

Notice of Ways and Means Motion to amend the Income Tax Act, the
Income Tax Application Rules and certain Acts related to the
Income Tax Act

SUMMARY

These amendments implement a variety of draft income tax measures that have previously been announced. The measures of greater significance are summarized below.

(1) **Taxpayer Migration:** enhances Canada's ability to tax the gains accrued by emigrants while they were resident in Canada.

(2) **Trusts:** addresses the tax treatment of property distributed from a Canadian trust to a non-resident beneficiary and introduces new measures dealing with the tax treatment of bare, protective and similar trusts as well as health and welfare trusts and trusts governed by registered retirement savings plans and registered retirement income funds.

(3) **Advertising Expenses:** implements the income tax aspects of the June 1999 agreement between Canada and the United States concerning periodicals.

(4) **Simultaneous Control:** confirms that in a chain of corporations, a corporation is controlled by its immediate parent even where the parent is itself controlled by a third corporation.

(5) **Foreign Affiliates Held by Partnerships:** ensures that Canadian corporations that are members of a partnership that holds shares of non-resident corporations are provided relief from double taxation on the income derived from those shares and receive the same tax treatment in respect of the disposition of those shares as if they held the shares directly.

(6) **Foreign Affiliate Losses:** provides that foreign accrual property losses of a foreign affiliate may be carried back three years and forward seven years for the purpose of determining the affiliate's foreign accrual property income for a particular taxation year.

(7) **Capital Tax:** extends for two years the additional capital tax on life insurance corporations.

(8) **Foreign Share-for-Share Exchange:** provides a tax-deferred rollover on the exchange of shares of one foreign corporation for shares of another foreign corporation.

(9) **Resource Expenditures:** clarifies the tax treatment of resource expenditures.

(10) **Amount Owing by Non-Resident:** removes certain loans and transfers of property from the scope of the "back-to-back loans" rule in section 17 of the *Income Tax Act*.

(11) **Canadian-Controlled Private Corporations:** ensures that a subsidiary of a Canadian resident corporation that has shares

listed on a foreign prescribed stock exchange does not qualify as a Canadian-controlled private corporation.

(12) **Stop-Loss Rule:** extends the rule that suspends recognition of a loss when a corporation, trust or partnership transfers depreciable property to transferees who are affiliated persons to include transfers by natural persons.

(13) **Types of Property:** amends the corporate butterfly rules to no longer require that each transferee corporation receive its pro-rata share of each type of property in the case of certain public corporation butterflies.

(14) **Investment Tax Credit:** amends the definition "investment tax credit" in subsection 127(9) of the *Income Tax Act* to ensure that a taxpayer that is exempt from tax, and becomes taxable, cannot claim investment tax credits in respect of expenditures incurred while the taxpayer was exempt from tax.

(15) **Ecological Lands:** clarifies rules for calculating a gain or loss upon the gift of an easement, covenant or servitude in respect of ecologically sensitive land.

(16) **Replacement Property Rules:** provides that the replacement property rules do not apply to shares of the capital stock of corporations.

(17) **Limited Liability Partnerships:** ensures that a member of a "limited liability partnership" (under provincial law) is not automatically a "limited partner" for the purposes of the *Income Tax Act*.

**Notice of Ways and Means Motion to amend the Income Tax Act, the
Income Tax Application Rules and certain Acts related to the
Income Tax Act**

That it is expedient to amend the Income Tax Act, the Income Tax Application Rules and certain Acts related to the Income Tax Act as follows:

PART 1

R.S., c. 1 (5th
Supp.)

INCOME TAX ACT

1. (1) Paragraph 7(1.4)(a) of the *Income Tax Act* is replaced by the following:

(a) a taxpayer disposes of rights under an agreement referred to in subsection (1) or (1.1) to acquire securities of a particular qualifying person that made the agreement or of a qualifying person with which it does not deal at arm's length (which rights and securities are referred to in this subsection as the "exchanged option" and the "old securities", respectively),

(2) Section 7 of the Act is amended by adding the following after subsection (1.5):

Emigrant

(1.6) For the purposes of this section and paragraph 110(1)(d.1), a taxpayer is deemed not to have disposed of a share solely because of subsection 128.1(4).

(3) Subsection (1) applies to the 1998 and subsequent taxation years.

(4) Subsection (2) applies after 1992.

2. (1) Paragraph 8(1)(a) of the Act is repealed.

(2) Subsection 8(10) of the Act is replaced by the following:

Certificate of
employer

(10) An amount otherwise deductible for a taxation year under paragraph (1)(f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form signed by the taxpayer's employer certifying that the conditions set out in that paragraph or subparagraph, as the case may be, were met in

the year in respect of the taxpayer is filed with the taxpayer's return of income for the year.

(3) Subsections (1) and (2) apply to the 1998 and subsequent taxation years.

3. (1) Section 10 of the Act is amended by adding the following after subsection (11):

Removing
property from
inventory

(12) If at any time a non-resident taxpayer ceases to use, in connection with a business or part of a business carried on by the taxpayer in Canada immediately before that time, a property that was immediately before that time described in the inventory of the business or the part of the business, as the case may be, (other than a property that was disposed of by the taxpayer at that time), the taxpayer is deemed

(a) to have disposed of the property immediately before that time for proceeds of disposition equal to its fair market value at that time; and

(b) to have received those proceeds immediately before that time in the course of carrying on the business or the part of the business, as the case may be.

Adding property
to inventory

(13) If at any time a property becomes included in the inventory of a business or part of a business that a non-resident taxpayer carries on in Canada after that time (other than a property that was, otherwise than because of this subsection, acquired by the taxpayer at that time), the taxpayer is deemed to have acquired the property at that time at a cost equal to its fair market value at that time.

Work in
progress

(14) For the purposes of subsections (12) and (13), property that is included in the inventory of a business includes property that would be so included if paragraph 34(a) did not apply.

(2) Subsection (1) applies after December 23, 1998.

4. (1) Paragraph 12(1)(c) of the Act is replaced by the following:

Interest

(c) subject to subsections (3) and (4.1), any amount received or receivable by the taxpayer in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) as, on account of, in lieu of payment of or in satisfaction of, interest to the extent that the interest was not included in computing the taxpayer's income for a preceding taxation year;

(2) Subsection (1) applies to taxation years that end after September 1997.

5. (1) The definition "disposition of property" in subsection 13(21) of the Act is repealed.

(2) Paragraph 13(21.2)(a) of the Act is replaced by the following:

(a) a person or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54) of a depreciable property of a particular prescribed class of the transferor,

(3) Subparagraph 13(21.2)(e)(ii) of the Act is replaced by the following:

(ii) where two or more properties of a prescribed class of the transferor are disposed of at the same time, subparagraph (i) applies as if each property so disposed of had been separately disposed of in the order designated by the transferor or, if the transferor does not designate an order, in the order designated by the Minister,

(4) Subsection (1) applies to transactions and events that occur after December 23, 1998.

(5) Subsections (2) and (3) apply after November 1999 except that, if an individual (other than a trust) so elects in writing and files the election with the Minister of National Revenue on or before the individual's filing-due date for the taxation year in which this Act receives royal assent, subsection (2) does not apply in respect of the disposition of a property by the individual before July 2000

(a) to a person who was obliged on November 30, 1999 to acquire the property pursuant to the terms of an agreement in writing made on or before that day; or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced before December 1999, other than a transaction or series of transactions a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the Act, or

(ii) any balance of undeducted outlays, expenses or other amounts.

6. (1) Section 17 of the Act is amended by adding the following after subsection (11):

Determination
of whether
persons related

(11.1) For the purpose of this section, in determining whether persons are related to each other at any time, any rights referred to in subparagraph 251(5)(b)(i) that exist at that time are deemed not to exist at that time to the extent that the exercise of those rights is prohibited at that time under a law, of the country under the law of which the corporation was formed or last continued and is governed, that restricts the foreign ownership or control of the corporation.

Back-to-back
loans

(11.2) For the purposes of paragraph (3)(b), where a non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "intermediate lender") makes a loan to a non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "intended borrower") because the intermediate lender received a loan from another non-resident person, or a partnership each member of which is non-resident, (in this subsection referred to as the "initial lender"), the loan that was made by the intermediate lender to the intended borrower is deemed to have been made by the initial lender (and not by the intermediate lender) to the intended borrower (to the extent of the lesser of the amount of the loan made by the initial lender to the intermediate lender and the amount of the loan made by the intermediate lender to the intended borrower) under the same terms and conditions and at the same time as it was made by the intermediate lender.

(2) The definition "exempt loan or transfer" in subsection 17(15) of the Act is replaced by the following:

"exempt loan or transfer"
« *prêt ou transfert de biens exclu* »

"exempt loan or transfer" means

(a) a loan or transfer of property made by a corporation to a person or partnership where

(i) at the time of the loan or transfer, the corporation was not related to the person or to any member of the partnership, as the case may be,

(ii) the loan or transfer of property was not part of a series of transactions or events at the end of which the corporation was related to the person or to any member of the partnership, as the case may be, and

(iii) the terms and conditions of the loan or transfer (determined without reference to any other loan or transfer of property to either a person related to the corporation or to a partnership any member of which was related to the corporation) are such that persons dealing at arm's length would have been willing to enter into them at the time that they were entered into;

(b) a dividend paid by a corporation resident in Canada on shares of a class of its capital stock; and

(c) a payment made by a corporation resident in Canada on a reduction of the paid-up capital in respect of shares of a class of its capital stock (not exceeding the total amount of the reduction).

(3) Subsections (1) and (2) apply to taxation years that begin after February 23, 1998.

7. (1) Subparagraph 18(9)(a)(ii) of the Act is replaced by the following:

(ii) as, on account of, in lieu of payment of or in satisfaction of, interest, taxes (other than taxes imposed on an insurer in respect of insurance premiums of a non-cancellable or guaranteed renewable accident and sickness insurance policy, or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less), rent or royalties in respect of a period that is after the end of the year, or

(2) Section 18 of the Act is amended by adding the following after subsection (9.01):

Application of
subsection (9)
to insurers

(9.02) For the purpose of subsection (9), an outlay or expense made or incurred by an insurer on account of the acquisition of an insurance policy (other than a non-cancellable or guaranteed renewable accident and sickness insurance policy or a life insurance policy other than a group term life insurance policy that provides coverage for a period of 12 months or less) is deemed to be an expense incurred as consideration for services rendered consistently throughout the period of coverage of the policy.

(3) Subsections (1) and (2) apply to taxation years that begin after 1999 except that, where a taxpayer so elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year in which this Act receives royal assent, they apply to taxation years that end after 1997.

8. (1) Subsection 18.1(15) of the Act is replaced by the following:

Non-
applicability
of section 18.1

(15) Subject to subsections (1) and (14), this section does not apply to a taxpayer's matchable expenditure in respect of a right to receive production if

(a) no portion of the expenditure can reasonably be considered to have been paid to another taxpayer, or to a person with whom the other taxpayer does not deal at arm's length, to acquire the right from the other taxpayer and

(i) the taxpayer's expenditure cannot reasonably be considered to relate to a tax shelter or tax shelter investment (as defined in section 143.2) and none of the main purposes for making the expenditure is that the taxpayer, or a person with whom the taxpayer does not deal at arm's length, obtain a tax benefit, or

(ii) before the end of the taxation year in which the expenditure is made, the total of all amounts each of which is included in computing the taxpayer's income for the year (other than any portion of such an amount that is the subject of a reserve claimed by the taxpayer for the year under this Act) in

respect of the right to receive production to which the matchable expenditure relates exceeds 80% of the expenditure;
or

(b) the expenditure is in respect of commissions or other expenses related to the issuance of an insurance policy for which all or a portion of a risk has been ceded to the taxpayer (in this paragraph referred to as the "reinsurer") and both the reinsurer and the person to whom the expenditure is made or is to be made are insurers subject to the supervision of

(i) the Superintendent of Financial Institutions, in the case of an insurer that is required by law to report to the Superintendent of Financial Institutions, or

(ii) in any other case, the Superintendent of Insurance or other similar officer or authority of the province under whose laws the insurer is incorporated.

(2) Subsection (1) applies to expenditures made after November 17, 1996.

9. (1) The portion of subsection 19(1) of the Act before subparagraph (b)(i) is replaced by the following:

Limitation re
advertising
expense -
newspapers

19. (1) In computing income, no deduction shall be made in respect of an otherwise deductible outlay or expense of a taxpayer for advertising space in an issue of a newspaper for an advertisement directed primarily to a market in Canada unless

(a) the issue is a Canadian issue of a Canadian newspaper; or

(b) the issue is an issue of a newspaper that would be a Canadian issue of a Canadian newspaper except that

(2) The definition "substantially the same" in subsection 19(5) of the Act is repealed.

(3) The definition "Canadian issue" in subsection 19(5) of the Act is replaced by the following:

"Canadian
issue"
« *édition
canadienne* »

"Canadian issue" of a newspaper means an issue, including a special issue,

(a) the type of which, other than the type for advertisements or features, is set in Canada,

(b) all of which, exclusive of any comics supplement, is printed in Canada,

(c) that is edited in Canada by individuals resident in Canada, and

(d) that is published in Canada;

(4) The portion of the definition "Canadian newspaper or periodical" in subsection 19(5) of the Act before paragraph (a) is replaced by the following:

"Canadian
newspaper"
« *journal
canadien* »

"Canadian newspaper" means a newspaper the exclusive right to produce and publish issues of which is held by one or more of the following:

(5) Section 19 of the Act is amended by adding the following after subsection (5):

Interpretation

(5.1) In this section, each of the following is deemed to be a Canadian citizen:

(a) a trust or corporation described in paragraph 149(1)(o) or (o.1) formed in connection with a pension plan that exists for the benefit of individuals a majority of whom are Canadian citizens;

(b) a trust described in paragraph 149(1)(r) or (x), the annuitant in respect of which is a Canadian citizen;

(c) a mutual fund trust, within the meaning assigned by subsection 132(6), other than a mutual fund trust the majority of

the units of which are held by citizens or subjects of a country other than Canada;

(d) a trust, each beneficiary of which is a person, partnership, association or society described in any of paragraphs (a) to (e) of the definition "Canadian newspaper" in subsection (5); and

(e) a person, association or society described in paragraph (c) or (d) of the definition "Canadian newspaper" in subsection (5).

(6) Subsections 19(6) to (8) of the Act are replaced by the following:

Trust property

(6) Where the right that is held by any person, partnership, association or society described in the definition "Canadian newspaper" in subsection (5) to produce and publish issues of a newspaper is held as property of a trust or estate, the newspaper is not a Canadian newspaper unless each beneficiary under the trust or estate is a person, partnership, association or society described in that definition.

Grace period

(7) A Canadian newspaper that would, but for this subsection, cease to be a Canadian newspaper, is deemed to continue to be a Canadian newspaper until the end of the 12th month that follows the month in which it would, but for this subsection, have ceased to be a Canadian newspaper.

Non-Canadian newspaper

(8) Where at any time one or more persons or partnerships that are not described in any of paragraphs (a) to (e) of the definition "Canadian newspaper" in subsection (5) have any direct or indirect influence that, if exercised, would result in control in fact of a person or partnership that holds a right to produce or publish issues of a newspaper, the newspaper is deemed not to be a Canadian newspaper at that time.

(7) Subsections (1) to (4) and (6) apply in respect of advertisements placed in an issue dated after May 2000.

(8) Subsection (5) applies in respect of advertisements placed in an issue dated after June 1996 except that, in applying subsection 19(5.1) of the Act, as enacted by subsection (5), to advertisements placed in an issue dated after June 1996 and before June 2000, the references in that subsection 19(5.1) to "Canadian newspaper" shall be read as references to "Canadian newspaper or periodical".

10. (1) The Act is amended by adding the following after section 19:

Definitions

19.01 (1) The definitions in this subsection apply in this section.

"advertisement
directed at the
Canadian
market"
« *annonce
destinée au
marché
canadien* »

"advertisement directed at the Canadian market" has the same meaning as the expression "directed at the Canadian market" in section 2 of the *Foreign Publishers Advertising Services Act* and includes a reference to that expression made by or under that Act.

"original
editorial
content"
« *contenu
réactionnel
original* »

"original editorial content" in respect of an issue of a periodical means non-advertising content

(a) the author of which is a Canadian and, for this purpose, "author" includes a writer, a journalist, an illustrator and a photographer; or

(b) that is created for the Canadian market and has not been published in any other edition of that issue of the periodical published outside Canada.

"periodical"
« *périodique* »

"periodical" has the meaning assigned by section 2 of the *Foreign Publishers Advertising Services Act*.

Limitation re
advertising
expenses --
periodicals

(2) Subject to subsections (3) and (4), in computing income, no deduction shall be made by a taxpayer in respect of an otherwise deductible outlay or expense for advertising space in an issue of a periodical for an advertisement directed at the Canadian market.

100% deduction

(3) A taxpayer may deduct in computing income an outlay or expense of the taxpayer for advertising space in an issue of a periodical for an advertisement directed at the Canadian market if

(a) the original editorial content in the issue is 80% or more of the total non-advertising content in the issue; and

(b) the outlay or expense would, but for subsection (2), be deductible in computing the taxpayer's income.

50% deduction

(4) A taxpayer may deduct in computing income 50% of an outlay or expense of the taxpayer for advertising space in an issue of a periodical for an advertisement directed at the Canadian market if

(a) the original editorial content in the issue is less than 80% of the total non-advertising content in the issue; and

(b) the outlay or expense would, but for subsection (2), be deductible in computing the taxpayer's income.

Application

(5) For the purposes of subsections (3) and (4),

(a) the percentage that original editorial content is of total non-advertising content is the percentage that the total space occupied by original editorial content in the issue is of the total space occupied by non-advertising content in the issue; and

(b) the Minister may obtain the advice of the Department of Canadian Heritage for the purpose of

(i) determining the result obtained under paragraph (a), and

(ii) interpreting any expression defined in this section that is defined in the *Foreign Publishers Advertising Services Act*.

Editions of
issues

(6) For the purposes of this section,

(a) where an issue of a periodical is published in several versions, each version is an edition of that issue; and

(b) where an issue of a periodical is published in only one version, that version is an edition of that issue.

(2) Subsection (1) applies in respect of advertisements placed in an issue dated after May 2000.

11. (1) The portion of paragraph 20(1)(e) of the Act before subparagraph (i) is replaced by the following:

Expenses re
financing

(e) such part of an amount (other than an excluded amount) that is not otherwise deductible in computing the income of the taxpayer and that is an expense incurred in the year or a preceding taxation year

(2) The portion of paragraph 20(1)(e) of the Act after subparagraph (ii.2) and before subparagraph (iii) is replaced by the following:

(including a commission, fee, or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing) that is the lesser of

(3) Paragraph 20(1)(e) of the Act is amended by adding the following before subparagraph (v):

(iv.1) "excluded amount" means

(A) an amount paid or payable as or on account of the principal amount of a debt obligation or interest in respect of a debt obligation,

(B) an amount that is contingent or dependent on the use of, or production from, property, or

(C) an amount that is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation,

(4) Subsections (1) to (3) apply to expenses incurred by a taxpayer after November 1999, other than expenses incurred pursuant to a written agreement made by the taxpayer before December 1999.

12. (1) Subsection 27(2) of the Act is replaced by the following:

Presumption

(2) Notwithstanding any other provision of this Act, a prescribed federal Crown corporation and any corporation controlled by such a corporation are each deemed not to be a private corporation and paragraphs 149(1)(d) to (d.4) do not apply to those corporations.

(2) Subsection (1) applies to taxation years and fiscal periods that begin after 1998.

13. (1) Paragraphs 28(4)(a) and (b) of the Act are replaced by the following:

(a) for the year, if the taxpayer was non-resident throughout the year; and

(b) for the part of the year throughout which the taxpayer was resident in Canada, if the taxpayer was resident in Canada at any time in the year.

(2) Subsection 28(4.1) of the Act is repealed.

(3) Subsection (1) applies to the 1998 and subsequent taxation years.

(4) Subsection (2) applies after December 23, 1998.

14. (1) Clause 40(2)(g)(iv)(A) of the Act is replaced by the following:

(A) a trust governed by a deferred profit sharing plan, an employees profit sharing plan or a registered retirement income fund under which the taxpayer is a beneficiary or immediately after the disposition becomes a beneficiary, or

(2) Paragraph 40(3.14)(a) of the Act is replaced by the following:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions or misconduct that another member of

the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership);

(3) Section 40 of the Act is amended by adding the following after subsection (3.6):

Losses of
non-resident

(3.7) If an individual disposes of a property at any time after having ceased to be resident in Canada, for the purposes of applying subsections 100(4), 107(1) and 112(3) to (3.32) and (7) in computing the individual's loss from the disposition,

(a) the individual is deemed to be a corporation in respect of dividends received by the individual, or deemed under Part XIII to have been paid to the individual, at a particular time that is after the time at which the individual last acquired the property and at which the individual was non-resident; and

(b) an amount on account of

(i) each taxable dividend received by the individual at a particular time described in paragraph (a), and

(ii) each amount deemed under Part XIII to have been paid to the individual at a particular time described in paragraph (a), as a dividend from a corporation resident in Canada, to the extent that the amount can reasonably be considered to relate to the property,

is deemed to be a taxable dividend that was received by the individual and that was deductible under section 112 in computing the individual's taxable income or taxable income earned in Canada for the taxation year that includes that particular time.

(4) The portion of subsection 40(9) of the Act before the formula is replaced by the following:

Additions to
taxable
Canadian
property

(9) If a non-resident person disposes of a taxable Canadian property

(a) that the person last acquired before April 27, 1995,

(b) that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on April 26, 1995, and

(c) that would be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that occurred on January 1, 1996,

the person's gain or loss from the disposition is deemed to be the amount determined by the formula

(5) Subsection (1) applies to the 1998 and subsequent taxation years.

(6) Subsection (2) applies after 1997.

(7) Subsection (3) applies to dispositions after December 23, 1998 by individuals who cease to be resident in Canada after October 1, 1996.

(8) Subsection (4) applies to dispositions that occur after April 26, 1995.

15. (1) Section 43 of the Act is replaced by the following:

General rule
for part
dispositions

43. (1) For the purpose of computing a taxpayer's gain or loss for a taxation year from the disposition of part of a property, the adjusted cost base to the taxpayer, immediately before the disposition, of that part is the portion of the adjusted cost base to the taxpayer at that time of the whole property that can reasonably be regarded as attributable to that part.

Ecological
gifts

(2) For the purposes of subsection (1) and section 53, where at any time a taxpayer disposes of a servitude, covenant or easement to which land is subject in circumstances where subsection 110.1(5) or 118.1(12) applies,

(a) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the servitude, covenant or easement, as the case may be, is deemed to be equal to the amount determined by the formula

$$A \times B/C$$

where

- A is the adjusted cost base to the taxpayer of the land immediately before the disposition,
- B is the amount determined under subsection 110.1(5) or 118.1(12) in respect of the disposition, and
- C is the fair market value of the land immediately before the disposition; and

(b) for greater certainty, the cost to the taxpayer of the land shall be reduced at the time of the disposition by the amount determined under paragraph (a).

Payments out of
trust income,
etc.

(3) Notwithstanding subsection (1), where part of a capital interest of a taxpayer in a trust would, but for paragraph (h) or (i) of the definition "disposition" in subsection 248(1), be disposed of solely because of the satisfaction of a right to enforce payment of an amount by the trust, no part of the adjusted cost base to the taxpayer of the taxpayer's capital interest in the trust shall be allocated to that part of the capital interest.

(2) Subsection 43(1) of the Act, as enacted by subsection (1), applies after February 27, 1995.

(3) Subsection 43(2) of the Act, as enacted by subsection (1), applies in respect of gifts made after February 27, 1995.

(4) Subsection 43(3) of the Act, as enacted by subsection (1), applies to satisfactions of rights that occur after 1999.

16. (1) The portion of subsection 44(1) of the Act before paragraph (a) is replaced by the following:

Exchanges of
property

44. (1) Where at any time in a taxation year (in this subsection referred to as the "initial year") an amount has become receivable by a taxpayer as proceeds of disposition of a capital property that is not a share of the capital stock of a corporation (which capital property is in this section referred to as the taxpayer's "former property") that is either

(2) Subsection (1) applies to shares disposed of after April 15, 1999, other than shares disposed of after that date as a consequence of a public takeover bid or offer filed with a public authority before April 16, 1999.

17. (1) Subsection 45(1) of the Act is amended by striking out the word "and" at the end of paragraph (b), by adding the word "and" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) in applying this subsection in respect of a non-resident taxpayer, a reference to "gaining or producing income" shall be read as a reference to "gaining or producing income from a source in Canada".

(2) Subsection (1) applies after October 1, 1996.

18. (1) Subparagraph 48.1(1)(a)(ii) of the Act is replaced by the following:

(ii) immediately after that time, ceases to be a small business corporation because a class of its or another corporation's shares is listed on a prescribed stock exchange, and

(2) Subsection (1) applies to corporations that cease to be small business corporations after 1999.

(3) Where a corporation ceases to be a Canadian-controlled private corporation in a taxation year solely because of the application of subsection 71(1) of this Act, an election under subsection 48.1(1) of the Act, as amended by subsection (1), that is made by an individual in respect of the 2000 taxation year is deemed to have been made on time if the election is made on or before the individual's filing-due date for the taxation year in which this Act receives royal assent.

19. (1) Paragraph 49(5)(b) of the Act is replaced by the following:

(b) for the purposes of subsections (2) to (4) and subparagraph (b)(iv) of the definition "disposition" in subsection 248(1), the original option and each extension or renewal of it is deemed to be the same option; and

(2) Subsection (1) applies to options granted after December 23, 1998.

20. (1) Subsections 52(1) and (1.1) of the Act are replaced by the following:

Cost of certain
property the
value of which
included in
income

52. (1) Where

(a) a taxpayer acquired property after 1971 (other than an annuity contract, a right as a beneficiary under a trust to enforce payment of an amount by the trust to the taxpayer, property acquired in circumstances to which subsection (2) or (3) applies or property acquired from a trust in satisfaction of all or part of the taxpayer's capital interest in the trust), and

(b) an amount in respect of its value was

(i) included, otherwise than under section 7, in computing

(A) the taxpayer's taxable income or taxable income earned in Canada, as the case may be, for a taxation year during which the taxpayer was non-resident, or

(B) the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada, or

(ii) for the purpose of computing the tax payable under Part XIII by the taxpayer, included in an amount that was paid or credited to the taxpayer,

for the purposes of this subdivision, the amount so included shall be added in computing the cost to the taxpayer of the property, except to the extent that the amount was otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property.

(2) Subsection 52(6) of the Act is repealed.

(3) Subsection (1) applies after 1999 except that, in respect of property acquired before 2000 and disposed of before March 2000, paragraph 52(1)(a) of the Act, as enacted by that subsection, shall be read as follows:

"(a) a taxpayer acquired property after 1971 (other than an annuity contract or property acquired as described in subsection (2), (3) or (6)), and"

(4) Subsection (2) applies after 1999, but not to rights that were acquired before 2000 and disposed of before March 2000.

21. (1) The portion of paragraph 53(2)(h) of the Act before subparagraph (i) is replaced by the following:

(h) where the property is a capital interest of the taxpayer in a trust (other than an interest in a personal trust that has never been acquired for consideration or an interest of a taxpayer in a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)),

(2) The portion of paragraph 53(2)(i) of the Act before subparagraph (i) is replaced by the following:

(i) where the property is a capital interest in a trust (other than a unit trust) not resident in Canada that was purchased after 1971 and before that time by the taxpayer from a non-resident person at a time (in this paragraph referred to as the "purchase time") when the property was not taxable Canadian property and the fair market value of such of the trust property as was

(3) The portion of paragraph 53(2)(i) of the Act after subparagraph (v) is replaced by the following:

was not less than 50% of the fair market value of all the trust property, that proportion of the amount, if any, by which

(vi) the fair market value at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v)

exceeds

(vii) the total of the cost amounts to the trust at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v),

that the fair market value at the purchase time of the interest is of the fair market value at the purchase time of all capital interests in the trust;

(4) The portion of paragraph 53(2)(j) of the Act before subparagraph (i) is replaced by the following:

(j) where the property is a unit of a unit trust not resident in Canada that was purchased after 1971 and before that time by the taxpayer from a non-resident person at a time (in this paragraph referred to as the "purchase time") when the property was not taxable Canadian property and the fair market value of such of the trust property as was

(5) The portion of paragraph 53(2)(j) of the Act after subparagraph (v) is replaced by the following:

was not less than 50% of the fair market value of all the trust property, that proportion of the amount, if any, by which

(vi) the fair market value at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v)

exceeds

(vii) the total of the cost amounts to the trust at the purchase time of such of the trust properties as were properties described in any of subparagraphs (i) to (v),

that the fair market value at the purchase time of the unit is of the fair market value at the purchase time of all the issued units of the trust;

(6) Subsection 53(3) of the Act is repealed.

(7) The portion of subsection 53(4) of the Act before paragraph (a) is replaced by the following:

Recomputation
of adjusted
cost base on
transfers and
deemed
dispositions

(4) Where at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property and the proceeds of disposition of the property are determined under paragraph 48.1(1)(c), section 70 or 73, subsection 85(1), paragraph 87(4)(a) or (c) or 88(1)(a), subsection 97(2) or 98(2), paragraph 98(3)(f) or (5)(f), subsection 104(4), paragraph 107(2)(a), (2.1)(a), (4)(d) or (5)(a), 107.4(3)(a) or 111(4)(e) or section 128.1,

(8) Subsection (1) applies to amounts that become payable after 1999.

(9) Subsections (2) to (5) apply for the purpose of computing the adjusted cost base of property after April 26, 1995.

(10) Subsection (6) applies after October 1, 1996.

(11) Subsection (7) applies to the 1998 and subsequent taxation years.

22. (1) The definition "disposition" in section 54 of the Act is repealed.

(2) Paragraph (c) of the definition "principal residence" in section 54 of the Act is replaced by the following:

(c) where the taxpayer is an individual other than a personal trust, unless the particular property was designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the year and no other property has been designated for the purposes of this definition for the year

(i) where the year is before 1982, by the taxpayer, or

(ii) where the year is after 1981,

(A) by the taxpayer,

(B) by a person who was throughout the year the taxpayer's spouse or common-law partner (other than a spouse or common-law partner who was throughout the year living apart from, and was separated under a judicial separation or written separation agreement from, the taxpayer),

(C) by a person who was the taxpayer's child (other than a child who was at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older), or

(D) where the taxpayer was not at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older, by a person who was the taxpayer's

(I) mother or father, or

(II) brother or sister, where that brother or sister was not at any time in the year a married person, a person who is in a common-law partnership or 18 years of age or older,

(3) Subsection (1) applies to transactions and events that occur after December 23, 1998.

(4) Subsection (2) applies to dispositions that occur after 1990 except that clauses (c)(ii)(B) to (D) of the definition "principal residence" in section 54 of the Act, as enacted by subsection (2), shall be read without reference to "or common-law partner" and "a person who is in a common-law partnership" in their application to dispositions made by a taxpayer that occur in a taxation year that is before 2001 and

(a) before 1998; or

(b) after 1997, unless a valid election is made by the taxpayer under section 144 of the *Modernization of Benefits and Obligations Act*, chapter of the Statutes of Canada, 2000, that that Act apply to the taxpayer in respect of one or more taxation years that include the year.

23. (1) Subsection 55(1) of the Act is amended by adding the following in alphabetical order:

"specified
corporation"
« *société*
déterminée »

"specified corporation" in relation to a distribution means a distributing corporation

(a) that is a public corporation or a specified wholly-owned corporation of a public corporation,

(b) shares of the capital stock of which are exchanged for shares of the capital stock of another corporation (referred to in this definition and subsection (3.02) as an "acquiror") in an exchange to which the definition "permitted exchange" in this subsection would apply if that definition were read without reference to paragraph (a) and subparagraph (b)(ii) of that definition,

(c) that does not make a distribution, to a corporation that is not an acquiror, after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b), and

(d) no acquiror in relation to which makes a distribution after 1998 and before the day that is three years after the day on which the shares of the capital stock of the distributing corporation are exchanged in a transaction described in paragraph (b),

and, for the purposes of paragraphs (c) and (d),

(e) a corporation that is formed by an amalgamation of two or more other corporations is deemed to be the same corporation as, and a continuation of, each of the other corporations, and

(f) where there has been a winding-up of a corporation to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

"specified
wholly-owned
corporation"
« filiale à
cent pour cent
déterminée »

"specified wholly-owned corporation" of a public corporation means a corporation all of the outstanding shares of the capital stock of which (other than directors' qualifying shares and shares of a specified class) are held by

(a) the public corporation,

(b) a specified wholly-owned corporation of the public corporation, or

(c) any combination of corporations described in paragraph (a) or (b).

(2) Section 55 of the Act is amended by adding the following after subsection (3.01):

Distribution by
a specified
corporation

(3.02) For the purposes of the definition "distribution" in subsection (1), where the transfer referred to in that definition is by a specified corporation to an acquiror described in the definition "specified corporation" in subsection (1), the references in the definition "distribution" to

(a) "each type of property" shall be read as "property"; and

(b) "property of that type" shall be read as "property".

(3) The portion of paragraph 55(5)(e) of the French version of the Act before subparagraph (i) is replaced by the following:

e) pour déterminer si des personnes sont liées entre elles, si une personne est un actionnaire déterminé d'une société et si le contrôle d'une société a été acquis par une personne ou un groupe de personnes, les règles suivantes s'appliquent :

(4) Subparagraph 55(5)(e)(iv) of the Act is replaced by the following:

(iv) this Act shall be read without reference to subsection 251(3) and paragraph 251(5)(b); and

(5) Subsections (1) and (2) apply to transfers that occur after 1998.

(6) Subsections (3) and (4) apply to dividends that are received after November 1999, other than dividends received as part of a transaction or event, or a series of transactions or events, that was required before December 1, 1999 to be carried out pursuant to a written agreement made before that day.

24. (1) Subsection 59(5) of the Act is replaced by the following:

Definition of
"proceeds of
disposition"

(5) In this section, "proceeds of disposition" has the meaning assigned by section 54.

(2) Subsection (1) applies to transactions and events that occur after December 23, 1998.

25. (1) Paragraph (b) of the definition "earned income" in subsection 63(3) of the Act is replaced by the following:

(b) all amounts that are included, or that would, but for paragraph 81(1)(a) or subsection 81(4), be included, because of section 6 or 7 or paragraph 56(1)(n), (o) or (r), in computing the taxpayer's income,

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

26. (1) Subparagraph 66(4)(a)(i) of the Act is replaced by the following:

(i) the total of the foreign exploration and development expenses incurred by the taxpayer before the end of the year and at a time at which the taxpayer was resident in Canada

(2) The portion of paragraph 66(4)(b) of the Act before subparagraph (ii) is replaced by the following:

(b) of that total, the greatest of,

(i) such amount as the taxpayer claims not exceeding 10% of the amount determined under paragraph (a) in respect of the taxpayer for the year,

(i.1) if the taxpayer ceased to be resident in Canada immediately after the end of the year, such amount as the

taxpayer claims not exceeding the amount determined under paragraph (a) in respect of the taxpayer for the year, and

(3) Subsection (1) applies to the 1999 and subsequent taxation years.

(4) Subsection (2) applies to the 1995 and subsequent taxation years.

27. (1) Subparagraph (d)(i) of the definition "Canadian exploration expense" in subsection 66.1(6) of the Act is replaced by the following:

(i) the drilling or completing of the well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas, where

(A) before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas, and

(B) the discovery occurred at any time before six months after the end of the year,

(2) The definition "Canadian exploration expense" in subsection 66.1(6) of the Act is amended by adding the following after paragraph (k):

(k.1) an expense that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after 1987,

(3) Paragraph 66.1(9)(a) of the Act is replaced by the following:

(a) the drilling or completing of an oil or gas well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas and, before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas,

(4) Subsections (1) and (3) apply to expenses incurred after March 1987.

(5) Subsection (2) applies to the 1988 and subsequent taxation years.

28. (1) The definition "Canadian development expense" in subsection 66.2(5) of the Act is amended by adding the following after paragraph (i):

(i.1) an expense that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after 1987,

(2) Subsection (1) applies to the 1988 and subsequent taxation years.

29. (1) The definitions "disposition" and "proceeds of disposition" in subsection 66.4(5) of the Act are replaced by the following:

"proceeds of
disposition"
« *produit de
disposition* »

"proceeds of disposition" has the meaning assigned by section 54.

(2) Subsection (1) applies to transactions and events that occur after December 23, 1998.

30. (1) Subparagraph 66.7(2)(a)(i) of the Act is replaced by the following:

(i) the foreign exploration and development expenses incurred by the original owner before the original owner disposed of the particular property to the extent that those expenses were incurred when the original owner was resident in Canada, were not otherwise deducted in computing the successor's income for the year, were not deducted in computing the successor's income for a preceding taxation year and were not deductible by the original owner, nor deducted by any predecessor owner of the particular property, in computing income for any taxation year

(2) Subsection 66.7(10) of the Act is amended by adding the following after paragraph (e):

(f) the original owner is deemed to have been resident in Canada before that time while the corporation was resident in Canada,

(3) Subsections (1) and (2) apply to the 1999 and subsequent taxation years.

31. (1) Paragraph 69(1)(b) of the Act is amended by striking out the word "or" at the end of subparagraph (i), by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) to a trust because of a disposition of a property that does not result in a change in the beneficial ownership of the property,

(2) Paragraph 69(1)(c) of the Act is replaced by the following:

(c) where a taxpayer acquires a property by way of gift, bequest or inheritance or because of a disposition that does not result in a change in the beneficial ownership of the property, the taxpayer is deemed to acquire the property at its fair market value.

(3) Paragraph 69(5)(c) of the Act is replaced by the following:

(c) subsections 52(1) and (2) do not apply for the purposes of determining the cost to the shareholder of the property; and

(4) Subsection (1) applies to dispositions that occur after December 23, 1998.

(5) Subsection (2) applies to acquisitions that occur after December 23, 1998.

(6) Subsection (3) applies to dispositions that occur after 1999.

32. (1) Subsection 70(5.3) of the Act is replaced by the following:

Fair market
value

(5.3) For the purposes of subsections (5) and 104(4) and section 128.1, the fair market value at any time of any property deemed to have been disposed of at that time as a consequence of a particular individual's death or as a consequence of the particular individual becoming or ceasing to be resident in Canada shall be determined as though the fair market value at that time of any life insurance policy, under which the particular individual (or any other individual not dealing at arm's length with the particular individual at that time or at the time the policy was issued) was a person whose life was insured, were the cash surrender value (as defined in subsection 148(9)) of the policy immediately before the particular individual died or became or ceased to be resident in Canada, as the case may be.

(2) The portion of subsection 70(9.1) of the Act before paragraph (a) is replaced by the following:

Transfer of
farm property
from trust to
settlor's
children

(9.1) Where any property in Canada of a taxpayer that is land or depreciable property of a prescribed class has been transferred or distributed to a trust described in subsection (6) or 73(1) (as that subsection applied to transfers before 2000) or a trust to which subparagraph 73(1.01)(c)(i) applies and the property or a replacement property for that property in respect of which the trust has made an election under subsection 13(4) or 44(1) was, immediately before the death of the taxpayer's spouse or common-law partner who was a beneficiary under the trust, used in the business of farming and has, on the death of the spouse or common-law partner and as a consequence of the death, been transferred or distributed to and vested indefeasibly in an individual who was a child of the taxpayer and who was resident in Canada immediately before the death of the spouse or common-law partner, the following rules apply:

(3) The portion of subsection 70(9.3) of the Act before paragraph (a) is replaced by the following:

Transfer of
family farm
corporation or
partnership
from trust to
children of
settlor

(9.3) Where property of a taxpayer has been transferred or distributed to a trust described in subsection (6) or 73(1) (as that subsection applied to transfers before 2000) or a trust to which subparagraph 73(1.01)(c)(i) applies and the property was,

(4) Subsection (1) applies to dispositions that occur after October 1, 1996.

(5) Subsections (2) and (3) apply to transfers and distributions from trusts that occur after 1999.

(6) Where a particular transfer or distribution to a trust referred to in subsection 70(9.1) or (9.3) of the Act, as amended by subsections (2) and (3), respectively, occurred before 2001, in applying that subsection 70(9.1) or (9.3) to a transfer or distribution from the trust that occurs after 1997, that subsection shall be read without reference to the words "or common-law partner" and to the *Modernization of Benefits and Obligations Act*, chapter of the Statutes of Canada, 2000, unless

(a) the particular transfer or distribution occurred after 1997;

**(b) the death referred to in that subsection occurs after 1997;
and**

(c) either

(i) at the time of the particular transfer or distribution referred to in paragraph (a), the taxpayer was a spouse of the individual whose death is referred to in paragraph (b), or

(ii) because of an election under section 144 of the *Modernization of Benefits and Obligations Act*, sections 130 to 142 of that Act applied, at the time of the particular transfer or distribution referred to in paragraph (a), to the taxpayer and the individual whose death is referred to in paragraph (b).

33. (1) Subsections 73(1) and (1.1) of the Act are replaced by the following:

Inter vivos
transfers by
individuals

73. (1) For the purposes of this Part, where at any time any particular capital property of an individual (other than a trust) has been transferred in circumstances to which subsection (1.01) applies and both the individual and the transferee are resident in Canada at that time, unless the individual elects in the individual's return of income under this Part for the taxation year in which the property was transferred that the provisions of this subsection not apply, the particular property is deemed

(a) to have been disposed of at that time by the individual for proceeds equal to,

(i) where the particular property is depreciable property of a prescribed class, that proportion of the undepreciated capital cost to the individual immediately before that time of all property of that class that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all of that property of that class, and

(ii) in any other case, the adjusted cost base to the individual of the particular property immediately before that time; and

(b) to have been acquired at that time by the transferee for an amount equal to those proceeds.

Qualifying
transfers

(1.01) Subject to subsection (1.02), property is transferred by an individual in circumstances to which this subsection applies where it is transferred to

(a) the individual's spouse or common-law partner;

(b) a former spouse or common-law partner of the individual in settlement of rights arising out of their marriage or common-law partnership; or

(c) a trust created by the individual under which

(i) the individual's spouse or common-law partner is entitled to receive all of the income of the trust that arises before the spouse's or common-law partner's death and no person except the spouse or common-law partner may, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust,

(ii) the individual is entitled to receive all of the income of the trust that arises before the individual's death and no person except the individual may, before the individual's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iii) either

(A) the individual or the individual's spouse is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the spouse and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust, or

(B) the individual or the individual's common-law partner is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the common-law partner and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust.

Exception for transfers

(1.02) Subsection (1.01) applies to a transfer of property by an individual to a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii) or (iii) only where

(a) the trust was created after 1999;

(b) either

(i) the individual had attained 65 years of age at the time the trust was created, or

(ii) no person (other than the individual) or partnership has any absolute or contingent right as a beneficiary under the trust (determined with reference to subsection 104(1.1));

(c) unless subparagraph (b)(ii) applies in respect of the transfer, the transfer is not part of a series of transactions or events

(i) that includes a transfer of property to the individual (or the spouse or common-law partner or former spouse or common-law partner, as the case may be, of the individual) from a trust (other than a testamentary trust) in circumstances to which subsection 107(2) applied, and

(ii) one of the main purposes of which can reasonably be considered to be to avoid the application of subsection 104(4) or (5) on a day determined under paragraph 104(4)(b) or (c); and

(d) in the case of a trust the terms of which satisfy the conditions in subparagraph (1.01)(c)(ii), the trust does not make an election under subparagraph 104(4)(a)(ii.1).

Interpretation

(1.1) For greater certainty, a property is, for the purposes of subsections (1) and (1.01), deemed to be property of the individual referred to in subsection (1) that has been transferred to a particular transferee where,

(a) under the laws of a province or because of a decree, order or judgment of a competent tribunal made in accordance with those laws, the property

(i) is acquired or is deemed to have been acquired by the particular transferee,

(ii) is deemed or declared to be property of, or is awarded to, the particular transferee, or

(iii) has vested in the particular transferee; and

(b) the property was or would, but for those laws, have been a capital property of the individual referred to in subsection (1).

(2) Subsection (1) applies to transfers that occur after 1999 except that, in respect of transfers that occur in 2000,

(a) for the purpose of subsection 73(1) of the Act, as enacted by subsection (1), the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it read before 2001;

(b) subject to paragraph (c),

(i) subsections 73(1.01) and (1.02) of the Act, as enacted by subsection (1), shall be read without reference to the words "or common-law partner", "or common-law partner's" and "or common-law partnership", and

(ii) subparagraph 73(1.01)(c)(iii) of the Act, as enacted by subsection (1), shall be read as follows:

"(iii) the individual or the individual's spouse is, in combination with the other, entitled to receive all of the income of the trust that arises before the later of the death of the individual and the death of the spouse and no other person may, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust."

(c) paragraph (b) does not apply to a transfer at any time by an individual to or for the benefit of another individual where, because of an election under section 144 of the *Modernization of Benefits and Obligations Act*, chapter of the Statutes of Canada, 2000, sections 130 to 142 of that Act applied at that time to those individuals.

34. (1) Section 74.2 of the Act is amended by adding the following after subsection (2):

Election for
subsection (1)
to apply

(3) Subsection (1) does not apply to a disposition at any particular time (in this subsection referred to as the "emigration disposition") under paragraph 128.1(4)(b), by a taxpayer who is a

recipient referred to in subsection (1), unless the recipient and the individual referred to in that subsection, in their returns of income for the taxation year that includes the first time, after the particular time, at which the recipient disposes of the property, jointly elect that subsection (1) apply to the emigration disposition.

Application of
subsection (3)

(4) For the purpose of applying subsection (3) and notwithstanding subsections 152(4) to (5), any assessment of tax payable under this Act by the recipient or the individual referred to in subsection (1) shall be made that is necessary to take an election under subsection (3) into account except that no such assessment shall affect the computation of

(a) interest payable under this Act to or by a taxpayer in respect of any period that is before the taxpayer's filing-due date for the taxation year that includes the first time, after the particular time referred to in subsection (3), at which the recipient disposes of the property referred to in that subsection; or

(b) any penalty payable under this Act.

(2) Subsection (1) applies after October 1, 1996.

35. (1) The portion of subsection 75(2) of the Act after paragraph (a) is replaced by the following:

(b) that, during the existence of the person, the property shall not be disposed of except with the person's consent or in accordance with the person's direction,

any income or loss from the property or from property substituted for the property, and any taxable capital gain or allowable capital loss from the disposition of the property or of property substituted for the property, shall, during the existence of the person while the person is resident in Canada, be deemed to be income or a loss, as the case may be, or a taxable capital gain or allowable capital loss, as the case may be, of the person.

(2) Paragraphs 75(3)(a) and (b) of the Act are replaced by the following:

(a) by a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement

savings plan, a registered supplementary unemployment benefit plan or a retirement compensation arrangement;

(b) by an employee trust, a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)), a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1), or a trust described in paragraph 149(1)(y);

(3) Subsection (1) applies to taxation years that begin after 2000.

(4) Paragraph 75(3)(a) of the Act, as enacted by subsection (2), applies to taxation years that end after October 8, 1986 and, notwithstanding subsections 152(4) to (5) of the Act, the Minister of National Revenue shall make any assessments, reassessments and additional assessments of tax, interest and penalties that are necessary to give effect to the words "retirement compensation arrangement" in that paragraph.

(5) Paragraph 75(3)(b) of the Act, as enacted by subsection (2), applies to the 1999 and subsequent taxation years.

36. (1) Subsection 81(3.1) of the Act is replaced by the following:

Travel expenses

(3.1) There shall not be included in computing an individual's income for a taxation year an amount (not in excess of a reasonable amount) received by the individual from an employer with whom the individual was dealing at arm's length as an allowance for, or reimbursement of, travel expenses incurred by the individual in the year in respect of the individual's part-time employment in the year with the employer (other than expenses incurred in the performance of the duties of the individual's part-time employment) if

(a) throughout the period in which the expenses were incurred,

(i) the individual had other employment or was carrying on a business, or

(ii) where the employer is a designated educational institution (as defined in subsection 118.6(1)), the duties of the individual's part-time employment were the provision in Canada of a service to the employer in the individual's capacity as a professor or teacher; and

(b) the duties of the individual's part-time employment were performed at a location not less than 80 kilometres from,

(i) where subparagraph (a)(i) applies, both the individual's ordinary place of residence and the place of the other employment or business referred to in that subparagraph, and

(ii) where subparagraph (a)(ii) applies, the individual's ordinary place of residence.

Payments for
volunteer
services

(4) Where

(a) an individual was employed or otherwise engaged in a taxation year by a government, municipality or public authority (in this subsection referred to as "the employer") and received in the year from the employer one or more amounts for the performance, as a volunteer, of the individual's duties as

(i) an ambulance technician,

(ii) a firefighter, or

(iii) a person who assists in the search or rescue of individuals or in other emergency situations, and

(b) if the Minister so demands, the employer has certified in writing that

(i) the individual was in the year a person described in paragraph (a), and

(ii) the individual was at no time in the year employed or otherwise engaged by the employer, otherwise than as a volunteer, in connection with the performance of any of the duties referred to in paragraph (a) or of similar duties,

there shall not be included in computing the individual's income derived from the performance of those duties the lesser of \$1,000 and the total of those amounts.

(2) Subsection 81(3.1) of the Act, as enacted by subsection (1), applies to the 1995 and subsequent taxation years and, notwithstanding subsections 152(4) to (5) of the Act, any assessment of an individual's tax payable under the Act for any taxation year that ends before 2000 shall be made that is necessary to take into account the application of that subsection 81(3.1).

(3) Subsection 81(4) of the Act, as enacted by subsection (1), applies to the 1998 and subsequent taxation years.

37. (1) Subsection 85.1(2) of the Act is amended by striking out the word "or" at the end of paragraph (c), by adding the word "or" at the end of paragraph (d) and by adding the following after paragraph (d):

(e) the vendor

(i) is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred, and

(ii) has included any portion of the gain or loss, otherwise determined, from the disposition of the exchanged shares in computing its foreign accrual property income for the taxation year of the vendor in which the exchange occurred.

(2) Section 85.1 of the Act is amended by adding the following after subsection (4):

Foreign share
for foreign
share exchange

(5) Subject to subsections (3) and (6) and 95(2), where a corporation resident in a country other than Canada (in this section referred to as the "foreign purchaser") issues shares of its capital stock (in this section referred to as the "issued foreign shares") to a vendor in exchange for shares of the capital stock of another corporation resident in a country other than Canada (in this section referred to as the "exchanged foreign shares") that were immediately before the exchange capital property of the vendor, except where the vendor has, in the vendor's return of income for the taxation year in which the exchange occurred, included in computing the vendor's income for that year any portion of the gain or loss, otherwise determined, from the disposition of the exchanged foreign shares, the vendor is deemed

(a) to have disposed of the exchanged foreign shares for proceeds of disposition equal to the adjusted cost base to the vendor of those shares immediately before the exchange, and

(b) to have acquired the issued foreign shares at a cost to the vendor equal to the adjusted cost base to the vendor of the exchanged foreign shares immediately before the exchange,

and where the exchanged foreign shares were taxable Canadian property of the vendor, the issued foreign shares so acquired by the vendor are deemed to be taxable Canadian property of the vendor.

Where
subsection (5)
does not apply

(6) Subsection (5) does not apply where

(a) the vendor and foreign purchaser were, immediately before the exchange, not dealing with each other at arm's length (otherwise than because of a right referred to in paragraph 251(5)(b) that is a right of the foreign purchaser to acquire the exchanged foreign shares);

(b) immediately after the exchange the vendor, persons with whom the vendor did not deal at arm's length or the vendor together with persons with whom the vendor did not deal at arm's length,

(i) controlled the foreign purchaser, or

(ii) beneficially owned shares of the capital stock of the foreign purchaser having a fair market value of more than 50% of the fair market value of all of the outstanding shares of the capital stock of the foreign purchaser;

(c) consideration other than issued foreign shares was received by the vendor for the exchanged foreign shares, notwithstanding that the vendor may have disposed of shares of the capital stock of the other corporation referred to in subsection (5) (other than the exchanged foreign shares) to the foreign purchaser for consideration other than shares of the capital stock of the foreign purchaser;

(d) the vendor

(i) is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred, and

(ii) has included any portion of the gain or loss, otherwise determined, from the disposition of the exchanged foreign shares in computing its foreign accrual property income for the taxation year of the vendor in which the exchange occurred; or

(e) the vendor is a foreign affiliate of a taxpayer resident in Canada at the end of the taxation year of the vendor in which the exchange occurred and the exchanged foreign shares are excluded property (within the meaning assigned by subsection 95(1)) of the vendor.

(3) Subsections (1) and (2) apply to exchanges that occur after 1995.

38. (1) Subparagraph 87(2)(u)(ii) of the Act is replaced by the following:

(ii) for the purposes of subsections 93(2) to (2.3), any exempt dividend received by the predecessor corporation on any such share is deemed to be an exempt dividend received by the new corporation on the share;

(2) The portion of subsection 87(8) of the Act before paragraph (a) is replaced by the following:

Foreign merger

(8) Subject to subsection 95(2), where there has been a foreign merger in which a taxpayer's shares or options to acquire shares of the capital stock of a corporation that was a predecessor foreign corporation immediately before the merger were exchanged for or became shares or options to acquire shares of the capital stock of the new foreign corporation or the foreign parent corporation, unless the taxpayer elects in the taxpayer's return of income for the taxation year in which the foreign merger took place not to have this subsection apply, subsections (4) and (5) apply to the taxpayer as if the references in those subsections to

(3) Subsection 87(8.1) of the Act is replaced by the following:

Definition of
"foreign
merger"

(8.1) For the purposes of this section, "foreign merger" means a merger or combination of two or more corporations each of which was, immediately before the merger or combination, resident in a country other than Canada (each of which is in this section referred to as a "predecessor foreign corporation") to form one corporate entity resident in a country other than Canada (in this section referred to as the "new foreign corporation") in such a manner that, and otherwise than as a result of the distribution of property to one corporation on the winding-up of another corporation,

(a) all or substantially all the property (except amounts receivable from any predecessor foreign corporation or shares of the capital stock of any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or combination becomes property of the new foreign corporation as a consequence of the merger or combination;

(b) all or substantially all the liabilities (except amounts payable to any predecessor foreign corporation) of the predecessor foreign corporations immediately before the merger or

combination become liabilities of the new foreign corporation as a consequence of the merger or combination; and

(c) all or substantially all of the shares of the capital stock of the predecessor foreign corporations (except any shares or options owned by any predecessor foreign corporation) are exchanged for or become, because of the merger or combination,

(i) shares of the capital stock of the new foreign corporation, or

(ii) if, immediately after the merger, the new foreign corporation was controlled by another corporation (in this section referred to as the "foreign parent corporation") that was resident in a country other than Canada, shares of the capital stock of the foreign parent corporation.

(4) The portion of subsection 87(10) of the Act after paragraph (f) is replaced by the following:

the new share is deemed, for the purposes of subsection 116(6), the definitions "qualified investment" in subsections 146(1), 146.1(1), and 146.3(1) and in section 204, and the definition "taxable Canadian property" in subsection 248(1), to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

(5) Subsection (1) applies after November 1999.

(6) Subsections (2) and (3) apply to mergers and combinations that occur after 1995 and, where a taxpayer notifies the Minister of National Revenue in writing before the taxpayer's filing-due date for the taxation year in which this Act receives royal assent that the taxpayer makes the election referred to in subsection 87(8) of the Act, as amended by subsection (2), in respect of a merger or combination that occurred before 1999, the election is deemed to have been validly made in respect of the merger or combination.

(7) Subsection (4) applies after October 1, 1996.

39. (1) The portion of subclause 88(1)(c)(vi)(B)(III) of the Act before sub-subclause 1 is replaced by the following:

(III) a corporation (other than a specified person or the subsidiary)

(2) Clause 88(1)(c.2)(iii)(A) of the Act is replaced by the following:

(A) the reference in the definition "specified shareholder" in subsection 248(1) to "the issued shares of any class of the capital stock of the corporation or of any other corporation that is related to the corporation" shall be read as "the issued shares of any class (other than a specified class) of the capital stock of the corporation or of any other corporation that is related to the corporation and that has a significant direct or indirect interest in any issued shares of the capital stock of the corporation", and

(3) Subsection 88(1) of the Act is amended by adding the following after paragraph (c.7):

(c.8) for the purpose of clause (c.2)(iii)(A), a specified class of the capital stock of a corporation is a class of shares of the capital stock of the corporation where

(i) the paid-up capital in respect of the class was not, at any time, less than the fair market value of the consideration for which the shares of that class then outstanding were issued,

(ii) the shares are non-voting in respect of the election of the Board of Directors of the corporation, except in the event of a failure or default under the terms or conditions of the shares,

(iii) under neither the terms and conditions of the shares nor any agreement in respect of the shares are the shares convertible into or exchangeable for shares other than shares of a specified class of the capital stock of the corporation, and

(iv) under neither the terms and conditions of the shares nor any agreement in respect of the shares is any holder of the shares entitled to receive on the redemption, cancellation or acquisition of the shares by the corporation or by any person with whom the corporation does not deal at arm's length an amount (excluding any premium for early redemption) greater than the total of the fair market value of the consideration for which the shares were issued and the amount of any unpaid dividends on the shares;

(4) The portion of subsection 88(4) of the Act before paragraph (a) is replaced by the following:

Amalgamation
deemed not to
be acquisition
of control

(4) For the purposes of paragraphs (1)(c), (c.2), (d) and (d.2) and, for greater certainty, paragraphs (c.3) to (c.8) and (d.3),

(5) Subsections (1) to (4) apply to windings-up that begin after November 1994.

40. (1) Clause (a)(i)(A) of the definition "capital dividend account" in subsection 89(1) of the English version of the Act is replaced by the following:

(A) the amount of the corporation's capital gain from a disposition (other than a disposition that is the making of a gift after December 8, 1997 that is not a gift described in subsection 110.1(1)) of a property in the period beginning at the beginning of its first taxation year (that began after the corporation last became a private corporation and that ended after 1971) and ending immediately before the particular time

(2) Subsection (1) applies to dispositions made after December 8, 1997, other than a disposition made under a written agreement made before December 9, 1997.

41. (1) Section 91 of the Act is amended by adding the following after subsection (6):

Shares acquired
from a
partnership

(7) For the purpose of subsection (5), where a taxpayer resident in Canada acquires a share of the capital stock of a corporation that is immediately after the acquisition a foreign affiliate of the taxpayer from a partnership of which the taxpayer, or a corporation resident in Canada with which the taxpayer was not dealing at arm's length at the time the share was acquired, was a member (each such person referred to in this subsection as the "member") at any time during any fiscal period of the partnership that began before the acquisition,

(a) that portion of any amount required by subsection 92(1) to be added to the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the amount included in the income of the member because of subsection 96(1) in respect of the amount that was included in the income of the partnership because of subsection (1) or (3) in respect of the foreign affiliate and added to that adjusted cost base, and

(b) that portion of any amount required by subsection 92(1) to be deducted from the adjusted cost base to the partnership of the share of the capital stock of the foreign affiliate equal to the

amount by which the income of the member from the partnership under subsection 96(1) was reduced because of the amount deducted in computing the income of the partnership under subsection (2), (4) or (5) and deducted from that adjusted cost base

is deemed to be an amount required by subsection 92(1) to be added or deducted, as the case may be, in computing the adjusted cost base to the taxpayer of the share.

(2) Subsection (1) applies to shares acquired after November 1999.

42. (1) Section 92 of the Act is amended by adding the following after subsection (3):

Disposition of
a partnership
interest

(4) Where a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada has at any time disposed of all or a portion of an interest in a partnership of which it was a member, there shall be added, in computing the proceeds of disposition of that interest, the amount determined by the formula

$$(A - B) \times (C/D)$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for any taxation year of the member that began before that time in respect of any portion of a dividend received by the partnership, or would have been so deductible if the member were a corporation resident in Canada,

exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member of the partnership to a government of a country other than Canada that can reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a);

B is the total of

(a) the total of all amounts each of which was an amount added under this subsection in computing the member's proceeds of a disposition before that time of another interest in the partnership, and

(b) the total of all amounts each of which was an amount deemed by subsection (5) to be a gain of the member from a disposition before that time of a share by the partnership;

C is the adjusted cost base, immediately before that time, of the portion of the member's interest in the partnership disposed of by the member at that time; and

D is the adjusted cost base, immediately before that time, of the member's interest in the partnership immediately before that time.

Deemed gain
from the
disposition of
a share

(5) Where a partnership has, at any time in a fiscal period of the partnership at the end of which a corporation resident in Canada or a foreign affiliate of a corporation resident in Canada was a member, disposed of a share of the capital stock of a corporation, the amount determined under subsection (6) in respect of such a member is deemed to be a gain of the member from the disposition of the share by the partnership for the member's taxation year in which the fiscal period of the partnership ends.

Formula

(6) The amount determined for the purposes of subsection (5) is the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which

(a) the total of all amounts each of which is an amount that was deductible under paragraph 113(1)(d) by the member from its income in computing its taxable income for a taxation year in respect of any portion of a dividend received by the partnership on the share in a fiscal period of the partnership that began before the time referred to in subsection (5) and

ends in the member's taxation year, or would have been so deductible if the member were a corporation resident in Canada, exceeds

(b) the total of all amounts each of which is the portion of any income or profits tax paid by the partnership or the member to a government of a country other than Canada that can reasonably be considered as having been paid in respect of the member's share of the dividend described in paragraph (a); and

B is the total of all amounts each of which is an amount that was added under subsection (4) in computing the member's proceeds of a disposition before the time referred to in subsection (5) of an interest in the partnership.

(2) Subsection (1) applies to dispositions that occur after November 1999.

43. (1) Subparagraph 93(1)(b)(ii) of the Act is replaced by the following:

(ii) for the purposes of determining the exempt surplus, exempt deficit, taxable surplus, taxable deficit and underlying foreign tax of the affiliate in respect of the corporation resident in Canada (within the meanings assigned by Part LIX of the *Income Tax Regulations*), the affiliate is deemed to have redeemed at the time of disposition shares of a class of its capital stock.

(2) Section 93 of the Act is amended by adding the following after subsection (1.1):

Disposition of
a share of a
foreign
affiliate held
by a
partnership

(1.2) Where a particular corporation resident in Canada or a foreign affiliate of the particular corporation (each of which is referred to in this subsection as the "disposing corporation") would, but for this subsection, have a taxable capital gain from a disposition by a partnership, at any time, of a share of the capital stock of a foreign affiliate of the particular corporation and the particular corporation so elects in prescribed manner in respect of the disposition,

(a) $\frac{4}{3}$ of

(i) the amount designated by the particular corporation (which amount shall not exceed the amount of the disposing corporations's taxable capital gain from the disposition of the share), or

(ii) where subsection (1.3) applies, the amount prescribed for the purpose of that subsection

in respect of the share is deemed to have been a dividend received on the share by the disposing corporation from the affiliate immediately before that time;

(b) notwithstanding section 96, the disposing corporation's taxable capital gain from the disposition of the share is deemed to be the amount, if any, by which the disposing corporation's taxable capital gain from the disposition of the share otherwise determined exceeds the amount designated by the particular corporation in respect of the share;

(c) for the purpose of any regulation made under this subsection, the disposing corporation is deemed to have disposed of the share at that time and to have had a capital gain from the disposition of the share equal to $\frac{4}{3}$ of the disposing corporation's taxable capital gain from the disposition of the share;

(d) for the purpose of section 113 in respect of the dividend referred to in paragraph (a), the disposing corporation is deemed to have owned the share on which that dividend was received; and

(e) where the disposing corporation has a taxable capital gain from the partnership because of the application of subsection 40(3) to the partnership in respect of the share, for the purposes of this subsection, the share is deemed to have been disposed of by the partnership.

Deemed election

(1.3) Where a foreign affiliate of a particular corporation resident in Canada has a gain from the disposition by a partnership at any time of shares of the capital stock of a foreign affiliate of the particular corporation that are excluded property, the particular corporation is deemed to have made an election under subsection (1.2) in respect of each such share disposed of by the partnership and to have designated in the election an amount equal to a prescribed amount.

(3) Subsection 93(2) of the Act is replaced by the following:

Loss limitation
on disposition
of share

(2) Where

(a) a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that is not excluded property (in this subsection referred to as the "affiliate share"),

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the loss determined without reference to this subsection,

B is the total of all amounts each of which is an amount received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another disposition at or before that time by a corporation or foreign affiliate described in the description of B of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in

respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a previous disposition by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of the exempt dividends referred to in the description of B.

Loss limitation
- disposition
of share by
partnership

(2.1) Where

(a) a corporation resident in Canada has an allowable capital loss from a disposition at any time by a partnership of a share of the capital stock of a foreign affiliate of the corporation (in this subsection referred to as the "affiliate share"), or

(b) a foreign affiliate of a corporation resident in Canada has an allowable capital loss from a disposition at any time by a partnership of a share of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property of the affiliate if the affiliate owned the share immediately before it was disposed of (in this subsection referred to as the "affiliate share"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the allowable capital loss determined without reference to this subsection,

B is 3/4 of the total of all amounts each of which was received before that time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under this subsection in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of the affiliate share or a share for which the affiliate share was substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of exempt dividends referred to in the description of B.

Loss limitation
- disposition
of partnership
interest

(2.2) Where

(a) a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

(b) a foreign affiliate of a corporation resident in Canada has a loss from the disposition by it at any time of an interest in a partnership (in this subsection referred to as the "partnership interest"), which has a direct or indirect interest in shares of the capital stock of another foreign affiliate of the corporation resident in Canada that would not be excluded property if the shares were owned by the affiliate (in this subsection referred to as "affiliate shares")

the amount of the loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the loss determined without reference to this subsection,

B is the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from another disposition at or before that time by a corporation or foreign affiliate described in the description of B of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is $\frac{4}{3}$ of the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under subsection (2.3) in respect of the exempt dividends referred to in the description of B.

Loss limitation
- disposition
of partnership
interest

(2.3) Where

(a) corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time of an interest

in another partnership that has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada (in this subsection referred to as "affiliate shares"), or

(b) a foreign affiliate of a corporation resident in Canada has an allowable capital loss from a partnership from a disposition at any time by a partnership of an interest in another partnership which has a direct or indirect interest in shares of the capital stock of a foreign affiliate of the corporation resident in Canada that would not be excluded property of the affiliate if the affiliate owned the shares immediately before the disposition (in this subsection referred to as "affiliate shares"),

the amount of the allowable capital loss is deemed to be the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the allowable capital loss determined without reference to this subsection,

B is 3/4 of the total of all amounts each of which was received before that time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

(a) the corporation resident in Canada,

(b) a corporation related to the corporation resident in Canada,

(c) a foreign affiliate of the corporation resident in Canada, or

(d) a foreign affiliate of a corporation related to the corporation resident in Canada, and

C is the total of

(a) the total of all amounts each of which is 3/4 of the amount by which a loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from another disposition at or before that time of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2) in respect of the exempt dividends referred to in the description of B,

(b) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of affiliate shares or shares for which affiliate shares were substituted, was reduced under subsection (2.1) in respect of the exempt dividends referred to in the description of B,

(c) the total of all amounts each of which is $\frac{3}{4}$ of the amount by which a loss (determined without reference to this section), from a disposition at or before that time by a corporation or foreign affiliate described in the description of B of an interest in a partnership, was reduced under subsection (2.2) in respect of the exempt dividends referred to in the description of B, and

(d) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or foreign affiliate described in the description of B from a disposition at or before that time by a partnership of an interest in another partnership, was reduced under this subsection in respect of the exempt dividends referred to in the description of B.

(4) Subsection 93(3) of the Act is replaced by the following:

Exempt
dividends

(3) For the purposes of subsections (2) to (2.3),

(a) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation for the purpose of computing the taxable income of the corporation because of paragraph 113(1)(a), (b) or (c); and

(b) a dividend received by a particular foreign affiliate of a corporation resident in Canada from another foreign affiliate of the corporation is an exempt dividend to the extent of the amount, if any, by which the portion of the dividend that was not prescribed to have been paid out of the pre-acquisition surplus of the other affiliate exceeds the total of such portion of the income or profits tax that can reasonably be considered to have been paid in respect of that portion of the dividend by the particular affiliate or by a partnership in which the particular affiliate had, at the time of the payment of the income or profits tax, a partnership interest, either directly or indirectly.

(5) Subsections (1) to (4) apply to dispositions that occur after November 1999.

44. (1) The Act is amended by adding the following after section 93:

Shares held by
a partnership

93.1 (1) For the purpose of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsections (2) and 20(12), sections 93 and 113 (and any regulations made for the purposes of those sections), section 95 (to the extent that that section is applied for the purposes of those provisions) and section 126, where at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, each member of the partnership is deemed to own at that time that number of those shares that is equal to the proportion of all those shares that

(a) the fair market value of the member's interest in the partnership at that time

is of

(b) the fair market value of all members' interests in the partnership at that time.

Where dividends
received by a
partnership

(2) Where at any time shares of a class of the capital stock of a foreign affiliate of a corporation resident in Canada (in this subsection referred to as "affiliate shares") are owned by a partnership and at that time the affiliate pays a dividend on affiliate shares to the partnership (in this subsection referred to as the "partnership dividend"),

(a) for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, each member of the partnership is deemed to have received the proportion of the partnership dividend that

(i) the fair market value of the member's interest in the partnership at that time

is of

(ii) the fair market value of all members' interests' in the partnership at that time;

(b) for the purposes of sections 93 and 113 and any regulations made for the purposes of those sections, the proportion of the partnership dividend deemed by paragraph (a) to have been received by a member of the partnership at that time is deemed to have been received by the member in equal proportions on each affiliate share that is property of the partnership at that time;

(c) for the purpose of applying section 113, in respect of the dividend referred to in paragraph (a), each affiliate share referred to in paragraph (b) is deemed to be owned by each member of the partnership; and

(d) notwithstanding paragraphs (a) to (c),

(i) where the corporation resident in Canada is a member of the partnership, the amount deductible by it under section 113 in respect of the dividend referred to in paragraph (a) shall not exceed the portion of the amount of the dividend included in its income pursuant to subsection 96(1), and

(ii) where another foreign affiliate of the corporation resident in Canada is a member of the partnership, the amount included in that other affiliate's income in respect of the dividend referred to in paragraph (a) shall not exceed the amount that would be included in its income pursuant to subsection 96(1) in respect of the partnership dividend received by the partnership if the value for H in the definition "foreign accrual property income" in subsection 95(1) were nil and this Act were read without reference to this subsection.

(2) Subsection 93.1(1) of the Act, as enacted by subsection (1), applies in determining whether a non-resident corporation is, at any time after November 1999, a foreign affiliate of a taxpayer and, where a taxpayer so elects and notifies the Minister of National Revenue in writing before 2002 of its election, that subsection also applies in determining (other than for the purposes of subsection 20(12) and section 126 of the Act) whether a non-resident corporation is, at any time after 1972 and before December 1999, a foreign affiliate of the taxpayer.

(3) Subsection 93.1(2) of the Act, as enacted by subsection (1), applies in respect of dividends received after November 1999.

45. (1) Subparagraphs 94(1)(c)(i) and (ii) of the Act are replaced by the following:

(i) the trust is deemed for the purposes of this Part and sections 233.3 and 233.4 to be a person resident in Canada no part of whose taxable income is exempt because of section 149 from tax under this Part and whose taxable income for the year is the amount, if any, by which the total of

(A) the amount, if any, that would but for this subparagraph be its taxable income earned in Canada for the year,

(B) the amount that would be its foreign accrual property income for the year if

(I) except for the purpose of applying subsections 104(4) to (5.2) to days after 1998 that are determined under subsection 104(4), the trust were a non-resident corporation all the shares of which were owned by a person who was resident in Canada,

(II) the description of A in the definition "foreign accrual property income" in subsection 95(1) were, in respect of dividends received after 1998, read without reference to paragraph (b) of that description,

(III) the descriptions of B and E in that definition were, in respect of dispositions that occur after 1998, read without reference to "other than dispositions of excluded property to which none of paragraphs (2)(c), (d) and (e) apply",

(IV) the value of C in that definition were nil, and

(V) for the purposes of computing the trust's foreign accrual property income, the consequences of the application of subsections 104(4) to (5.2) applied in respect of days after 1998 that are determined under subsection 104(4),

(C) the amount, if any, by which the total of all amounts each of which is an amount required by subsection 91(1) or (3) to be included in computing its income for the year exceeds the total of all amounts each of which is an amount deducted by it for that year under subsection 91(2), (4) or (5), and

(D) the amount, if any, required by section 94.1 to be included in computing its income for the year,

exceeds

(E) the amount, if any, by which the total of all amounts each of which is an amount deducted by it under subsection

91(2), (4) or (5) in computing its income for the year exceeds the total of all amounts each of which is an amount included in computing its income for the year because of subsection 91(1) or (3), and

(ii) for the purposes of section 126,

(A) the amount that would be determined under subparagraph (i) in respect of the trust for the year, if that subparagraph were read without reference to clause (i)(A), is deemed to be income of the trust for the year from sources in the country other than Canada in which the trust would, but for subparagraph (i), be resident, and

(B) any income or profits tax paid by the trust for the year (other than any tax paid because of this section), to the extent that it can reasonably be regarded as having been paid in respect of that income, is deemed to be non-business income tax paid by the trust to the government of that country, and

(2) Subsection (1) applies to the 1999 and subsequent taxation years.

46. (1) The formula in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

$$(A+A.1+A.2+B+C) - (D+E+F+G+H)$$

(2) The description of F in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

F is the amount prescribed to be the deductible loss of the affiliate for the year, and

(3) The definition "foreign accrual property income" in subsection 95(1) of the Act is amended by striking out the word "and" at the end of the description of F, by adding the word "and" at the end of the description of G and by adding the following after the description of G:

H is

(a) where the affiliate was a member of a partnership at the end of the fiscal period of the partnership that ended in the year and the partnership received a dividend at a particular time in that fiscal period from a corporation that was, for the purposes of sections 93 and 113, a foreign affiliate of the taxpayer at that particular time, the portion of the

amount of that dividend that is included in the value of A in respect of the affiliate for the year and that is deemed by paragraph 93.1(2)(a) to have been received by the affiliate for the purposes of sections 93 and 113, and

(b) in any other case, nil;

(4) Paragraph 95(2)(g) of the Act is replaced by the following:

(g) where, because of a fluctuation in the value of the currency of a country other than Canada relative to the value of Canadian currency, a particular foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a taxation year of the particular affiliate has earned income or incurred a loss or realized a capital gain or a capital loss in the year, on

(i) the settlement of a debt obligation (other than a "specified debt obligation" as defined in subsection 142.2(1)), that was owing to

(A) another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year or any other non-resident corporation to which the particular affiliate and the taxpayer are related throughout the year (referred to in this paragraph as a "qualified foreign corporation"), or

(B) the particular affiliate by a qualified foreign corporation,

(ii) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, the particular affiliate or another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (other than a "mark-to-market property" as defined in subsection 142.2(1)), or

(iii) the disposition to a qualified foreign corporation of a share of the capital stock of another foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout the year (other than a "mark-to-market property" as defined in subsection 142.2(1)),

that income, gain or loss, as the case may be, is deemed to be nil;

(5) Paragraph 95(2)(h) of the Act is repealed.

(6) The portion of subsection 95(2.2) of the Act before paragraph (a) is replaced by:

Rule for
subsection (2)

(2.2) For the purpose of subsection (2),

(7) The portion of paragraph 95(6)(a) of the Act before subparagraph (i) is replaced by the following:

(a) where any person or partnership has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares of the capital stock of a corporation or interests in a partnership and

(8) Subparagraph 95(6)(a)(ii) of the Act is replaced by the following:

(ii) it can reasonably be considered that the principal purpose for the existence of the right is to permit any person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, those shares or partnership interests, as the case may be, are deemed to be owned by that person or partnership; and

(9) Paragraph 95(6)(b) of the Act is replaced by the following:

(b) where a person or partnership acquires or disposes of shares of the capital stock of a corporation or interests in a partnership, either directly or indirectly, and it can reasonably be considered that the principal purpose for the acquisition or disposition is to permit a person to avoid, reduce or defer the payment of tax or any other amount that would otherwise be payable under this Act, that acquisition or disposition is deemed not to have taken place, and where the shares or partnership interests were unissued by the corporation or partnership immediately before the acquisition, those shares or partnership interests, as the case may be, are deemed not to have been issued.

(10) Subsections (1), (3) and (7) to (9) apply after November 1999.

(11) Subsection (2) applies to taxation years, of foreign affiliates, that begin after November 1999.

(12) Subsections (4) to (6) apply to taxation years of a foreign affiliate of a taxpayer that begin after November 1999 except that, where the taxpayer so elects in writing and files the election with the Minister of National Revenue before 2002, those subsections apply to taxation years, of all of its foreign affiliates, that began after 1994 and, notwithstanding subsections 152(4) to (5) of

the Act, any assessment of a taxpayer's tax payable under the Act for any of those taxation years shall be made that is necessary to take into account the application of subsections (4) to (6).

47. (1) Paragraph 96(2.4)(a) of the Act is replaced by the following:

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited (except by operation of a provision of a statute of Canada or a province that limits the member's liability only for debts, obligations and liabilities of the partnership, or any member of the partnership, arising from negligent acts or omissions or misconduct that another member of the partnership or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership);

(2) Subsection (1) applies after 1997.

48. (1) Subsection 104(1) of the Act is replaced by the following:

Reference to
trust or estate

104. (1) In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of the succession, heir or other legal representative having ownership or control of the trust property, but, except for the purposes of this subsection, subsection (1.1) and paragraph (k) of the definition "disposition" in subsection 248(1), a trust is deemed to not include an arrangement under which the trust can reasonably be considered to act as agent for all the beneficiaries under the trust with respect to all dealings with all of the trust's property unless the trust is described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1).

Restricted
meaning of
"beneficiary"

(1.1) For the purposes of subsection (1), subparagraph 73(1.02)(b)(ii) and paragraph 107.4(1)(e), a person or partnership is deemed not to be a beneficiary under a trust at a particular time where the person or partnership is beneficially interested in the trust at the particular time solely because of

(a) a right that may arise as a consequence of the terms of the will or other testamentary instrument of an individual who, at the particular time, is a beneficiary under the trust;

(b) a right that may arise as a consequence of the law governing the intestacy of an individual;

(c) a right as a shareholder under the terms of the shares of the capital stock of a corporation that, at the particular time, is a beneficiary under the trust;

(d) a right as a member of a partnership under the terms of the partnership agreement, where, at the particular time, the partnership is a beneficiary under the trust; or

(e) any combination of rights described in paragraphs (a) to (d).

(2) The portion of subsection 104(4) of the Act before paragraph (a) is replaced by the following:

Deemed
disposition by
trust

(4) Every trust is, at the end of each of the following days, deemed to have disposed of each property of the trust (other than exempt property) that was capital property (other than excluded property or depreciable property) or land included in the inventory of a business of the trust for proceeds equal to its fair market value (determined with reference to subsection 70(5.3)) at the end of that day and to have reacquired the property immediately after for an amount equal to that fair market value, and for the purposes of this Act those days are

(3) Paragraph 104(4)(a) of the Act is amended by striking out the word "or" at the end of subparagraph (i.1), by adding the word "or" at the end of subparagraph (ii) and by replacing the portion after subparagraph (ii) with the following:

(ii.1) is a trust (other than a trust the terms of which are described in clause (iv)(A) that elects in its return of income under this Part for its first taxation year that this subparagraph not apply) that was created after 1999 by a taxpayer during the taxpayer's lifetime that, at any time after 1999, was a trust

under which

(iii) the taxpayer's spouse or common-law partner was entitled to receive all of the income of the trust that arose before the spouse's or common-law partner's death and no person except the

spouse or common-law partner could, before the spouse's or common-law partner's death, receive or otherwise obtain the use of any of the income or capital of the trust, or

(iv) in the case of a trust described in subparagraph (ii.1) created by a taxpayer who had attained 65 years of age at the time the trust was created,

(A) the taxpayer was entitled to receive all of the income of the trust that arose before the taxpayer's death and no person except the taxpayer could, before the taxpayer's death, receive or otherwise obtain the use of any of the income or capital of the trust,

(B) the taxpayer or the taxpayer's spouse was, in combination with the spouse or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the spouse and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust, or

(C) the taxpayer or the taxpayer's common-law partner was, in combination with the common-law partner or the taxpayer, as the case may be, entitled to receive all of the income of the trust that arose before the later of the death of the taxpayer and the death of the common-law partner and no other person could, before the later of those deaths, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the death or the later death, as the case may be, occurs;

(4) Subsection 104(4) of the Act is amended by adding the following after paragraph (a.1):

(a.2) where the trust makes a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, it is reasonable to conclude that the distribution was financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual, the day on which the distribution is made (determined as if a day ends for the trust immediately after the time at which each distribution is made by the trust to a beneficiary in respect of the beneficiary's capital interest in the trust);

(a.3) where property (other than property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) has been transferred by a taxpayer after December 17, 1999 to the trust in circumstances to

which subsection 73(1) applies, it is reasonable to conclude that the property was so transferred in anticipation that the taxpayer would subsequently cease to reside in Canada and the taxpayer subsequently ceases to reside in Canada, the first day after that transfer during which the taxpayer ceases to reside in Canada (determined as if a day ends for the trust immediately after each time at which the taxpayer ceases to be resident in Canada);

(5) Paragraph 104(4)(c) of the Act is replaced by the following:

(c) the day that is 21 years after any day (other than a day determined under paragraph (a), (a.1), (a.2) or (a.3)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

(6) The portion of subsection 104(5) of the Act before paragraph (a) is replaced by the following:

Depreciable
property

(5) Every trust is, at the end of each day determined under subsection (4) in respect of the trust, deemed to have disposed of each property of the trust (other than exempt property) that was a depreciable property of a prescribed class of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately after that day at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that fair market value, except that

(7) The portion of subsection 104(5.2) of the Act before paragraph (b) is replaced by the following:

Resource
property

(5.2) Where at the end of a day determined under subsection (4) in respect of a trust the trust owns a Canadian resource property (other than an exempt property) or a foreign resource property (other than an exempt property),

(a) for the purpose of determining the amounts under subsection 59(1), paragraph 59(3.2)(c), subsections 66(4) and 66.2(1), the definition "cumulative Canadian development expense" in subsection 66.2(5), subsection 66.4(1) and the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5), the trust is deemed

(i) to have a taxation year (in this subsection referred to as the "old taxation year") that ended at the end of that day and a new taxation year that begins immediately after that day, and

(ii) to have disposed, immediately before the end of the old taxation year, of each of those properties for proceeds that became receivable at that time equal to its fair market value at that time and to have reacquired, at the beginning of the new taxation year, each such property for an amount equal to that fair market value; and

(8) Subsection 104(5.3) of the Act is amended by adding the word "and" at the end of paragraph (b.1) and by replacing the portion of paragraph (c) before subparagraph (i) with the following:

(c) subsection 107.4(3) does not apply to a disposition by the trust during the period

(9) Subsection 104(5.3) of the Act is amended by striking out the word "and" at the end of paragraph (c) and by repealing paragraph (d).

(10) The portion of subsection 104(5.8) of the Act before paragraph (a) is replaced by the following:

Trust transfers

(5.8) Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which subsection 107(2) or 107.4(3) or paragraph (f) of the definition "disposition" in subsection 248(1) applies,

(11) The portion of subparagraph 104(5.8)(a)(i) of the Act before clause (A) is replaced by the following:

(i) subject to paragraphs (b) to (b.2), the first day (in this subsection referred to as the "disposition day") that ends at or after the particular time that would, if this section were read without reference to paragraphs (4)(a.2) and (a.3), be determined in respect of the transferee trust is deemed to be the earliest of

(12) Clause 104(5.8)(a)(i)(C) of the Act is replaced by the following:

(C) the first day that ends at or after the particular time, where

(I) the transferor trust is a joint partner trust, a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1), and

(II) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition "pre-1972 spousal trust" in subsection 108(1) is alive at the particular time,

(C.1) the first day that ends at or after the particular time, where

(I) the transferor trust is an *alter ego* trust or a joint partner trust, and

(II) the taxpayer referred to in paragraph (4)(a) is alive at the particular time, and

(13) Paragraph 104(5.8)(b) of the Act is replaced by the following:

(b) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1),

(ii) the spouse or common-law partner referred to in paragraph (4)(a) or in the definition "pre-1972 spousal trust" in subsection 108(1) is alive at the particular time, and

(iii) the transferee trust is a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1);

(b.1) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is an *alter ego* trust,

(ii) the taxpayer referred to in paragraph (4)(a) is alive at the particular time, and

(iii) the transferee trust is an *alter ego* trust;

(b.2) paragraph (a) does not apply in respect of the transfer where

(i) the transferor trust is a joint partner trust,

(ii) either the taxpayer referred to in paragraph (4)(a), or the spouse or common-law partner referred to in that paragraph, is alive at the particular time, and

(iii) the transferee trust is a joint partner trust; and

(14) Subsection 104(6) of the Act is amended by striking out the word "and" at the end of paragraph (a.2) and by adding the following after that paragraph:

(a.3) in the case of an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, such part of its income for the year as became payable in the year to a beneficiary; and

(15) Clauses 104(6)(b)(ii)(A) and (B) of the Act are replaced by the following:

(A) is a post-1971 partner trust that was created after December 20, 1991, or

(B) would be a post-1971 partner trust if the reference in paragraph (4)(a) to "at the time it was created" were read as "on December 20, 1991",

(16) Paragraph 104(6)(b) of the Act is amended by striking out the word "and" at the end of subparagraph (ii) and by replacing subparagraph (iii) with the following:

(ii.1) where the trust is an *alter ego* trust or a joint partner trust and the death or later death, as the case may be, referred to in subparagraph (4)(a)(iv) has not occurred before the end of the year, such part of the amount that, but for this subsection and subsections (12), 12(10.2) and 107(4), would be its income as became payable in the year to a beneficiary (other than a taxpayer, spouse or common-law partner referred to in clause (4)(a)(iv)(A), (B) or (C)) or was included under subsection 105(2) in computing the income of a beneficiary (other than such a taxpayer, spouse or common-law partner), and

(iii) where the trust is an *alter ego* trust, a joint partner trust or a post-1971 partner trust and the death or the later death, as the case may be, referred to in paragraph (4)(a) in respect of the trust occurred on a day in the year, the amount, if any, by which

(A) the maximum amount that would be deductible under this subsection in computing the trust's income for the year if this subsection were read without reference to this subparagraph

exceeds the total of

(B) the amount that, but for this subsection and subsections (12), 12(10.2) and 107(4), would be its income as became payable in the year to the taxpayer, spouse or common-law

partner referred to in subparagraph (4)(a)(iii) or clause (4)(a)(iv)(A), (B) or (C), as the case may be, and

(C) the amount that would be the trust's income for the year if that income were computed without reference to this subsection and subsection (12) and as if the year began immediately after the end of the day,

(17) Subsection 104(13) of the Act is replaced by the following:

Income of
beneficiary

(13) There shall be included in computing the income for a particular taxation year of a beneficiary under a trust such of the following amounts as are applicable:

(a) in the case of a trust (other than a trust referred to in paragraph (a) of the definition "trust" in subsection 108(1)), such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as became payable in the trust's year to the beneficiary; and

(b) in the case of a trust governed by an employee benefit plan to which the beneficiary has contributed as an employer, such part of the amount that, but for subsections (6) and (12), would be the trust's income for the trust's taxation year that ended in the particular year as was paid in the trust's year to the beneficiary.

(18) Paragraphs 104(15)(a) and (b) of the Act are replaced by the following:

(a) where the trust is an *alter ego* trust, a joint partner trust, a post-1971 partner trust or a trust described in the definition "pre-1972 spousal trust" in subsection 108(1) at the end of the year and a beneficiary, referred to in paragraph (4)(a) or in that definition, is alive at the end of the year, an amount equal to

(i) if the preferred beneficiary is a beneficiary so referred to, the trust's accumulating income for the year, and

(ii) in any other case, nil;

(b) where paragraph (a) does not apply and the preferred beneficiary's interest in the trust is not solely contingent on the death of another beneficiary who has a capital interest in the trust and who does not have an income interest in the trust, the trust's accumulating income for the year; and

(19) The portion of subsection 104(19) of the Act after paragraph (b) is replaced by the following:

if so designated by the trust in respect of the beneficiary in its return of income for the year, is deemed, for the purposes of paragraphs 82(1)(b) and 107(1)(c) and (d) and section 112, not to have been received by the trust, and for the purposes of this Act (other than Part XIII), to be a taxable dividend on the share received by the beneficiary in the particular year from the corporation.

(20) The portion of subsection 104(21.2) of the Act before paragraph (a) is replaced by the following:

Beneficiaries'
taxable capital
gain

(21.2) Where, for the purposes of subsection (21), a personal trust or a trust referred to in subsection 7(2) designates an amount in respect of a beneficiary in respect of its net taxable capital gains for a taxation year (in this subsection referred to as the "designation year"),

(21) Subsection (1) applies to the 1998 and subsequent taxation years except that, in connection with transfers of property that occur before December 24, 1998, subsection 104(1) of the Act, as enacted by subsection (1), shall be read as follows:

"104. (1) In this Act, a reference to a trust or estate (in this subdivision referred to as a "trust") shall, unless the context otherwise requires, be read to include a reference to the trustee, executor, administrator, liquidator of the succession, heir or other legal representative having ownership or control of the trust property."

(22) Subsection (2) applies

(a) to days after December 23, 1998 that are determined in respect of a trust under subsection 104(4) of the Act, as amended by this section; and

(b) for the purpose of determining the cost amount to a trust after December 23, 1998 of property, to days after 1992 that are determined in respect of the trust under subsection 104(4) of the Act, as amended by this section.

(23) Subsections (3) and (5) and (15) to (17) apply to the 2000 and subsequent taxation years except that, with regard to a trust created by a taxpayer at a particular time in 2000 for the benefit of another individual, subparagraphs 104(4)(a)(iii) and (iv) of the

Act, as enacted by subsection (3), shall be read without reference to the words "or common-law partner" and "or common-law partner's" and to clause 104(4)(a)(iv)(C) of the Act, as enacted by subsection (3), unless, because of an election under section 144 of the *Modernization of Benefits and Obligations Act*, chapter of the Statutes of Canada, 2000, sections 130 to 142 of that Act applied at the particular time to the taxpayer and the other individual.

(24) Subsection (4) applies to days after December 17, 1999 that are determined under subsection 104(4) of the Act, as amended by this section.

(25) Subsections (6) and (7) apply to days after December 23, 1998 that are determined under subsection 104(4) of the Act, as amended by this section.

(26) Subsections (8) and (9) apply to transfers made after December 23, 1998.

(27) Subsection (10) applies to transfers made after February 11, 1991 except that, for transfers made before December 24, 1998, the portion of subsection 104(5.8) of the Act before paragraph (a), as enacted by subsection (10), shall be read as follows:

"(5.8) Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which paragraph (e) of the definition "disposition" in section 54 or subsection 107(2) applies and the transferee trust is not described in paragraph (g) of the definition "trust" in subsection 108(1),"

(28) Subsection (11) applies to transfers made after December 17, 1999.

(29) Subsections (12) and (13) apply to transfers made after 1999.

(30) Subsection (14) applies to the 1998 and subsequent taxation years.

(31) Subsection (18) applies to the 2000 and subsequent taxation years.

(32) Subsection (19) applies to taxation years that end after 2000.

(33) Subsection (20) applies to taxation years, of trusts, that begin after February 22, 1994.

49. (1) Subsection 106(1.1) of the Act is replaced by the following:

Cost of income
interest in a
trust

(1.1) The cost to a taxpayer of an income interest of the taxpayer in a trust is deemed to be nil unless

(a) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition; or

(b) the cost of any part of the interest would otherwise be determined not to be nil under paragraph 128.1(1)(c) or (4)(c).

(2) Paragraph 106(2)(a) of the Act is replaced by the following:

(a) except where subsection (3) applies to the disposition, there shall be included in computing the taxpayer's income for the year the amount, if any, by which

(i) the proceeds of disposition

exceed

(ii) where that interest includes a right to enforce payment of an amount by the trust, the amount in respect of that right that has been included in computing the taxpayer's income for a taxation year because of subsection 104(13);

(3) Subsections (1) and (2) apply to the 2000 and subsequent taxation years.

50. (1) The portion of paragraph 107(1)(a) of the Act before subparagraph (i) is replaced by the following:

(a) where the trust is a personal trust or a prescribed trust, for the purpose of computing the taxpayer's capital gain, if any, from the disposition, the adjusted cost base to the taxpayer of the interest or the part of the interest, as the case may be, immediately before the disposition is, unless any part of the interest has ever been acquired for consideration and, at the time of the disposition, the trust is non-resident, deemed to be the greater of

(2) Paragraph 107(1)(b) of the Act is repealed.

(3) The portion of subsection 107(1) of the Act after paragraph (d) is repealed.

(4) Subsection 107(1.1) of the Act is replaced by the following:

Cost of capital
interest in a
trust

(1.1) The cost to a taxpayer of a capital interest of the taxpayer in a personal trust or a prescribed trust is deemed to be,

(a) where the taxpayer elected under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and

(b) in any other case, nil, unless

(i) any part of the interest was acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before that acquisition, or

(ii) the cost of any part of the interest would otherwise be determined not to be nil under section 48 as it read in its application before 1993 or under paragraph 111(4)(e) or 128.1(1)(c) or (4)(c).

(5) The portion of subsection 107(2) of the Act before paragraph (a) is replaced by the following:

Distribution by
personal trust

(2) Subject to subsection (2.001), where at any time a property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's capital interest in the trust,

(6) The portion of subsection 107(2) of the Act before paragraph (a), as enacted by subsection (5), is replaced by the following:

Distribution by
personal trust

(2) Subject to subsections (2.001), (2.002) and (4) to (5), where at any time a property of a personal trust or a prescribed trust is distributed by the trust to a taxpayer who was a beneficiary under the trust and there is a resulting disposition of all or any part of the taxpayer's capital interest in the trust,

(7) Paragraphs 107(2)(b) and (c) of the Act are replaced by the following:

(b) subject to subsection (2.2), the taxpayer is deemed to have acquired the property at a cost equal to the total of its cost amount to the trust immediately before that time and the specified percentage of the amount, if any, by which

(i) the adjusted cost base to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time (determined without reference to paragraph (1)(a))

exceeds

(ii) the cost amount to the taxpayer of the capital interest or part of it, as the case may be, immediately before that time;

(b.1) for the purpose of paragraph (b), the specified percentage is,

(i) where the property is capital property (other than depreciable property), 100%,

(ii) where the property is eligible capital property in respect of a business of the trust, 100%, and

(iii) in any other case, 75%;

(c) the taxpayer is deemed to have disposed of all or part, as the case may be, of the capital interest for proceeds equal to the amount, if any, by which

(i) the cost at which the taxpayer would be deemed by paragraph (b) to have acquired the property if the specified percentage referred to in that paragraph were 100%

exceeds

(ii) the total of all amounts each of which is an eligible offset at that time of the taxpayer in respect of the capital interest or the part of it;

(8) Subsection 107(2) of the Act is amended by striking out the word "and" at the end of paragraph (d) and by adding the following after that paragraph:

(d.1) the property is deemed to be taxable Canadian property of the taxpayer where

(i) the taxpayer is non-resident at that time,

(ii) that time is before October 2, 1996, and

(iii) the property was deemed by paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 87(4) or (5) or paragraph 97(2)(c) to be taxable Canadian property of the trust; and

(9) Section 107 of the Act is amended by adding the following after subsection (2):

No rollover on
election by a
trust

(2.001) Where a trust makes a distribution of a property to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and so elects in prescribed form filed with the Minister with the trust's return of income for its taxation year in which the distribution occurred, subsection (2) does not apply to the distribution if

(a) the trust is resident in Canada at the time of the distribution;

(b) the property is taxable Canadian property; or

(c) the property is capital property used in, eligible capital property in respect of, or property described in the inventory of, a business carried on by the trust through a permanent establishment (as defined by regulation) in Canada immediately before the time of the distribution.

No rollover on
election by a
beneficiary

(2.002) Where a non-resident trust makes a distribution of a property (other than a property described in paragraph (2.001)(b) or (c)) to a beneficiary of the trust in full or partial satisfaction of the beneficiary's capital interest in the trust and the beneficiary makes an election under this subsection in prescribed form filed with the Minister with the beneficiary's return of income for the beneficiary's taxation year in which the distribution occurred,

(a) subsection (2) does not apply to the distribution; and

(b) for the purpose of subparagraph (1)(a)(ii), the cost amount of the interest to the beneficiary is deemed to be nil.

(10) The portion of subsection 107(2.01) of the Act before paragraph (a) is replaced by the following:

Distribution of
principal
residence

(2.01) Where property that would, if a personal trust had designated the property under paragraph (c.1) of the definition "principal residence" in section 54, be a principal residence (within the meaning of that definition) of the trust for a taxation year, is at any time (in this subsection referred to as "that time") distributed by the trust to a taxpayer in circumstances to which subsection (2) applies and the trust so elects in its return of income for the taxation year that includes that time,

(11) Subsection 107(2.1) of the Act is replaced by the following:

Other
distributions

(2.1) Where at any time a property of a trust is distributed by the trust to a beneficiary under the trust, there would, if this Act were read without reference to paragraphs (h) and (i) of the definition "disposition" in subsection 248(1), be a resulting disposition of all or any part of the beneficiary's capital interest in the trust (which interest or part, as the case may be, is in this subsection referred to as the "former interest") and the rules in subsection (2) and section 132.2 do not apply in respect of the distribution,

(a) the trust is deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the beneficiary is deemed to have acquired the property at a cost equal to the proceeds determined under paragraph (a);

(c) the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which

(i) the proceeds determined under paragraph (a) (other than the portion, if any, of the proceeds that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies)

exceed the total of

(ii) where the property is not a Canadian resource property or foreign resource property, the amount, if any, by which

(A) the fair market value of the property at that time

exceeds the total of

(B) the cost amount to the trust of the property immediately before that time, and

(C) the portion, if any, of the excess that would be determined under this subparagraph if this subparagraph were read without reference to this clause that represents a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies, and

(iii) all amounts each of which is an eligible offset at that time of the taxpayer in respect of the former interest; and

(d) notwithstanding paragraphs (a) to (c), where the trust is non-resident at that time, the property is not described in paragraph (2.001)(b) or (c) and, if this Act were read without reference to this paragraph, there would be no income, loss, taxable capital gain or allowable capital loss of a taxpayer in respect of the property because of the application of subsection 75(2) to the disposition at that time of the property,

(i) the trust is deemed to have disposed of the property for proceeds equal to the cost amount of the property,

(ii) the beneficiary is deemed to have acquired the property at a cost equal to the fair market value of the property, and

(iii) the beneficiary's proceeds of disposition of the portion of the former interest disposed of by the beneficiary on the distribution are deemed to be equal to the amount, if any, by which

(A) the fair market value of the property

exceeds the total of

(B) the portion, if any, of the amount of the distribution that is a payment to which paragraph (h) or (i) of the definition "disposition" in subsection 248(1) applies, and

(C) all amounts each of which is an eligible offset at that time of the taxpayer in respect of the former interest.

Gains not
distributed to
beneficiaries

(2.11) Where a trust makes one or more distributions of property in a taxation year in circumstances to which subsection (2.1) applies (or, in the case of property distributed after October 1,

1996 and before 2000, in circumstances to which subsection (5) applied)

(a) where the trust is resident in Canada at the time of each of those distributions and has so elected in prescribed form filed with the trust's return for the year or a preceding taxation year, the income of the trust for the year (determined without reference to subsection 104(6)) shall, for the purposes of subsections 104(6) and (13), be computed without regard to all of those distributions to non-resident persons (including a partnership other than a Canadian partnership); and

(b) where the trust is resident in Canada at the time of each of those distributions and has so elected in prescribed form filed with the trust's return for the year or a preceding taxation year, the income of the trust for the year (determined without reference to subsection 104(6)) shall, for the purposes of subsections 104(6) and (13), be computed without regard to all of those distributions.

(12) Subsection 107(3) of the Act is repealed.

(13) Subsection 107(4) of the Act is replaced by the following:

Trusts in
favour of
spouse, common-
law partner or
self

(4) Subsection (2.1) applies at any time to property distributed to a beneficiary by a trust described in paragraph 104(4)(a) where

(a) the beneficiary is not

(i) in the case of a post-1971 partner trust, the partner or common-law partner referred to in paragraph 104(4)(a),

(ii) in the case of an *alter ego* trust, the taxpayer referred to in paragraph 104(4)(a), and

(iii) in the case of a joint partner trust, the taxpayer, spouse or common-law partner referred to in paragraph 104(4)(a); and

(b) a taxpayer, spouse or common-law partner referred to in subparagraph (a)(i), (ii), or (iii), as the case may be, is alive on the day of the distribution.

(14) The portion of subsection 107(4.1) of the Act after paragraph (c) is replaced by the following:

subsection (2.1) applies in respect of the distribution.

(15) Subsection 107(5) of the Act is replaced by the following:

Distribution to
non-resident

(5) Subsection (2.1) applies in respect of a distribution of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) by a trust resident in Canada to a non-resident taxpayer (including a partnership other than a Canadian partnership) in satisfaction of all or part of the taxpayer's capital interest in the trust.

Instalment
interest

(5.1) Where, solely because of the application of subsection (5), paragraphs (2)(a) to (c) do not apply to a distribution in a taxation year of taxable Canadian property by a trust, in applying sections 155, 156 and 156.1 and subsections 161(2), (4) and (4.01) and any regulations made for the purpose of those provisions, the trust's total taxes payable under this Part and Part I.1 for the year are deemed to be the lesser of

(a) the trust's total taxes payable under this Part and Part I.1 for the year, determined before taking into consideration the specified future tax consequences for the year, and

(b) the amount that would be determined under paragraph (a) if subsection (5) did not apply to each distribution in the year of taxable Canadian property to which the rules in subsection (2) do not apply solely because of the application of subsection (5).

(16) Subsections (1) to (4) apply to the 2000 and subsequent taxation years except that, in respect of transfers in 2000, for the purposes of subsection 107(1) of the Act, as amended by subsection (1), the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it read before 2001.

(17) Subsection (5) applies to distributions made after October 1, 1996.

(18) Subsections (6) and (7), subsection 107(2.002) of the Act, as enacted by subsection (9), and subsections (10) and (12) to (14) apply to distributions made after 1999 except that, for distributions made to a beneficiary before the particular day on which this Act receives royal assent, an election under subsection 107(2.002) of the Act, as enacted by subsection (9), is deemed to

have been made in a timely manner if it is made on or before the beneficiary's filing-due date for the taxation year that includes the particular day.

(19) Subsection (8) applies in determining after October 1, 1996 whether property is taxable Canadian property.

(20) Subsection 107(2.001) of the Act, as enacted by subsection (9), applies to distributions made after October 1, 1996 except that, for distributions made from a trust before the particular day on which this Act receives royal assent, an election under that subsection 107(2.001) is deemed to have been made in a timely manner if it is made on or before the trust's filing-due date for the taxation year that includes the particular day.

(21) Subsection 107(2.1) of the Act, as enacted by subsection (11), applies to distributions made after 1999 (other than distributions made before March 2000 in satisfaction of rights described in subsection 52(6) of the Act that were acquired before 2000).

(22) Subsection 107(2.11) of the Act, as enacted by subsection (11), applies to distributions made after October 1, 1996 except that, for distributions made from a trust before the particular day on which this Act receives royal assent, an election under that subsection 107(2.11) is deemed to have been made in a timely manner if it is made on or before the trust's filing-due date for the taxation year that includes the particular day.

(23) Subsection (15) applies to distributions made after October 1, 1996 except that, for distributions made after October 1, 1996 and before 2000, subsection 107(5) of the Act, as enacted by subsection (15), shall be read as follows:

"(5) Where subsection (2) applies to a distribution at any time by a trust resident in Canada of a property (other than a share of the capital stock of a non-resident-owned investment corporation or property described in any of subparagraphs 128.1(4)(b)(i) to (iii)) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who is a beneficiary under the trust in satisfaction of the taxpayer's capital interest in the trust, notwithstanding paragraphs (2)(a) to (c),

(a) the trust is deemed to have disposed of the property for proceeds equal to its fair market value at that time;

(b) the taxpayer is deemed to have acquired the property at a cost equal to that fair market value; and

(c) the taxpayer is deemed to have disposed of all or part, as the case may be, of the taxpayer's capital interest in the trust,

for proceeds of disposition equal to the adjusted cost base to the taxpayer of that interest or part of the interest, as the case may be, immediately before that time."

51. (1) The portion of section 107.1 of the Act before paragraph (a) is replaced by the following:

Distribution by
employee trust,
employee
benefit plan or
similar trust

107.1 Where at any time any property of an employee trust, a trust governed by an employee benefit plan or a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1) has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's interest in the trust, the following rules apply:

(2) The portion of paragraph 107.1(a) of the Act before subparagraph (i) is replaced by the following:

(a) in the case of an employee trust or a trust described in paragraph (a.1) of the definition "trust" in subsection 108(1),

(3) Subsections (1) and (2) apply to the 1999 and subsequent taxation years.

52. (1) The Act is amended by adding the following after section 107.3:

Qualifying
disposition

107.4 (1) For the purpose of this section, a "qualifying disposition" of a property means a disposition of the property by a person or partnership (in this subsection referred to as the "contributor") as a result of a transfer of the property to a particular trust where

(a) the disposition does not result in a change in the beneficial ownership of the property;

(b) the proceeds of disposition would, if this Act were read without reference to this section and sections 69 and 73, not be determined under any provision of this Act;

(c) if the particular trust is non-resident, the disposition is not

(i) by a person resident in Canada or by a partnership (other than a partnership each member of which is non-resident), or

(ii) a transfer of taxable Canadian property from a non-resident person who was resident in Canada in any of the ten calendar years preceding the transfer;

(d) the contributor is not a partnership, if the disposition is part of a series of transactions or events that begin after December 17, 1999 that includes the cessation of the partnership's existence and a subsequent distribution from a personal trust to a former member of the partnership in circumstances to which subsection 107(2) applies;

(e) unless the contributor is a trust, there is immediately after the disposition no absolute or contingent right of a person or partnership (other than the contributor or, where the property was co-owned, each of the joint contributors) as a beneficiary (determined with reference to subsection 104(1.1)) under the particular trust;

(f) the contributor is not an individual (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)), if the particular trust is described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1);

(g) the disposition is not part of a series of transactions or events

(i) that begins after December 17, 1999 and that includes the subsequent acquisition, for consideration given to a personal trust, of a capital interest or an income interest in the trust,

(ii) that begins after December 17, 1999 and that includes the disposition of all or part of a capital interest or an income interest in a personal trust, other than a disposition solely as a consequence of a distribution from a trust to a person or partnership in satisfaction of all or part of that interest, or

(iii) that begins after ANNOUNCEMENT DATE and that includes the transfer to the particular trust of particular property as consideration for the acquisition of a capital interest in the particular trust, if the particular property can reasonably be considered to have been received by the particular trust in order to fund a distribution (other than a distribution that is proceeds of disposition of a capital interest in the particular trust);

(h) the disposition is not, and is not part of, a transaction

(i) that occurs after December 17, 1999, and

(ii) that includes the giving to the contributor, for the disposition, of any consideration (other than consideration that is an interest of the contributor as a beneficiary under the particular trust or that is the assumption by the particular trust of debt for which the property can, at the time of the disposition, reasonably be considered to be security);

(i) subsection 73(1) does not apply to the disposition and would not apply to the disposition if

(i) no election had been made under that subsection, and

(ii) section 73 were read without reference to subsection 73(1.02); and

(j) if the contributor is an amateur athlete trust, a cemetery care trust, an employee trust, an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (as defined by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the particular trust is the same type of trust.

Application of
paragraph
(1)(a)

(2) For the purpose of paragraph (1)(a),

(a) where a trust (in this paragraph referred to as the "transferor trust"), in a period that does not exceed one day, disposes of one or more properties in the period to one or more other trusts, there is deemed to be no resulting change in the beneficial ownership of those properties if

(i) the transferor trust receives no consideration for the disposition, and

(ii) as a consequence of the disposition, the beneficial ownership at the beginning of the period of each beneficiary under the transferor trust in each particular property of the transferor trust is the same as the beneficiary's beneficial ownership at the end of the period in the particular property that relates to the beneficiary's combined interest in the transferor trust and in the other trust or trusts; and

(b) where a trust (in this paragraph referred to as the "transferor") governed by a registered retirement savings plan or by a registered retirement income fund transfers a property to a trust (in this paragraph referred to as the "transferee") governed by a registered retirement savings plan or by a registered retirement income fund, the transfer is deemed to not result in a change in the beneficial ownership of the property if the annuitant of the plan or fund that governs the transferor is also the annuitant of the plan or fund that governs the transferee.

Tax
consequences of
qualifying
dispositions

(3) Where at a particular time there is a qualifying disposition of a property by a person or partnership (in this subsection referred to as the "transferor") to a trust (in this subsection referred to as the "transferee trust"),

(a) the transferor's proceeds of disposition of the property are deemed to be

(i) where the transferor so elects in writing and files the election with the Minister on or before the transferor's filing-due date for its taxation year that includes the particular time, or at any later time that is acceptable to the Minister, the amount specified in the election that is not less than the cost amount to the transferor of the property immediately before the particular time and not more than the fair market value of the property at the particular time, and

(ii) in any other case, the cost amount to the transferor of the property immediately before the particular time;

(b) except as otherwise provided under paragraph (c), the transferee trust's cost of the property is deemed to be the amount, if any, by which

(i) the proceeds determined under paragraph (a) in respect of the qualifying disposition

exceed

(ii) the amount by which the transferor's loss otherwise determined from the qualifying disposition would be reduced because of subsection 100(4), paragraph 107(1)(c) or (d) or any of subsections 112(3) to (4.2), if the proceeds determined under paragraph (a) were equal to the fair market value of the property at the particular time;

(c) notwithstanding subsection 206(4), for the purposes of Part XI and regulations made for the purposes of that Part, the transferee trust's cost of the property is deemed to be

(i) the cost amount to the transferor immediately before the particular time where

(A) the particular time is before 2000,

(B) the transferor is a trust governed by a registered retirement savings plan or a registered retirement income fund,

(C) the transferee trust is governed by a registered retirement savings plan or a registered retirement income fund,

(D) the transferee trust files a written election with the Minister on or before the later of March 1, 2001 and its filing due-date for its taxation year that includes the particular time (or at such later date as is acceptable to the Minister) that this subparagraph apply, and

(E) it can reasonably be considered that the election was not made for the purpose of avoiding tax under Part XI,

(ii) the fair market value of the property at the particular time where

(A) subparagraph (iii) does not apply,

(B) the transferee trust files a written election with the Minister on or before the later of March 1, 2001 and its filing due-date for its taxation year that includes the particular time (or at such later date as is acceptable to the Minister) that this subparagraph apply, and

(C) it can reasonably be considered that the election was not made for the purpose of avoiding tax under Part XI,

(iii) the fair market value of the property at the particular time where

(A) subparagraph (i) does not apply to the qualifying disposition,

(B) the particular time is before 2000,

(C) the transferor is a trust governed by a registered retirement savings plan or a registered retirement income fund, and

(D) the transferee trust is governed by a registered retirement savings plan or a registered retirement income fund, and

(iv) the cost amount to the transferor of the property immediately before the particular time, in any other case;

(d) if the property was depreciable property of a prescribed class of the transferor and its capital cost to the transferor exceeds the cost at which the transferee trust is deemed by this subsection to have acquired the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a),

(i) the capital cost of the property to the transferee trust is deemed to be the amount that was the capital cost of the property to the transferor, and

(ii) the excess is deemed to have been allowed to the transferee trust in respect of the property under regulations made for the purpose of paragraph 20(1)(a) in computing income for taxation years that ended before the particular time;

(e) if the property was eligible capital property of the transferor in respect of a business of the transferor,

(i) where the eligible capital expenditure of the transferor in respect of the property exceeds the cost at which the transferee trust is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the transferee trust in respect of the property is deemed to be the amount that was the eligible capital expenditure of the transferor in respect of the property, and

(B) $\frac{3}{4}$ of the excess is deemed to have been allowed under paragraph 20(1)(b) to the transferee trust in respect of the property in computing income for taxation years that ended

(I) before the particular time, and

(II) after the adjustment time of the transferee trust in respect of the business, and

(ii) for the purpose of determining after the particular time the amount to be included under subparagraph 14(1)(a)(v) or paragraph 14(1)(b) in computing the transferee trust's income in respect of any subsequent disposition of the property of the business, there shall be added to the value otherwise determined for Q in the definition "cumulative eligible

capital" in subsection 14(5) the amount determined by the formula

$$A \times B/C$$

where

A is the amount, if any, determined for Q in that definition in respect of the business of the transferor immediately before the particular time,

B is the fair market value of the property immediately before the particular time, and

C is the fair market value immediately before the particular time of all eligible capital property of the transferor in respect of the business;

(f) if the property was deemed to be taxable Canadian property of the transferor by this paragraph or paragraph 51(1)(f), 85(1)(i) or 85.1(1)(a), subsection 87(4) or (5) or paragraph 97(2)(c) or 107(2)(d.1), the property is deemed to be taxable Canadian property of the transferee trust;

(g) where the transferor is a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1),

(i) paragraph 138.1(1)(i) does not apply in respect of a disposition of an interest in the transferor that occurs in connection with the qualifying disposition, and

(ii) in computing the amount determined under paragraph 138.1(1)(i) in respect of a subsequent disposition of an interest in the transferee trust where the interest is deemed to exist in connection with a particular life insurance policy, the acquisition fee (as defined by subsection 138.1(6)) in respect of the particular policy shall be determined as if each amount determined under any of paragraphs 138.1(6)(a) to (d) in respect of the policyholder's interest in the transferor trust had been determined in respect of the policyholder's interest in the transferee trust;

(h) if the transferor is a trust to which property had been transferred by an individual (other than a trust),

(i) where subsection 73(1) applied in respect of the property so transferred and it is reasonable to consider that the property was so transferred in anticipation of the individual ceasing to be resident in Canada, for the purposes of paragraph 104(4)(a.3) and the application of this paragraph to a disposition by the transferee trust after the particular time,

the transferee trust is deemed after the particular time to be a trust to which the individual had transferred property in anticipation of the individual ceasing to reside in Canada and in circumstances to which subsection 73(1) applied, and

(ii) for the purposes of paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the application of this paragraph to a disposition by the transferee trust after the particular time, where the property so transferred was transferred in circumstances to which this subsection would apply if subsection (1) were read without reference to paragraphs (1)(h) and (i), the transferee trust is deemed after the particular time to be a trust an interest in which was acquired by the individual as a consequence of a qualifying disposition;

(i) if the transferor is a trust (other than a personal trust or a trust prescribed for the purposes of subsection 107(2)), the transferee trust is deemed to be neither a personal trust nor a trust prescribed for the purposes of subsection 107(2);

(j) if the transferor is a trust and a taxpayer disposes of all or part of a capital interest in the transferor because of the qualifying disposition and, as a consequence, acquires a capital interest or part of it in the transferee trust

(i) the taxpayer is deemed to dispose of the capital interest or part of it in the transferor for proceeds equal to the cost amount to the taxpayer of that interest or part of it immediately before the particular time, and

(ii) the taxpayer is deemed to acquire the capital interest or part of it in the transferee trust at a cost equal to the amount, if any, by which

(A) that cost amount

exceeds

(B) the amount by which the taxpayer's loss otherwise determined from the disposition referred to in subparagraph (i) would be reduced because of paragraph 107(1)(c) or (d) if the proceeds under that subparagraph were equal to the fair market value of the capital interest or part of it in the transferor immediately before the particular time;

(k) where the transferor is a trust, a taxpayer's beneficial ownership in the property ceases to be derived from the taxpayer's capital interest in the transferor because of the qualifying disposition and no part of the taxpayer's capital interest in the transferor was disposed of because of the

qualifying disposition, there shall, immediately after the particular time, be added to the cost otherwise determined of the taxpayer's capital interest in the transferee trust, the amount determined by the formula

$$A \times [(B - C)/B] - D$$

where

A is the cost amount to the taxpayer of the taxpayer's capital interest in the transferor immediately before the particular time,

B is the fair market value immediately before the particular time of the taxpayer's capital interest in the transferor,

C is the fair market value at the particular time of the taxpayer's capital interest in the transferor (determined as if the only property disposed of at the particular time were the particular property), and

D is the lesser of

(i) the amount, if any, by which the cost amount to the taxpayer of the taxpayer's capital interest in the transferor immediately before the particular time exceeds the fair market value of the taxpayer capital interest in the transferor immediately before the particular time, and

(ii) the maximum amount by which the taxpayer's loss from a disposition of a capital interest otherwise determined could have been reduced because of paragraph 107(1)(c) or (d) if the taxpayer's capital interest in the transferor had been disposed of immediately before the particular time;

(l) where paragraph (k) applies to the qualifying disposition in respect of a taxpayer, the amount that would be determined under that paragraph in respect of the qualifying disposition if the amount determined for D in that paragraph were nil shall, immediately after the particular time, be deducted in computing the cost otherwise determined of the taxpayer's capital interest in the transferor;

(m) where paragraphs (j) and (k) do not apply in respect of the qualifying disposition, the transferor is deemed to acquire the capital interest or part of it in the transferee trust that is acquired as a consequence of the qualifying disposition

(i) where the transferee trust is a personal trust, at a cost equal to nil, and

(ii) in any other case, at a cost equal to the excess determined under paragraph (b) in respect of the qualifying disposition; and

(n) if the transferor is a trust and a taxpayer disposes of all or part of an income interest in the transferor because of the qualifying disposition and, as a consequence, acquires an income interest or a part of an income interest in the transferee trust, for the purpose of subsection 106(2), the taxpayer is deemed not to dispose of any part of the income interest in the transferor at the particular time.

Fair market
value of vested
interest in
trust

(4) Where

(a) a particular capital interest in a trust is held by a beneficiary at any time,

(b) the particular interest is vested indefeasibly at that time,

(c) the trust is not described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1), and

(d) interests under the trust are not ordinarily disposed of for consideration that reflects the fair market value of the net assets of the trust,

the fair market value of the particular interest at that time is deemed to be not less than the amount determined by the formula

$$(A - B) \times (C/D)$$

where

A is the total fair market value at that time of all properties of the trust,

B is the total of all amounts each of which is the amount of a debt owing by the trust at that time or the amount of any other obligation of the trust to pay any amount that is outstanding at that time,

C is the fair market value at that time of the particular interest (determined without reference to this subsection), and

D is the total fair market value at that time of all interests as beneficiaries under the trust (determined without reference to this subsection).

(2) Subsections 107.4(1) and (3) of the Act, as enacted by subsection (1), apply

(a) to dispositions that occur after December 23, 1998; and

(b) in respect of the 1993 and subsequent taxation years, to transfers of capital property that occurred before December 24, 1998 except that, in its application to transfers before December 24, 1998,

(i) subsection 107.4(1) of the Act, as enacted by subsection (1), shall be read as follows:

"107.4 (1) For the purpose of this section, a "qualifying disposition" of a property means a transfer of the property to a particular trust that was not a disposition of the property for the purpose of subdivision c because of paragraph (e) of the definition "disposition" in section 54, except where

(a) if the transfer is from another trust to the particular trust,

(i) each trust can reasonably be considered to act as agent for the same beneficiary or beneficiaries in respect of the property transferred, or

(ii) the transferee trust can reasonably be considered to act as agent for the transferor trust in respect of the property transferred; and

(b) in any other case, it is reasonable to consider that the particular trust acts as agent in respect of the property transferred."

(ii) the portion of subsection 107.4(3) of the Act before paragraph (a), as enacted by subsection (1), shall be read as follows:

"(3) Where at a particular time there is a qualifying disposition of a property by a person or partnership (in this subsection referred to as the "transferor") to a trust (in this subsection referred to as the "transferee trust"), except for the purposes of Part XI and regulations made for the purposes of that Part"

(iii) subsection 107.4(3) of the Act, as enacted by subsection (1), shall be read without reference to paragraphs 107.4(3)(a), (c), (g) and (h) of the Act, as enacted by subsection (1),

(iv) paragraph 107.4(3)(b) of the Act, as enacted by subsection (1), shall be read as follows:

"(b) the transferee trust's cost of the property is deemed to be the cost amount to the transferor of the property immediately before the particular time;"

(v) subsection 107.4(3) of the Act, as enacted by subsection (1), shall be read as if each amount determined under clause 107.4(3)(j)(ii)(B) of the Act and the description of D in paragraph 107.4(3)(k) of the Act, as enacted by subsection (1), were nil, and

(vi) subparagraph 107.4(3)(m)(ii) of the Act, as enacted by subsection (1), shall be read as follows:

"(ii) in any other case, at a cost equal to the amount determined under paragraph (b) in respect of the qualifying disposition; and"

(3) Subsections 107.4(2) and (4) of the Act, as enacted by subsection (1), apply to dispositions that occur after December 23, 1998.

53. (1) The definition "accumulating income" in subsection 108(1) of the Act is replaced by the following:

"accumulating
income"
« *revenu
accumulé* »

"accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if that amount were computed

(a) without reference to paragraphs 104(4)(a) and (a.1) and subsections 104(5.1), (5.2) and (12) and 107(4),

(b) as if the greatest amount that the trust was entitled to claim under subsection 104(6) in computing its income for the year were so claimed, and

(c) without reference to subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust to which paragraph 70(6.1)(b) applies and before the death of the spouse or common-law partner referred to in that paragraph;

(2) The definition "capital interest" in subsection 108(1) of the Act is replaced by the following:

"capital
interest"
« *participation
au capital* »

"capital interest" of a taxpayer in a trust means all rights of the taxpayer as a beneficiary under the trust, and after 1999 includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right, but does not include an income interest in the trust;

(3) The portion of the definition "cost amount" in subsection 108(1) of the Act before paragraph (a) is replaced by the following:

"cost amount"
« *coût indiqué*
»

"cost amount" to a taxpayer at any time of a capital interest or part of the interest, as the case may be, in a trust (other than a trust that is a foreign affiliate of the taxpayer) means, except for the purposes of section 107.4 and notwithstanding subsection 248(1),

(4) The definition "cost amount" in subsection 108(1) of the Act is amended by striking out the word "and" at the end of paragraph (a) and by adding the following after that paragraph:

(a.1) where that time is immediately before the time of the death of the taxpayer and subsection 104(4) or (5) deems the trust to dispose of property at the end of the day that includes that time, the amount that would be determined under paragraph (b) if the taxpayer had died on a day that ended immediately before that time, and

(5) The definition "income interest" in subsection 108(1) of the Act is replaced by the following:

"income
interest"
« *participation
au revenu* »

"income interest" of a taxpayer in a trust means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, after 1999, includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an

amount by the trust that arises as a consequence of any such right;

(6) The definition "trust" in subsection 108(1) of the Act is amended by adding the following after paragraph (a):

(a.1) a trust, other than a trust described in paragraph (a) or (d), all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

(7) The portion of the definition "trust" in subsection 108(1) of the Act after paragraph (e.1) is replaced by the following:

and, in applying subsections 104(4), (5), (5.2), (12), (14) and (15) and section 106 at any time, does not include

(f) a trust that, at that time, is a unit trust, or

(g) a trust all interests in which, at that time, have vested indefeasibly, other than

(i) an *alter ego* trust, a joint partner trust or a post-1971 partner trust,

(ii) a trust that has elected under subsection 104(5.3),

(iii) a trust that has, in its return of income under this Part for its first taxation year that ends after 1992, elected that this paragraph not apply,

(iv) a trust that is at that time resident in Canada where the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust who at that time are non-resident is more than 20% of the total fair market value at that time of all interests in the trust held at that time by beneficiaries under the trust,

(v) a trust under the terms of which, at that time, all or part of a person's interest in the trust is to be terminated with reference to a period of time (including a period of time determined with reference to the person's death), otherwise than as a consequence of terms of the trust under which an interest in the trust is to be terminated as a consequence of a distribution to the person (or the person's estate) of property of the trust if the fair market value of the property to be distributed is required to be commensurate with the fair market value of that interest immediately before the distribution, or

(vi) a trust that, before that time and after December 17, 1999, has made a distribution to a beneficiary in respect of the beneficiary's capital interest in the trust, if the distribution can reasonably be considered to have been financed by a liability of the trust and one of the purposes of incurring the liability was to avoid taxes otherwise payable under this Part as a consequence of the death of any individual;

(8) Subsection 108(1) of the Act is amended by adding the following in alphabetical order:

"eligible
offset"
« *montant de
réduction
admissible* »

"eligible offset" at any time of a taxpayer in respect of all or part of the taxpayer's capital interest in a trust is the portion of any debt or obligation that is assumed by the taxpayer and that can reasonably be considered to be applicable to property distributed at that time in satisfaction of the interest or part of the interest, as the case may be, if the distribution is conditional upon the assumption by the taxpayer of the portion of the debt or obligation;

"exempt
property"
« *bien exonéré*
»

"exempt property" of a taxpayer at any time means property any income or gain from the disposition of which by the taxpayer at that time would, because the taxpayer is non-resident or because of a provision contained in a tax treaty, not cause an increase in the taxpayer's tax payable under this Part;

(9) Paragraph 108(2)(b) of the Act is replaced by the following:

(b) each of the following conditions was satisfied:

(i) throughout the taxation year that includes the particular time (in this paragraph referred to as the "current year"), the trust was resident in Canada,

(ii) throughout the period or periods (in this paragraph referred to as the "relevant periods") that are in the current year and throughout which the conditions in paragraph (a) are not satisfied in respect of the trust, its only undertaking was

(A) the investing of its funds in property (other than real property or an interest in real property),

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property or an interest in real property, that is capital property of the trust, or

(C) any combination of the activities described in clauses (A) and (B),

(iii) throughout the relevant periods at least 80% of its property consisted of any combination of

(A) shares,

(B) any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,

(C) cash,

(D) bonds, debentures, hypothecs, mortgages, notes and other similar obligations,

(E) marketable securities,

(F) real property situated in Canada and interests in real property situated in Canada, and

(G) rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,

(iv) either

(A) not less than 95% of its income for the current year (computed without regard to subsections 49(2.1) and 104(6)) was derived from, or from the disposition of, investments described in subparagraph (iii), or

(B) not less than 95% of its income for each of the relevant periods (computed without regard to subsections 49(2.1) and 104(6) and as though each of those periods were a taxation year) was derived from, or from the disposition of, investments described in subparagraph (iii),

(v) throughout the relevant periods, not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her

Majesty in right of Canada or a province or a Canadian municipality, and

(vi) where the trust would not be a unit trust at the particular time if this paragraph were read without reference to this subparagraph and subparagraph (iii) were read without reference to clause (F), the units of the trust are listed at any time in the current year or in the following taxation year on a prescribed stock exchange in Canada, or

(10) The portion of subsection 108(3) of the Act before paragraph (a) is replaced by the following:

Income of a
trust in
certain
provisions

(3) For the purposes of the definition "income interest" in subsection (1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition "pre-1972 spousal trust" in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

(11) Subsection 108(4) of the Act is replaced by the following:

Trust not
disqualified

(4) For the purposes of the definition "pre-1972 spousal trust" in subsection (1), subparagraphs 70(6)(b)(ii) and (6.1)(b)(ii) and paragraphs 73(1.01)(c) and 104(4)(a), where a trust was created by a taxpayer whether by the taxpayer's will or otherwise, no person is deemed to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any income or capital of the trust solely because of the payment, or provision for payment, as the case may be, by the trust of

(a) any estate, legacy, succession or inheritance duty payable, in consequence of the death of the taxpayer, or a spouse or common-law partner of the taxpayer who is a beneficiary under the trust, in respect of any property of, or interest in, the trust; or

(b) any income or profits tax payable by the trust in respect of any income of the trust.

(12) Subsection 108(6) of the Act is replaced by the following:

Variation of trusts

(6) Where at any time the terms of a trust are varied

(a) for the purposes of subsections 104(4), (5) and (5.2), subject to paragraph (b), the trust is, at and after that time, deemed to be the same trust as, and a continuation of, the trust immediately before that time;

(b) for greater certainty, paragraph (a) does not affect the application of paragraph 104(4)(a.1); and

(c) for the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the definition "personal trust" in subsection 248(1), no interest of a beneficiary under the trust before it was varied is considered to be consideration for the interest of the beneficiary in the trust as varied.

Interests acquired for consideration

(7) For the purposes of paragraph 53(2)(h), subsection 107(1), paragraph (j) of the definition "excluded right or interest" in subsection 128.1(10) and the definition "personal trust" in subsection 248(1),

(a) an interest in a trust is deemed not to be acquired for consideration solely because it was acquired in satisfaction of any right as a beneficiary under the trust to enforce payment of an amount by the trust; and

(b) where all the beneficial interests in a particular *inter vivos* trust acquired by way of the transfer, assignment or other disposition of property to the particular trust were acquired by

(i) one person, or

(ii) two or more persons who would be related to each other if

(A) a trust and another person were related to each other, where the other person is a beneficiary under the trust or is related to a beneficiary under the trust, and

(B) a trust and another trust were related to each other, where a beneficiary under the trust is a beneficiary under the other trust or is related to a beneficiary under the other trust,

any beneficial interest in the particular trust acquired by such a person is deemed to have been acquired for no consideration.

(13) Subsection (1) and subsection 108(6) of the Act, as enacted by subsection (12), apply to the 2000 and subsequent taxation years.

(14) Subsection (2) applies after 1999.

(15) Subsection (3) applies to the 1993 and subsequent taxation years.

(16) Subsection (4) applies to deaths that occur after 1999.

(17) Subsection (5) applies in respect of interests created or materially altered after January 1987 that were acquired after 10 p.m. Eastern Standard Time, February 6, 1987.

(18) Subsection (6) applies to the 1999 and subsequent taxation years.

(19) Subsection (7) applies to the 1998 and subsequent taxation years, except that

(a) it does not apply for the purpose of applying subparagraph (g)(iv) of the definition "trust" in subsection 108(1) of the Act, as enacted by subsection (7), before December 24, 1998; and

(b) where the trust so elects in writing and files the election with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes the day on which this Act receives royal assent (or any later day that is acceptable to that Minister), subparagraph (g)(v) of that definition, as enacted by subsection (7), as it applies before 2001, shall be read as follows:

"(v) a trust any interest in which may become effective in the future, or"

(20) The definition "eligible offset" in subsection 108(1) of the Act, as enacted by subsection (8), applies after 1999.

(21) The definition "exempt property" in subsection 108(1) of the Act, as enacted by subsection (8), applies after 1992 except that, before 1999, the words "tax treaty" in that definition shall be read as "convention or agreement with another country that has the force of law in Canada".

(22) Subsection (9) applies to the 1998 and subsequent taxation years.

(23) Subsections (10) and (11) apply to the 2000 and subsequent taxation years, except for the purpose of applying section 73 of the Act to transfers that occur before 2000.

(24) Subsection 108(7) of the Act, as enacted by subsection (12), applies after December 23, 1998.

54. (1) The portion of clause 110(1)(d)(ii)(A) of the Act before subclause (I) is replaced by the following:

(A) the amount payable by the taxpayer to acquire the security under the agreement (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency after the agreement was made) is not less than the amount by which

(2) The portion of paragraph 110(1)(d) of the Act after clause (ii)(A) is replaced by the following:

(B) at the time immediately after the agreement was made, the taxpayer was dealing at arm's length with

(I) the particular qualifying person,

(II) each other qualifying person that, at that time, was an employer of the taxpayer and was not dealing at arm's length with the particular qualifying person, and

(III) each other qualifying person of which the taxpayer had, under the agreement, a right to acquire a security, and

(iii) where rights under the agreement were acquired by the taxpayer as a result of one or more dispositions to which subsection 7(1.4) applied, the requirements of clauses (ii)(A) and (B) would be satisfied if

(A) the agreement referred to in clauses (ii)(A) and (B) were the agreement (in this subparagraph referred to as the "original agreement") the rights under which were the subject of the first of those dispositions,

(B) the security referred to in clause (ii)(A) were a security that the taxpayer had a right to acquire under the original agreement, and

(C) the particular qualifying person referred to in clause (ii)(B) were the qualifying person that made the original agreement;

(3) Subsections (1) and (2) apply to the 1998 and subsequent taxation years.

55. (1) The portion of subsection 110.1(3) of the Act after paragraph (b) is replaced by the following:

such amount, not greater than the fair market value otherwise determined and not less than the adjusted cost base to the corporation of the property at that time, as the corporation designates in its return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

(2) Subsection 110.1(5) of the Act is replaced by the following:

Ecological
gifts

(5) For the purposes of applying subparagraph 69(1)(b)(ii), section 207.31 and this section in respect of a gift described in paragraph (1)(d) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of

(a) the fair market value otherwise determined of the gift, and

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (3), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (3), to be the taxpayer's proceeds of disposition of the gift.

(3) Subsections (1) and (2) apply in respect of gifts made after February 27, 1995.

56. (1) The portion of subsection 110.6(12) of the Act before paragraph (a) is replaced by the following:

Trust deduction

(12) Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(a) or (a.1) (other than a trust that elected under subsection 104(5.3), an alter ego trust or a joint partner trust) may, in computing its taxable income for its taxation year that includes the day determined under paragraph

104(4)(a) or (a.1), as the case may be, in respect of the trust, deduct under this section an amount equal to the least of

(2) Subsection (1) applies to the 2000 and subsequent taxation years.

57. (1) Paragraph 111(9)(a) of the Act is replaced by the following:

(a) in the part of the year throughout which the taxpayer was non-resident, if section 114 applies to the taxpayer in respect of the year, and

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

58. (1) Subsection 112(2.2) of the Act is replaced by the following:

Guaranteed
shares

(2.2) No deduction may be made under subsection (1), (2) or 138(6) in computing the taxable income of a particular corporation in respect of a dividend received on a share of the capital stock of a corporation that was issued after 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 where

(a) a person or partnership (in this subsection and subsection (2.21) referred to as the "guarantor") that is a specified financial institution or a specified person in relation to any such institution, but that is not the issuer of the share or an individual other than a trust, is, at or immediately before the time the dividend is paid, obligated, either absolutely or contingently and either immediately or in the future, to effect any undertaking (in this subsection and subsections (2.21) and (2.22) referred to as a "guarantee agreement"), including any guarantee, covenant or agreement to purchase or repurchase the share and including the lending of funds to or the placing of amounts on deposit with, or on behalf of, the particular corporation or any specified person in relation to the particular corporation given to ensure that

(i) any loss that the particular corporation or a specified person in relation to the particular corporation may sustain by reason of the ownership, holding or disposition of the share or any other property is limited in any respect, or

(ii) the particular corporation or a specified person in relation to the particular corporation will derive earnings by

reason of the ownership, holding or disposition of the share or any other property; and

(b) the guarantee agreement was given as part of a transaction or event or a series of transactions or events that included the issuance of the share.

Exceptions

(2.21) Subsection (2.2) does not apply to a dividend received by a particular corporation on

(a) a share that is at the time the dividend is received a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1);

(b) a grandfathered share, a taxable preferred share issued before December 16, 1987 or a prescribed share;

(c) a taxable preferred share issued after December 15, 1987 and of a class of the capital stock of a corporation that is listed on a prescribed stock exchange where all guarantee agreements in respect of the share were given by one or more of the issuer of the share and persons that are related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the issuer unless, at the time the dividend is paid to the particular corporation, dividends in respect of more than 10 per cent of the issued and outstanding shares to which the guarantee agreement applies are paid to the particular corporation or the particular corporation and specified persons in relation to the particular corporation; or

(d) a share

(i) that was not acquired by the particular corporation in the ordinary course of its business,

(ii) in respect of which the guarantee agreement was not given in the ordinary course of the guarantor's business, and

(iii) the issuer of which is, at the time the dividend is paid, related (otherwise than because of a right referred to in paragraph 251(5)(b)) to both the particular corporation and the guarantor.

Interpretation

(2.22) For the purposes of subsections (2.2) and (2.21),

(a) where a guarantee agreement in respect of a share is given at any particular time after 8:00 p.m. Eastern Daylight Saving Time,

June 18, 1987, otherwise than under a written arrangement to do so entered into before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987, the share is deemed to have been issued at the particular time and the guarantee agreement is deemed to have been given as part of a series of transactions that included the issuance of the share; and

(b) "specified person" has the meaning assigned by paragraph (h) of the definition "taxable preferred share" in subsection 248(1).

(2) Subsection (1) applies in respect of dividends received after 1998.

59. (1) Sections 114 and 114.1 of the Act are replaced by the following:

Individual
resident in
Canada for only
part of year

114. Notwithstanding subsection 2(2), the taxable income for a taxation year of an individual who is resident in Canada throughout part of the year and non-resident throughout another part of the year is the amount, if any, by which

(a) the amount that would be the individual's income for the year if the individual had no income or losses, for the part of the year throughout which the individual was non-resident, other than

(i) income or losses described in paragraphs 115(1)(a) to (c), and

(ii) income that would have been included in the individual's taxable income earned in Canada for the year under subparagraph 115(1)(a)(v) if the part of the year throughout which the individual was non-resident were the whole taxation year

exceeds the total of

(b) the deductions permitted by subsection 111(1) and, to the extent that they relate to amounts included in computing the amount determined under paragraph (a), the deductions permitted by any of paragraphs 110(1)(d), (d.1), (d.2) and (f), and

(c) any other deduction permitted for the purpose of computing taxable income to the extent that

(i) it can reasonably be considered to be applicable to the part of the year throughout which the individual was resident in Canada, or

(ii) if all or substantially all of the individual's income for the part of the year throughout which the individual was non-resident is included in the amount determined under paragraph (a), it can reasonably be considered to be applicable to that part of the year.

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

60. (1) Subparagraph 115(1)(a)(i) of the Act is replaced by the following:

(i) incomes from the duties of offices and employments performed by the non-resident person in Canada and, if the person was resident in Canada at the time the person performed the duties, outside Canada,

(2) Paragraphs 115(1)(b) and (b.1) of the Act are replaced by the following:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian properties (other than treaty-protected properties), and

(3) Paragraphs 115(2)(b) and (b.1) of the Act are replaced by the following:

(b) a student attending, or a teacher teaching at, an educational institution outside Canada that is a university, college or other educational institution providing courses at a post-secondary school level, who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to attend or to teach at the institution,

(b.1) an individual who in any preceding taxation year ceased to be resident in Canada in the course of or subsequent to moving to carry on research or any similar work under a grant received by the individual to enable the individual to carry on the research or work,

(4) Subsection 115(3) of the Act is repealed.

(5) Subsections (1) and (3) apply to the 1998 and subsequent taxation years except that, if an individual who ceased at any time after 1992 and before October 2, 1996 to be resident in Canada elects under subsection 78(1) in respect of that cessation of

residence, subparagraph 115(1)(a)(i) of the Act, as enacted by subsection (1), applies to income received by the individual after that cessation of residence.

(6) Subsections (2) and (4) apply after October 1, 1996 except that, in its application to dispositions that occurred before the 1998 taxation year, paragraph 115(1)(b) of the Act, as enacted by subsection (2), shall be read as follows:

"(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions of taxable Canadian properties, and"

61. (1) The portion of subsection 116(1) of the Act before paragraph (a) is replaced by the following:

Disposition by
non-resident
person of
certain
property

116. (1) If a non-resident person proposes to dispose of any taxable Canadian property (other than property described in subsection (5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

(2) The portion of subsection 116(5.1) of the Act before paragraph (a) is replaced by the following:

Gifts, etc.

(5.1) If a non-resident person has disposed of or proposes to dispose of a life insurance policy in Canada, a Canadian resource property or a taxable Canadian property other than

(3) The portion of subsection 116(5.2) of the Act before paragraph (a) is replaced by the following:

Certificates
for
dispositions

(5.2) If a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that is real property situated in Canada, a timber resource property, depreciable property that is a taxable

Canadian property or any interest in or option in respect of a property to which this subsection applies (whether or not that property exists),

(4) Paragraph 116(6)(a) of the Act is replaced by the following:

(a) a property that is a taxable Canadian property solely because a provision of this Act deems it to be a taxable Canadian property;

(a.1) a property (other than real property situated in Canada, a Canadian resource property or a timber resource property) that is described in an inventory of a business carried on in Canada by the person;

(5) Subsections (1) to (4) apply after October 1, 1996.

62. (1) Clause (c.1)(ii)(B) of the description of B in subsection 118(1) of the Act is replaced by the following:

(B) resident in Canada and is the parent, grandparent, brother, sister, aunt, uncle, nephew or niece of the individual or of the individual's spouse or common-law partner, and

(2) Subsection (1) applies to the 1998 and subsequent taxation years, except that clause (c.1)(ii)(B) of the description of B in subsection 118(1) of the Act, as enacted by subsection (1), shall be read without reference to "or common-law partner" for any taxation year that ends before 2001 unless a valid election is made by the taxpayer under section 144 of the *Modernization of Benefits and Obligations Act*, chapter xx of the Statutes of Canada, 2000, that that Act apply to the taxpayer in respect of one or more taxation years that includes the year.

63. (1) Subsection 118.1(4) of the Act is replaced by the following:

Gift in year of
death

(4) Subject to subsection (13), a gift made by an individual in the particular taxation year in which the individual dies (including, for greater certainty, a gift otherwise deemed by subsection (5), (7), (7.1), (13) or (15) to have been so made) is deemed, for the purpose of this section other than this subsection, to have been made by the individual in the preceding taxation year, and not in the particular year, to the extent that an amount in respect of the gift is not deducted in computing the individual's tax payable under this Part for the particular year.

(2) The portion of subsection 118.1(6) of the Act after paragraph (b) is replaced by the following:

and the fair market value of the property otherwise determined at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

(3) Subsections 118.1(7) and (7.1) of the Act are replaced by the following:

Gifts of art

(7) Except where subsection (7.1) applies, where at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1) of a work of art that was

(a) created by the individual and that is property in the individual's inventory, or

(b) acquired under circumstances where subsection 70(3) applied,

and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

(c) where the gift is made as a consequence of the death of the individual, the gift is deemed to have been made immediately before the death, and

(d) the amount, not greater than that fair market value at the time the gift is made and not less than the cost amount of the property to the individual, that is designated in the individual's return of income under section 150 for the year in which the gift is made is, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, deemed to be the individual's proceeds of disposition of the work of art and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

Gifts of
cultural
property

(7.1) Where at any particular time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total cultural gifts" in subsection (1) of a work of art that was

(a) created by the individual and that is property in the individual's inventory, or

(b) acquired under circumstances where subsection 70(3) applied, and at that time the fair market value of the work of art exceeds its cost amount to the individual, the following rules apply:

(c) where the gift is made as a consequence of the death of the individual, the individual is deemed to have made the gift immediately before the death, and

(d) the individual is deemed to have received at the particular time proceeds of disposition in respect of the gift equal to its cost amount to the individual at that time.

(4) Subsection 118.1(12) of the Act is replaced by the following:

Ecological
gifts

(12) For the purpose of applying subparagraph 69(1)(b)(ii), subsection 70(5), section 207.31 and this section in respect of a gift described in the definition "total ecological gifts" in subsection (1) that is made by a taxpayer and that is a servitude, covenant or easement to which land is subject, the greater of

(a) the fair market value otherwise determined of the gift, and

(b) the amount by which the fair market value of the land is reduced as a result of the making of the gift

is deemed to be the fair market value (or, for the purpose of subsection (6), the fair market value otherwise determined) of the gift at the time the gift was made and, subject to subsection (6), to be the taxpayer's proceeds of disposition of the gift.

(5) Subsections (1) and (3) apply to the 2000 and subsequent taxation years and, where a taxpayer or a taxpayer's legal representative so notifies the Minister of National Revenue in writing before 2002 of the intention of the taxpayer or the taxpayer's legal representative that this subsection apply in

respect of a gift made after 1996 and before 2000, subsections (1) and (3) apply to the taxation year in which the gift was made and, where paragraph 118.1(7)(d) of the Act, as enacted by subsection (3), applies, the amount designated in the notice in respect of the gift is deemed to have been validly designated for the purposes of that paragraph in the taxpayer's return of income for the year in which the gift was made.

(6) Subsections (2) and (4) apply in respect of gifts made after February 27, 1995.

64. (1) The portion of subsection 118.6(2) of the Act after the description of B is replaced by the following:

if the enrolment is proven by filing with the Minister a certificate in prescribed form issued by the designated educational institution and containing prescribed information and, in respect of a designated educational institution described in subparagraph (a)(ii) of the definition "designated educational institution" in subsection (1), the individual has attained the age of 16 years before the end of the year and is enrolled in the program to obtain skills for, or improve the individual's skills in, an occupation.

(2) Subsection (1) applies to the 1999 and subsequent taxation years.

65. (1) The description of C in subsection 118.61(1) of the Act is replaced by the following:

C is the lesser of the value of B and the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121;

(2) Paragraph 118.61(2)(b) of the Act is replaced by the following:

(b) the amount that would be the individual's tax payable under this Part for the year if no amount were deductible under any of sections 118.1, 118.2, 118.5, 118.6, 118.62, 118.8, 118.9 and 121.

(3) Subsections (1) and (2) apply to the 1999 and subsequent taxation years.

66. (1) Section 119 of the Act is repealed.

(2) The Act is amended by adding the following after section 118.95:

Former resident
- credit for
tax paid

119. If at any particular time an individual was deemed by subsection 128.1(4) to have disposed of a capital property that was a taxable Canadian property of the individual throughout the period that began at the particular time and that ends at the first time, after the particular time, at which the individual disposes of the property, there may be deducted in computing the individual's tax payable under this Part for the taxation year that includes the particular time the lesser of

(a) that proportion of the individual's tax for the year otherwise payable under this Part (within the meaning assigned by paragraph (a) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7)) that

(i) the individual's taxable capital gain from the disposition of the property at the particular time

is of

(ii) the amount determined under paragraph 114(a) in respect of the individual for the year, and

(b) that proportion of the individual's tax payable under Part XIII in respect of dividends received during the period by the individual in respect of the property and amounts deemed under Part XIII to have been paid during the period to the individual as dividends from corporations resident in Canada, to the extent that the amounts can reasonably be considered to relate to the property, that

(i) the amount by which the individual's loss from the disposition of the property at the end of the period is reduced by subsection 40(3.7)

is of

(ii) the total amount of those dividends.

(3) Subsection (1) applies to the 1995 and subsequent taxation years.

(4) Subsection (2) applies to dispositions after December 23, 1998 by individuals who cease to be resident in Canada after October 1, 1996.

67. (1) Subsection 120(2.1) of the Act is repealed.

(2) Paragraphs 120(3)(a) and (b) of the Act are replaced by the following:

(a) if section 114 applies to the individual in respect of the year, the amount determined under paragraph 114(a) in respect of the individual for the year; and

(b) if the individual was non-resident throughout the year, the individual's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(d) to (f).

(3) Clause (a)(ii)(A) of the definition "tax otherwise payable under this Part" in subsection 120(4) of the Act is replaced by the following:

(A) section 119, subsection 120.4(2) and sections 126, 127, 127.4 and 127.41, and

(4) Subsections (1) and (3) apply to the 1996 and subsequent taxation years except that, in its application to taxation years that end before 2000, subsection (3) shall be read as follows:

"(3) Paragraph (b) of the definition "tax otherwise payable under this Part" in subsection 120(4) of the Act is replaced by the following:

(b) the amount that, but for this section and subsection 117(6), would be the tax payable under this Part by the individual for the year if this Part were read without reference to any of sections 119, 126, 127 and 127.4."

(5) Subsection (2) applies to the 1998 and subsequent taxation years.

68. (1) Subsection 120.2(4) of the Act is replaced by the following:

Where
subsection (1)
does not apply

(4) Subsection (1) does not apply in respect of an individual's return of income filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(f) or subsection 150(4).

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

69. (1) Subsection 122(2) of the Act is amended by striking out the word "and" at the end of paragraph (d), by adding the word

"and" at the end of paragraph (e) and by adding the following after paragraph (e):

(f) has not received any property after December 17, 1999, where

(i) the property was received as a result of a transfer from another trust,

(ii) subsection (1) applied to a taxation year of the other trust that began before the property was so received, and

(iii) no change in the beneficial ownership of the property resulted from the transfer.

(2) Subsection (1) applies to the 1999 and subsequent taxation years.

70. (1) Paragraph 122.3(1)(e) of the Act is replaced by the following:

(e) the amount, if any, by which

(i) if the individual is resident in Canada throughout the year, the individual's income for the year, and

(ii) if the individual is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b) or deductible under paragraph 110(1)(d.2), (d.3), (f) or (j) in computing the individual's taxable income for the year.

(2) Subsection (1) applies to the 1998 and subsequent taxation years.

71. (1) The definition "Canadian-controlled private corporation" in subsection 125(7) of the Act is replaced by the following:

"Canadian-controlled private corporation"
« *société privée sous contrôle canadien* »

"Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than

(a) a corporation controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), by one or more corporations described in paragraph (c), or by any combination of them,

(b) a corporation that would, if each share of the capital stock of a corporation that is owned by a non-resident person, by a public corporation (other than a prescribed venture capital corporation), or by a corporation described in paragraph (c) were owned by a particular person, be controlled by the particular person, or

(c) a corporation a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

(2) Subsection (1) applies to taxation years that begin after 1999.

72. (1) Subsection 125.4(2) of the Act is amended by striking out the word "and" at the end of paragraph (a), by adding the word "and" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) that definition does not apply to an amount to which section 37 applies.

(2) Subsection (1) applies after November 1999.

73. (1) The portion of the definition "eligible production corporation" in subsection 125.5(1) of the Act after paragraph (b) and before paragraph (c) is replaced by the following:

except a corporation that is, at any time in the year,

(2) Subsection (1) applies after November 1999.

74. (1) Clause 126(1)(b)(ii)(A) of the Act is replaced by the following:

(A) the amount, if any, by which,

(I) if the taxpayer was resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) if the taxpayer was non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, in computing the taxpayer's taxable income for the year, and

(2) Clause 126(2.1)(a)(ii)(A) of the Act is replaced by the following:

(A) the amount, if any, by which

(I) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(II) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j) or section 112 or 113, in computing the taxpayer's taxable income for the year, and

(3) The portion of subsection 126(2.2) of the Act before paragraph (b) is replaced by the following:

Non-resident's
foreign tax
deduction

(2.2) If at any time in a taxation year a taxpayer who is not at that time resident in Canada disposes of a property that was deemed by subsection 48(2), as it read in its application before 1993, or by paragraph 128.1(4)(e), as it read in its application before October 2, 1996, to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to the lesser of

(a) the amount of any non-business-income tax paid by the taxpayer for the year to the government of a country other than Canada that can reasonably be regarded as having been paid by the

taxpayer in respect of any gain or profit from the disposition of the property, and

(4) Subparagraph 126(2.2)(b)(ii) of the Act is replaced by the following:

(ii) if the taxpayer is non-resident throughout the year, the taxpayer's taxable income earned in Canada for the year determined without reference to paragraphs 115(1)(d) to (f), and

(iii) if the taxpayer is resident in Canada at any time in the year, the amount that would have been the taxpayer's taxable income earned in Canada for the year if the part of the year throughout which the taxpayer was non-resident were the whole taxation year.

(5) Section 126 of the Act is amended by adding the following after subsection (2.2):

Former resident
- deduction

(2.21) If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired because of the application, at any time (in this subsection referred to as the "acquisition time") after October 1, 1996, of paragraph 128.1(4)(c), there may be deducted from the individual's tax otherwise payable under this Part for the year (in this subsection referred to as the "emigration year") that includes the time immediately before the acquisition time an amount not exceeding the lesser of

(a) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued while the individual was resident in Canada and before the time the individual last ceased to be resident in Canada, and

(b) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the individual for the emigration year

exceeds

(ii) the amount of such tax that would have been payable if the particular property had not been deemed by subsection 128.1(4) to have been disposed of in the emigration year.

Former resident
- trust
beneficiary

(2.22) If at any particular time in a particular taxation year a non-resident individual disposes of a property that the individual last acquired at any time (in this subsection referred to as the "acquisition time") on a distribution after October 1, 1996 to which paragraphs 107(2)(a) to (c) do not apply only because of subsection 107(5), the trust may deduct from its tax otherwise payable under this Part for the year (in this subsection referred to as the "distribution year") that includes the acquisition time an amount not exceeding the lesser of

(a) the total of all amounts each of which is the amount of any business-income tax or non-business-income tax paid by the individual for the particular year

(i) where the property is real property situated in a country other than Canada,

(A) to the government of that country, or

(B) to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time, or

(ii) where the property is not real property, to the government of a country with which Canada has a tax treaty at the particular time and in which the individual is resident at the particular time,

that can reasonably be regarded as having been paid in respect of that portion of any gain or profit from the disposition of the property that accrued before the distribution and after the latest of the times, before the distribution, at which

(iii) the trust became resident in Canada,

(iv) the individual became a beneficiary under the trust, or

(v) the trust acquired the property, and

(b) the amount, if any, by which

(i) the amount of tax under this Part that was, after taking into account the application of this subsection in respect of dispositions that occurred before the particular time, otherwise payable by the trust for the distribution year

exceeds

(ii) the amount of such tax that would have been payable by the trust for the distribution year if the particular property had not been distributed to the individual.

Where foreign
credit
available

(2.23) For the purposes of subsections (2.21) and (2.22), in computing, in respect of the disposition of a property by an individual in a taxation year, the total amount of taxes paid by the individual for the year to one or more governments of countries other than Canada, there shall be deducted any tax credit (or other reduction in the amount of a tax) to which the individual was entitled for the year, under the law of any of those countries or under a tax treaty between Canada and any of those countries, because of taxes paid or payable by the individual under this Act in respect of the disposition or a previous disposition of the property.

(6) Subparagraphs 126(3)(a)(i) and (ii) of the Act are replaced by the following:

(i) for the year, if the individual is resident in Canada throughout the year, and

(ii) for the part of the year throughout which the individual was resident in Canada, if the individual is non-resident at any time in the year,

(7) Paragraph 126(3)(b) of the Act is replaced by the following:

(b) the amount, if any, by which

(i) if the taxpayer is resident in Canada throughout the year, the taxpayer's income for the year computed without reference to paragraph 20(1)(ww), and

(ii) if the taxpayer is non-resident at any time in the year, the amount determined under paragraph 114(a) in respect of the taxpayer for the year

exceeds

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(b), or deductible under paragraph 110(1)(d), (d.1), (d.2), (d.3), (f) or (j), in computing the taxpayer's taxable income for the year, and

(8) Subsections (1), (2), (4), (6) and (7) apply to the 1998 and subsequent taxation years except that, in their application to the 1998 and 1999 taxation years, subclauses 126(1)(b)(ii)(A)(I) and (2.1)(a)(ii)(A)(I) and subparagraph 126(3)(b)(i) of the Act, as enacted by subsections (1), (2) and (7), respectively, shall be read without reference to the expression "computed without reference to paragraph 20(1)(ww)".

(9) Subsections (3) and (5) apply to the 1996 and subsequent taxation years.

75. (1) Paragraph (1) of the definition "investment tax credit" in subsection 127(9) of the Act is replaced by the following:

(1) any of the income is exempt income or is exempt from tax under this Part,

(2) Subsection (1) applies to all taxation years.

76. (1) Paragraph 127.55(b) of the Act is repealed.

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

77. (1) Subparagraph 128.1(1)(b)(i) of the Act is replaced by the following:

(i) property that is a taxable Canadian property,

(2) Paragraph 128.1(1)(b) of the Act is amended by adding the word "and" at the end of subparagraph (iii) and by replacing subparagraphs (iv) and (v) with the following:

(iv) an excluded right or interest of the taxpayer (other than an interest in a non-resident testamentary trust that was never acquired for consideration),

(3) Paragraph 128.1(4)(b) of the Act is replaced by the following:

Fiscal period

(a.1) if the taxpayer is an individual (other than a trust) and carries on a business at the particular time, otherwise than through a permanent establishment (as defined by regulation) in Canada,

(i) the fiscal period of the business is deemed to have ended immediately before the particular time and a new fiscal period of the business is deemed to have begun at the particular time, and

(ii) for the purpose of determining the fiscal period of the business after the particular time, the taxpayer is deemed not to have established a fiscal period of the business before the particular time;

Deemed disposition

(b) the taxpayer is deemed to have disposed, at the time (in this paragraph and paragraph (d) referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer other than, if the taxpayer is an individual,

(i) real property situated in Canada, a Canadian resource property or a timber resource property,

(ii) capital property used in, eligible capital property in respect of or property described in the inventory of, a business carried on by the taxpayer through a permanent establishment (as defined by regulation) in Canada at the particular time,

(iii) an excluded right or interest of the taxpayer,

(iv) if the taxpayer is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property that was owned by the taxpayer at the time the taxpayer last became resident in Canada or that was acquired by the taxpayer by inheritance or bequest after the taxpayer last became resident in Canada, and

(v) any property in respect of which the taxpayer elects under paragraph (6)(a) for the taxation year that includes the first time, after the particular time, at which the taxpayer becomes resident in Canada,

for proceeds equal to its fair market value at the time of disposition, which proceeds are deemed to have become receivable and to have been received by the taxpayer at the time of disposition;

(4) Paragraphs 128.1(4)(d) to (f) of the Act are replaced by following:

Individual –
elective
disposition

(d) notwithstanding paragraphs (b) to (c), if the taxpayer is an individual (other than a trust) and so elects in prescribed form and manner in respect of a property described in subparagraph (b)(i) or (ii),

(i) the taxpayer is deemed to have disposed of the property at the time of disposition for proceeds equal to its fair market value at that time and to have reacquired the property at the particular time at a cost equal to those proceeds,

(ii) the taxpayer's income for the taxation year that includes the particular time is deemed to be the greater of

(A) that income determined without reference to this subparagraph, and

(B) the lesser of

(I) that income determined without reference to this subsection, and

(II) that income determined without reference to subparagraph (i), and

(iii) each of the taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for the taxation year that includes the particular time is deemed to be the lesser of

(A) that amount determined without reference to this subparagraph, and

(B) the greater of

(I) that amount determined without reference to this subsection, and

(II) that amount determined without reference to subparagraph (i); and

Employee CCPC
stock option
shares

(d.1) if the taxpayer is deemed by paragraph (b) to have disposed of a share that was acquired under circumstances to which subsection 7(1.1) applied, there shall be deducted from the taxpayer's proceeds of disposition the amount that would, if section 7 were read without reference to subsection 7(1.6), be added under paragraph 53(1)(j) in computing the adjusted cost base to the taxpayer of the share as a consequence of the deemed disposition.

(5) Section 128.1 of the Act is amended by adding the following after subsection (4):

Instalment
interest

(5) If an individual is deemed by subsection (4) to have disposed of a property in a taxation year, in applying sections 155 and 156 and subsections 156.1(1) to (3) and 161(2), (4) and (4.01) and any regulations made for the purposes of those provisions, the individual's total taxes payable under this Part and Part I.1 for the year are deemed to be the lesser of

(a) the individual's total taxes payable under this Part and Part I.1 for the year, determined before taking into consideration the specified future tax consequences for the year, and

(b) the amount that would be determined under paragraph (a) if subsection (4) did not apply to the individual for the year.

Returning
former resident

(6) If an individual (other than a trust) becomes resident in Canada at a particular time in a taxation year and the last time (in this subsection referred to as the "emigration time"), before the particular time, at which the individual ceased to be resident in Canada was after October 1, 1996,

(a) subject to paragraph (b), if the individual so elects in writing and files the election with the Minister on or before the individual's filing-due date for the year, paragraphs (4)(b) and

(c) do not apply to the individual's cessation of residence at the emigration time in respect of all properties that were taxable Canadian properties of the individual throughout the period that began at the emigration time and that ends at the particular time;

(b) where, if a property in respect of which an election under paragraph (a) is made had been acquired by the individual at the emigration time at a cost equal to its fair market value at the emigration time and had been disposed of by the individual immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, the application of subsection 40(3.7) would reduce the amount that would, but for that subsection and this subsection, be the individual's loss from the disposition,

(i) the individual is deemed to have disposed of the property at the time of disposition (within the meaning assigned by paragraph (4)(b)) in respect of the emigration time for proceeds of disposition equal to the total of

(A) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(B) the amount, if any, by which that reduction exceeds the lesser of

(I) the adjusted cost base to the individual of the property immediately before the time of disposition, and

(II) the amount, if any, that the individual specifies for the purposes of this paragraph in the election under paragraph (a) in respect of the property,

(ii) the individual is deemed to have reacquired the property at the emigration time at a cost equal to the amount, if any, by which the amount determined under clause (i)(A) exceeds the lesser of that reduction and the amount specified by the individual under subclause (i)(B)(II), and

(iii) for the purpose of section 119, the individual is deemed to have disposed of the property immediately before the particular time;

(c) if the individual so elects in writing and files the election with the Minister on or before the individual's filing-due date for the year, in respect of each property that the individual owned throughout the period that began at the emigration time and that ends at the particular time and that is deemed by paragraph (1)(b) to have been disposed of because the individual became resident in Canada, notwithstanding paragraphs (1)(c) and (4)(b)

the individual's proceeds of disposition at the time of disposition (within the meaning assigned by paragraph (4)(b)), and the individual's cost of acquiring the property at the particular time, are deemed to be those proceeds and that cost, determined without reference to this paragraph, minus the least of

(i) the amount that would, but for this paragraph, have been the individual's gain from the disposition of the property deemed by paragraph (4)(b) to have occurred,

(ii) the fair market value of the property at the particular time, and

(iii) the amount that the individual specifies for the purposes of this paragraph in the election; and

(d) notwithstanding subsections 152(4) to (5), any assessment of tax that is payable under this Act by the individual for any taxation year that is before the year that includes the particular time and that is not before the year that includes the emigration time shall be made that is necessary to take an election under this subsection into account, except that no such assessment shall affect the computation of

(i) interest payable under this Act to or by a taxpayer in respect of any period that is before the day on which the taxpayer's return of income for the taxation year that includes the particular time is filed, or

(ii) any penalty payable under this Act.

Returning trust
beneficiary

(7) If an individual (other than a trust)

(a) becomes resident in Canada at a particular time in a taxation year,

(b) owns at the particular time a property that the individual last acquired on a trust distribution to which subsection 107(2) would, but for subsection 107(5), have applied and at a time (in this subsection referred to as the "distribution time") that was after October 1, 1996 and before the particular time, and

(c) was a beneficiary of the trust at the last time, after October 1, 1996 and before the particular time, at which the individual ceased to be resident in Canada,

the following rules apply:

(d) subject to paragraphs (e) and (f), if the individual and the trust jointly so elect in writing and file the election with the Minister on or before the earlier of their filing-due dates for their taxation years that include the particular time, subsection 107(2.1) does not apply to the distribution in respect of all properties acquired by the individual on the distribution that were taxable Canadian properties of the individual throughout the period that began at the distribution time and that ends at the particular time;

(e) paragraph (f) applies in respect of the individual, the trust and a property in respect of which an election under paragraph (d) is made where, if the individual

(i) had been resident in Canada at the distribution time,

(ii) had acquired the property at the distribution time at a cost equal to its fair market value at that time,

(iii) had ceased to be resident in Canada immediately after the distribution time, and

(iv) had, immediately before the particular time, disposed of the property for proceeds of disposition equal to its fair market value immediately before the particular time,

the application of subsection 40(3.7) would reduce the amount that would, but for that subsection and this subsection, have been the individual's loss from the disposition;

(f) where this paragraph applies in respect of an individual, a trust and a property,

(i) notwithstanding paragraph 107(2.1)(a), the trust is deemed to have disposed of the property at the distribution time for proceeds of disposition equal to the total of

(A) the cost amount to the trust of the property immediately before the distribution time, and

(B) the amount, if any, by which the reduction under subsection 40(3.7) described in paragraph (e) exceeds the lesser of

(I) the cost amount to the trust of the property immediately before the distribution time, and

(II) the amount, if any, which the individual and the trust jointly specify for the purposes of this paragraph in the

election under paragraph (d) in respect of the property,
and

(ii) notwithstanding paragraph 107(2.1)(b), the individual is deemed to have acquired the property at the distribution time at a cost equal to the amount, if any, by which the amount otherwise determined under paragraph 107(2)(b) exceeds the lesser of the reduction under subsection 40(3.7) described in paragraph (e) and the amount specified under subclause (i)(B)(II);

(g) if the individual and the trust jointly so elect in writing and file the election with the Minister on or before the later of their filing-due dates for their taxation years that include the particular time, in respect of each property that the individual owned throughout the period that began at the distribution time and that ends at the particular time and that is deemed by paragraph (1)(b) to have been disposed of because the individual became resident in Canada, notwithstanding paragraphs 107(2.1)(a) and (b), the trust's proceeds of disposition under paragraph 107(2.1)(a) at the distribution time, and the individual's cost of acquiring the property at the particular time, are deemed to be those proceeds and that cost determined without reference to this paragraph, minus the least of

(i) the amount that would, but for this paragraph, have been the trust's gain from the disposition of the property deemed by paragraph 107(2.1)(a) to have occurred,

(ii) the fair market value of the property at the particular time, and

(iii) the amount that the individual and the trust jointly specify for the purposes of this paragraph in the election;

(h) if the trust ceases to exist before the individual's filing-due date for the individual's taxation year that includes the particular time,

(i) an election or specification described in this subsection may be made by the individual alone in writing if the election is filed with the Minister on or before that filing-due date,
and

(ii) if the individual alone makes such an election or specification, the individual and the trust are jointly and severally liable for any amount payable under this Act by the trust as a result of the election or specification; and

(i) notwithstanding subsections 152(4) to (5), such assessment of tax payable under the Act by the trust or the individual for any

year that is before the year that includes the particular time and that is not before the year that includes the distribution time shall be made as is necessary to take an election under this subsection into account, except that no such assessment shall affect the computation of

(i) interest payable under this Act to or by the trust or the individual in respect of any period that is before the individual's filing-due date for the taxation year that includes the particular time, or

(ii) any penalty payable under this Act.

Post-emigration
loss

(8) If an individual (other than a trust)

(a) was deemed by paragraph (4)(b) to have disposed of a capital property at any particular time after October 1, 1996,

(b) has disposed of the property at a later time at which the property was a taxable Canadian property of the individual, and

(c) so elects in writing in the individual's return of income for the taxation year that includes the later time,

there shall, except for the purpose of paragraph (4)(c), be deducted from the individual's proceeds of disposition of the property at the particular time, and added to the individual's proceeds of disposition of the property at the later time, an amount equal to the least of

(d) the amount specified in respect of the property in the election,

(e) the amount that would, but for the election, be the individual's gain from the disposition of the property at the particular time, and

(f) the amount that would be the individual's loss from the disposition of the property at the later time, if the loss were determined having reference to every other provision of this Act including, for greater certainty, subsection 40(3.7) and section 112, but without reference to the election.

Information
reporting

(9) An individual who ceases at a particular time in a taxation year to be resident in Canada, and who owns immediately after the

particular time one or more reportable properties the total fair market value of which at the particular time is greater than \$25,000, shall file with the Minister in prescribed form, on or before the individual's filing-due date for the year, a list of all the reportable properties that the individual owned immediately after the particular time.

Definitions

(10) The definitions in this subsection apply in this section.

"excluded right
or interest"
« *droit,*
participation
ou
intérêt exclu »

"excluded right or interest" of a taxpayer who is an individual means

(a) a right of the individual under, or an interest of the individual in a trust governed by,

(i) a registered retirement savings plan or a plan referred to in subsection 146(12) as an "amended plan",

(ii) a registered retirement income fund,

(iii) a registered education savings plan,

(iv) a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan",

(v) an employees profit sharing plan,

(vi) an employee benefit plan (other than a plan described in subparagraph (b)(i) or (ii)),

(vii) a plan or arrangement (other than an employee benefit plan) under which the individual has a right to receive in a year remuneration in respect of services rendered by the individual in the year or a prior year,

(viii) a superannuation or pension fund or plan (other than an employee benefit plan),

(ix) a retirement compensation arrangement,

(x) a foreign retirement arrangement, or

(xi) a registered supplementary unemployment benefit plan;

(b) a right of the individual to a benefit under an employee benefit plan that is

(i) a plan or arrangement described in paragraph (j) of the definition "salary deferral arrangement" in subsection 248(1) that would, but for paragraphs (j) and (k) of that definition, be a salary deferral arrangement, or

(ii) a plan or arrangement that would, but for paragraph 6801(c) of the *Income Tax Regulations*, be a salary deferral arrangement,

to the extent that the benefit can reasonably be considered to be attributable to services rendered by the individual in Canada;

(c) a right of the individual under an agreement referred to in subsection 7(1) or (1.1);

(d) a right of the individual to a retiring allowance;

(e) a right of the individual under, or an interest of the individual in, a trust that is

(i) an employee trust,

(ii) an amateur athlete trust,

(iii) a cemetery care trust, or

(iv) a trust governed by an eligible funeral arrangement;

(f) a right of the individual to receive a payment under

(i) an annuity contract, or

(ii) an income-averaging annuity contract;

(g) a right of the individual to a benefit under

(i) the *Canada Pension Plan* or a provincial plan described in section 3 of that Act,

(ii) the *Old Age Security Act*,

(iii) a provincial pension plan prescribed for the purpose of paragraph 60(v), or

(iv) a plan or arrangement instituted by the social security legislation of a country other than Canada or of a state, province or other political subdivision of such a country;

(h) a right of the individual to a benefit described in any of subparagraphs 56(1)(a)(iii) to (vi);

(i) a right of the individual to a payment out of a NISA Fund No. 2;

(j) an interest of the individual in a personal trust resident in Canada if the interest was never acquired for consideration and did not arise as a consequence of a qualifying disposition by the individual (within the meaning that would be assigned by subsection 107.4(1) if that subsection were read without reference to paragraphs 107.4(1)(h) and (i));

(k) an interest of the individual in a non-resident testamentary trust if the interest was never acquired for consideration; or

(l) an interest of the individual in a life insurance policy in Canada, except for that part of the policy in respect of which the individual is deemed by paragraph 138.1(1)(e) to have an interest in a related segregated fund trust.

"reportable
property"
« *bien à
déclarer* »

"reportable property" of an individual at a particular time means any property other than

(a) money that is legal tender in Canada and deposits of such money;

(b) property that would be an excluded right or interest of the individual if the definition "excluded right or interest" in this subsection were read without reference to paragraphs (c), (j) and (l) of that definition;

(c) if the individual is not a trust and was not, during the 120-month period that ends at the particular time, resident in Canada for more than 60 months, property described in subparagraph (4)(b)(iv) that is not taxable Canadian property; and

(d) any item of personal-use property the fair market value of which, at the particular time, is less than \$10,000.

(6) Subsections (1) to (5) (other than paragraph 128.1(4)(d.1) of the Act, as enacted by subsection (4), and subsection 128.1(9) of the Act and the definition "reportable property" in subsection 128.1(10) of the Act, as enacted by subsection (5)) apply to changes in residence that occur after October 1, 1996, and

(a) an election made under any of paragraphs 128.1(6)(a) and (c), 128.1(7)(d) and (g) and 128.1(8)(c) of the Act, as enacted by subsection (5), by an individual who ceased to be resident in Canada before the day on which this Act receives royal assent, is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes that day; and

(b) a form described in subsection 128.1(9) of the Act, as enacted by subsection (5), filed by an individual who ceased to be resident in Canada before the day on which this Act receives royal assent, is deemed to have been filed in a timely manner if it is filed on or before the individual's filing-due date for the taxation year that includes that day.

(7) Paragraph 128.1(4)(d.1) of the Act, as enacted by subsection (4), applies to changes in residence that occur after 1992.

(8) Subsection 128.1(9) of the Act and the definition "reportable property" in subsection 128.1(10) of the Act, as enacted by subsection (5), apply to changes in residence that occur after 1995.

78. (1) If an individual ceased at any time after 1992 and before October 2, 1996 to be resident in Canada and so elects in writing and files the election with the Minister of National Revenue before the end of the sixth month following the month in which this Act receives royal assent, subparagraph 128.1(4)(b)(iii) of the Act as it read at that time shall, in respect of the cessation of residence, be read as enacted by this Act and as though subsection 128.1(10) of the Act, as enacted by this Act, applied.

(2) Where an individual makes an election under subsection (1), notwithstanding subsections 152(4) to (5) of the Act, any reassessment of the individual's tax, interest or penalties for any year shall be made that is necessary to take the election into account.

79. (1) The Act is amended by adding the following after section 128.2:

Former resident
- replaced
shares

128.3 If, in a transaction to which section 51, subparagraphs 85.1(1)(a)(i) and (ii) or section 86 or 87 apply, a person acquires a share (in this section referred to as the "new share") in exchange for another share (in this section referred to as the "old share"), for the purposes of section 119, subsections 126(2.21) to

(2.23), 128.1(6) to (8), 180.1(1.4) and 220(4.5) and (4.6), the person is deemed not to have disposed of the old share, and the new share is deemed to be the same share as the old share.

(2) Subsection (1) applies after October 1, 1996.

80. (1) Section 129 of the Act is amended by adding the following after subsection (3):

Application

(3.1) Where, in a taxation year that begins after November 12, 1981, a corporation that last became a private corporation on or before that date and that was throughout the year a private corporation, other than a Canadian-controlled private corporation, has included in its income for the year an amount in respect of property that the corporation

(a) disposed of before November 13, 1981,

(b) was obligated to dispose of under the terms of an agreement in writing entered into before November 13, 1981, or

(c) is deemed by subsection 44(2) to have disposed of at any time after November 12, 1981 because of an event referred to in paragraph (b), (c) or (d) of the definition "proceeds of disposition" in section 54 in respect of the disposition that occurred before November 13, 1981,

paragraph 3(a) shall apply as if the corporation were a Canadian-controlled private corporation throughout the year, except that the total of the amounts determined under that paragraph in respect of the corporation for the year shall not exceed the amount that would be so determined if the only income of the corporation for the year were the amount included in respect of the disposition of such property.

(2) Subsection (1) applies to taxation years that end after June 1995 and before 2003.

81. (1) Paragraph 131(8.1)(a) of the Act is replaced by the following:

(a) throughout the period that begins on the later of February 21, 1990 and the day of its incorporation and ends at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition "taxable Canadian property" in subsection 248(1) were read without reference to paragraph (b) of that definition; or

(2) Subsection (1) applies after October 1, 1996.

82. (1) Section 132 of the Act is amended by adding the following after subsection (6.1):

Retention of
status as
mutual fund
trust

(6.2) A trust is deemed to be a mutual fund trust throughout a calendar year where

(a) at any time in the year, the trust would, if this section were read without reference to this subsection, have ceased to be a mutual fund trust

(i) because the condition described in paragraph 108(2)(a) ceased to be satisfied, or

(ii) because of the application of paragraph (6)(c);

(b) the trust was a mutual fund trust at the beginning of the year; and

(c) the trust would, throughout the portion of the year throughout which it was in existence, have been a mutual fund trust if

(i) in the case where the condition described in paragraph 108(2)(a) was satisfied at any time in the year, that condition were satisfied throughout the year,

(ii) subsection (6) were read without reference to paragraph (c) of that subsection, and

(iii) this section were read without reference to this subsection.

(2) Paragraphs 132(7)(a) and (b) of the Act are replaced by the following:

(a) throughout the period that began on the later of February 21, 1990 and the day of its creation and ended at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition "taxable Canadian property" in subsection 248(1) were read without reference to paragraph (b) of that definition; or

(b) it has not issued any unit (other than a unit issued to a person as a payment, or in satisfaction of the person's right to enforce payment, of an amount out of the trust's income determined before the application of subsection 104(6), or out of the trust's capital gains) of the trust after February 20, 1990 and before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident, except where the unit was issued to that person under an agreement in writing entered into before February 21, 1990.

(3) Subsection (1) applies to the 1990 and subsequent taxation years.

(4) Paragraph 132(7)(a) of the Act, as enacted by subsection (2), applies after October 1, 1996.

(5) Paragraph 132(7)(b) of the Act, as enacted by subsection (2), applies after February 20, 1990.

83. (1) Subsection 132.11(4) of the Act is replaced by the following:

Amounts paid or
payable to
beneficiaries

(4) For the purposes of subsections (5) and (6) and 104(6) and (13) and notwithstanding subsection 104(24), each amount that is paid, or that becomes payable, by a trust to a beneficiary after the end of a particular taxation year of the trust that ends on December 15 of a calendar year because of subsection (1) and before the end of that calendar year, is deemed to have been paid or to have become payable, as the case may be, to the beneficiary at the end of the particular year and not at any other time.

(2) Subsection 132.11(6) of the Act is amended by adding the word "and" at the end of paragraph (a), by striking out the word "and" at the end of paragraph (b) and by repealing paragraph (c).

(3) Subsections (1) and (2) apply to the 2000 and subsequent taxation years.

84. (1) Paragraph 133(1)(c) of the Act is replaced by the following:

(c) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property,

(2) Paragraph (a) of the definition "Canadian property" in subsection 133(8) of the Act is replaced by the following:

(a) taxable Canadian property, and

(3) The description of M in paragraph (c) of the definition "capital gains dividend account" in subsection 133(8) of the Act is replaced by the following:

M is the total of the corporation's capital gains for taxation years ending in the period from dispositions in the period of taxable Canadian property, and

(4) Subsections (1) to (3) apply after October 1, 1996.

85. (1) Subparagraph 138(5)(b)(i) of the Act is replaced by the following:

(i) interest on borrowed money used to acquire designated insurance property for the year, or to acquire property for which designated insurance property for the year was substituted property, for the period in the year during which the designated insurance property was held by the insurer in respect of the business,

(2) Paragraph 138(5)(b) of the Act is amended by adding the word "or" at the end of subparagraph (ii), by striking out the word "or" at the end of subparagraph (iii) and by repealing subparagraph (iv).

(3) The portion of subsection 138(11.3) of the Act after paragraph (b) is replaced by the following:

the following rules apply:

(c) the insurer is deemed to have disposed of the property at the beginning of the year for proceeds of disposition equal to its fair market value at that time and to have reacquired the property immediately after that time at a cost equal to that fair market value,

(d) where paragraph (a) applies, any gain or loss arising from the disposition is deemed not to be a gain or loss from designated insurance property of the insurer in the year, and

(e) where paragraph (b) applies, any gain or loss arising from the disposition is deemed to be a gain or loss from designated insurance property of the insurer in the year.

(4) Paragraph 138(11.5)(b) of the Act is replaced by the following:

(b) the transferor has, at that time or within 60 days after that time, transferred all or substantially all of the property (in this subsection referred to as the "transferred property") that is owned by it at that time and that was designated insurance property in respect of the business for the taxation year that, because of paragraph (h), ended immediately before that time

(i) to a corporation (in this subsection referred to as the "transferee") that is a qualified related corporation (within the meaning assigned by subsection 219(8)) of the transferor that began immediately after that time to carry on that insurance business in Canada, and

(ii) for consideration that includes shares of the capital stock of the transferee,

(5) Paragraph 138(11.91)(e) of the Act is replaced by the following:

(e) the insurer is deemed to have disposed, immediately before the beginning of the particular taxation year, of each property owned by it at that time that is designated insurance property in

respect of the business referred to in paragraph (a) for the particular taxation year, for proceeds of disposition equal to the fair market value at that time and to have reacquired, at the beginning of the particular taxation year, the property at a cost equal to that fair market value, and

(6) Paragraph 138(11.94)(b) of the Act is replaced by the following:

(b) the transferor has, at that time or within 60 days after that time,

(i) in the case of a transferor that is a life insurer and that carries on an insurance business in Canada and in a country other than Canada in the year, transferred all or substantially all of the property (in subsection (11.5) referred to as the "transferred property") that is owned by it at that time and that was designated insurance property in respect of the business for the taxation year that, because of paragraph (11.5)(h), ended immediately before that time, or

(ii) in any other case, transferred all or substantially all of the property owned by it at that time and used by it in the year in, or held by it in the year in the course of, carrying on that insurance business in Canada in that year (in subsection (11.5) referred to as the "transferred property")

to a corporation resident in Canada (in this subsection referred to as the "transferee") that is a subsidiary wholly-owned corporation of the transferor that, immediately after that time, began to carry on that insurance business in Canada for consideration that includes shares of the capital stock of the transferee,

(7) The definition "designated insurance property" in subsection 138(12) of the Act is replaced by the following:

"designated
insurance
property"
« *bien
d'assurance
désigné* »

"designated insurance property" for a taxation year of an insurer (other than an insurer resident in Canada that at no time in the year carried on a life insurance business) that, at any time in the year, carried on an insurance business in Canada and in a country other than Canada, means property determined in accordance with prescribed rules except that, in its application to any taxation year, "designated insurance property" for the 1998 or a preceding taxation year means property that was, under this subsection as it read in its application to taxation years that ended in 1996, property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada;

(8) Subsections (1) to (3) and (7) apply to the 1997 and subsequent taxation years.

(9) Subsections (4) to (6) apply to the 1999 and subsequent taxation years except that, where a taxpayer or a taxpayer's legal representative so elects in writing and files with the Minister of National Revenue before 2002 its election in respect of one or more of paragraph 138(11.5)(b) of the Act, as enacted by subsection (4), paragraph 138(11.91)(e) of the Act, as enacted by subsection (5), or paragraph 138(11.94)(b) of the Act, as enacted by subsection (6), each of the subsections in respect of which the election was made applies to the taxpayer's 1997 and subsequent taxation years.

86. (1) The portion of subsection 141(5) of the Act before paragraph (a) is replaced by the following:

Exclusion from
taxable
Canadian
property

(5) For the purpose of paragraph (d) of the definition "taxable Canadian property" in subsection 248(1), a share of the capital stock of a corporation is deemed to be listed at any time on a stock exchange prescribed for the purpose of that definition where

(2) Subsection (1) applies after December 15, 1998.

87. (1) Paragraph 147.2(4)(a) of the Act is replaced by the following:

Service after
1989

(a) the total of all amounts each of which is a contribution (other than a prescribed contribution) made by the individual in the year to a registered pension plan that is in respect of a period after 1989 or that is a prescribed eligible contribution, to the extent that the contribution was made in accordance with the plan as registered,

(2) Subsection (1) applies to contributions made after 1990.

88. (1) Paragraph 147.3(5)(a) of the Act is replaced by the following:

(a) is a single amount no portion of which relates to an actuarial surplus;

(2) Section 147.3 of the Act is amended by adding the following after subsection (7):

Transfer where
money purchase
plan replaces
money purchase
plan

(7.1) An amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") in accordance with this subsection if

(a) the amount is a single amount;

(b) the amount is transferred in respect of the surplus (as defined by regulation) under a money purchase provision (in this subsection referred to as the "former provision") of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision (in this subsection referred to as the "current provision") of the other plan;

(d) the amount is transferred in conjunction with the transfer of amounts from the former provision to the current provision on behalf of all or a significant number of members of the transferor plan whose benefits under the former provision are replaced by benefits under the current provision; and

(e) the transfer is acceptable to the Minister and the Minister has so notified the administrator of the transferor plan in writing.

(3) Paragraphs 147.3(8)(b) and (c) of the Act are replaced by the following:

(b) the amount is transferred in respect of the actuarial surplus under a defined benefit provision of the transferor plan;

(c) the amount is transferred directly to another registered pension plan to be held in connection with a money purchase provision of the other plan;

(4) Subsection (1) applies to transfers that occur after November 1999.

(5) Subsection (2) applies to transfers that occur after 1998.

(6) Subsection (3) applies to transfers that occur after 1990.

89. (1) Paragraphs 149(1)(d) to (d.2) of the Act are replaced by the following:

Corporations
owned by the
Crown

(d) a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

Corporations
90% owned by
the Crown

(d.1) a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

Wholly-owned
corporations

(d.2) a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

(2) Subparagraph 149(1)(d.3)(i) of the Act is replaced by the following:

(i) one or more persons each of which is Her Majesty in right of Canada or a province or a person to which paragraph (d) or (d.2) applies for the period, or

(3) Paragraph 149(1)(d.4) of the Act is replaced by the following:

Combined
ownership

(d.4) a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

(4) The portion of paragraph 149(1)(d.6) of the Act before subparagraph (i) is replaced by the following:

Subsidiaries of
municipal
corporations

(d.6) subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying

shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which paragraph (d.5) or this paragraph applies for the period if the income for the period of the particular corporation from activities carried on outside

(5) Subsection 149(1.1) of the Act is replaced by the following:

Exception

(1.1) Where at any time a person other than Her Majesty in right of Canada or a province or a municipality in Canada has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of a corporation, commission or association, paragraphs (1)(d) to (d.6) apply as if the right had been exercised and the shares or capital had been so acquired immediately before that time and held at that time by the person.

Election

(1.11) Subsection (1) does not apply in respect of a person's taxable income for a taxation year that begins after 1998 where

(a) paragraph (1)(d) did not apply in respect of the person's taxable income for the person's last taxation year that began before 1999;

(b) paragraph (1)(d.2), (d.3) or (d.4) would, but for this subsection, have applied in respect of the person's taxable income for the person's first taxation year that began after 1998;

(c) there has been no change in the ownership of the shares or capital of the person (other than a change with respect to directors' qualifying shares) since the beginning of the person's first taxation year that began after 1998;

(d) the person has elected in writing in its return of income for its first taxation year that began after 1998 that this subsection apply; and

(e) the person has not notified the Minister in writing before the year that the election has been revoked.

(6) Subsection 149(1.2) of the Act is replaced by the following:

Income test

(1.2) For the purposes of paragraphs (1)(d.5) and (d.6), income of a corporation, commission or association from activities carried on outside the geographical boundaries of a municipality does not include income from activities carried on

(a) under an agreement in writing between

(i) the corporation, commission or association, and

(ii) a person who is Her Majesty in right of Canada or a province or a municipality or corporation to which any of paragraphs (1)(d) to (d.6) applies and that is controlled by Her Majesty in right of Canada or a province or by a municipality in Canada

within the geographical boundaries of,

(iii) where the person is Her Majesty in right of Canada or a corporation controlled by Her Majesty in right of Canada, Canada,

(iv) where the person is Her Majesty in right of a province or a corporation controlled by Her Majesty in right of a province, the province, and

(v) where the person is a municipality in Canada or a corporation controlled by a municipality in Canada, the municipality; or

(b) in a province as

(i) a producer of electrical energy or natural gas, or

(ii) a distributor of electrical energy, heat, natural gas or water,

where the activities are regulated under the laws of the province.

(7) Subsections (1) to (6) apply to taxation years and fiscal periods that begin after 1998 except that, where a corporation, commission or association so elects in writing and files the election with the Minister of National Revenue on or before the day that is six months after the end of the month in which this Act receives royal assent, the reference to "at any time" in subsection 149(1.1) of the Act, as enacted by subsection (5), shall be read as a reference to "at any time after November 1999".

90. The portion of subsection 149.1(6.4) of the Act after paragraph (d) is replaced by the following:

applies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section, paragraph 38(a.1), sections 110.1, 118.1, 168, 172, 180 and 230, subsection 241(3.2) and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or as if it were a registered charity that is designated as a charitable organization, as the case may be.

91. (1) Paragraph 152(6)(c.1) of the Act is replaced by the following:

(c.1) a deduction under section 119 in respect of a disposition in a subsequent taxation year,

(2) Subsection 152(6) of the Act is amended by adding the following after paragraph (f):

(f.1) a deduction under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(f.2) a deduction under subsection 128.1(8) as a result of a disposition in a subsequent taxation year,

(3) Section 152 of the Act is amended by adding the following after subsection (6):

Reassessment
where amount
included in
income under
subsection
91(1) is
reduced

(6.1) Where

(a) a taxpayer has filed for a particular taxation year the return of income required by section 150,

(b) the amount included in computing the taxpayer's income for the particular year under subsection 91(1) is subsequently reduced because of a reduction in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year of the affiliate that ends in the particular year and is

(i) attributable to the amount prescribed to be the deductible loss of the affiliate for the year that arose in a subsequent year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(ii) included in the description of F of the definition "foreign accrual property income" in subsection 95(1) in respect of the affiliate for the year, and

(c) the taxpayer has filed with the Minister, on or before the filing-due-date for the taxpayer's subsequent taxation year, a prescribed form amending the return,

the Minister shall reassess the taxpayer's tax for any relevant taxation year (other than a taxation year preceding the particular taxation year) in order to take into account the reduction in the amount included under subsection 91(1) in computing the income of the taxpayer for the year.

(4) Section 152 of the Act is amended by adding the following after subsection (9):

Where tax
deemed not to
be assessed

(10) Notwithstanding any other provision of this section, an amount of tax for which adequate security is accepted by the Minister under subsection 220(4.5) or (4.6) is, until the end of the period during which the security is accepted by the Minister, deemed for the purpose of any agreement entered into by or on behalf of the Government of Canada under section 7 of the *Federal-Provincial Fiscal Arrangements Act* not to have been assessed under this Act.

(5) Subsections (1), (2) and (4) apply to taxation years that end after October 1, 1996.

(6) In respect of

(a) a deduction under section 119 of the Act, as enacted by subsection 66(2), or an adjustment under subsection 128.1(8) of the Act, as enacted by subsection 77(5), in respect of a disposition by a taxpayer, or

(b) a deduction under subsection 126(2.21) or (2.22) of the Act, as enacted by subsection 74(5), in respect of foreign taxes paid by a taxpayer,

the taxpayer is deemed to have filed a prescribed form described in subsection 152(6) of the Act in a timely manner if the taxpayer files the form with the Minister on or before the later of the day on or before which the taxpayer would, but for this subsection, be required to file the form and the taxpayer's filing-due date for the taxation year that includes the day on which this Act receives royal assent.

(7) Subsection (3) applies to taxation years of foreign affiliates that begin after November 1999.

92. (1) Subsections 159(4) and (4.1) of the Act are repealed.

(2) Subsection 159(6.1) of the Act is replaced by the following:

Election where
subsection
104(4)
applicable

(6.1) Where a day determined under paragraph 104(4)(a), (a.1), (a.2), (a.3), (b) or (c) in respect of a trust occurs in a taxation year of the trust and the trust so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any other provision of this Part respecting the time within which

payment shall be made of the tax payable under this Part by the trust for the year, all or any portion of the part of that tax that is equal to the amount, if any, by which that tax exceeds the amount that that tax would be if this Act were read without reference to paragraph 104(4)(a), (a.1), (a.2), (a.3), (b) or (c), as the case may be, may be paid in the number (not exceeding 10) of equal consecutive annual instalments that is specified by the trust in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

(3) Subsection (1) applies to individuals who cease to be resident in Canada after October 1, 1996.

(4) Subsection (2) applies to 2000 and subsequent taxation years.

93. (1) Paragraph 161(7)(a) of the Act is amended by adding the following before subparagraph (ii):

(i) any amount deducted under section 119 in respect of a disposition in a subsequent taxation year,

(2) Subparagraph 161(7)(a)(iv.1) of the Act is replaced by the following:

(iv.1) any amount deducted under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(3) Paragraph 161(7)(a) of the Act is amended by striking out the word "and" at the end of subparagraph (ix), by adding the word "and" at the end of subparagraph (x) and by adding the following after subparagraph (x):

(xi) any amount deducted under any of subsections 128.1(6) to (8) from the taxpayer's proceeds of disposition of a property because of an election made in a return of income for a subsequent taxation year,

(4) Subsections (1) to (3) apply to taxation years that end after October 1, 1996.

94. (1) Paragraphs 164(1)(a) and (b) of the Act are replaced by the following:

(a) may,

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income for the year to have paid an amount on account of its tax payable under this Part for the year because of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in

subsection 127.1(2)), refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year,

(ii) before mailing the notice of assessment for the year, where the taxpayer is a qualified corporation (as defined in subsection 125.4(1)) or an eligible production corporation (as defined in subsection 125.5(1)) and an amount is deemed under subsection 125.4(3) or 125.5(3) to have been paid on account of its tax payable under this Part for the year, refund all or part of any amount claimed in the return as an overpayment for the year, not exceeding the total of those amounts so deemed to have been paid, and

(iii) on or after mailing the notice of assessment for the year, refund any overpayment for the year, to the extent that the overpayment was not refunded pursuant to subparagraph (i) or (ii); and

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(iii) after mailing the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a).

(2) Subsection 164(5) of the Act is amended by adding the following after paragraph (a):

(a.1) any amount deducted under section 119 in respect of the disposition of a taxable Canadian property in a subsequent taxation year,

(3) Paragraph 164(5)(e) of the Act is replaced by the following:

(e) the deduction of an amount under subsection 126(2) in respect of an unused foreign tax credit (within the meaning assigned by subsection 126(7)), or under subsection 126(2.21) or (2.22) in respect of foreign taxes paid, for a subsequent taxation year,

(4) Subsection 164(5) of the Act is amended by adding the following after paragraph (h.01):

(h.02) the deduction under any of subsections 128.1(6) to (8) of an amount from the taxpayer's proceeds of disposition of a property, because of an election made in a return of income for a subsequent taxation year,

(5) Subsection 164(5.1) of the Act is replaced by the following:

Interest -
disputed
amounts

(5.1) Where a portion of a repayment made under subsection (1.1) or (4.1), or an amount applied under subsection (2) in respect of a repayment, can reasonably be regarded as being in respect of a claim made by the taxpayer in an objection to or appeal from an assessment of tax for a taxation year for a deduction or exclusion described in subsection (5) in respect of a subsequent taxation year, interest shall not be paid or applied on the portion for any part of a period that is before the latest of the dates described in paragraphs (5)(i) to (l).

(6) Subsection (1) applies to the 1999 and subsequent taxation years.

(7) Subsections (2) to (5) apply to taxation years that end after October 1, 1996.

95. (1) Section 180.1 of the Act is amended by adding the following after subsection (1.3):

Former resident
credit for tax
paid

(1.4) There may be deducted from the tax otherwise payable under this Part by an individual for a taxation year (computed without reference to subsections (1.1) and (1.2)) the amount, if any, by which

(a) the amount that would be deductible under section 119 in computing the individual's tax payable under Part I for the year if, in applying for that purpose paragraph (a) of the definition "tax for the year otherwise payable under this Part" in subsection 126(7), the reference in that paragraph to "tax payable under this Part for the year" were read as a reference to "the total of taxes that, but for subsections 180.1(1.1), (1.2) and (1.4), would be payable under this Part and Part I.1 for the year"

exceeds

(b) the amount deductible under section 119 in computing the individual's tax payable under Part I for the year.

(2) Subsection 180.1(2) of the Act is replaced by the following:

Meaning of tax
payable under
Part I

(2) For the purposes of subsection (1), the tax payable under Part I by an individual for a taxation year is the amount, if any, by which

(a) the amount that would be the individual's tax payable under that Part for the year if that Part were read without reference to section 119, subsection 120(1) and sections 122.3, 126, 127, 127.4 and 127.54

exceeds

(b) if the individual was throughout the year a mutual fund trust, the least of the amounts determined under paragraphs (a), (b) and (c) of the description of A in the definition "refundable capital gains tax on hand" in subsection 132(4) in respect of the trust for the year, and

(c) in any other case, nil.

(3) Subsections (1) and (2) apply after October 1, 1996.

96. (1) The formula in subparagraph 180.2(4)(a)(ii) of the Act is replaced by the following:

$$(0.0125A - \$665)(1 - B)$$

(2) Subsection (1) applies to amounts paid after November 1999.

97. (1) The description of C in subsection 190.1(1.1) of the Act is replaced by the following:

C is the number of days in the year that are after February 25, 1992 and before 2001.

(2) Subsection (1) applies to taxation years that end after 1998.

98. (1) Subsection 206(1) of the Act is amended by adding the following in alphabetical order:

"cost amount"
« coût
indiqué »

"cost amount" at any time of a taxpayer's capital interest in a trust that is foreign property is deemed to be the greater of

(a) the cost amount of the interest, determined without reference to this definition, and

(b) where that time is more than 60 days after the end of a taxation year of the trust, the amount that would be the cost amount of the interest if new units of the trust had been issued in satisfaction of each amount payable

(i) after 2000 and at or before the end of the taxation year, by the trust in respect of the interest,

(ii) to which subparagraph 53(2)(h)(i.1) applies (or would apply if that subparagraph were read without reference to clauses (A) and (B) of that subparagraph), and

(iii) that has not been satisfied at or before that time by the issue of new units of the trust or by a payment of an amount by the trust;

(2) Subsection 206(4) of the Act is replaced by the following:

Non-arm's
length
transactions

(4) For the purposes of this Part, where at any time a taxpayer acquires property, otherwise than pursuant to a transfer of property to which paragraph (f) or (g) of the definition "disposition" in subsection 248(1) applies, from a person with whom the taxpayer does not deal at arm's length for no consideration or for consideration less than the fair market value of the property at that time, the taxpayer is deemed to acquire the property at that fair market value, and for those purposes, a particular trust is deemed not to deal at arm's length with another trust if a person who is beneficially interested in the particular trust is at that time also beneficially interested in the other trust.

(3) Subsection (1) applies to months that end after February 2001.

(4) Subsection (2) applies in respect of property acquired after December 17, 1999.

99. (1) Section 207.31 of the Act is replaced by the following:

Tax payable by
recipient of an
ecological gift

207.31 Any charity or municipality that at any time in a taxation year, without the authorization of the Minister of the Environment or a person designated by that Minister, disposes of or changes the use of a property described in paragraph 110.1(1)(d) or in the definition "total ecological gifts" in subsection 118.1(1) and given to the charity or municipality after February 27, 1995 shall, in respect of the year, pay a tax under this Part equal to 50% of the amount that would be determined for the purposes of section 110.1 or 118.1, if this Act were read without reference to subsections 110.1(3) and 118.1(6), to be the fair market value of the property if the property were given to the charity or municipality immediately before the disposition or change.

(2) Subsection (1) applies in respect of dispositions or changes that occur after November 1999.

100. (1) Paragraph 210.1(d) of the Act is replaced by the following:

(d) a trust described in paragraph (a), (a.1) or (c) of the definition "trust" in subsection 108(1); or

(2) Subsection (1) applies to the 1999 and subsequent taxation years.

101. (1) Paragraph 210.2(2)(b) of the Act is replaced by the following:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were from dispositions of taxable Canadian property; and

(2) Subsection (1) applies after October 1, 1996.

102. (1) Subclause 212(1)(b)(ii)(C)(IV) of the Act is replaced by the following:

(IV) of a corporation, commission or association to which any of paragraphs 149(1)(d) to (d.6) applies, or

(2) Subparagraph 212(1)(c)(i) of the Act is replaced by the following:

(i) is included in computing the income of the non-resident person under subsection 104(13), except to the extent that the amount is deemed by subsection 104(21) to be a taxable capital gain of the non-resident person, or

(3) Subsection (1) applies to amounts paid or credited after 1998.

(4) Subsection (2) applies to amounts paid or credited after December 17, 1999.

103. (1) Subsection 215(5) of the Act is replaced by the following:

Regulations
reducing
deduction or
withholding

(5) The Governor in Council may make regulations in respect of any non-resident person or class of non-resident persons to whom any amount is paid or credited as, on account of, in lieu of payment of or in satisfaction of, any amount described in any of paragraphs 212(1)(h), (j) to (m) and (q) reducing the amount otherwise required by any of subsections (1) to (3) to be deducted or withheld from the amount so paid or credited.

(2) Subsection (1) applies after April 1997.

104. (1) Subsection 219(1.1) of the Act is replaced by the following:

Excluded gains

(1.1) For the purpose of subsection (1), the definition "taxable Canadian property" in subsection 248(1) shall be read without reference to paragraphs (a) and (c) to (k) of that definition and as if the only interests or options referred to in paragraph (l) of that definition were those in respect of property described in paragraph (b) of that definition.

(2) Subsection (1) applies after October 1, 1996.

105. (1) Section 220 of the Act is amended by adding the following after subsection (4.4):

Security for
departure tax

(4.5) If an individual who is deemed by subsection 128.1(4) to have disposed of a property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) at any particular time in a taxation year (in this section referred to as the individual's "emigration year") elects, in prescribed manner on or before the individual's balance-due day for the emigration year, that this subsection and subsections (4.51) to (4.54) apply in respect of the emigration year,

(a) the Minister shall, until the individual's balance-due day for a particular taxation year that begins after the particular time, accept adequate security furnished by or on behalf of the individual on or before the individual's balance-due day for the emigration year for the lesser of

(i) the total amount of taxes under Parts I and I.1

(A) that would be payable by the individual for the emigration year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a) were not taken into account, but

(B) that would not have been so payable if each property (other than a right to a benefit under, or an interest in a trust governed by, an employee benefit plan) deemed by subsection 128.1(4) to have been disposed of at the particular time, and that has not been subsequently disposed of before the beginning of the particular year, were not deemed by subsection 128.1(4) to have been disposed of by the individual at the particular time, and

(ii) if the particular year does not immediately follow the emigration year, the amount determined under this paragraph in respect of the individual for the taxation year that immediately precedes the particular year; and

(b) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period that ends on the individual's balance-due day for the particular year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to an individual's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the individual on account of the particular amount.

Deemed security

(4.51) If an individual (other than a trust) elects under subsection (4.5) that that subsection apply in respect of a taxation year, for the purposes of this subsection and subsections (4.5) and (4.52) to (4.54), the Minister is deemed to have accepted at any time after the election is made adequate security for a total amount of taxes payable under Parts I and I.1 by the individual for the emigration year equal to the lesser of

(a) the total amount of those taxes that would be payable for the year by an *inter vivos* trust resident in Canada (other than a trust described in subsection 122(2)) the taxable income of which for the year is \$67,000, and

(b) the greatest amount for which the Minister is required to accept security furnished by or on behalf of the individual under subsection (4.5) at that time in respect of the emigration year,

and that security is deemed to have been furnished by the individual before the individual's balance-due day for the emigration year.

Limit

(4.52) Notwithstanding subsections (4.5) and (4.51), the Minister is deemed at any time not to have accepted security under subsection (4.5) in respect of an individual's emigration year for any amount greater than the amount, if any, by which

(a) the total amount of taxes that would be payable by the individual under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a), in respect of which the day determined under paragraph 161(7)(b) is after that time, were not taken into account

exceeds

(b) the total amount of taxes that would be determined under paragraph (a) if this Act were read without reference to subsection 128.1(4).

Inadequate
security

(4.53) Subject to subsection (4.7), if it is determined at any particular time that security accepted by the Minister under subsection (4.5) is not adequate to secure the particular amount for which it was furnished by or on behalf of an individual,

(a) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(b) the Minister shall notify the individual in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the individual within 90 days after the day of notification; and

(c) any security accepted in accordance with paragraph (b) is deemed to have been accepted by the Minister under subsection (4.5) on account of the particular amount at the particular time.

Extension of
time

(4.54) If in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(a) the time for making an election under subsection (4.5);

(b) the time for furnishing and accepting security under subsection (4.5); or

(c) the 90-day period for the acceptance of security under paragraph (4.53)(b).

Security for
tax on
distributions
of taxable
Canadian
property to
non-resident
beneficiaries

(4.6) Where

(a) solely because of the application of subsection 107(5), paragraphs 107(2)(a) to (c) do not apply to a distribution by a trust in a particular taxation year (in this section referred to as the trust's "distribution year") of taxable Canadian property, and

(b) the trust elects, in prescribed manner on or before the trust's balance-due day for the distribution year, that this

subsection and subsections (4.61) to (4.63) apply in respect of the distribution year,

the following rules apply:

(c) the Minister shall, until the trust's balance-due day for a subsequent taxation year, accept adequate security furnished by or on behalf of the trust on or before the trust's balance-due day for the distribution year for the lesser of

(i) the total amount of taxes under Parts I and I.1

(A) that would be payable by the trust for the distribution year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a) were not taken into account, but

(B) that would not have been so payable if the rules in subsection 107(2) (other than the election referred to in that subsection) had applied to each distribution by the trust in the distribution year of property (other than property subsequently disposed of before the beginning of the subsequent year) to which paragraph (a) applies, and

(ii) where the subsequent year does not immediately follow the distribution year, the amount determined under this paragraph in respect of the trust for the taxation year that immediately precedes the subsequent year, and

(d) except for the purposes of subsections 161(2), (4) and (4.01),

(i) interest under this Act for any period that ends on the trust's balance-due day for the subsequent year and throughout which security is accepted by the Minister, and

(ii) any penalty under this Act computed with reference to the trust's tax payable for the year that was, without reference to this paragraph, unpaid

shall be computed as if the particular amount for which adequate security has been accepted under this subsection were an amount paid by the trust on account of the particular amount.

Limit

(4.61) Notwithstanding subsection (4.6), the Minister is deemed at any time not to have accepted security under that subsection in respect of a trust's distribution year for any amount greater than the amount, if any, by which

(a) the total amount of taxes that would be payable by the trust under Parts I and I.1 for the year if the exclusion or deduction of each amount referred to in paragraph 161(7)(a), in respect of which the day determined under paragraph 161(7)(b) is after that time, were not taken into account

exceeds

(b) the total amount of taxes that would be determined under paragraph (a) if paragraphs 107(2)(a) to (c) had applied to each distribution by the trust in the year of property to which paragraph (1)(a) applies.

Inadequate security

(4.62) Subject to subsection (4.7), where it is determined at any particular time that security accepted by the Minister under subsection (4.6) is not adequate to secure the particular amount for which it was furnished by or on behalf of a trust,

(a) subject to a subsequent application of this subsection, the security shall be considered after the particular time to secure only the amount for which it is adequate security at the particular time;

(b) the Minister shall notify the trust in writing of the determination and shall accept adequate security, for all or any part of the particular amount, furnished by or on behalf of the trust within 90 days after the notification; and

(c) any security accepted in accordance with paragraph (b) is deemed to have been accepted by the Minister under subsection (4.6) on account of the particular amount at the particular time.

Extension of time

(4.63) Where in the opinion of the Minister it would be just and equitable to do so, the Minister may at any time extend

(a) the time for making an election under subsection (4.6);

(b) the time for furnishing and accepting security under subsection (4.6); or

(c) the 90-day period for the acceptance of the security under paragraph (4.62)(b).

Undue hardship

(4.7) If, in respect of any period of time, the Minister determines that an individual who has made an election under either subsection (4.5) or (4.6)

(a) cannot, without undue hardship, pay or reasonably arrange to have paid on the individual's behalf, an amount of taxes to which security under that subsection would relate, and

(b) cannot, without undue hardship, provide or reasonably arrange to have provided on the individual's behalf, adequate security under that subsection,

the Minister may, in respect of the election, accept for the period security different from, or of lesser value than, that which the Minister would otherwise accept under that subsection.

Limit

(4.71) In making a determination under subsection (4.7), the Minister shall ignore any transaction that is a disposition, lease, encumbrance, mortgage, or other voluntary restriction by a person or partnership of the person's or partnership's rights in respect of a property, if the transaction can reasonably be considered to have been entered into for the purpose of influencing the determination.

(2) Subsection (1) applies to dispositions and distributions that occur at any time after October 1, 1996 except that,

(a) the reference to "\$67,000" in paragraph 220(4.51)(a) of the Act, as enacted by subsection (1), shall be read as a reference to "\$75,000" in respect of emigration years that are before 2001; and

(b) if an individual ceased to be resident in Canada, or a distribution by a trust occurred to which paragraph 220(4.6)(a) of the Act, as enacted by subsection (1), applies in respect of the trust, before the particular day on which this Act receives royal assent,

(i) an election by the individual under subsection 220(4.5) of the Act, or by the trust under subsection 220(4.6) of the Act, as the case may be, as enacted by subsection (1), in respect of the taxation year that includes that time is deemed to have been made in a timely manner if it is made on or before the individual's filing-due date for the taxation year that includes the particular day, and

(ii) security furnished by or on behalf of the individual under subsection 220(4.5) of the Act, or by or on behalf of the trust under subsection 220(4.6) of the Act, as the case may be, as enacted by subsection (1), is deemed to have been furnished in a timely manner if it is furnished on or before the individual's filing-due date for the taxation year that includes the particular day.

106. Paragraph 225.1(6)(b) of the Act is replaced by the following:

(b) an amount required to be deducted or withheld, or required to be remitted or paid, under this Act or the Regulations;

107. (1) Section 227 of the Act is amended by adding the following after subsection (4.2):

Application to
Crown

(4.3) For greater certainty, subsections (4) to (4.2) apply to Her Majesty in right of Canada or a province where Her Majesty in right of Canada or a province is a secured creditor (within the meaning assigned by subsection 224(1.3)) or holds a security interest (within the meaning assigned by that subsection).

(2) Subsection 227(16) of the Act is replaced by the following:

Municipal or
provincial
corporation
excepted

(16) A corporation that at any time in a taxation year would be a corporation described in any of paragraphs 149(1)(d) to (d.6) but for a provision of an appropriation Act is deemed not to be a private corporation for the purposes of Part IV with respect to that year.

(3) Subsection (2) applies to taxation years that begin after 1998.

108. The portion of section 231 of the Act before the definition "authorized person" is replaced by the following:

Definitions

231. In sections 231.1 to 231.7,

109. The Act is amended by adding the following after section 231.6:

Compliance
order

231.7 (1) On summary application by the Minister five clear days after the service of the notice of application to the person against whom the order is sought, a judge may, notwithstanding subsection 238(2) but subject to section 232 and such conditions as the judge considers appropriate, order that the person provide such access, assistance, information or document sought by the Minister under section 231.1 or 231.2 where the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document; and

(b) the person did not provide the access, assistance, information or document as required under section 231.1 or 231.2.

Contempt of
court

(2) Where a person fails or refuses to comply with an order made under subsection (1), a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court that made the order.

Appeal

(3) An order under subsection (1) may be appealed to the court to which appeals from the court making the order normally lie. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

110. The portion of subsection 241(3.2) of the Act before paragraph (a) is replaced by the following:

Registered
charities

(3.2) An official may provide to any person the following taxpayer information relating to another person that was at any time a registered charity (in this subsection referred to as the "charity"):

111. (1) Subsection 247(4) of the French version of the Act is replaced by the following:

Documentation
ponctuelle

(4) Pour l'application du paragraphe (3) et de la définition de « arrangement admissible de participation au coût » au paragraphe (1), un contribuable ou une société de personnes est réputé ne pas avoir fait d'efforts sérieux pour déterminer et utiliser les prix de transfert de pleine concurrence ou les attributions de pleine concurrence relativement à une opération ou ne pas avoir pris part à une opération qui est un arrangement admissible de participation au coût, à moins d'avoir à la fois:

a) établi ou obtenu, au plus tard à la date limite de production qui lui est applicable pour l'année d'imposition ou l'exercice, selon le cas, au cours duquel l'opération est conclue, des registres ou des documents contenant une description complète et exacte, quant à tous les éléments importants, de ce qui suit :

(i) les biens ou les services auxquels l'opération se rapporte,

(ii) les modalités de l'opération et leurs rapports éventuels avec celles de chacune des autres opérations conclues entre les participants à l'opération,

(iii) l'identité des participants à l'opération et les liens qui existent entre eux au moment de la conclusion de l'opération,

(iv) les fonctions exercées, les biens utilisés ou apportés et les risques assumés dans le cadre de l'opération par les participants,

(v) les données et méthodes prises en considération et les analyses effectuées en vue de déterminer les prix de transfert, l'attribution des bénéfices ou des pertes ou la participation aux coûts, selon le cas, relativement à l'opération,

(vi) les hypothèses, stratégies et principes éventuels ayant influé sur l'établissement des prix de transfert, l'attribution des bénéfices ou des pertes ou la participation aux coûts relativement à l'opération;

b) pour chaque année d'imposition ou exercice ultérieur où se poursuit l'opération, établi ou obtenu, au plus tard à la date limite de production qui lui est applicable pour l'année ou l'exercice, selon le cas, des registres ou des documents contenant une description complète et exacte de chacun des changements importants dont les éléments visés aux sous-alinéas a)(i) à (vi) ont fait l'objet au cours de l'année ou de l'exercice relativement à l'opération;

c) fourni les registres ou documents visés aux alinéas a) et b) au ministre dans les trois mois suivant la signification à personne ou par courrier recommandé ou certifié d'une demande écrite les concernant.

(2) Subsection (1) applies in respect of adjustments made under subsection 247(2) of the Act for taxation years and fiscal periods that begin after 1998, except that

(a) subsection (1) does not apply to transactions completed before September 11, 1997; and

(b) a record or document made, obtained or provided to the Minister of National Revenue by a taxpayer or a partnership on or before the taxpayer's or partnership's documentation-due date for the taxpayer's or partnership's first taxation year or fiscal period, as the case may be, that begins after 1998 is deemed for the purpose of subsection 247(4) of the Act, as enacted by subsection (1), to have been so made, obtained or provided on a timely basis.

112. (1) The portion of the definition "grandfathered share" in subsection 248(1) of the Act after paragraph (d) is replaced by the following:

except that a share that is deemed under the definition "short-term preferred share", "taxable preferred share" or "term preferred share" in this subsection or under subsection 112(2.22) to have been issued at any time is deemed after that time not to be a grandfathered share for the purposes of that provision;

(2) The portion of paragraph (b) of the definition "personal trust" in subsection 248(1) of the Act after subparagraph (ii) and before subparagraph (iii) is replaced by the following:

but, after 1999, does not include a unit trust;

(3) The definition "taxable Canadian property" in subsection 248(1) of the Act is replaced by the following:

"taxable
Canadian
property"
« *bien canadien*
imposable »

"taxable Canadian property" of a taxpayer at any time in a taxation year means a property of the taxpayer that is

- (a) real property situated in Canada,
- (b) property used or held by the taxpayer in, eligible capital property in respect of, or property described in an inventory of, a business carried on in Canada, other than
 - (i) property used in carrying on an insurance business, and
 - (ii) where the taxpayer is non-resident, ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the taxpayer is resident does not impose tax on gains of persons resident in Canada from dispositions of such property,
- (c) if the taxpayer is an insurer, its designated insurance property for the year,
- (d) a share of the capital stock of a corporation resident in Canada (other than a non-resident-owned investment corporation if, on the first day of the year, the corporation owns neither taxable Canadian property nor property referred to in any of paragraphs (m) to (o), or a mutual fund corporation) that is not listed on a prescribed stock exchange,
- (e) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange if, at any particular time during the 60-month period that ends at that time,
 - (i) the fair market value of all of the properties of the corporation each of which was
 - (A) a taxable Canadian property,
 - (B) a Canadian resource property,
 - (C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not the property exists,

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the share was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

(B) Canadian resource properties, and

(C) timber resource properties,

(f) a share that is listed on a prescribed stock exchange and that would be described in paragraph (d) or (e) if those paragraphs were read without reference to the words "that is not listed on a prescribed stock exchange", or a share of the capital stock of a mutual fund corporation, if at any time during the 60-month period that ends at that time the taxpayer, persons with whom the taxpayer did not deal at arm's length, or the taxpayer together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(g) an interest in a partnership if, at any particular time during the 60-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(i) a taxable Canadian property,

(ii) a Canadian resource property,

(iii) a timber resource property,

(iv) an income interest in a trust resident in Canada, or

(v) an interest in or option in respect of a property described in any of subparagraphs (ii) to (iv), whether or not that property exists,

was greater than 50% of the fair market value of all of its properties,

(h) a capital interest in a trust (other than a unit trust) resident in Canada,

(i) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(j) a unit of a mutual fund trust if, at any time during the 60-month period that ends at that time, not less than 25% of the issued units of the trust belonged to the taxpayer, to persons with whom the taxpayer did not deal at arm's length, or to the taxpayer and persons with whom the taxpayer did not deal at arm's length,

(k) an interest in a non-resident trust if, at any particular time during the 60-month period that ends at that time,

(i) the fair market value of all of the properties of the trust each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in any of clauses (B) to (D), whether or not that property exists

was greater than 50% of the fair market value of all of its properties, and

(ii) more than 50% of the fair market value of the interest was derived directly or indirectly from one or any combination of

(A) real property situated in Canada,

(B) Canadian resource properties, and

(C) timber resource properties, or

(l) an interest in or option in respect of a property described in any of paragraphs (a) to (k), whether or not that property exists,

and, for the purposes of section 2, subsection 107(2.001) and sections 128.1 and 150, and for the purpose of applying paragraphs 85(1)(i) and 97(2)(c) to a disposition by a non-resident person, includes

(m) a Canadian resource property,

(n) a timber resource property,

(o) an income interest in a trust resident in Canada,

(p) a right to a share of the income or loss under an agreement referred to in paragraph 96(1.1)(a), and

(q) a life insurance policy in Canada;

(4) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

"alter ego
trust"
« *fiducie en
faveur de soi-
même* »

"alter ego trust" means a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clauses 104(4)(a)(iv)(B) and (C);

"disposition"
« *disposition* »

"disposition" of any property, except as expressly otherwise provided, includes

(a) any transaction or event entitling a taxpayer to proceeds of disposition of the property,

(b) any transaction or event by which,

(i) where the property is a share, bond, debenture, note, certificate, hypothec, mortgage, agreement of sale or similar property, or an interest in it, the property is redeemed in whole or in part or is cancelled,

(ii) where the property is a debt or any other right to receive an amount, the debt or other right is settled or cancelled,

(iii) where the property is a share, the share is converted because of an amalgamation or merger, and

(iv) where the property is an option to acquire or dispose of property, the option expires,

(c) any transfer of the property to a trust or, where the property is property of a trust, any transfer of the property to any beneficiary under the trust, except as provided by paragraph (f) or (g), and

(d) where the property is, or is part of, a taxpayer's capital interest in a trust, except as provided by paragraph (h) or (i), a payment made after 1999 to the taxpayer from the trust that can reasonably be considered to have been made because of the taxpayer's capital interest in the trust,

but does not include

(e) any transfer of the property as a consequence of which there is no change in the beneficial ownership of the property, except where the transfer is

(i) from a person or a partnership to a trust for the benefit of the person or the partnership,

(ii) from a trust to a beneficiary under the trust, or

(iii) from one trust maintained for the benefit of one or more beneficiaries under the trust to another trust maintained for the benefit of the same beneficiaries,

(f) any transfer of the property as a consequence of which there is no change in the beneficial ownership of the property, where

(i) the transferor and the transferee are trusts,

(ii) the transfer is not by a trust resident in Canada to a non-resident trust,

(iii) the transferee does not receive the property in satisfaction of the transferee's right as a beneficiary under the transferor trust,

(iv) the transferee held no property immediately before the transfer (other than property the cost of which is not included, for the purposes of this Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee),

(v) the transferee does not file a written election with the Minister on or before the filing-due date for its taxation year in which the transfer is made (or on such later date as is acceptable to the Minister) that this paragraph not apply,

(vi) where the transferor is an amateur athlete trust, a cemetery care trust, an employee trust, an *inter vivos* trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a registered education savings plan or a registered supplementary unemployment benefit plan, the transferee is the same type of trust, and

(vii) the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist and, immediately before the time of the transfer or the beginning of that series, as the case may be, the transferee never held any property or held only property having a nominal value,

(g) any transfer of the property where

(i) the transferor is a trust governed by a registered retirement savings plan or a trust governed by a registered retirement income fund,

(ii) the transferee is a trust governed by a registered retirement savings plan or a trust governed by a registered retirement income fund,

(iii) the annuitant under the plan or fund that governs the transferor is also the annuitant under the plan or fund that governs the transferee,

(iv) the transferee held no property immediately before the transfer (other than property the cost of which is not included, for the purposes of this Act, in computing a balance of undeducted outlays, expenses or other amounts in respect of the transferee),

(v) the transferee does not file a written election with the Minister on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that this paragraph not apply, and

(vi) the transfer results, or is part of a series of transactions or events that results, in the transferor ceasing to exist and, immediately before the time of the transfer or the beginning of that series, as the case may be, the transferee never held any property or held only property having a nominal value,

(h) where the property is part of a capital interest of a taxpayer in a trust (other than a personal trust or a trust prescribed for the purpose of subsection 107(2)) that is described by reference to units issued by the trust, a payment after 1999 from the trust in respect of the capital interest, where the number of units in the trust that are owned by the taxpayer is not reduced because of the payment,

(i) where the property is a taxpayer's capital interest in a trust, a payment to the taxpayer after 1999 in respect of the capital interest to the extent that the payment

(i) is out of the income of the trust (determined without reference to subsection 104(6)) for a taxation year or out of the capital gains of the trust for the year, if the payment was made in the year or the right to the payment was acquired by the taxpayer in the year, or

(ii) is in respect of an amount designated in respect of the taxpayer by the trust under subsection 104(20),

(j) any transfer of the property for the purpose only of securing a debt or a loan, or any transfer by a creditor for

the purpose only of returning property that had been used as security for a debt or a loan,

(k) any transfer of the property to a trust as a consequence of which there is no change in the beneficial ownership of the property, where the main purpose of the transfer is

(i) to effect payment under a debt or loan,

(ii) to provide assurance that an absolute or contingent obligation of the transferor will be satisfied, or

(iii) to facilitate either the provision of compensation or the enforcement of a penalty, in the event that an absolute or contingent obligation of the transferor is not satisfied,

(l) any issue of a bond, debenture, note, certificate, mortgage or hypothec, and

(m) any issue by a corporation of a share of its capital stock, or any other transaction that, but for this paragraph, would be a disposition by a corporation of a share of its capital stock;

"joint partner
trust"
« *fiducie mixte
au profit du
conjoint* »

"joint partner trust" means a trust to which paragraph 104(4)(a) would apply if that paragraph were read without reference to subparagraph 104(4)(a)(iii) and clause 104(4)(a)(iv)(A);

"post-1971
partner trust"
« *fiducie au
profit du
conjoint
postérieure à
1971* »

"post-1971 partner trust" means a trust that would be described in paragraph 104(4)(a) if that paragraph were read without reference to subparagraph 104(4)(a)(iv);

(5) Section 248 of the Act is amended by adding the following after subsection (25):

Trust-to-trust
transfers

(25.1) Where there is a transfer at a particular time of a property from a trust (in this subsection referred to as the "transferor") to another trust (in this subsection referred to as the "transferee") in circumstances to which paragraph (f) or (g) of the definition "disposition" in subsection (1) applies, without

affecting the personal liabilities under this Act of the trustees of either trust or the application of subsection 104(5.8) and paragraph 122(2)(f), the transferee is deemed to be after the particular time the same trust as, and a continuation of, the transferor.

Trusts to
ensure
obligations
fulfilled

(25.2) Except for the purpose of this subsection, where at any time property is transferred to a trust in circumstances to which paragraph (k) of the definition "disposition" in subsection (1) applies, the trust is deemed to deal with the property as agent for the transferor throughout the period that begins at the time of the transfer and ends at the time of the first change after that time in the beneficial ownership of the property.

Cost of trust
interest

(25.3) The cost to a taxpayer of a particular unit of a trust is deemed to be equal to the amount described in paragraph (a) where

(a) the trust issues the particular unit to the taxpayer directly in satisfaction of a right to enforce payment of an amount by the trust in respect of the taxpayer's capital interest in the trust;

(b) at the time that the particular unit is issued, the trust is neither a personal trust nor a trust prescribed for the purpose of subsection 107(2); and

(c) either

(i) the particular unit is capital property and subparagraph 53(2)(h)(i.1) applies in respect of the amount described in paragraph (a), or would apply if that subparagraph were read without reference to clauses 53(2)(h)(i.1) (A) and (B), or

(ii) the particular unit is not capital property and subparagraph 53(2)(h)(i.1) does not apply in respect of the amount described in paragraph (a) but would so apply if that subparagraph were read without reference to clauses 53(2)(h)(i.1)(A) and (B).

Where
acquisition by
another of
right to
enforce

(25.4) If at a particular time a taxpayer's capital interest in a trust includes a right to enforce payment of an amount by the trust, the amount shall be added at the particular time to the cost otherwise determined to the taxpayer of the capital interest where

(a) immediately after the particular time there is a disposition by the taxpayer of the capital interest;

(b) as a consequence of the disposition, the right to enforce payment of the amount is acquired by another person or partnership; and

(c) if the right to enforce payment of the amount had been satisfied by a payment to the taxpayer by the trust, there would have been no disposition of that right for the purposes of this Act because of the application of paragraph (i) of the definition "disposition" in subsection (1).

(6) Section (1) applies in respect of dividends received after 1998.

(7) Subsection (2) applies after December 23, 1998.

(8) Subsection (3) applies after October 1, 1996 except that, in its application before December 24, 1998, the portion of paragraph (b) of the definition "taxable Canadian property" in subsection 248(1) of the Act before subparagraph (i), as enacted by subsection (3), shall be read as follows:

"(b) capital property used by the taxpayer in carrying on a business in Canada, other than"

(9) The definition "disposition" in subsection 248(1) of the Act, as enacted by subsection (4), applies to transactions and events that occur after December 23, 1998, except that paragraphs (f) and (g) of that definition, as enacted by subsection (4), shall not apply for the purposes of the Act (other than section 107.4 of the Act, as enacted by section 52,) to a transfer of property, that occurred before 2000, by a trust governed by a registered retirement savings plan to a trust governed by a registered retirement income fund (or to a transfer by a trust governed by a registered retirement income fund to a trust governed by a registered retirement savings plan) unless the transferee trust files a written election with the Minister of National Revenue on or before the filing-due date for its taxation year in which the transfer is made (or on such later day as is acceptable to the Minister) that paragraph (f) or (g), as the case may be, of that definition apply.

(10) The definitions "alter ego trust" and "joint partner trust" in subsection 248(1) of the Act, as enacted by subsection (4), apply to trusts created after 1999.

(11) The definition "post-1971 partner trust" in subsection 248(1) of the Act, as enacted by subsection (4), applies to trusts created after 1971.

(12) Subsections 248(25.1), (25.2) and (25.4) of the Act, as enacted by subsection (5), apply to transfers that occur after December 23, 1998.

(13) Subsection 248(25.3) of the Act, as enacted by subsection (5), applies to the 1999 and subsequent taxation years.

113. (1) The portion of paragraph 249.1(1)(b) of the Act after subparagraph (iii) is replaced by the following:

after the end of the calendar year in which the period began unless, in the case of a business, the business is not carried on in Canada, is a prescribed business or is carried on by a prescribed person or partnership, and

(2) Subsection (1) applies to fiscal periods that begin after 1994.

114. (1) Section 250 of the Act is amended by adding the following after subsection (6):

Residence of
inter vivos
trusts

(6.1) For the purposes of provisions of this Act that apply to a trust for a taxation year only where the trust has been resident in Canada throughout the year, where a particular trust ceases at any time to exist and the particular trust was resident in Canada immediately before that time, the particular trust is deemed to be resident in Canada throughout the period that begins at that time and ends at the end of the year.

(2) Subsection (1) applies to the 1990 and subsequent taxation years.

115. (1) The Act is amended by adding the following after section 250:

Non-resident
person's
taxation year
and income

250.1 For greater certainty, unless the context requires otherwise

(a) a taxation year of a non-resident person shall be determined, except as otherwise permitted by the Minister, in the same manner as the taxation year of a person resident in Canada; and

(b) a person for whom income for a taxation year is determined in accordance with this Act includes a non-resident person.

(2) Subsection (1) applies after December 17, 1999.

116. (1) Subsection 251(1) of the Act is amended by striking out the word "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and

(c) where paragraph (b) does not apply, it is a question of fact whether persons not related to each other are at a particular time dealing with each other at arm's length.

(2) Subsection (1) applies after December 23, 1998 except that paragraph 251(1)(b) of the Act, as enacted by subsection (1), shall, for the purpose of applying the definition "taxable Canadian property" in subsection 248(1) of the Act, not apply in respect of property acquired before December 24, 1998.

117. (1) The Act is amended by adding the following after section 253:

Investments in
limited
partnerships

253.1 For the purposes of subparagraph 108(2)(b)(ii), the definition "non-resident investment fund" in subsection 115.2(1), paragraphs 130.1(6)(b), 131(8)(b) and 132(6)(b), the definition "private holding corporation" in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), where a trust, corporation or partnership is a member of a particular partnership and, by operation of any law governing the arrangement in respect of the particular partnership, the liability of the member as a member of the particular partnership is limited, the member is deemed

(a) to undertake an investing of its funds because of its acquisition and holding of its interest as a member of the particular partnership; and

(b) not to carry on any business or other activity of the particular partnership.

(2) Subsection (1) applies after 1992.

118. (1) Section 256 of the Act is amended by adding the following after subsection (6):

Simultaneous
control

(6.1) For the purposes of this Act and for greater certainty,

(a) where a corporation (in this paragraph referred to as the "subsidiary") would be controlled by another corporation (in this paragraph referred to as the "parent") if the parent were not

controlled by any person or group of persons, the subsidiary is controlled by

(i) the parent, and

(ii) any person or group of persons by whom the parent is controlled; and

(b) where a corporation (in this paragraph referred to as the "subject corporation") would be controlled by a group of persons (in this paragraph referred to as the "first-tier group") if no corporation that is a member of the first-tier group were controlled by any person or group of persons, the subject corporation is controlled by

(i) the first-tier group, and

(ii) any group of one or more persons comprised of, in respect of every member of the first-tier group, either the member, or a person or group of persons by whom the member is controlled.

Application to
control in fact

(6.2) In its application to subsection (5.1), subsection (6.1) shall be read as if the references in subsection (6.1) to "controlled" were references to "controlled, directly or indirectly in any manner whatever,".

(2) Subsection (1) applies after November 1999.

119. (1) Subparagraph 258(3)(b)(ii) of the Act is replaced by the following:

(ii) was issued before 8:00 p.m. Eastern Daylight Saving Time, June 18, 1987 and is not deemed by subsection 112(2.22) to have been issued after that time

(2) Subsection (1) applies in respect of dividends received after 1998.

PART 2

R.S., c. 2 (5th
Supp.)

INCOME TAX APPLICATION RULES

120. (1) Subsection 26(30) of the *Income Tax Application Rules* is replaced by the following:

Additions to
taxable
Canadian
property

(30) Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a property

(a) that the person last acquired before April 27, 1995;

(b) that would not be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on April 26, 1995; and

(c) that would be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on January 1, 1996.

(2) Subsection (1) applies to dispositions that occur after October 1, 1996.

PART 3

1998, c. 19

INCOME TAX AMENDMENTS ACT, 1997

121. (1) Section 206 of the *Income Tax Amendments Act, 1997* is amended by replacing the references to "1999" with references to "2001".

(2) Subsection (1) applies to taxation years that end after 1998.

PART 4

1999, c. 22

INCOME TAX AMENDMENTS ACT, 1998

122. (1) Subsection 82(8) of the *Income Tax Amendments Act, 1998* is replaced by the following:

(8) Subsection (4) applies after February 24, 1998 except that, if on that day an individual who would, but for a tax treaty (as defined in subsection 248(1) of the *Income Tax Act*, as amended by this Act), be resident in Canada for the purposes of the *Income Tax Act* is, under the tax treaty, resident in another country, subsection (4) does not apply to the individual until the first time after February 24, 1998 at which the individual becomes, under a tax treaty, resident in a country other than Canada.

(2) Subsection (1) is deemed to have come into force on June 17, 1999.