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Re: Legislation Pertaining to the Flipped Property Rules

Enclosed is a submission from the Tax Technical Committee of STEP Canada on the flipped property rules found at subsections 12(12), (13), and (14) of the *Income Tax Act*. Our submission highlights several presumably unintended consequences arising from the interaction of these rules with longstanding provisions governing trusts, estates, family transfers, and rollover transactions. We recommend targeted amendments to ensure that the rules address genuine speculative activity without unduly penalizing bona fide planning or continuity-of-ownership arrangements.

STEP Canada's membership represents a broad cross-section of professional advisors in estate planning and wealth management. Because our members routinely advise on transactions affected by these rules, the organization is uniquely positioned to identify practical deficiencies in the current legislation and to propose balanced, workable solutions.

Several members of the STEP Canada Tax Technical Committee participated in discussions concerning our submission and contributed to its preparation, in particular:

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We would be pleased to discuss our comments with you at your convenience.

Kindly direct any enquiries to Michael Dodick, Chief Operating Officer, at mdodick@step.ca.

Yours truly,



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Flipped Property Rules Conflict with Trust, Estate, and Continuity-of-Ownership Provisions

The *Income Tax Act* (“the Act”) is designed to distinguish between income and capital gains, ensuring appropriate and fair taxation of each. In response to concerns about real estate flipping and the erosion of tax revenues through mischaracterized gains, the Act now includes specific recharacterization rules targeting rapid resales of residential property. These provisions treat profits from such transactions as fully taxable business income rather than as capital gains. This submission discusses the mechanics, history, and purpose of subsection 12(12) of the Act and suggests legislative amendments in order to address some unintended and penalizing consequences of this provision.

In recent years, the practice of purchasing and rapidly reselling residential properties—commonly known as “house flipping”—has garnered increasing attention from tax authorities. This activity involves acquiring residential property and reselling it within a short time frame to realize a profit. Under the general tax framework, although it is a question of fact, such profits may have previously qualified as capital gains, of which only 50% are taxable, rather than being treated as fully taxable business income. In some cases, taxpayers even claimed the principal residence exemption to fully shelter the gain from tax, arguing that the property qualified as their principal residence.

To address this issue and potential abuse, legislative measures have been introduced, notably subsection 12(12), which establishes a specific time frame to distinguish genuine investment from speculative flipping. This provision aims to ensure that profits derived from the quick resale of residential properties are appropriately taxed, reflecting the true nature of the activity.

However, the current deeming rule set out in subsection 12(12) presents certain limitations, particularly in the context of trusts and estates. The legislative framework, as it stands, does not adequately account for all scenarios involving legitimate short-term holding periods. Certain transactional structures that incorporate trusts can produce unintended and unfair tax consequences under the current regime.

This submission recommends a technical update for consideration by the Department of Finance to align subsection 12(12) with its intended policy objective while ensuring that gains arising from transactions involving trusts and estates or legitimate transfers are not inadvertently subjected to recharacterization as business income.

History of Subsection 12(12)

On April 7, 2022, Minister of Finance Chrystia Freeland delivered *Budget 2022: A Plan to Grow Our Economy and Make Life More Affordable*. The budget documents stated that “some people who engage in property flipping may be improperly reporting their profits to pay less tax”. To ensure profits from flipping properties are taxed “fully and fairly”, Budget 2022 proposes that “any person who sells a property they have held for less than 12 months would be considered to be flipping properties and would be subject to full taxation on their profits as business income. Exemptions would apply for Canadians who sell their home due to certain life circumstances, such as a death, disability, the birth of a child, a new job, or a divorce.”

On November 4, 2022, Bill C-32, the *Fall Economic Statement Implementation Act, 2022*, received first reading in the House of Commons, introducing subsections 12(12), 12(13), and 12(14).

These rules were part of Bill C-47, which received royal assent on June 22, 2023, and apply retroactively to dispositions that occur after 2022.

In August 2024, legislative proposals were introduced that would, among other things, amend paragraph 12(13)(b) by adding the following exception after subparagraph (i):

(i.1) if a taxpayer is a trust, a deemed disposition by the taxpayer by application of paragraph 104(4)(a),

The August 2024 proposals, including the addition of subparagraph 12(13)(b)(i.1), have not yet been enacted and were not included in the August 15, 2025 nor the November 2025 draft legislation.

Basic Mechanics of Subsection 12(12)

Generally, subsection 12(12) provides that a gain from the disposition of a flipped property that would otherwise have been a capital gain is instead treated as business income. As a result, the gain is fully included in income rather than 50% included, and the principal residence exemption cannot be claimed. Treating the taxpayer’s gain as business income is achieved through a deeming rule that provides that, throughout the period the taxpayer owned the flipped property, the taxpayer is considered to be carrying on a business that is

an adventure or concern in the nature of trade. As a result, the property is regarded as inventory of the business and not as capital property of the taxpayer.

Subsection 12(13) introduces the concept of a “flipped property.” A “flipped property,” for the purposes of subsections 12(12) and 12(14), is generally defined as a housing unit located in Canada—or a right to acquire such a unit—that is owned or held by a taxpayer for less than 365 consecutive days prior to its disposition. The term “housing unit” is not defined in the Act. In paragraph 2.7 of *Income Tax Folio S1-F3-C2*, the Canada Revenue Agency (CRA) stated that a “housing unit” could include a house; an apartment or unit in a duplex, apartment building, or condominium; a cottage; a mobile home; a trailer; or a houseboat.

Paragraph 12(13)(b) provides for certain events that create exceptions to the application of the flipped property rules, including:

- (i) the death of the taxpayer or a person related to the taxpayer;
- (ii) one or more persons related to the taxpayer becoming a member of the taxpayer’s household (such as on the birth of a child, adoption, or care of an elderly parent), or the taxpayer becoming a member of the household of a related person;
- (iii) the breakdown of the marriage or common-law partnership of the taxpayer if the taxpayer has been living separate and apart from their spouse or common-law partner for at least 90 days prior to the disposition;
- (iv) a threat to personal safety of the taxpayer or a related person;
- (v) the taxpayer or a related person suffering from a serious illness or disability;
- (vi) an eligible relocation (including an international transfer) of the taxpayer or the taxpayer’s spouse or common-law partner;
- (vii) an involuntary termination of the employment of the taxpayer or the taxpayer’s spouse or common-law partner;
- (viii) the insolvency of the taxpayer; or
- (ix) the destruction or expropriation of the property.

For any of these exceptions to apply, it must be reasonable to consider that the disposition occurred due to (or in anticipation of) the particular event. Where one of the exceptions applies, the property will not be considered “flipped property,” even if it is held for a period of less than 365 consecutive days.

Implications of the Current Subsection 12(12) Rules and Other Sections of the Act

The exceptions to the “flipped property” definition are relatively broad and offer relief in a number of situations. However, the rules appear to overlook many common transactions where a taxpayer may legitimately own a property for less than 365 consecutive days, yet fall outside the scope of the speculative activity the government intended to target.

The core issue in these cases stems from the absence of a continuity-of-ownership provision within the flipped property regime. Without such a mechanism, even routine transfers—such as those involving trusts and estates or family arrangements—can inadvertently trigger penalizing tax treatment, despite lacking any true element of short-term speculation.

Transfer to spouse, alter ego trust, or joint partner trust that sells within 365 days

Subsection 73(1), which governs transfers to a spouse or common-law partner, an alter ego trust, or a joint partner trust, may give rise to significant unintended consequences. For example, if a taxpayer transfers the family home to their spouse and the spouse sells the home within 365 days, not only would the principal residence exemption be denied, but the entire gain accrued since the original acquisition of the property could be taxed as business income (assuming that the transfer was done on a tax-deferred basis).

Subsection 40(4) addresses situations where a property is transferred to a trust under subsection 73(1), such as a transfer from an individual to an alter ego trust. In such cases, subsection 40(4) deems the trust to have owned the property throughout the period during which the transferor held it. It also deems the property to have been the alter ego trust’s principal residence for any taxation year in which it was the transferor’s principal residence.

However, this deeming rule is limited in scope. It applies solely for the purposes of calculating the trust’s gain under the principal residence exemption rules in paragraph 40(2)(b) and the farming property rules in paragraph 40(2)(c). Crucially, it does not extend to the flipped property rules. As a result, the trust’s deemed period of ownership does not help it meet the 365-day holding requirement under the anti-flipping regime.

This creates a potential pitfall. For example, if an individual transfers their home to an alter ego trust and the trust sells the property within 365 days, the transaction could be classified as a “flipped property.” In that case, the principal residence exemption would be denied, and the entire gain—dating back to the original acquisition by the individual—

could be taxed as business income, even though the alter ego trust was used for non-tax purposes such as a will substitute. This outcome appears inconsistent with the policy underpinning subsection 40(4).

One possible solution would be for the individual to elect out of the automatic rollover under subsection 73(1) at the time of the transfer. Doing so would trigger a capital gain, which could be sheltered using the individual's principal residence exemption, provided that Form T2091 is filed on time. This approach would also step up the property's tax cost in the hands of the alter ego trust, potentially reducing future tax exposure. Although this solution would solve the issue of the gain accrued prior to the transfer, it would not solve the issue of the gain realized on a subsequent disposition by the transferee within 365 days, which would still be caught by the flipped property rules. This solution also implies that the taxpayer had access to the advice of a tax specialist, which is not always the case in this type of scenario where an alter ego trust is used for estate-planning purposes.

Distribution by a trust to beneficiary who sells within 365 days

Where a home is held by a family trust that does not qualify for the principal residence exemption (because it is not a trust described in paragraph (c.1) of the definition of "principal residence" in section 54), the trust may distribute a property to its beneficiary pursuant to subsection 107(2). Pursuant to subsection 40(7), the home is deemed to be owned by the beneficiary continuously since the trust last acquired the property. This deeming rule applies only for the purposes of the definition of "principal residence" in section 54 and the principal residence exemption in paragraph 40(2)(b). The plan may be for the beneficiary to claim the exemption upon disposition. However, if the sale occurs within 365 days of the distribution from the trust, this fact pattern would fall within the ambit of the flipped property rules, which would prevent the beneficiary from claiming the principal residence exemption while also recharacterizing the proceeds as business income.

It is questionable whether such an outcome reflects the legislative intent behind subsection 12(12) given its inconsistency with the policy underpinning subsection 40(7). In this scenario, the transaction does not align with the traditional model of speculative house flipping that the rule aims to prevent. This raises important concerns about the scope and application of subsection 12(12), especially as it intersects with trust law, asset protection planning, marital equalization planning, and intergenerational asset transfers.

Transfer to beneficiary by estate, sale by estate, exception pursuant to subparagraph 12(13)(b)(i), and CRA document no. 2023-0990101E5

Subparagraph 12(13)(b)(i) provides an exception where a taxpayer holds the housing unit for less than 365 days before its disposition, where the disposition can reasonably be considered to occur due to (or in anticipation of) the death of the taxpayer or a person related to the taxpayer.

In CRA document no. 2023-0990101E5 (January 29, 2024), the CRA addressed a situation in which an estate distributed a home to a beneficiary who sold it within 365 days of acquiring it. The beneficiary was the child of the deceased. The CRA's response was that "if it can be shown that there is a sufficiently clear connection between the death of the deceased parent and the disposition of the housing unit by the child beneficiary, then it may be possible to conclude that the disposition of the housing unit by the child beneficiary can reasonably be considered to have occurred due to the deceased parent's death, and the gain realized on the disposition would not be deemed to be business income by virtue of the application of subsection 12(12) of the Act."

With respect, we wonder what a "sufficiently clear connection" would be. Is a parent required to put words in their will that the child beneficiary can sell the property? We submit that this seems unduly onerous. A beneficiary has a choice when dealing with any property acquired by them under the terms of a will. Further, the fact situation in CRA document no. 2023-0990101E5 involved a deceased and the child of the deceased. What if the beneficiary were a niece or nephew of the deceased, or a friend of the deceased? In that event, the exception in subparagraph 12(13)(b)(i) could not apply because there would be no death of a person "related" to the taxpayer as that term is defined in subsection 251(2).

When an individual dies, their assets pass to their estate. The estate as represented by the estate trustees is not necessarily related to the deceased. The estate may dispose of the property because funds are needed to satisfy estate obligations and liabilities. If the estate is not related to the deceased because of the choice of estate trustees, then the exception in subparagraph 12(13)(b)(i) cannot apply. A sale of a housing unit by the estate within 365 days of the death of the deceased will result in the application of the flipped property rules.

Other transfers

We can also consider a scenario in which a taxpayer transfers a housing unit—held for more than 365 days as a capital property—to a related or wholly owned corporation on a tax-deferred basis under subsection 85(1). Assuming that the property continues to be treated as a capital property by the transferee corporation, if the corporation sells the property within 365 days of the transfer, the entire historical accrued gain could be recharacterized as business income under the flipped property rules. This outcome arises despite the fact that the property was held within the same economic group as a capital asset for well over a year.

The same issue applies to a rollover under subsection 88(1) or 97(2) and an amalgamation under subsection 87(1).

Proposed Amendments

In order to properly address the unintended tax consequences resulting from the application of subsection 12(12) in non-speculative contexts, we recommend that the Department of Finance consider amending the provision to exclude dispositions arising from genuine estate planning, asset protection planning, or intergenerational transfers, particularly where trusts are involved. Without such clarification, transactions that are not motivated by short-term profit—such as those involving rollovers, distributions from trusts, or reorganizations within a family context—may be inappropriately captured by the flipped property rules, leading to disproportionate tax treatment that does not align with the intended policy.

One of the shortcomings of the flipped property regime introduced by subsection 12(12) is its failure to recognize continuity of ownership within the same economic group. A property transferred from an individual to a related corporation, trust, or partnership may be legally disposed of, but economically it remains under the same control. To address this, the legislation could be amended to include a continuity-of-ownership rule that deems the holding period of the transferor to be inherited by the transferee in cases where the transfer occurs between affiliated or related parties.

Moreover, subsection 40(4) currently provides a deeming rule that allows a life interest trust (alter ego, self-benefit, spousal or common-law partner, or joint spousal or common-law partner trust) and a spouse to inherit the transferor's holding period and principal residence status for the purposes of the principal residence exemption and the farming property rules. Similarly, subsection 40(7) provides a deeming rule, for the purposes of the

definition of “principal residence” in section 54, that deems a beneficiary to have continuously owned the property that they received from the trust since the trust last acquired it. However, these provisions do not extend to the flipped property regime. It seems antithetical to effectively transfer an ownership period (given that the transferee trust or beneficiary, as the case may be, is deemed to own the property since the transferor last acquired it) yet to ignore this for the purposes of characterizing the gain on disposition. A targeted amendment could expand the application of subsections 40(4) and 40(7) to include these situations, thereby ensuring that a beneficiary or trust is not penalized for disposing of a property shortly after a rollover or a distribution, provided that the property was held by for the transferor and transferee for more than 365 days combined.

An additional approach would be to introduce a specific exemption from the flipped property rules for transfers made under recognized rollover provisions, such as subsections 73(1), 85(1), 87(1), 88(1) and 97(2), by providing that the transferee may benefit from the holding period of the transferor. These provisions are designed to facilitate tax-deferred transfers of property for legitimate non-speculative purposes, such as estate freezes, succession planning, trust creation, or routine corporate reorganization. Excluding these transactions from the flipped property regime would align the legislation with its policy intent—namely, to target speculative short-term gains rather than bona fide estate planning or corporate structuring transactions.

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We would welcome the opportunity to discuss this matter with you in more detail and respond to any questions you might have.