Draft technical amendments expand the scope of taxable Canadian property

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On July 23, 2026, the Department of Finance released draft legislative proposals containing numerous technical amendments to the *Income Tax Act* (Canada) (the Act) accompanied by explanatory notes released on July 27, 2026. Among the proposals are amendments to the definition of "taxable Canadian property" (TCP) in subsection 248(1) of the Act.

Coming into force on Royal Assent, the proposed amendments will:

1. modify the rules governing when units of publicly traded partnerships constitute TCP;
2. broaden the look-through rule found in paragraph (d) of the definition of TCP;
3. reinstate the deeming rule for options and interests in property that previously applied in determining whether property is TCP.

1. Publicly traded partnership units

Under the proposed amendments, paragraph (d) of the definition of TCP no longer applies to partnership units listed on a designated stock exchange.

Instead, listed partnership units are brought within paragraph (e), alongside listed corporate shares and mutual fund interests, and are now subject to the 25 per cent ownership test and the more-than-50 per cent FMV test. Unlisted partnership interests continue to be tested only under the more-than-50 per cent FMV test in paragraph (d). This generally aligns the treatment of listed partnerships with that of listed corporate shares.

The revised language appears designed to better accommodate partnership structures when applying the ownership threshold. The proposal may therefore be particularly relevant for investment funds and other collective investment vehicles.

2. Broadening of look-through rule in paragraph (d)

The proposed amendments broaden the look-through rule found in paragraph (d) of the definition of TCP by permitting value to be traced through a wider range of intermediate entities, including through any corporation, trust or partnership (other than entities described in paragraph (e)).

Non-listed shares and interests that indirectly derive more than 50 per cent of their value from underlying TCP assets may now constitute TCP even where intermediate entities are not themselves TCP. As a result, shares that are not TCP under the current rules may become TCP because more underlying Canadian property is considered in applying the more-than-50 per cent FMV test.

3. Options, rights and interests: A significant broadening

The amendments also replace the existing deeming rules found in subparagraph (d)(iv) and paragraph (f) of the TCP definition with proposed subsection 248(1.2). New subsection 248(1.2) provides that, for the purposes of the definition TCP in subsection 248(1), a property described in any of paragraphs (a) to (e) of that definition is deemed to include an option in respect of, or an interest in, or for civil law a right in, the property, whether or not the property exists.

The explanatory notes indicate that the amendment is broader in its application than subparagraph (d)(iv) and paragraph (f) of the definition (which are consequently being repealed), as it ensures that options and interests themselves can qualify as TCP while also applying for the purposes of the TCP definition as a whole. The explanatory notes provide the following example:

- a taxpayer who owns 24 per cent of the shares of a corporation and holds an option to acquire an additional 1 per cent of its shares meets the 25 per cent or more ownership test under subparagraph (e)(i) of the definition due to the application of this new deeming provision; consequently, both the taxpayer's shares and the option to acquire additional shares would be TCP, provided the condition in subparagraph (e)(ii) of the definition is also met.

As a result of the proposed amendments, options to acquire shares are once again factored into the 25 per cent test and can affect whether the shares are considered TCP.

Historical context

This new subsection reinstates the deeming rule that was repealed effective Oct. 1, 1996, when the definition of TCP was located in subsection 115(1) of the Act, with options or interests being dealt with in former subsection 115(3).

Subsection 115(3) provided that references to property described in subsection 115(1) included "any interest therein or option in respect thereof, whether or not such property is in existence.” As such, in Finance’s example above, the taxpayer would have also been deemed to have met the 25 per cent ownership test under the definition of TCP found in previous subsection 115(1).

When the TCP definition was relocated from subsection 115(1) to subsection 248(1) as part of the 2001 amendments, the former subsection 115(3) rule was not carried forward in its entirety. Although portions of the concept were subsequently reflected in subparagraph (d)(iv) and paragraph (f) of the TCP definition, the statutory language no longer expressly provided that options or interests are considered in determining whether the 25 per cent ownership threshold was met.

The Canada Revenue Agency acknowledged this issue shortly after the 2001 amendments. In technical interpretation 2002-015179, the CRA noted that former subsection 115(3) was not reproduced when the TCP definition was moved to subsection 248(1), creating uncertainty regarding the treatment of options and interests in property for purposes of the TCP definition.

Viewed in this context, the addition of subsection 248(1.2) appears less like an expansion of the TCP regime and more like a restoration of a concept that existed under former subsection 115(3) before the 2001 reorganization of the Act.

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