NO.: **IT-268R3** DATE: February 13, 1987

SUBJECT: INCOME TAX ACT

# Inter Vivos Transfer of Farm Property to Child

REFERENCE: Subsections 73(3) and 73(4) (also sections 69, 75, 75.1, 80 and 110.6, subsections 40(1), 40(1.1), 70(9.6), 70(9.8), 70(10), 73(5), 100(2), 146(5.3), 146(5.4), 146(5.5), 248(1) and 252(1) and paragraphs 40(2)(b), 40(2)(c) and 54(g) of the Income Tax Act; subsections 20(1), 21(1), 21(2), 26(3), 26(5) and 26(19) of the Income Tax Application Rules, 1971 (ITAR); and Part XVII of the Income Tax Regulations)



*This bulletin cancels and replaces IT-268R2 dated April 16, 1982 and a Special Release dated January 9, 1985*

## Contents



## General

**¶ 1.** This bulletin deals with the provisions of the Income Tax Act which permit the inter vivos rollover to a child of a taxpayer of farm assets, shares of the capital stock of a family farm corporation or an interest in a family farm partnership.

## Definitions:

**¶ 2.** "Child" includes a grandchild and a great-grandchild for purposes of sections 70, 73 and 75.1 (subsection 75.1(2) and paragraph 70(10)(a)). Subsection 252(1) extends the meaning of "child" for all purposes of the Act to include a step-child (a child of the taxpayer's spouse), a legally adopted child and a spouse of a child. Subparagraph 70(10)(a)(iii) provides that for purposes of a transfer made after 1983 a person who was wholly dependent upon the taxpayer at some time before reaching the age of 21 and over whom the taxpayer had legal or de facto control at that time is a child of the taxpayer for sections 70 and 73. For transfer before 1984 such a person who did not otherwise qualify as a child would have to meet the dependancy, custody and control tests of paragraph 252(1)(b). For purposes of the transfer rules of section 73, the child relationship must exist at the time of the transfer and it is not material to these provisions nor to any subsequent disposition of the property that the relationship may afterwords cease. Child also includes children.

"Eligible capital property" includes agricultural quotas.

"Land of a taxpayer" includes, for purposes of subsection 73(3), an interest in a parcel of land held jointly or in common with one or more other persons.

# Farm Assets Transferred

**¶ 3.** Subsection 73(3) applies where at any time after 1971 a taxpayer while living transfers to the taxpayer's child, who was resident in Canada immediately before the transfer, property used in a farming business by the transferor, or by the transferor's spouse or child which is land in Canada or depreciable property of a prescribed class in Canada, or at any time after April 10, 1978 transfers to that child any eligible capital property in respect of such a business carried on in Canada. The transfer may be by way of sale or gift. If the taxpayer transfers a particular piece of farm property for an amount of actual proceeds of disposition (consideration) within the relevant limits set out in (a) to (c) below, that amount is deemed to be the transferor's proceeds of disposition and the cost of acquisition of that property to the transferee. If the consideration is in excess of the greater of the applicable limits described in (a) to (c) below, then the greater of those limits is deemed to be the transferor's proceeds of disposition and the transferee's cost of acquisition. On the other hand, if the consideration is less than the lesser of the applicable limits in (a) to (c) below, then the lesser of those limits is deemed to be the transferor's proceeds of disposition and the transferee's cost of acquisition. Therefore, by applying the mutually exclusive rules in any of paragraphs 73(3)(a), 73(3)(b) or 73(3)(b.1), as applicable, a transferor's deemed proceeds of disposition may be,

(a) in the case of land, any amount from the fair market value of the property to its adjusted cost base (paragraph 73(3)(b)),

(b) in the case of depreciable property of a prescribed class, any amount from the fair market value of the property to its undepreciated capital cost as determined pursuant to clause 73(3)(a)(ii)(B) (paragraph 73(3)(a)), and

(c) in the case of eligible capital property (transferred after April 10, 1978) in respect of a farming business of the taxpayer, any amount from the fair market value of the property to 2 times the taxpayer's cumulative eligible capital in respect of that business (paragraph 73(3)(b.1)).

In applying these rules, the fair market value, adjusted cost base or undepreciated capital cost of property, as the case may be, and the cumulative eligible capital are computed immediately before the time of transfer.

**¶ 4.** Examples of the application of subsection 73(3):

(a) Farm land with an adjusted cost base of $8,000 and a fair market value of $14,500 is transferred to a farmer's child:

| | **Case 1** | **Case 2** | **Case 3** | **Case 4** | **Case 5** |
|---|---|---|---|---|---|
| If the agreed selling price is | $7,000 | $8,000 | $13,500 | $16,000 | NIL |
| The deemed proceeds will be | $8,000 | $8,000 | $13,500 | $14,500 | $8,000 |

(b) Farm land with an adjusted cost base of $8,000 and a fair market value of $6,500 is transferred to a farmer's child:

| | | | | | |
|---|---|---|---|---|---|
| If the agreed selling price is | $6,000 | $6,500 | $8,000 | $9,500 | NIL |
| The deemed proceeds will be | $6,500 | $6,500 | $8,000 | $8,000 | $6,500 |

**¶ 5.** Application of the mutually exclusive rules in paragraphs 73(3)(a), 73(3)(b) and 73(3)(b.1) requires determination of an amount described in those paragraphs as "the proceeds of disposition otherwise determined". It is the Department's view that, for purposes of those provisions, the term "proceeds of disposition otherwise determined" means the amount of consideration paid or payable by a child on a transfer of farm property. In the case of a gift, there is no consideration paid or payable and, because of paragraph 73(3)(c), section 69 does not apply to otherwise determine the proceeds of disposition on such a transfer. In addition, subsection 20(1) of the ITAR has no application in determining "proceeds of disposition otherwise determined" for purposes of paragraph 73(3)(a). Likewise, subsection 21(1) of the ITAR does not apply in determining "proceeds of disposition otherwise determined" for purposes of paragraph 73(3)(b.1).

**¶ 6.** Pursuant to paragraph 73(3)(c), section 69 does not apply in determining the proceeds of disposition of depreciable property, land or eligible capital property under subsection 73(3).

**¶ 7.** The provisions of subsection 73(3) apply only if, immediately before the transfer, the child was resident in Canada and the property was used in the business of farming (see ¶s 15 to 17 below) by the taxpayer or by the spouse or any child of the taxpayer. The taxpayer (transferor) is not required to be resident in Canada at any time. In addition, subsection 73(3) applies only to property owned by the taxpayer immediately before the transfer to a child and thus is not applicable to property owned at that time by a partnership or corporation although property owned by the taxpayer and used by a family farm corporation or partnership qualifies (see ¶ 14 below). With regard to the property transferred, the land must be capital property of the transferor but neither the land nor depreciable property need be used in farming after the transfer.

**¶ 8.** If property which was acquired by a child under subsection 73(3) has been transferred or distributed to a parent as a consequence of the child's death after 1983, the child's legal representative may elect under subsection 70(9.6) in the final return to have the rollover provisions of subsection 70(9) apply.

**¶ 9.** In certain circumstances the Department will regard a remainder interest in land as "land" for the purposes of subsection 73(3). Where all of the parties to the transaction agree in writing that the remainder interest transferred to the child is "land" to which subsection 73(3) applies and that its fair market value immediately before the time of transfer for the purposes of that subsection is the full value of the land not discounted by any life interest not transferred to the child, the Department will view the transaction accordingly.

**¶ 10.** Subject to the comments in ¶s 34 and 35 below, the proceeds of disposition of the taxpayer (transferor) under subsection 73(3) is, in the case of land and depreciable property of a prescribed class, deemed to be the child's cost of acquisition (paragraph 73(3)(d)). In the case of eligible capital property, the child is deemed to have acquired a capital property at a cost equal to the taxpayer's proceeds of disposition, except that the child who continues to carry on the business previously carried on by the taxpayer or the spouse or any of the children of the taxpayer is deemed to have acquired an eligible capital property and to have made an eligible capital expenditure at a cost equal to those proceeds (paragraph 73(3)(d.1)).

**¶ 11.** Where the amount that is the deemed cost to the child of depreciable property of a prescribed class under paragraph 73(3)(d) is less than the capital cost thereof to the taxpayer, the capital cost of the property to the child is deemed to be the amount that was its capital cost to the taxpayer. The difference between these two amounts is deemed to have been allowed to the child as capital cost allowance and thus may be subject to recapture in the event of a subsequent disposition by the child (paragraph 73(3)(e)).

**¶ 12.** Under subsections 146(5.3) and (5.4) a full-time farmer who disposed of a qualified farm property in 1984 and in that year or within 60 days thereafter paid an amount not exceeding the taxable capital gain arising on the disposition as a premium under a registered retirement savings plan (RRSP) could deduct the amount subject to a calculated limit. The limit was $10,000 times the number of calendar years after 1971 and before 1984 in which the taxpayer or the taxpayer's spouse was a full-time farmer, less amounts deducted under subsection 146(5.3) by the spouse. If the taxpayer had attained the age of 71 in a previous year and as a consequence had become ineligible to contribute to an RRSP, an amount paid to acquire an annuity for life or to age 90 is deemed by subsection 146(5.5) to be a premium paid under an RRSP. The deductible portion of premuims paid by the taxpayer under an RRSP in these circumstances may not exceed the lesser of

(a) the aggregate of the taxpayer's taxable capital gains since 1983 from dispositions of qualified farm properties, and

(b) the amount of the "calculated limit" described above less the amounts deducted by the taxpayer since 1983 in respect of contributions to RRSPs of either the taxpayer or the spouse or to registered pension plans of the taxpayer,

reduced by all amounts previously deducted by the taxpayer under subsection 146(5.3).

**¶ 13.** Although subsections 146(5.3), (5.4) and (5.5) were repealed with respect to premiums paid to an RRSP after May 23, 1985 in respect of taxable capital gains arising from dispositions of qualified farm property after 1984, a taxpayer who disposed of a qualified farm property in 1984 and is bringing the taxable capital gain resulting from that disposition into income over a number of years by virtue of the capital gains reserve mechanism continues to be eligible to deduct amounts contributed to an RRSP on account of the gain. As well, a taxpayer who disposed of a qualified farm property in 1985, but before May 24, 1985, could deduct an amount contributed to an RRSP during that period. In either case the deductible portion of amounts contributed to an RRSP in respect of taxable capital gains from dispositions of qualified farm property may not exceed the limit described in ¶ 12 above.

**¶ 14.** A taxpayer who disposes of farm property after 1984 may be eligible for the capital gains deduction under section 110.6 in respect of taxable capital gains arising from the disposition. Where the disposition was of qualified farm property which was disposed of in 1985 and before May 24, 1985 and the taxpayer deducted an amount in respect of contributions to an RRSP on account of taxable capital gains arising from the disposition, the taxpayer's 1985 annual gains limit for purposes of section 110.6 is reduced by the amount of such deduction. This reduction is diminished to the extent that in 1985 the taxpayer withdrew amounts from the RRSP. Although the $500,000 lifetime capital gains deduction (i.e., $250,000 of taxable capital gains) is being phased in over the taxation years 1985 to 1990 inclusive for dispositions of most capital properties, the phasing-in restriction does not apply to gains by individuals on the disposition of qualified farm property.

## Used in the Business of Farming by a Taxpayer, or by the Spouse or Children of the Taxpayer

**¶ 15.** With regard to ¶ 7 above, for purposes of subsection 73(3), it is always a question of fact whether a particular property (e.g., land or depreciable property of a prescribed class) is used in a farming business and consequently no general guidelines for such a determination can be given in this bulletin. The question of whether a particular business operation constitutes a farming business is discussed in ¶ 16 below. Assuming that a farming business is being carried on and that the aforementioned property is in fact used in that farming business, it also must be determined on a fact basis whether a particular taxpayer, or the spouse or children of the taxpayer, are carrying on that particular farming business. In this regard, the Department considers a taxpayer, a spouse or a child to be carrying on a particular farming business where that person, to the extent that the circumstances of the particular farming operation allow, determines, for example, which fields will be planted, the type of crops to be seeded and the times for spraying and harvesting. The fact that the services of another person may be engaged for a negotiated sum of money to undertake all or part of the work associated with the farming activity (a relationship commonly referred to as "custom working") would not disqualify a taxpayer (farm owner) from rolling farm property to a child under subsection 73(3).

**¶ 16.** Except as provided by subsection 70(9.8), the Department considers that a lessor of farm property does not use such property in the business of farming and thus property (or any portion thereof) which immediately before the transfer was leased by the taxpayer to another person (including a sharecropper) is not ordinarily eligible for transfer under subsection 73(3). However, such leased property would be eligible where

(a) the lessee was using the property in the business of farming, and

(b) the lessee was

   (i) the spouse or any of the children of the taxpayer,

   (ii) a partnership, which is a family farm partnership of the taxpayer or of the spouse or any of the children of the taxpayer (70(9.8)(b)), or

   (iii) a family farm corporation of the taxpayer or of the spouse or any of the children of the taxpayer (70(9.8)(a)).

**¶ 17.** In the preceding paragraph "sharecropper" means a farmer who is a tenant and gives a share of the crop to the landlord in lieu of rent. There may be other types of arrangements, for example, where an individual is actually an employee of the owner of the farm and not a tenant and receives a share of the crop as a remuneration for services rendered; under such an arrangement the farm property may be eligible for transfer under subsection 73(3).

## Farming Business

**¶ 18.** It is a question of fact whether a particular farming operation constitutes a farming business at any particular time. Some of the criteria which should be considered in making this determination are set out in IT-322R. An additional criterion exists in cases where farming operations have not been undertaken previously, or at least in recent years, on property owned by an individual, a family farm corporation or a family farm partnership (see ¶ 26 below). In such cases, before the rollover provisions of subsection 73(3) or subsection 73(4) can apply, the Department considers that if a new farming operation has been initiated, whether specifically in anticipation of a rollover under one of those provisions or not, in order to establish that a farming business is being carried on all of the work associated with and required to initiate a viable farming business should be instituted and completed to the extent it is reasonably possible to do so in a given fact situation.

## Situations In Which Subsection 73(3) Applies:

**¶ 19.** The following are some examples of situations in which subsection 73(3) would apply, assuming all conditions of that provision are otherwise met:

(a) a taxpayer may transfer farm property in stages or piecemeal (partial dispositions) over any number of years. The onus is on the taxpayer to establish that a legal transfer is made on each occasion;

(b) the transfer of a part of a farm property to the taxpayer's spouse under subsection 73(1) does not preclude a transfer of the remainder to a child under subsection 73(3);

(c) a taxpayer may sever and transfer to a child farm land upon which the child may construct a residence;

(d) a taxpayer may transfer a farm property to several children in undivided shares;

(e) a taxpayer who is a sole owner of farm property may arrange for transfer of ownership of that property to a child in such a manner that the child becomes a joint tenant or tenant in common with the taxpayer in that property;

(f) provided the substance of a transaction is to effect the immediate transfer of the beneficial ownership (i.e., all the incidents of title such as possession, use and risk) of a farm property from a taxpayer to a child, such taxpayer may in certain instances (subject to departmental approval on an individual basis) transfer farm property under subsection 73(3) notwithstanding that legal title in the property so transferred continues to be held by the taxpayer, or some third party as security against payment of the sale price of that property or against payment of a loan taken by the child to purchase that property. For example, the Department has agreed that subsection 73(3) could apply where a child borrowed money from a Farm Loan Board to purchase a farm at less than fair market value from a parent, and the Board required that the parent first sell that property to them and they, in turn, would resell it to the child under an Agreement for Sale, thus retaining title to that real estate as security against the loan;

(g) a taxpayer may transfer a farm property to a partnership where all the partners are the taxpayer's children;

(h) a taxpayer may transfer farm land to a child and retain a life interest in the land for the taxpayer, for the spouse of the taxpayer or for the taxpayer and the spouse jointly (see ¶ 9 above).

## Situations In Which Subsection 73(3) Does Not Apply:

**¶ 20.** The following are some situations in which subsection 73(3) would not apply:

(a) a taxpayer cannot transfer farm property to a corporation and have subsection 73(3) apply even though all the shareholders are the taxpayer's children; and

(b) a taxpayer cannot use subsection 73(3) to defer a capital gain attributable to a principal residence located on, and transferred with, farm land being transferred to a child under that subsection. However, paragraphs 40(2)(b) or 40(2)(c) could apply to such gain if the conditions of paragraph 54(g) are met.

## Trusts for Minors

**¶ 21.** It is possible for an individual to transfer to a trust solely for the benefit of a minor child property described in subsection 73(3) or subsection 73(4). However, for property transferred to such a trust to qualify for a rollover under either of those subsections the following additional conditions must be met:

(a) the trust must be irrevocable;

(b) the terms of the trust must provide for the property to be held in trust for the exclusive benefit of the child and there must not be any trust provision which could have the effect of depriving the child of any rights as the beneficial owner of the property;

(c) the terms of the trust must provide for the distribution of the property to the child absolutely upon reaching a certain age and for the distribution of that property to the child's estate upon the child's death before that age; and

(d) use of the trust must be required because a provincial or other relevant statute does not permit property to be deeded to, or owned directly by, a child that is a minor.

## Reserves

**¶ 22.** If a taxpayer transfers property to a child at an amount in excess of its adjusted cost base where subsection 73(3) or 73(4) applies, a reserve may be claimed under subparagraph 40(1)(a)(iii) in respect of the uncollected proceeds computed as described in IT-236R2. For dispositions after November 12, 1981 the reserve calculation provided under subparagraph 40(1)(a)(iii) has been revised and a new subsection 40(1.1) has been added. As a consequence, in its application to transfers of property listed in ¶ 1 above to a child who was resident in Canada immediately before the transfer, this reserve is limited to a maximum period of 9 years. In computing the taxpayer's capital gains over this period at least 1/10 of the capital gain on disposition must be included in the year of disposition, and at least 1/10 of that gain must be included in computing the taxpayer's capital gains for each of the 9 subsequent taxation years subject, of course, to any overriding effect of the application of clause 40(1)(a)(iii)(A) with respect to the calculation of the reasonable reserve, as described in IT-236R2, which might accelerate this reporting. These new reserve limitations do not apply to dispositions occurring after November 12, 1981 pursuant to the terms of a written offer or agreement made on or before that date.

## Family Farm Corporations and Partnerships

**¶ 23.** Pursuant to subsection 73(4), where at any time after April 10, 1978 a taxpayer while living transfers property that was immediately before the transfer a share of the capital stock of a family farm corporation or an interest in a family farm partnership to a child of the taxpayer, who was resident in Canada immediately before the transfer, and the amount of the proceeds of disposition otherwise determined is either equal to or falls between the fair market value and the adjusted cost base of that property, then that amount is deemed to be the transferor's proceeds of disposition. In any other case, if the proceeds of disposition otherwise determined (see ¶ 24 below) are greater than both the fair market value and the adjusted cost base of the transferred property, the greater of those amounts is deemed to be the proceeds of disposition and, if less than both of those amounts, the lesser of those amounts is deemed to be the proceeds of disposition. The child is deemed to have acquired the shares or partnership interest at a cost equal to the taxpayer's deemed proceeds of disposition. If property acquired by a child under subsection 73(4) passes to a parent upon the child's death an election may be made under subsection 70(9.6) as discussed in ¶ 8 above.

**¶ 24.** Consistent with ¶ 5 above, the Department considers that for purposes of subsection 73(4) the term "proceeds of disposition otherwise determined" means the amount of consideration paid or payable by a child on a transfer of the above-mentioned shares or partnership interests. In addition, pursuant to paragraph 73(4)(b), section 69 does not apply in determining the proceeds of disposition of such property.

**¶ 25.** Even though a partnership interest in a family farm partnership may have a negative adjusted cost base at the time it is transferred under subsection 73(4), that negative amount must not be included in the computation of the deemed proceeds of disposition of that partnership interest under subsection 73(4). In such a case, the deemed proceeds of disposition under subsection 73(4) and the resultant gain under subsection 40(1) on disposition of the partnership interest are computed as if the adjusted cost base were nil. However, subsection 100(2) would apply in this situation to require that, in computing the amount of the transferor's gain on the disposition of the partnership interest, there be included, in addition to the amount of the gain normally computed under subsection 40(1), the amount of the aforementioned negative adjusted cost base immediately before the transfer.

**¶ 26.** A "share of the capital stock of a family farm corporation" of a person at a particular time is defined by paragraph 70(10)(b) to mean a share of the capital stock of a corporation that, at that time, carried on the business of farming in Canada in which it used all or substantially all of its property and in which that person or the person's spouse or child was actively engaged. For transfers after May 25, 1978 the definition is extended to include shares of a holding corporation where all or substantially all of its property is shares or debt obligations of a family farm corporation or a combination of such shares or debt obligations together with property used by the corporation in carrying on the business of farming in Canada in which the person or the spouse or any child of that person is actively engaged. In accordance with the comments in ¶ 15 above, a subsidiary could perform any farm task on a custom work basis for its parent without disqualifying the latter as a family farm corporation, provided that the parent otherwise qualifies and directs and controls all farming activities. A share of a corporation will be regarded as a share of a family farm corporation in respect of a taxpayer if all or substantially all of the corporation's property is an interest in a partnership which uses all or substantially all of its property in carrying on in Canada a farming business in which that taxpayer or the spouse or any child of the taxpayer is actively engaged.

**¶ 27.** An "interest in a family farm partnership" of a person at a particular time is defined by paragraph 70(10)(c) to mean an interest in a partnership that, at that time, carried on the business of farming in Canada in which it used all or substantially all of its property and in which that person, or the spouse or any child of that person was actively engaged.

**¶ 28.** Some criteria applied by the Department in determining, for purposes of paragraphs 70(10)(b) and 70(10)(c), whether a farming business is being carried on at any particular time by a family farm corporation or a family farm partnership and in determining whether the rollover provisions of subsection 73(4) can apply to a particular situation are discussed in ¶ 18 above.

**¶ 29.** It is also a question of fact to be determined on an individual basis whether, for purposes of paragraphs 70(10)(b) and 70(10)(c), "all or substantially all" of the property of a corporation or partnership is used in the business of farming. However, if a corporation or partnership has permanently set aside more than 10% in terms of cost of its assets for investment or non-qualified uses (i.e., uses other than in the business of farming), it will not qualify as a family farm corporation or a family farm partnership. Accordingly, it is necessary to establish whether particular assets of a corporation or partnership are used in the business of farming. This, of course, is also a question of fact. Generally, the Department considers that, for purposes of paragraphs 70(10)(b) and 70(10)(c), an asset is used in a farming business if its primary or principal use (i.e., more than 50% of its use) is in respect of the farming business operation as opposed to use in concurrent corporate or partnership operations that may even be ancillary or related to the farming operation such as, for example, storage or trucking of farm products for others or contract harvesting. In this context a residence owned by a corporation will be regarded as used in the business of farming if more than 50% of its use is as accommodation for persons who are actively employed in the farming business or their dependants. If the 50% farming business usage test is not met by a particular asset, then it will be included in the group of assets acquired for investment or non-qualified uses.

**¶ 30.** "Small business corporation" as defined in subsection 248(1) could include a corporation the shares of which fall within the definition of a "share of the capital stock of a family farm corporation" in paragraph 70(10)(b). The rollover rules in subsection 73(4) relative to family farm corporations and (before 1988) in subsection 73(5) relative to small business corporations could apply equally in a particular situation where both definitions are satisfied. In such a situation, it is the Department's view that a taxpayer may choose which subsection to apply on the transfer or distribution of any particular share.

## Debts Arising on Rollover

**¶ 31.** Where a taxpayer makes an inter vivos transfer of farm property pursuant to subsection 73(3) for a stipulated sale price, any subsequent forgiveness of part or all of the debt obligation arising on the transfer will bring section 80 into play unless one of paragraphs 80(1)(c) to (h) applies. IT-293R deals with the application of section 80. To avoid any adverse income tax consequences under section 80 in circumstances where a transferor really intends to sell farm property to a child for less than fair market value, the rollover transaction should be designed so that there is no possibility for that section to come into play. For example, if farm land (fair market value – $100,000; adjusted cost base – $50,000) is transferred to a child for a stipulated sale price of $50,000, the transferor's proceeds of disposition calculated as described in ¶s 3 and 4 above would be $50,000 and the child's cost of acquisition would by virtue of paragraph 73(3)(d) also be $50,000. On the other hand, if the property were sold to the child for $100,000 and $50,000 of the debt were subsequently forgiven, the transferor's proceeds of disposition under subsection 73(3) would be $100,000 and paragraph 80(1)(b) could apply to reduce the child's original $100,000 cost of acquisition by $50,000 if none of the losses described in subparagraphs 80(1)(a)(i), (ii) and (iii) were available to be reduced first. Thus the transferred land could be exposed to income tax a second time on any capital gain, up to $50,000, realized on a subsequent disposition by the child.

## Attribution

**¶ 32.** Subsection 75.1(1) provides that where a taxpayer's property has been transferred to a child in circumstances such that subsection 73(3) applied, taxable capital gains and allowable capital losses from dispositions of the transferred property by the child are deemed to be those of the taxpayer. Subsection 75.1(1) does not apply, if

(a) the taxpayer is dead or no longer resident in Canada at the time of the disposition by the child,

(b) the child attains the age of 18 years before the end of the taxation year in which the disposition takes place, or

(c) the transfer to the child was made at not less than the fair market value of the property immediately before that transfer.

Only property that is land in Canada or depreciable property in Canada of a prescribed class is subject to this provision.

**¶ 33.** For transfers of property on or before May 22, 1985 the rules in section 75 apply to attribute to a taxpayer income (but not business income) from farm property, an interest in a family farm partnership or a share in a family farm corporation, or property substituted therefor, transferred to and owned by a child while under 18 years of age. IT-260R discusses the attribution rules as they affect minors. The attribution rules in respect of property transferred thereafter will be dealt with in a bulletin to be published.

## ITAR Provisions

### Land:

**¶ 34.** If the farm land transferred, which is subject to the provisions of subsection 73(3), was owned by the taxpayer on December 31, 1971 (or where a person who did not deal at arm's length with the taxpayer owned the property on June 18, 1971 and no arm's-length owners intervened to the date of such transfer), subsections 26(3) and 26(5) of the ITAR preserve the tax-free zone in the usual way (see IT-132R2, "Capital Property Owned on December 31, 1971 – No Arm's-Length Transactions", and subsection 26(19) of the ITAR).

## Depreciable Property of a Prescribed Class

**¶ 35.** Subsection 20(1) of the ITAR may preserve the tax-free zone in respect of depreciable property of a prescribed class transferred under subsection 73(3), where the taxpayer's deemed proceeds of disposition exceed the property's capital cost (see IT-217, "Capital Property Owned on December 31, 1971 – Depreciable Property").

## Eligible Capital Property

**¶ 36.** Subsection 21(1) of the ITAR has no application in determining the amount of a parent-transferor's deemed proceeds of disposition of eligible capital property under paragraph 73(3)(b.1) of the Act. However, once such an amount is computed under paragraph 73(3)(b.1), that amount represents an amount payable for purposes of section 14 of the Act (in particular subparagraph 14(5)(a)(iv)) and can be reduced by the provisions of subsection 21(1) of the ITAR if the conditions of that subsection are otherwise met. Where ITAR 21(1) applies to reduce the amount payable, the child-transferee's cost of acquisition of the eligible capital property (see paragraph 73(3)(d.1) of the Act) is subject to a similar reduction under ITAR 21(2) since the child acquires that property in a non-arm's length transaction.

## Family Farm Corporations:

**¶ 37.** If a taxpayer owned shares of the capital stock of a family farm corporation on June 18, 1971 and continuously thereafter until the time of transfer to a child after 1971, then subsection 26(5) of the ITAR would apply to preserve that taxpayer's tax-free zone to the child if the other provisions of that subsection are met. However, if the taxpayer acquired such shares between June 19, 1971 and December 31, 1971 and transfers them after 1971 in a non-arm's length transaction to which subsection 73(4) of the Act applies (see ¶ 23 above), subsection 26(5) of the ITAR is technically not applicable and there is no provision similar to subsection 26(19) of the ITAR (see ¶ 34 above) to preserve the tax-free zone on those shares. Nevertheless, it is the Department's practice not to deprive the child in such a situation of the benefit of the tax-free zone. Consequently, the Department will permit such a transferee (child) to use subsections 26(5) and related 26(3) of the ITAR instead of paragraph 73(4)(c) of the Act to establish the adjusted cost base of such shares transferred whether by gift or in any other manner.

# Property Depreciable Pursuant to Part XVII

**¶ 38.** Property on which a taxpayer is claiming, or has claimed, capital cost allowance only under Part XVII of the Income Tax Regulations before making an inter vivos transfer thereof to a child does not qualify for a rollover under subsection 73(3) of the Act. Instead, that taxpayer's proceeds of disposition of such property must be computed either under subsection 20(1) of the ITAR or, if the conditions of that subsection are not met, under section 69 of the Act. In any case where ITAR 20(1) applies to determine a parent's deemed proceeds of disposition of Part XVII property that subsection will also preserve the parent's tax-free zone in respect of such property to the transferee-child. (See IT-217, "Capital Property Owned on December 31, 1971 – Depreciable Property").

**¶ 39.** Once Part XVII property is transferred by a taxpayer to a child after 1971, if it is depreciable property of the child it is required to be included in a prescribed class under Part XI of the Regulations, since property acquired after 1971 may not be depreciated pursuant to Part XVII of the Regulations.

**¶ 40.** Notwithstanding that a leasehold interest in land used in a farming business (where that leasehold interest was acquired prior to 1972 and capital cost allowance was claimed thereon only under Part XVII of the Regulations) is technically not depreciable property of a prescribed class, the Department will nevertheless accept it as qualifying for a rollover under subsection 73(3) of the Act if the taxpayers involved so request in writing.