

# Update on new Canadian trust taxation legislation – subsection 104(13.4)

Kim G C Moody FCPA, FCA, TEP  
November 4, 2015

Almost a year ago, I wrote about a piece of draft legislation – [subsection 104\(13.4\)](#) – that was introduced as part of the proposals to eliminate graduated rate taxation for Canadian resident testamentary trusts. I explained how troublesome subsection 104(13.4) will be when planning the affairs of Canadians who want to utilize “life interest trusts” such as alter ego, joint spousal/common-law partner, or spousal trusts.

Subsection 104(13.4) has since become law and will become effective January 1, 2016. Subsequent to the writing of my November 2014 blog, the [CBA/CPA Canada Joint Committee on Taxation](#) (which I lead this particular matter for the Joint Committee) along with [STEP Canada](#) and [CALU](#) have been very active in dealing with the [Department of Finance](#) to suggest alternatives and “fixes” to address the [concerns](#) expressed regarding subsection 104(13.4). In my opinion, the discussions with the Department have been very fruitful. Unfortunately, we have not yet seen any legislative changes to address such concerns and obviously we are not entirely sure if we ever will. However, for those of you who know me, I am a “glass half-full” kind of person. I remain optimistic that the Department of Finance has heard our concerns and will respond positively when they can (elections and a new government can have a way of slowing down things).

So, if you’re an optimist like me and believe that some positive changes will eventually come to pass, then what should trust, estate, and tax practitioners do when dealing with their clients who may be negatively affected by subsection 104(13.4)? Well, that is a good question. I have lectured on the graduated rate estate changes and specifically about subsection 104(13.4) concerns dozens of times over the last 15 months. I am scheduled to speak on such matters an additional four times before the end of this year. My message over the last 15 months has been and will continue to be the same: practitioners need to plan as if there will be no changes. In other words, ensure that the negative implications of subsection 104(13.4) are dealt with when completing the estate plan for the impacted client. Experienced practitioners, however, know that such planning is easier said than done and can have a negative cascading effect. Notwithstanding, diligent and good practitioners will work through the challenges for the benefit of their clients.

The Joint Committee, STEP and CALU continue to press forward and hope for positive changes.