SUBSECTION 75(2): THE SPOILER

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Generally, income or losses and capital gains or capital losses arising from trust property that may absolutely or contingently revert to the contributor of the property, or from trust property over which the contributor may exercise control with respect to distributions or dispositions, will be attributed to the contributor under subsection 75(2) of the Income Tax Act. Furthermore, subsection 107(4.1) may deny a tax-deferred “rollout” of capital property to a beneficiary in the case of a trust to which subsection 75(2) applies. The author examines the implications of these provisions and the legislation and administrative guidance relevant to their application. Various methods and techniques for avoiding the application of subsection 75(2) are also discussed.

KEYWORDS: TRUSTS • INTER VIVOS TRUSTS • REVERSIONARY TRUSTS • ATTRIBUTION

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