



Trusts and value of corporate life insurance

An alter ego trust, spouse trust or joint-partner trust is deemed to have disposed of its capital property for fair market value at the end of the day of death of the settlor, surviving spouse or joint-partner (as the case may be) under subsection 104(4) of the Act. What if the trust holds shares of a company that owns life insurance that is payable on the death of the settlor?

A CRA technical interpretation (#2010-0390911E5 dated July 26, 2011) confirms that for purposes of this deemed disposition by the trust, subsection 70(5.3) applies. This subsection states that for purposes of subsection 104(4), “the fair market value **at any time** of property that is disposed of as a consequence of an individual’s death is determined as though the fair market value of any life insurance policy of the said individual’s life were the cash surrender value... of the policy immediately before the said person’s death.”

Subsection 70(5.3) did not always apply to these dispositions and was amended to apply to 104(4) dispositions. Prior to the amendments to 70(5.3), there was the untenable position that the full death benefit could have contributed to the value of the shares held by the trust when determining the fair market value of the shares for purposes of 104(4). For a full discussion of these amendments, see As a Matter of Tax from July 2000 - “[Valuation of life insurance policy – when does 70\(5.3\) apply?](#)” and As a Matter of Tax from June 1999 - “[Valuation of Shares at death with Corporate-Owned Life Insurance](#)”.

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