

Post-Mortem Planning Just Got A Little Bit Easier: Amendments To 164(6) Loss Carryback

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Bill C-15, otherwise known as the *Budget Implementation Act, 2025, No. 1*, received Royal Assent on March 26, 2026. Within the bill, long-awaited amendments to subsection 164(6) of the *Income Tax Act* (Canada) (the "ITA") were implemented that make the post-mortem loss carryback election more practical for estates administering capital property after death.

Deemed Disposition on Death

When a taxpayer dies, the taxpayer is deemed to have disposed of each capital property owned by the taxpayer immediately before death for proceeds equal to fair market value.^[1] This may trigger accrued capital gains or recapture on capital properties owned by the taxpayer and must be included in the taxpayer's final T1 Income Tax and Benefit Return (the "Terminal Return"). For many taxpayers, this can create a significant tax liability.

Subsection 164(6) Loss Carryback Rule

The loss carryback allowed under subsection 164(6) is one of the main tools available to legal representatives to significantly reduce the tax burden created by the deemed disposition on death. Subsection 164(6) allows a deceased taxpayer's legal representative to elect to treat capital losses or terminal losses realized by the deceased's graduated rate estate ("GRE")^[2] as capital losses or terminal losses of the deceased in the deceased's last taxation year (the "Loss Carryback").^[3] A Loss Carryback is especially useful as it can be used to offset any income reported in the deceased's Terminal Return, not just capital gains.

Helpful Amendments to the Loss Carryback

1. Extension from one taxation year to three taxation years

Prior to the Bill C-15 coming into force, the Loss Carryback was limited to losses experienced by the deceased's GRE in the estate's first taxation year. This put pressure on legal representatives and their advisors to complete Loss Carryback planning quickly.

Bill C-15 amended subsection 164(6) so that the Loss Carryback now applies where, in the course of administering the GRE, the GRE realizes the relevant losses in any of the estate's first three taxation years.^[4] Legal representatives should note that the time limit for a Loss Carryback is threetaxation years – not the GRE's 36 months. Therefore, the Loss Carryback timeframe could be shorter than 36 months.

The extension to three taxation years was intended to align the treatment of capital losses and terminal losses realized by a GRE with the treatment of net capital losses and non-capital losses realized by other taxpayers.^[5] Additionally, the amendment provides legal representatives more time to review and implement post-mortem planning, removing some of the pressure of completing a Loss Carryback within the estate's first taxation year.

2. Simplified filing mechanics

Bill C-15 also simplified the filing of an election under 164(6). Prior to Bill C-15, the legal representative of the deceased was required to file an amended Terminal Return for the deceased. Under the amendment, there is to be a "prescribed form and manner" for amending the Terminal Return.^[6] This change was intended to simplify the election process while still ensuring the Minister of National Revenue receives the information needed to give effect to the election, including any

consequential impact on deductions claimed in the deceased's final year.[7]

As of now, there is no specific prescribed form for the Loss Carryback, but Canada Revenue Agency ("CRA") has indicated the prescribed manner for making the election. The following should be sent to CRA when making an election to use the Loss Carryback:

- a Form T1-ADJ T1 Adjustment request; and
- a letter indicating that you are making an election under to use the Loss Carryback including the required supporting details and schedules.[8]

Effective Date

These amendments apply to taxation years of individuals who die on or after August 12, 2024, and to GREs of individuals who die on or after August 12, 2024.

Conclusion

Bill C-15 brings welcome amendments to the operation of the Loss Carryback. The extension to three taxation years provides real relief to legal representatives administering GREs to ensure that they properly consider post-mortem planning options without the pressured timeline of completing the Loss Carryback within the estate's first taxation year. The simplified process should ensure that Loss Carryback transactions are filed and assessed quicker.

Overall, this is a meaningful improvement to an important post-mortem planning provision. A PDF of this blog is available for download [here](#).

[1] *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) at ss. 70(5) [ITA]

[2] As defined in ITA, ss. 248(1)

[3] ITA, at ss. 164(6)

[4] <https://www.parl.ca/DocumentViewer/en/45-1/bill/C-15/royal-assent>

[5] <https://fin.canada.ca/drlég-apl/2025/nwmm-amvm-1-n-2-1125-eng.html>

[6] <https://www.parl.ca/DocumentViewer/en/45-1/bill/C-15/royal-assent>

[7] <https://fin.canada.ca/drlég-apl/2025/nwmm-amvm-1-n-2-1125-eng.html>

[8] https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4013/t3-trust-guide.html#P906_97823

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Author



Ian Spiegel

Associate

416.865.6658

ispiegel@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com