividendes imposables reçus**

82(1) Le total des sommes ci-après est à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition:

a) l'excédent éventuel de la somme visée au sous-alinéa (i) sur la somme visée au sous-alinéa (ii):

(i) le total des sommes, à l'exception des dividendes déterminés et des sommes visées aux alinéas c), d) ou e), que le contribuable reçoit au cours de l'année de sociétés résidant au Canada au titre ou en paiement intégral ou partiel de dividendes imposables,

(ii) si le contribuable est un particulier, le total des sommes qu'il a versées au cours de l'année et qui sont réputées par le paragraphe 260(5) avoir été reçues par une autre personne à titre de dividendes imposables (autres que des dividendes déterminés);

a.1) l'excédent éventuel de la somme visée au sous-alinéa (i) sur la somme visée au sous-alinéa (ii) :

(i) le total des sommes, à l'exception des sommes incluses dans le calcul du revenu du contribuable par l'effet des alinéas c), d) ou e), que le contribuable a reçues au cours de

year from corporations resident in Canada as, on account of, in lieu of payment of or in satisfaction of, eligible dividends,

l'année de sociétés résidant au Canada au titre ou en paiement intégral ou partiel de dividendes déterminés,

exceeds

(ii) if the taxpayer is an individual, the total of all amounts paid by the taxpayer in the taxation year that are deemed by subsection 260(5) to have been received by another person as taxable dividends;

(ii) si le contribuable est un particulier, le total des sommes qu'il a versées au cours de l'année et qui sont réputées par le paragraphe 260(5) avoir été reçues par une autre personne à titre de dividendes déterminés;

(b) if the taxpayer is an individual, other than a trust that is a registered charity, the total of

b) si le contribuable est un particulier, autre qu'une fiducie qui est un organisme de bienfaisance enregistré, le total des sommes suivantes :

(i) 25% of the amount determined under paragraph (a) in respect of the taxpayer for the taxation year, and

(i) 25 % de la somme déterminée selon l'alinéa a) relativement au contribuable pour l'année,

(ii) 45% of the amount determined under paragraph (a.1) in respect of the taxpayer for the taxation year;

(ii) 45 % de la somme déterminée selon l'alinéa a.1) relativement au contribuable pour l'année;

(c) all taxable dividends received by the taxpayer in the taxation year, from corporations resident in Canada, under dividend rental arrangements of the taxpayer;

c) les dividendes imposables que le contribuable a reçus au cours de l'année de sociétés résidant au Canada, dans le cadre de ses mécanismes de transfert de dividendes;

(d) all taxable dividends (other than taxable dividends described in paragraph (c)) received by the taxpayer in the taxation year from corporations resident in Canada that are not taxable Canadian corporations; and

d) les dividendes imposables, à l'exception de ceux visés à l'alinéa c), que le contribuable a reçus au cours de l'année de sociétés résidant au Canada qui ne sont pas des sociétés canadiennes imposables;

(e) if the taxpayer is a trust, all amounts each of which is all or part of a taxable dividend (other than a taxable dividend described in paragraph (c) or (d)) that was received by the trust in the taxation year on a share of the capital stock of a taxable Canadian corporation and that can reasonably be considered to have been included in computing the income of a beneficiary under the trust who was non-resident at the end of the taxation year.

e) si le contribuable est une fiducie, le total des sommes représentant chacune tout ou partie d'un dividende imposable, à l'exception de celui visé aux alinéas c) ou d), qu'il a reçu au cours de l'année sur une action du capital-actions d'une société canadienne imposable et qu'il est raisonnable de considérer comme ayant été inclus dans le calcul du revenu d'un de ses bénéficiaires qui était un non-résident à la fin de l'année.

...

[...]

**Certain dividends [deemed] received by taxpayer**

**Dividendes réputés reçus par le contribuable**

82(2) Where by reason of subsection 56(4) or 56(4.1) or sections 74.1 to 75 of this Act or section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, there is included in computing a taxpayer's income for a taxation year a dividend received by another person, for the purposes of this Act, the dividend shall be deemed to have been received by the taxpayer.

82(2) Le dividende reçu par une personne et qui est inclus en application du paragraphe 56(4) ou (4.1) ou des articles 74.1 à 75 de la présente loi ou de l'article 74 de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts révisés du Canada de 1952, dans le calcul du revenu d'un contribuable — autre que cette personne — pour une année d'imposition est réputé reçu par le contribuable pour l'application de la présente loi.

**Taxed as individual**

**Impôt à titre de particulier**

104(2) A trust shall, for the purposes of this Act, and without affecting the liability of the trustee or legal representative for that person's own income tax, be deemed to be in respect of the trust property an individual, but where there is more than one trust and

104(2) Pour l'application de la présente loi, et sans que l'assujettissement du fiduciaire ou des représentants légaux à leur propre impôt sur le revenu en soit atteint, une fiducie est réputée être un particulier relativement aux biens de la fiducie; mais lorsqu'il existe plus d'une fiducie et que :

(a) substantially all of the property of the various trusts has been received from one person, and

a) d'une part, dans l'ensemble, tous les biens des diverses fiducies proviennent d'une seule personne;

(b) the various trusts are conditioned so that the income thereof accrued or will ultimately accrue to the same beneficiary, or group or class of beneficiaries,

b) d'autre part, les diverses fiducies sont telles que le revenu en découlant revient ou reviendra finalement au même bénéficiaire ou groupe ou catégorie de bénéficiaires,

such of the trustees as the Minister may designate shall, for the purposes of this Act, be deemed to be in respect of all the trusts an individual whose property is the property of all the trusts and whose income is the income of all the trusts.

ceux des fiduciaires que le ministre peut désigner sont réputés être, pour l'application de la présente loi, relativement à toutes les fiducies, un particulier dont les biens sont les biens de toutes les fiducies et dont le revenu est le revenu de toutes les fiducies.

**Deduction in computing income of trust**

**Déduction dans le calcul du revenu d'une fiducie**

104(6) For the purposes of this Part, there may be deducted in computing the income of

104(6) Pour l'application de la présente partie, il peut être déduit dans le calcul du

a trust for a taxation year

revenu d'une fiducie, pour une année d'imposition :

(a) in the case of an employee trust, the amount by which the amount that would, but for this subsection, be its income for the year exceeds the amount, if any, by which

a) dans le cas d'une fiducie d'employés, le montant par lequel le montant qui aurait constitué, sans le présent paragraphe, son revenu pour l'année dépasse l'excédent éventuel du total visé au sous-alinéa (i) sur le total visé au sous-alinéa (ii):

(i) the total of all amounts each of which is its income for the year from a business

(i) le total des sommes dont chacune représente son revenu tiré d'une entreprise pour l'année,

exceeds

(ii) the total of all amounts each of which is its loss for the year from a business;

(ii) le total des sommes dont chacune représente sa perte au titre d'une entreprise pour l'année;

(a.1) in the case of a trust governed by an employee benefit plan, such part of the amount that would, but for this subsection, be its income for the year as was paid in the year to a beneficiary;

a.1) dans le cas d'une fiducie régie par un régime de prestations aux employés, la partie de la somme qui aurait constitué, sans le présent paragraphe, son revenu pour l'année, telle que versée au cours de l'année à un bénéficiaire;

(a.2) where the taxable income of the trust for the year is subject to tax under this Part because of paragraph 146(4)(c) or subsection 146.3(3.1), the part of the amount that, but for this subsection, would be the income of the trust for the year that was paid in the year to a beneficiary;

a.2) dans le cas où le revenu imposable de la fiducie pour l'année est assujéti à l'impôt en vertu de la présente partie par l'effet de l'alinéa 146(4)c) ou du paragraphe 146.3(3.1), la partie du montant qui correspondrait, si ce n'était le présent paragraphe, au revenu de la fiducie pour l'année payée à un bénéficiaire au cours de l'année;

(a.3) in the case of an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, such part of its income for the year as became payable in the year to a beneficiary; and

a.3) dans le cas d'une fiducie non testamentaire qui est réputée, par le paragraphe 143(1), exister à l'égard d'une congrégation qui est une partie constituante d'un organisme religieux, toute partie de son revenu pour l'année qui est devenue payable au cours de l'année à un bénéficiaire;

(b) in any other case, such amount as the trust claims not exceeding the amount, if any, by which

b) dans les autres cas, le montant dont la fiducie demande la déduction et ne dépassant pas l'excédent éventuel :

(i) such part (in this section referred to as the trust's "adjusted distributions amount" for the taxation year) of the amount that, but for

(i) de la partie (appelée « montant de distribution rajusté » au présent article) du montant qui représenterait le revenu de la fiducie pour l'année en l'absence des dispositions ci-après, qui est devenue payable à un bénéficiaire au cours de l'année ou qui a été incluse en application du paragraphe 105(2) dans le calcul du revenu d'un bénéficiaire :

(A) this subsection,

(A) le présent paragraphe,

(B) subsections (5.1), (12), and 107(4),

(B) les paragraphes (5.1), (12) et 107(4),

(C) the application of subsections (4), (5) and (5.2) in respect of a day determined under paragraph (4)(a), and

(C) les paragraphes (4), (5) et (5.2), dans leur application au jour déterminé selon l'alinéa (4)a),

(D) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse or common-law partner referred to in that paragraph,

(D) le paragraphe 12(10.2), sauf dans la mesure où il s'applique à des montants payés à une fiducie visée à l'alinéa 70(6.1)b) et avant le décès de l'époux ou conjoint de fait mentionné à cet alinéa,

would be its income for the year as became payable in the year to a beneficiary or was included under subsection 105(2) in computing the income of a beneficiary

sur :

exceeds

(ii) where the trust

(ii) lorsque la fiducie est une fiducie au profit de l'époux ou du conjoint de fait postérieure à 1971 qui a été établie après le 20 décembre 1991 ou serait une telle fiducie si le passage « au moment où elle a été établie » à l'alinéa (4)a) était remplacé par « le 20 décembre 1991 », et que l'époux ou le conjoint de fait mentionné à l'alinéa (4)a) relativement à la fiducie est vivant tout au long de l'année, la partie du montant qui, si ce n'était les dispositions suivantes, représenterait le revenu de la fiducie pour l'année, qui est devenue payable à un bénéficiaire, sauf l'époux ou le conjoint de fait, au cours de l'année ou qui est incluse en application du

paragraphe 105(2) dans le calcul du revenu d'un bénéficiaire, sauf l'époux ou le conjoint de fait :

(A) is a post-1971 spousal or common-law partner trust that was created after December 20, 1991 or

(A) le présent paragraphe,

(B) would be a post-1971 spousal or common-law partner trust if the reference in paragraph (4)(a) to "at the time it was created" were read as "on December 20, 1991",

(B) les paragraphes (12) et 107(4),

and the spouse or common-law partner referred to in paragraph (4)(a) in respect of the trust is alive throughout the year, such part of the amount that, but for

C) this subsection,

(C) le paragraphe 12(10.2), sauf dans la mesure où il s'applique à des montants payés à une fiducie visée à l'alinéa 70(6.1)b) et avant le décès de l'époux ou conjoint de fait mentionné à cet alinéa,

(D) subsections (12) and 107(4), and

(E) subsection 12(10.2), except to the extent that that subsection applies to an amount paid to a trust described in paragraph 70(6.1)(b) and before the death of the spouse or common-law partner referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary (other than the spouse or common-law partner) or was included under subsection 105(2) in computing the income of a beneficiary (other than the spouse or common-law partner),

(ii.1) where the trust is an *alter ego* trust or a joint spousal or common-law partner trust and the death or later death, as the case may be, referred to in subparagraph (4)(a)(iv) has not occurred before the end of the year, such part of the amount that, but for this subsection and subsections (12), 12(10.2) and

(ii.1) lorsque la fiducie est une fiducie en faveur de soi-même ou une fiducie mixte au profit de l'époux ou du conjoint de fait et que le décès ou le décès postérieur, selon le cas, mentionné au sous-alinéa (4)a)(ii.1) ne s'est pas produit avant la fin de l'année, la partie du montant qui, si ce n'était le présent



107(4), would be its income as became payable in the year to a beneficiary (other than a taxpayer, spouse or common-law partner referred to in clause (4)(a)(iv)(A), (B) or (C)) or was included under subsection 105(2) in computing the income of a beneficiary (other than such a taxpayer, spouse or common-law partner), and

(iii) where the trust is an *alter ego* trust, a joint spousal or common-law partner trust, a trust to which paragraph (4)(a.4) applies or a post-1971 spousal or common-law partner trust and the death or the later death, as the case may be, referred to in paragraph (4)(a) in respect of the trust occurred on a day in the year, the amount, if any, by which

(A) the maximum amount that would be deductible under this subsection in computing the trust's income for the year if this subsection were read without reference to this subparagraph

exceeds the total of

(B) the amount that, but for this subsection and subsections (12), 12(10.2) and 107(4), would be its income that became payable in the year to the taxpayer, spouse or common-law partner referred to in subparagraph (4)(a)(iii), clause (4)(a)(iv)(A), (B) or (C) or paragraph (4)(a.4), as the case may be, and

(C) the amount that would be the trust's income for the year if that income were computed without reference to this subsection and subsection (12) and as if the year began immediately after the end of the day,

(iv) where the trust is a SIFT trust for the

paragraphe et les paragraphes (12), 12(10.2) et 107(4), représenterait le revenu de la fiducie, qui est devenue payable au cours de l'année à un bénéficiaire (sauf un contribuable, un époux ou un conjoint de fait visé à la division (4)a)(ii.1)(A), (B) ou (C)) ou qui est incluse en application du paragraphe 105(2) dans le calcul du revenu d'un bénéficiaire (sauf un tel contribuable, époux ou conjoint de fait),

(iii) lorsque la fiducie est une fiducie en faveur de soi-même, une fiducie mixte au profit de l'époux ou du conjoint de fait, une fiducie à laquelle l'alinéa (4)a.4 s'applique ou une fiducie au profit de l'époux ou du conjoint de fait postérieure à 1971 et que le décès ou le décès postérieur, selon le cas, mentionné aux alinéas (4)a) ou a.4) relativement à la fiducie s'est produit au cours de l'année, l'excédent éventuel :

(A) du montant maximal qui serait déductible en application du présent paragraphe dans le calcul du revenu de la fiducie pour l'année s'il n'était pas tenu compte du présent sous-alinéa,

sur la somme des montants suivants :

(B) le montant qui, si ce n'était le présent paragraphe et les paragraphes (12), 12(10.2) et 107(4), représenterait le revenu de la fiducie qui est devenu payable au cours de l'année au contribuable, à l'époux ou au conjoint de fait mentionné aux divisions (4)a)(i)(A) ou (4)a)(ii.1)(A), (B) ou (C) ou à l'alinéa (4)a.4), selon le cas,

(C) le montant qui représenterait le revenu de la fiducie pour l'année si ce revenu était calculé compte non tenu du présent paragraphe ni du paragraphe (12) et si l'année commençait immédiatement après la fin du jour du décès,

(iv) lorsque la fiducie est une fiducie

taxation year, the amount, if any, by which

intermédiaire de placement déterminée pour l'année, l'excédent éventuel de la somme visée à la division (A) sur la somme visée à la division (B) :

(A) its adjusted distributions amount for the taxation year

(A) son montant de distribution rajusté pour l'année,

exceeds

(B) the amount, if any, by which

(B) l'excédent éventuel de la somme visée à la subdivision (I) sur la somme visée à la subdivision (II) :

(I) the amount that would, if this Act were read without reference to this subsection, be its income for the taxation year

(I) la somme qui, en l'absence du présent paragraphe, correspondrait à son revenu pour l'année,

exceeds

(II) its non-portfolio earnings for the taxation year.

(II) ses gains hors portefeuille pour l'année.

### **Income of beneficiary**

### **Revenu des bénéficiaires**

104(13) There shall be included in computing the income for a particular taxation year of a beneficiary under a trust such of the following amounts as are applicable:

104(13) Les montants applicables suivants sont à inclure dans le calcul du revenu du bénéficiaire d'une fiducie pour une année d'imposition donnée :

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition "trust" in subsection 108(1)), such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as became payable in the trust's year to the beneficiary; and

a) dans le cas d'une fiducie qui n'est pas visée à l'alinéa a) de la définition de « fiducie » au paragraphe 108(1), la partie du montant qui, si ce n'était les paragraphes (6) et (12), représenterait son revenu pour son année d'imposition s'étant terminée dans l'année donnée, qui est devenue payable au bénéficiaire au cours de l'année de la fiducie;

(b) in the case of a trust governed by an employee benefit plan to which the beneficiary has contributed as an employer, such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended

b) dans le cas d'une fiducie régie par un régime de prestations aux employés auquel le bénéficiaire a cotisé comme employeur, la partie du montant qui, si ce n'était les paragraphes (6) et (12), représenterait le revenu de la fiducie pour son année

in the particular year as was paid in the trust's year to the beneficiary.

### **Taxable dividends**

104(19) Such portion of a taxable dividend received by a trust in a taxation year throughout which it was resident in Canada on a share of the capital stock of a taxable Canadian corporation as

(a) may reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the amount that, by reason of subsection (13) or (14) or section 105, as the case may be, was included in computing the income for a particular taxation year of a beneficiary under the trust, and

(b) was not designated by the trust in respect of any other beneficiary under the trust

is, if so designated by the trust in respect of the beneficiary in its return of income for the year, deemed, for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, not to have been received by the trust, and for the purposes of this Act (other than Part XIII), to be a taxable dividend on the share received by the beneficiary in the particular year from the corporation

### **Amount payable**

d'imposition s'étant terminée dans l'année donnée, qui a été payée au bénéficiaire au cours de l'année de la fiducie.

### **Dividende réputé reçu par un bénéficiaire**

104(19) La partie d'un dividende imposable qu'une fiducie reçoit au cours d'une année d'imposition tout au long de laquelle elle a résidé au Canada sur une action du capital-actions d'une société canadienne imposable et qu'elle attribue à un de ses bénéficiaires dans sa déclaration de revenu produite pour l'année est réputée, pour l'application des alinéas 82(1)*b*) et 107(1)*c*) et *d*) et de l'article 112, ne pas avoir été reçue par la fiducie et, pour l'application de la présente loi, sauf la partie XIII, constituer un dividende imposable sur l'action reçu de la société par le bénéficiaire au cours d'une année d'imposition donnée si :

*a*) d'une part, il est raisonnable de considérer, compte tenu des circonstances, y compris les modalités de l'acte de fiducie, que cette partie entre dans le montant inclus en application du paragraphe (13) ou (14) ou de l'article 105 dans le calcul du revenu du bénéficiaire pour l'année donnée;

*b*) d'autre part, la fiducie n'attribue cette partie à aucun autre de ses bénéficiaires.

### **Somme devenue payable**

104(24) For the purposes of subsections (6), (7), (13), (16) and (20) and subparagraph 53(2)(h)(i.1), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

### **Income interest in trust**

106(1) Where an amount in respect of a taxpayer's income interest in a trust has been included in computing the taxpayer's income for a taxation year by reason of subsection (2) or 104(13), except to the extent that an amount in respect of that income interest has been deducted in computing the taxpayer's taxable income pursuant to subsection 112(1) or 138(6), there may be deducted in computing the taxpayer's income for the year the lesser of

(a) the amount so included in computing the taxpayer's income for the year, and

(b) the amount, if any, by which the cost to the taxpayer of the income interest exceeds the total of all amounts in respect of the interest that were deductible under this subsection in computing the taxpayer's income for previous taxation years.

### **Definitions**

108(1) In this subdivision,

“**beneficiary**” under a trust includes a person beneficially interested therein;

“**trust**” includes an *inter vivos* trust and a

104(24) Pour l'application des paragraphes (6), (7), (13), (16) et (20) et du sous-alinéa 53(2)h(i.1), une somme est réputée ne pas être devenue payable à un bénéficiaire au cours d'une année d'imposition à moins qu'elle ne lui ait été payée au cours de l'année ou que le bénéficiaire n'eût le droit au cours de l'année d'en exiger le paiement

### **Participation au revenu d'une fiducie**

106(1) Lorsqu'une somme relative à la participation d'un contribuable au revenu d'une fiducie est incluse en application du paragraphe (2) ou 104(13) dans le calcul du revenu de ce contribuable pour une année d'imposition, la moins élevée des sommes suivantes est déductible dans ce calcul, sauf dans la mesure où une somme relative à cette participation a déjà été déduite dans le calcul du revenu imposable du contribuable conformément au paragraphe 112(1) ou 138(6):

a) la somme ainsi incluse dans le calcul de son revenu pour l'année;

b) l'excédent éventuel du prix que le contribuable a payé en contrepartie du droit de participer au revenu sur le total des sommes qui étaient déductibles au titre de cette participation, en vertu du présent paragraphe, dans le calcul de son revenu pour les années d'imposition antérieures.

### **Définitions**

108(1) Les définitions qui suivent s'appliquent à la présente sous-section.

« **bénéficiaire** » Sont comprises dans les bénéficiaires d'une fiducie les personnes ayant un droit de bénéficiaire sur celle-ci.

« **fiducie** » Sont comprises parmi les fiducies

testamentary trust but in subsections 104(4), (5), (5.2), (12), (13.1), (13.2), (14) and (15) and sections 105 to 107 does not include

(a) an amateur athlete trust, an employee trust, a trust described in paragraph 149(1)(o.4) or a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a foreign retirement arrangement, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan or a registered supplementary unemployment benefit plan,

(a.1) a trust, other than a trust described in paragraph (a) or (d), all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

(b) a related segregated fund trust (within the meaning assigned by section 138.1),

(c) an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization,

(d) an RCA trust (within the meaning assigned by subsection 207.5(1)),

(e) a trust each of the beneficiaries under which was at all times after it was created a trust referred to in paragraph (a), (b) or (d) or a person who is a beneficiary of the trust only because of being a beneficiary under a trust referred to in any of those paragraphs, or

tant la fiducie non testamentaire que la fiducie testamentaire; le terme ne vise toutefois pas, aux paragraphes 104(4), (5), (5.2), (12), (13.1), (13.2), (14) et (15) ainsi qu'aux articles 105 à 107 :

a) une fiducie au profit d'un athlète amateur, une fiducie d'employés, une fiducie visée à l'alinéa 149(1)o.4) ni une fiducie régie par quelque régime de participation différée aux bénéficiaires, régime de prestations aux employés, régime de participation des employés aux bénéficiaires, mécanisme de retraite étranger, régime enregistré d'épargne-études, régime de pension agréé, fonds enregistré de revenu de retraite, régime enregistré d'épargne-retraite ou régime enregistré de prestations supplémentaires de chômage;

a.1) une fiducie, sauf celle visée aux alinéas a) ou d), dont la totalité ou la presque totalité des biens sont détenus en vue d'assurer des prestations à des particuliers auxquels des prestations sont assurées dans le cadre ou au titre de la charge ou de l'emploi actuel ou ancien d'un particulier;

b) une fiducie créée à l'égard du fonds réservé, au sens de l'article 138.1;

c) une fiducie non testamentaire réputée, aux termes du paragraphe 143(1), exister à l'égard d'une congrégation qui est une partie constituante d'un organisme religieux;

d) une fiducie de convention de retraite, au sens du paragraphe 207.5(1);

e) une fiducie dont chacun des bénéficiaires est, depuis l'établissement de la fiducie, soit une fiducie visée aux alinéas a), b) ou d), soit une personne qui est bénéficiaire de la fiducie du seul fait qu'elle est bénéficiaire d'une fiducie visée à l'un de ces alinéas;

(e.1) a cemetery care trust or a trust governed by an eligible funeral arrangement,

e.1) une fiducie pour l'entretien d'un cimetière ou une fiducie régie par un arrangement de services funéraires;

and in applying subsections 104(4), (5), (5.2), (12), (14) and (15) and section 106 at any time, does not include

Par ailleurs, n'est pas considérée comme une fiducie pour l'application, à un moment quelconque, des paragraphes 104(4), (5), (5.2), (12), (14) et (15) et de l'article 106:

(f) a trust that, at that time, is a unit trust, or

f) la fiducie qui est une fiducie d'investissement à participation unitaire à ce moment;

(g) a trust all interests in which, at that time, have vested indefeasibly, other than

g) la fiducie dont l'ensemble des participations, à ce moment, ont été dévolues irrévocablement, à l'exception des fiducies suivantes :

(i) an *alter ego* trust, a joint spousal or common-law partner trust, a post-1971 spousal or common-law partner trust or a trust to which paragraph 104(4)(a.4) applies,

(i) les fiducies au profit de l'époux ou du conjoint de fait postérieures à 1971, les fiducies en faveur de soi-même, les fiducies mixtes au profit de l'époux ou du conjoint de fait ou les fiducies auxquelles l'alinéa 104(4)a.4) s'applique,

(ii) a trust that has elected under subsection 104(5.3),

(ii) la fiducie qui a fait le choix prévu au paragraphe 104(5.3),

(iii) a trust that has, in its return of income under this Part for its first taxation year that ends after 1992, elected that this paragraph not apply,

(iii) la fiducie qui a choisi, dans sa déclaration de revenu en vertu de la présente partie pour sa première année d'imposition se terminant après 1992, de se soustraire à l'application du présent alinéa,

(iv) a trust that is at that time resident in Canada where the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust who at that time are non-resident is more than 20% of the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust,

(iv) la fiducie qui réside au Canada à ce moment, dans le cas où la juste valeur marchande globale, à ce moment, de l'ensemble des participations dans la fiducie alors détenues par ceux de ses bénéficiaires qui ne résident pas au Canada à ce moment représente plus de 20 % de la juste valeur marchande globale, à ce moment, de l'ensemble des participations dans la fiducie alors détenues par ses bénéficiaires,

(v) a trust under the terms of which, at that time, all or part of a person's interest in the

(v) la fiducie dont les modalités prévoient, à ce moment, que la totalité ou une partie de la

trust is to be terminated with reference to a period of time (including a period of time determined with reference to the person's death), otherwise than as a consequence of terms of the trust under which an interest in the trust is to be terminated as a consequence of a distribution to the person (or the person's estate) of property of the trust if the fair market value of the property to be distributed is required to be commensurate with the fair market value of that interest immediately before the distribution, or

(vi) a trust that, before that time and after December 17, 1999, has made a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, if the distribution can reasonably be considered to have been financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual.

**“capital interest”** of a taxpayer in a trust means all rights of the taxpayer as a beneficiary under the trust, and after 1999 includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right, but does not include an income interest in the trust;

**“income interest”** of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, after 1999, includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right;

participation d'une personne dans la fiducie doit prendre fin par rapport à une période (y compris celle déterminée par rapport au décès de la personne), autrement que par l'effet des modalités de la fiducie selon lesquelles une participation dans la fiducie doit prendre fin par suite de l'attribution à la personne (ou à sa succession) d'un bien de la fiducie, si la juste valeur marchande du bien à attribuer doit être proportionnelle à celle de cette participation immédiatement avant l'attribution,

(vi) la fiducie qui, avant ce moment et après le 17 décembre 1999, a effectué une attribution en faveur d'un bénéficiaire au titre de la participation de celui-ci à son capital, s'il est raisonnable de considérer que l'attribution a été financée par une dette de la fiducie et si l'une des raisons pour lesquelles la dette a été contractée était d'éviter des impôts payables par ailleurs en vertu de la présente partie par suite du décès d'un particulier.

« participation au capital » S'agissant de la participation d'un contribuable au capital d'une fiducie, les droits du contribuable à titre de bénéficiaire de la fiducie, y compris, après 1999, le droit (sauf celui acquis avant 2000 et dont il est disposé avant mars 2000), découlant de tels droits, d'exiger de la fiducie le versement d'une somme. N'est pas une participation au capital la participation au revenu de la fiducie.

« participation au revenu » S'agissant de la participation d'un contribuable au revenu d'une fiducie, le droit, immédiat ou futur, conditionnel ou non, du contribuable à titre de bénéficiaire d'une fiducie personnelle à tout ou partie du revenu de la fiducie, ou de recevoir tout ou partie de ce revenu, y compris, après 1999, le droit (sauf celui acquis avant 2000 et dont il est disposé avant mars 2000), découlant d'un tel droit, d'exiger

**Deduction of taxable dividends received by corporation resident in Canada**

112(1) Where a corporation in a taxation year has received a taxable dividend from

- (a) a taxable Canadian corporation, or
- (b) a corporation resident in Canada (other than a non-resident-owned investment corporation or a corporation exempt from tax under this Part) and controlled by it,

an amount equal to the dividend may be deducted from the income of the receiving corporation for the year for the purpose of computing its taxable income.

**PART XVI**

**TAX AVOIDANCE**

**[General Anti-Avoidance Rule — GAAR] Definitions**

245(1) In this section,

“**tax consequences**” to a person means the amount of income, taxable income, or taxable income earned in Canada of, tax or other amount payable by or refundable to the person under this Act, or any other amount that is relevant for the purposes of computing that amount;

“**tax benefit**” means a reduction, avoidance

de la fiducie le versement d’une somme.

**Déduction des dividendes imposables reçus par une société résidant au Canada**

112(1) Lorsqu’une société a reçu, au cours d’une année d’imposition, un dividende imposable :

- a) soit d’une société canadienne imposable;
- b) soit d’une société résidant au Canada (autre qu’une société de placement appartenant à des non-résidents et une société exonérée d’impôt en vertu de la présente partie) et dont elle a le contrôle,

une somme égale au dividende peut être déduite du revenu pour l’année de la société qui le reçoit, dans le calcul de son revenu imposable.

**PARTIE XVI**

**ÉVITEMENT FISCAL**

**Définitions**

**245(1) Les définitions qui suivent s’appliquent au présent article.**

« **attribut fiscal** » S’agissant des attributs fiscaux d’une personne, revenu, revenu imposable ou revenu imposable gagné au Canada de cette personne, impôt ou autre montant payable par cette personne, ou montant qui lui est remboursable, en application de la présente loi, ainsi que tout montant à prendre en compte pour calculer, en application de la présente loi, le revenu, le revenu imposable, le revenu imposable gagné au Canada de cette personne ou l’impôt ou l’autre montant payable par cette personne ou le montant qui lui est remboursable.

« **avantage fiscal** » Réduction, évitement ou



or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act but for a tax treaty or an increase in a refund of tax or other amount under this Act as a result of a tax treaty;

“**transaction**” includes an arrangement or event.

### **General anti-avoidance provision [GAAR]**

(2) Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that, but for this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

### **Avoidance transaction**

(3) An avoidance transaction means any transaction

(a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or

(b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes

report d'impôt ou d'un autre montant exigible en application de la présente loi ou augmentation d'un remboursement d'impôt ou d'un autre montant visé par la présente loi. Y sont assimilés la réduction, l'évitement ou le report d'impôt ou d'un autre montant qui serait exigible en application de la présente loi en l'absence d'un traité fiscal ainsi que l'augmentation d'un remboursement d'impôt ou d'un autre montant visé par la présente loi qui découle d'un traité fiscal.

« opération » Sont assimilés à une opération une convention, un mécanisme ou un événement.

### **Disposition générale anti-évitement**

(2) En cas d'opération d'évitement, les attributs fiscaux d'une personne doivent être déterminés de façon raisonnable dans les circonstances de façon à supprimer un avantage fiscal qui, sans le présent article, découlerait, directement ou indirectement, de cette opération ou d'une série d'opérations dont cette opération fait partie.

### **Opération d'évitement**

(3) L'opération d'évitement s'entend :

a) soit de l'opération dont, sans le présent article, découlerait, directement ou indirectement, un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets véritables — l'obtention de l'avantage fiscal n'étant pas considérée comme un objet véritable;

b) soit de l'opération qui fait partie d'une série d'opérations dont, sans le présent article, découlerait, directement ou indirectement, un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets

other than to obtain the tax benefit.

véritables — l'obtention de l'avantage fiscal n'étant pas considérée comme un objet véritable.

### **Application of subsection (2)**

### **Application du par. (2)**

(4) Subsection (2) applies to a transaction only if it may reasonably be considered that the transaction

(4) Le paragraphe (2) ne s'applique qu'à l'opération dont il est raisonnable de considérer, selon le cas :

(a) would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of

a) qu'elle entraînerait, directement ou indirectement, s'il n'était pas tenu compte du présent article, un abus dans l'application des dispositions d'un ou de plusieurs des textes suivants :

(i) this Act,

(i) la présente loi,

(ii) the *Income Tax Regulations*,

(ii) le *Règlement de l'impôt sur le revenu*,

(iii) the *Income Tax Application Rules*,

(iii) les *Règles concernant l'application de l'impôt sur le revenu*,

(iv) a tax treaty, or

(iv) un traité fiscal,

(v) any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

(v) tout autre texte législatif qui est utile soit pour le calcul d'un impôt ou de toute autre somme exigible ou remboursable sous le régime de la présente loi, soit pour la détermination de toute somme à prendre en compte dans ce calcul;

(b) would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

b) qu'elle entraînerait, directement ou indirectement, un abus dans l'application de ces dispositions compte non tenu du présent article lues dans leur ensemble.

### **Determination of tax consequences**

### **Attributs fiscaux à déterminer**

(5) Without restricting the generality of subsection (2), and notwithstanding any other enactment,

(5) Sans préjudice de la portée générale du paragraphe (2) et malgré tout autre texte législatif, dans le cadre de la détermination des attributs fiscaux d'une personne de façon raisonnable dans les circonstances de façon à supprimer l'avantage fiscal qui, sans le présent article, découlerait, directement ou indirectement, d'une opération d'évitement :

(a) any deduction, exemption or exclusion in computing income, taxable income, taxable income earned in Canada or tax payable or any part thereof may be allowed or disallowed in whole or in part,

(b) any such deduction, exemption or exclusion, any income, loss or other amount or part thereof may be allocated to any person,

(c) the nature of any payment or other amount may be recharacterized, and

(d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored,

in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, but for this section, result, directly or indirectly, from an avoidance transaction.

## PART XVII

### Interpretation

#### Definitions

**248 (1)** In this Act,

*person*, or any word or expression descriptive of a person, includes any corporation, and any entity exempt, because of subsection 149(1), from tax under Part I on all or part of the entity's taxable income and the heirs, executors, liquidators of a succession, administrators or other legal representatives of such a person, according to the law of that part of Canada to which the context extends;

a) toute déduction, exemption ou exclusion dans le calcul de tout ou partie du revenu, du revenu imposable, du revenu imposable gagné au Canada ou de l'impôt payable peut être en totalité ou en partie admise ou refusée;

b) tout ou partie de cette déduction, exemption ou exclusion ainsi que tout ou partie d'un revenu, d'une perte ou d'un autre montant peuvent être attribués à une personne;

c) la nature d'un paiement ou d'un autre montant peut être qualifiée autrement;

d) les effets fiscaux qui découleraient par ailleurs de l'application des autres dispositions de la présente loi peuvent ne pas être pris en compte.

## PARTIE XVII

### Interprétation

#### Définitions

**248(1)** Les définitions qui suivent s'appliquent à la présente loi.

*personne* Sont comprises parmi les personnes tant les sociétés que les entités exonérées de l'impôt prévu à la partie I sur tout ou partie de leur revenu imposable par l'effet du paragraphe 149(1), ainsi que les héritiers, liquidateurs de succession, exécuteurs testamentaires, administrateurs ou autres représentants légaux d'une personne, selon la loi de la partie du Canada visée par le contexte. La notion est visée dans des formulations générales, impersonnelles ou comportant des pronoms ou adjectifs

indéfinis.

**Series of transactions**

248(10) For the purposes of this Act, where there is a reference to a series of transactions or events, the series shall be deemed to include any related transactions or events completed in contemplation of the series.

**Série d'opérations**

248(10) Pour l'application de la présente loi, la mention d'une série d'opérations ou d'événements vaut mention des opérations et événements liés terminés en vue de réaliser la série.

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