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# Explanatory Notes in Respect of Legislative Proposals Relating to the Income Tax Act and Related Regulations

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# Explanatory Notes

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act* and related regulations to implement certain tax measures included in the Budget announced on June 6, 2011. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These explanatory notes are provided to assist in an understanding of the relevant amendments. The notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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# Income Tax Act

**Clause 1**

**Corporate partner – additional income inclusion/deduction**

ITA
34.2 and 34.3

Existing section 34.2 of the Act sets out a 10-year reserve rule applicable after 1994, which was consequential on changes to the definition "fiscal period" in section 249.1. As the 10-year reserve period has expired, section 34.2 is no longer necessary. Existing section 34.2 is replaced with new sections 34.2 and 34.3.

*Overview*

Budget 2011 introduced a measure to limit the deferral of tax on income earned by a corporation through a partnership that arises if the partnership has a fiscal period that differs from the corporation's taxation year. The main rules implementing this measure are found in new sections 34.2 and 34.3, and amended section 249.1 of the Act. This overview provides a summary of the main aspects of new section 34.2. For further information, see the commentary below on the specific provisions.

The two main aspects of new section 34.2 are the rules related to adjusted stub period accrual and those related to qualifying transitional income. The adjusted stub period accrual rules require a corporate partner to include in computing its income for a taxation year its adjusted stub period accrual in respect of the partnership. These rules are in new subsections 34.2(1) to (10), new section 34.3, and amended section 249.1. The qualifying transitional income rules provide transitional relief, and these rules are in new subsections 34.2(1) and (11) to (18).

*Adjusted stub period accrual*

The adjusted stub period accrual rules apply to a corporation that has a significant interest in a partnership. In general terms, this means that the corporation is entitled (together with affiliated and related persons) to more than 10% of the income (or loss) of the partnership. A corporation's adjusted stub period accrual in respect of a partnership provides the corporation with an estimate of the income that the corporation is deferring as a result of its membership in a partnership that has a fiscal period that differs from the corporation's taxation year.

Under the rules, each corporate partner that has a significant interest in a partnership is required to include in computing its income for a taxation year its adjusted stub period accrual in respect of the partnership for that year. This income inclusion is not considered income from the partnership. In the immediately following taxation year the corporate partner may deduct in computing its income the inclusion for the immediately preceding taxation year. The corporate partner calculates its adjusted stub period accrual under the formula in the definition "adjusted stub period accrual" in subsection 34.2(1).

The starting point for the calculation of adjusted stub period accrual is the amount of partnership income allocated by a partnership to a corporate partner for fiscal periods of the partnership ending in the corporation's taxation year. This allocated partnership income is multiplied by the quotient of (1) the number of days in the fiscal period of the partnership that begins in the taxation year and ends in a subsequent taxation year and that are also days in the taxation year (*i.e.*, the stub period) divided by (2) the number of days in all of the fiscal periods of the partnership that end in the corporation's taxation year. This proration converts the partnership income allocated to the corporation in the taxation year into an estimate of the corporation's partnership income for the stub period.

The formula for determining adjusted stub period accrual allows two deductions. These deductions are amounts designated by a corporate partner when calculating adjusted stub period accrual. The first designation concerns qualified resource expenses incurred by the partnership during the corporation's stub period. The second designation is purely discretionary and allows a corporate partner to reduce a portion or all of the estimated stub period accrual to reflect its knowledge of the actual partnership income for the stub period. An excessive designation of this type, however, may result in a subsequent income shortfall adjustment inclusion under new subsection 34.3. For further information, see the commentary on that section.

The above-described adjusted stub period accrual mechanism limits the deferral of income (and tax) available under a corporate partnership structure that is not aligned with the corporation's taxation year by requiring an income inclusion in respect of the stub period in a taxation year of the corporation. This income inclusion is reconciled in a subsequent taxation year, when the corporation may take an equivalent deduction and is allocated its actual share of income (loss) for the fiscal period of the partnership. A corporation may have adjusted stub period accruals in respect of more than one partnership and, in such cases, the adjusted stub period accrual rules apply to the corporation on a partnership-by-partnership basis.

Further information on the adjusted stub period accrual rules and the inclusion/deduction mechanism, as well as the income shortfall adjustment inclusion rules in new section 34.3 is provided after a summary of the provisions related to transitional relief.

*Transition relief – qualifying transitional income*

The adjusted stub period accrual rules generally apply to taxation years of a corporation that end after March 22, 2011. In many cases, these rules could result in an income inclusion of a significant incremental amount of partnership income for a corporation's first taxation year ending after March 22, 2011. To mitigate the potential cash-flow impact on taxpayers, transitional relief will generally result in no additional taxes being payable for that first taxation year. Instead, the additional income will be brought into the corporation's income over the five taxation years that follow that first taxation year.

Whether a corporate partner is eligible for transitional relief depends initially on whether the corporation has qualifying transitional income (QTI) in respect of a partnership. A corporation's QTI in respect of a particular partnership could be made up of

- adjusted stub period accrual arising in the corporation's first taxation year ending after March 22, 2011 under new section 34.2,
- eligible alignment income, which can result from a single-tier alignment or a multi-tier alignment of the fiscal period of a partnership under new section 34.2 and amended section 249.1, or
- both adjusted stub period accrual and eligible alignment income (*i.e.*, the fiscal period of a partnership may be aligned, but that alignment may not coincide with the taxation year end of all its corporate members).

Special rules apply for the purpose of computing a corporate partner's QTI in respect of a partnership (*i.e.*, the adjusted stub period accrual and eligible alignment income used for QTI purposes). Among other things, for the purposes of QTI inclusions, a partnership is required to compute its income by deducting the maximum amounts of expenses, allowances, reserves and other deductions.

If a corporate partner has QTI, the corporation is generally eligible in computing its income for a taxation year to deduct, as a reserve, a specified percentage of its QTI in respect of the partnership (subject to certain rules). In general, the corporation may deduct a decreasing specified percentage of its QTI in respect of the partnership over a five or six-year period, with the result that over this period the corporation includes in income all of its QTI in respect of the partnership. A corporation may have QTI in respect of more than one partnership and, in such cases, the transitional relief rules apply on a partnership-by-partnership basis.

Depending on the circumstances, a corporation that is eligible for transitional relief may first have QTI in respect of a particular partnership in its 2011, 2012 or 2013 taxation year. It is important to identify the taxation year in which a corporation first has QTI in respect of a particular partnership. First, the specified percentage that applies for a particular taxation year to a corporation's QTI in respect of the particular partnership depends on the year in which the QTI initially arose and the taxation year in which the corporation is claiming a deduction, as a reserve, against that QTI.

Second, the initial calculation of QTI for that partnership is adjusted in the taxation year during which ends the fiscal period of the partnership that includes the partnership stub period for the first taxation year for which the corporation has QTI (*i.e.*, the portion of the fiscal period of the partnership that begins in that first taxation year and ends in a subsequent taxation year). Generally, the adjustment to QTI occurs in the second taxation year if there has been no intervening short taxation year of the corporation.

This adjustment of QTI is provided to "true-up" the adjusted stub period accrual included in the corporation's QTI in respect of a partnership. Once the fiscal period that includes the stub period actually ends and the corporate partner is allocated its income for that fiscal period, the partner can then accurately prorate that income for the stub period. Otherwise, a corporation's QTI in respect of a partnership could be overstated or understated.

Although this adjustment to QTI does not affect a corporation's deduction, as a reserve, of an amount in respect of the QTI for the first taxation year (or the amount included in its income for the following taxation year in respect of the reserve), it does change the QTI in respect of the partnership for the purpose of deducting a specified percentage of that QTI for the year in which it is adjusted and each subsequent taxation year in which a deduction is made in respect of QTI.

The availability of transitional relief is dependent on certain conditions being met. For example, a corporation generally must be a partner of a partnership for which the corporation has QTI continuously since before March 22, 2011 until the end of the taxation year in which the corporation is deducting a reserve in respect of QTI. A continuation rule is provided for cases where a corporation transfers its partnership interest to, and which is held by, another corporation that is related to, or affiliated with, the corporation.

New sections 34.2 and 34.3 apply to taxation years ending after March 22, 2011.

**Definitions**

ITA

34.2(1)

New subsection 34.2(1) of the Act defines "adjusted stub period accrual", "eligible alignment income", "multi-tier alignment", "qualified resource expense", "qualifying transitional income", "significant interest", "single-tier alignment" and "specified percentage" for the purposes of the corporate partner deferral rules in new section 34.2. The subsection provides two types of definitions.

The first type concerns those definitions that are relevant when applying the basic adjusted stub period accrual rules found in subsections 34.2(1) to (10) and the "income shortfall" rules in new section 34.3. These definitions are: "adjusted stub period accrual", "qualified resource expense" and "significant interest". These definitions are also relevant in the context of applying the transitional relief provisions. The second type of definition is specifically relevant in the context of transitional relief: "eligible alignment income", "multi-tier alignment", "qualifying transitional income", "single-tier alignment" and "specified percentage". These definitions are described more fully below.

**"adjusted stub period accrual"**

The new definition "adjusted stub period accrual" provides formulas for calculating a corporation's adjusted stub period accrual in respect of a partnership. It applies if the corporation has a "significant interest" (see below) in the partnership at the end of the last fiscal period of the partnership that ends in the corporation's taxation year, and another fiscal period of the partnership begins in that taxation year and ends after the end of the taxation year. If this is the case, one of three formulas set out in the definition will apply to determine the corporation's adjusted stub period accrual in respect of the partnership.

The first of these formulas is set out in paragraph (*a*) of the definition "adjusted stub period accrual". Paragraph (*a*) applies unless the fiscal period of the partnership is subject to a "multi-tier alignment" (see below) in which case paragraph (*b*) applies for the first taxation year of the corporation in which the fiscal period is aligned under the multi-tier alignment. A multi-tier alignment is a special case that relates to transitional relief for corporate members of partnership structures that are tiered. Even where there has been a multi-tier alignment, the formula in paragraph (*a*) is the one that applies to determine the adjusted stub period accrual on a go-forward basis. It also applies for transitional relief purposes where there is no multi-tier alignment.

The formula in paragraph (*a*) of the definition "adjusted stub period accrual" is:

$$((A - B) \times C/D) - (E + F)$$

where

A is total of all amounts each of which is the corporation's share of an income or taxable capital gain for a fiscal period of the partnership that ends in the corporation's taxation year (other than dividends upon which a deduction is available under section 112 or 113). If more than one fiscal period of the partnership ends in the taxation year, the description of A applies to the income and taxable capital gains allocated to the corporation for all of the fiscal periods. For example, two fiscal periods of a partnership could end in the same taxation year if a regular fiscal period is followed by a fiscal period that results from a "single-tier alignment" (see below) that is available under section 249.1 under the transitional rules.

B is the total of all amounts each of which is the corporation's share of a loss or allowable capital loss for a fiscal period of the partnership that ends in the corporation's taxation year. In the case of allowable capital losses, the description of B does not apply to the extent those losses exceed the corporation's share of the taxable capital gains of the partnership included in the description of A. This limit on allowable capital losses ensures that a corporation's income from the partnership is not reduced by allowable capital losses that exceed taxable capital gains.

C is the number of days that are in both the corporation's taxation year and the "particular period", which is the fiscal period of the partnership that begins in the taxation year and ends after the year. The description of C is the stub period portion of the particular period.

D is the number of days in the fiscal periods of the partnership that end in the taxation year. The number of days under the description of D could exceed 365 if there is more than one fiscal period of the partnership that ends in the corporation's taxation year.

E is the amount of "qualified resource expense" (see below) incurred by the partnership in the stub period and designated by the corporation under subsection 34.2(6). The designated amount must be included in the corporation's related return of income and filed with the Minister of National Revenue on or before the corporation's filing-due date. Once filed, the designation cannot be amended or revoked (see new subsection 34.2(10)).

F is an amount designated by the corporation (other than an amount included in the description of E) in the corporation's related return of income and filed with the Minister of National Revenue on or before the corporation's filing-due date. Once filed, the designation cannot be amended or revoked (see new subsection 34.2(10)). This designation is available to allow a corporate partner to designate an amount that reduces its adjusted stub period accrual if it knows (before filing the income tax return for the year in which the designation is made) the actual amount of partnership income that will be allocated to it for the stub period. To discourage inaccurate designations, the rules in new section 34.3 provide for an inclusion of a corporation's "income shortfall adjustment" in computing its income where the corporation has made such designations. For further information see the commentary on new section 34.3.

The result of applying the formula in paragraph (*a*) is the adjusted stub period accrual of a corporation in respect of a particular partnership, which is included in computing the corporation's income under new subsection 34.2(2).

Paragraph (*b*) of the definition "adjusted stub period accrual" provides formulas that apply to a corporation that is a member of a partnership for which there is a "multi-tier alignment" (see below) of a partnership structure that includes two or more partnerships. In the preamble to paragraph (*b*), the fiscal period of the partnership that is subject to the multi-tier alignment is defined as the "eligible fiscal period". The reference to "eligible" signifies that the adjusted stub period accrual calculated under the respective formulas may be eligible for transitional relief. Also, the formulas in paragraph (*b*) differ from that in paragraph (*a*) in that they are calculated with reference to the "eligible fiscal period", which is the first fiscal period that is aligned under the multi-tier alignment, instead of the fiscal periods of the partnership that end in the corporation's taxation year, as is the case in paragraph (*a*).

Paragraph (*b*) of the definition "adjusted stub period accrual" is divided into two subparagraphs. Which subparagraph applies depends on whether the eligible fiscal period resulting from the multi-tier alignment (and ending in the corporation's taxation year) is preceded by a fiscal period of the partnership that also ends in the corporation's taxation year.

The formula in subparagraph (*b*)(i) of the definition "adjusted stub period accrual" applies where a fiscal period of the partnership ends in the taxation year of the corporation "before" the eligible fiscal period ends. The formula in subparagraph (*b*)(i) is analogous to the formula and descriptions in paragraph (*a*) except that the descriptions of A, B and D in subparagraph (*b*)(i) refer to the income and taxable capital gains of the partnership (as reduced by the partnership's losses and allowable capital losses) for the "first fiscal period" of the partnership that ends in the year and before the eligible fiscal period.

The formula in subparagraph (*b*)(ii) of the definition "adjusted stub period accrual" applies where the eligible fiscal period of the partnership is the first fiscal period of the partnership that ends in the corporation's taxation year. Despite the multi-tier alignment, the formula will apply to the corporation if the aligned fiscal period does not end at the end of the corporation's taxation year. In such a case, the corporation may have adjusted stub period accrual and multi-tier alignment income.

The formula in subparagraph (*b*)(ii) differs from that in subparagraph (*b*)(i) in that a new description of C is introduced. It requires a deduction in respect of "eligible alignment income" (see below), which is the income (net of losses) and taxable capital gains (net of allowable capital losses) allocated to the corporation as a result of a fiscal period of the partnership being ended under a multi-tier alignment. To the extent that alignment income is "eligible alignment income", it is included in the corporation's qualifying transitional income, and subtracted in computing the amount of income and taxable capital gains upon which a corporation calculates its adjusted stub period accrual under the formula in subparagraph (*b*)(ii). This ensures that no portion of the corporation's adjusted stub period accrual includes an amount in respect of "eligible alignment income". The resulting adjusted stub period accrual is included under subsection 34.2(2) in computing the corporation's income for the taxation year, and it may also be eligible for inclusion in the corporation's qualifying transitional income in respect of the partnership along with any eligible alignment income.

**"eligible alignment income"**

The new definition "eligible alignment income" calculates the portion of a corporation's income from a partnership for a fiscal period that is aligned under an alignment election and that is eligible to be included in the corporation's "qualifying transitional income" (see below). The aligned fiscal period is the first fiscal period of the partnership that is subject to

- a "single-tier alignment", of the fiscal period of a single-tier partnership with the taxation year of a corporate partner, or
- a "multi-tier alignment " of the fiscal periods of two or more partnerships in a multi-tier partnership structure.

Paragraph (*a*) of the definition "eligible alignment income" applies where a partnership of which a corporation is a member is subject to a single-tier alignment. In such a case, paragraph (*a*) applies to the first aligned fiscal period of the partnership that ends in the first taxation year of the corporation ending after March 22, 2011. This first aligned fiscal period is defined as the "eligible fiscal period" for the purposes of applying paragraph (*a*). Eligible alignment income will arise only if the eligible fiscal period is preceded by another fiscal period of the partnership that ends in the corporation's first taxation year that ends after March 22, 2011 and the corporation is a member of the partnership at the end of that preceding fiscal period. In such a case, the formula in subparagraph (*a*)(i) that applies to calculate a corporation's eligible alignment income is:

$$A - B - C$$

where

A is the total of all amounts each of which is the corporation's share of an income or taxable capital gain of the partnership for the eligible fiscal period (other than any dividend for which a deduction is available under section 112 or 113).

B is the total of all amounts each of which the corporation's share of a loss or allowable capital loss of the partnership for the eligible fiscal period. In the case of allowable capital losses, the description of B does not apply to the extent those losses exceed the corporation's share of the taxable capital gains of the partnership included in the description of A. This limit ensures that a corporation's income from the partnership for the eligible fiscal period is not reduced by allowable capital losses that exceed taxable capital gains.

C is the total of all amounts each of which is a resource expense of the partnership under any of sections 66.1, 66.2, 66.21 and 66.4 that are deemed by subsection 66(18) to be incurred by the corporation at the end of the eligible fiscal period and which expenses are deductible for the taxation year by the corporation. The amount that is deductible for the year is to be determined as if each such resource expense were the only amount relevant in determining the amount deductible. Thus, such resource expenses are considered to be the only amounts in the corporation's respective resource pools under sections 66.1, 66.2, 66.21 and 66.4.

Subparagraph (*a*)(ii) of the definition "eligible alignment income" provides that no portion of a corporation's alignment income is "eligible alignment income" if the eligible fiscal period of the partnership is the first fiscal period of the partnership to end in the corporation's first taxation year that ends after March 22, 2011. In effect, a corporate partner cannot claim transitional relief for income that would have been taxable in the taxation year even if the alignment had not occurred.

Paragraph (*b*) of the definition "eligible alignment income" applies to a corporation that is a member of a partnership the fiscal period (the "eligible fiscal period") of which is subject to a multi-tier alignment and the corporation is also a member of the partnership at the end of the eligible fiscal period. The formula that applies is A – B – C. While this formula is analogous to the formula in subparagraph (*a*)(i), it differs in that the description of A excludes amounts that would be included in computing the income for the corporation if there were no multi-tier alignment.

Unlike "adjusted stub period accrual", a corporation may have "eligible alignment income" in respect of a partnership of which it is a member even though its interest is not a "significant interest".

**"multi-tier alignment"**

The new definition "multi-tier alignment", in respect of a partnership, means the alignment under subsection 249.1(9) or (11) of the fiscal period of the partnership and the fiscal period of one or more other partnerships. A multi-tier alignment of a fiscal period of a partnership does not necessarily require that the fiscal period of the partnership change, although this may happen for most partnerships subject to a multi-tier alignment. A multi-tier alignment signifies that the fiscal periods of two or more partnerships have been aligned because either

- the corporate partners of the tiered partnership structure filed a valid one-time multi-tier alignment election under new subsection 249.1(9), or
- the alignment results under the deeming rule in new subsection 249.1(11), which deems a December 31, 2011 fiscal period end for tiered partnership structures for which there is no valid multi-tier alignment election.

Whether a multi-tier alignment exists is relevant primarily for the purposes of applying the transitional relief aspects of the corporate partnership deferral rules.

**“qualified resource expense”**

The new definition “qualified resource expense”, of a corporation for a taxation year in respect of a fiscal period of a partnership that begins in the taxation year and ends after the taxation year, means an expense incurred by the partnership in the portion of the fiscal period of the partnership that is in the taxation year and that is described in any of:

(a) “Canadian exploration expense” in subsection 66.1(6);
(b) “Canadian development expense” in subsection 66.2(5);
(c) “foreign resource expense” in subsection 66.21(1); and
(d) “Canadian oil and gas property expenses” in subsection 66.4(5).

The definition “qualified resource expense” should be read in conjunction with the formulas in the definition “adjusted stub period accrual”. A corporation may be eligible to designate an amount as a qualified resource expense in determining adjusted stub period accrual. The main rules that apply for the purpose of determining if a designation may be made are set out in new subsection 34.2(6).

**“qualifying transitional income”**

The new definition “qualifying transitional income”, of a corporation that is a member of a partnership on March 22, 2011, means the amount that is the total of the following amounts, computed in accordance with subsection 34.2(15):

- the corporation’s “eligible alignment income” in respect of the partnership; and
- the corporation’s “adjusted stub period accrual” in respect of the partnership

  for:

  - if there is a multi-tier alignment in respect of the partnership, the corporation’s taxation year in which ends the fiscal period of the partnership that is aligned with the fiscal period of one or more other partnerships under the multi-tier alignment – this alignment could occur in the corporation’s first or second taxation year ending after March 22, 2011, or
  - in any other case, the corporation’s first taxation year that ends after March 22, 2011.

The definition “qualifying transitional income” applies on a partnership-by-partnership basis. In addition to being a member of a partnership on March 22, 2011, a corporation is required to satisfy the conditions in new subsection 34.2(13) in order to deduct, as a reserve, an amount under new subsection 34.2(11) for a taxation year.

**“significant interest”**

The new definition “significant interest” means a membership interest of the corporation in a partnership if the corporation, or the corporation together with one or more persons or partnerships related to or affiliated with the corporation, is entitled to more than 10% of

- the income or loss of the partnership, or
- the assets (net of liabilities) of the partnership if it were to cease to exist.

The definition “significant interest” is relevant for determining if a corporation that is a member of a partnership (the fiscal period of which does not align with the corporation’s taxation year) is required to calculate and include in computing its income for the year an adjusted stub period accrual in respect of the partnership.

**“single-tier alignment”**

The new definition “single-tier alignment” means the ending of a fiscal period of a partnership under subsection 249.1(8).

**“specified percentage”**

The new definition “specified percentage” is relevant for computing for a taxation year the maximum amount that a corporation may deduct, as a reserve, for its qualifying transitional income (QTI) in respect of a partnership under new subsection 34.2(11). The particular specified percentage that applies for a taxation year depends on both the calendar year in which the taxation year ends, and the first taxation year in which the corporation has QTI in respect of the partnership.

Paragraph (*a*) of the definition “specified percentage” applies if the first taxation year for which a corporation has QTI in respect of the partnership ends in 2011. In this case, the percentage of QTI that may be deducted as a reserve for the particular taxation year under subsection 34.2(11) is, for a taxation year ending in

- 2011, 100%,
- 2012, 85%,
- 2013, 65%,
- 2014, 45%,
- 2015, 25%, and
- 2016, 0%.

In general, the above schedule of specified percentages, in combination with the requirement to include the prior year reserve in income under subsection 34.2(12), means that a corporation with QTI in respect of a particular partnership includes that QTI in computing its income at a rate of 0% (for taxation years ending in 2011), 15% (for taxation years ending in 2012), 20% (for taxation years ending in 2013), 20% (for taxation years ending in 2014), 20% (for taxation years ending in 2015) and 25% (for its first taxation year ending in 2016).

Paragraph (*b*) of the definition “specified percentage” applies if the first taxation year for which a corporation has QTI in respect of the partnership ends in 2012. In this case, the percentage for the particular taxation year that a deduction is being claimed against that QTI under subsection 34.2(11) is, for a taxation year ending in

- 2012, 100%,
- 2013, 85%,
- 2014, 65%,
- 2015, 45%,
- 2016, 25%, and
- 2017, 0%.

Paragraph (*c*) of the definition “specified percentage” applies if the first taxation year for which a corporation has qualifying transitional income in respect of the partnership ends in 2013. In this case, the percentage for the particular taxation year that a deduction is being claimed against that QTI under subsection 34.2(11) is, for a taxation year ending in

- 2013, 85%,
- 2014, 65%,
- 2015, 45%,
- 2016, 25%, and
- 2017, 0%.

The percentages in paragraph (*c*) apply only if a multi-tier alignment occurs and the corporation's first taxation year that includes the aligned fiscal period ends in 2013.

Since the percentages in each paragraph of the definition "specified percentage" apply for a given calendar year, the particular percentage applies for all taxation years of the corporation that end in that calendar year. As a result, a corporation will not be required to accelerate the inclusion in income of its QTI where it has multiple taxation years that end in the same calendar year.

**Income inclusion – adjusted stub period accrual**

ITA
34.2(2)

New subsection 34.2(2) of the Act requires a corporation (other than a professional corporation) to include in computing its income for a taxation year its adjusted stub period accrual on a partnership-by-partnership basis. This subsection applies to the corporation if it has

- a significant interest in the partnership at the end of the last fiscal period of the partnership that ends in the taxation year,
- another fiscal period of the partnership begins in the taxation year and ends after the taxation year, and
- at the end of the taxation year, the corporation is entitled to a share of an income, capital loss, taxable capital gain or allowable capital loss of the partnership for the fiscal period that ends after the end of the taxation year.

The character of adjusted stub period accrual inclusion for a taxation year (*e.g.*, as business income, property income or taxable capital gains) is determined under the rules in new subsection 34.2(5). The inclusion in a corporate partner's income for a taxation year under subsection 34.2(2) is deductible by the corporation in the immediately following taxation year under new subsection 34.2(4).

New subsection 34.2(2) is subject to an exception provided for by new subsection 34.2(9), which relates to multi-tier alignments. For further information, see the commentary on subsection 34.2(9).

**Income inclusion – new partner designation**

ITA
34.2(3)

New subsection 34.2(3) of the Act permits certain corporations that become members of a partnership in a taxation year to designate an amount to be included in computing their income for the taxation year in respect of the partnership. New subsection 34.2(3) applies to corporations that become members of a partnership in a taxation year during a fiscal period of the partnership that begins in the corporation's taxation year (the particular period) and ends on or before the filing-due date for that year and the corporation has a "significant interest" in the partnership at the end of the particular period.

If applicable, new subsection 34.2(3) provides that a corporation may include in income for the taxation year the amount designated by it, not exceeding the amount determined under the formula

$$A \times B/C$$

where

A is the corporation's income from the partnership for the particular period (other than any dividend for which a deduction is available under section 112 or 113).

B is the number of days that are in both the corporation's taxation year and the particular period.

C is the number of days in the particular period.

The amount that is included in a corporate partner's income for a taxation year under subsection 34.2(3) is also deductible by the corporation in the immediately following taxation year under new subsection 34.2(4).

In general terms, new subsection 34.2(3) provides a mechanism for a corporation that becomes a partner of a partnership in a year to apportion its income from the partnership for the particular period between two taxation years – the taxation year in which the particular period began and the taxation year in which it ends.

**Deduction in following year**

ITA
34.2(4)

New subsection 34.2(4) of the Act provides that a corporation may deduct in computing its income for a taxation year the amount that was included in computing its income in respect of a partnership for the immediately preceding taxation year under either of new subsection 34.2(2) or (3). This deduction applies to a corporation on a partnership-by-partnership basis and is subject to the income characterization rules in new subsection 34.2(5).

**Character of stub period accrual – additional income and deduction**

ITA
34.2(5)

New subsection 34.2(5) of the Act provides rules for characterizing the nature of the income that makes up the adjusted stub period accrual for the purposes of applying the Act. This subsection ensures that the income that is the adjusted stub period accrual is taxed at the appropriate corporate tax rate.

Paragraph 34.2(5)(*a*) sets out rules that apply for the purpose of computing the income of a corporation for a taxation year. In general, adjusted stub period accruals, and related deductions, will have the same character and be in the same proportions as the partnership income to which they relate:

- A corporation's adjusted stub period accrual in respect of a partnership is deemed to be income and taxable capital gains having the same character and to be in the same proportions as any income and taxable capital gains that were allocated by the partnership to the corporation for all fiscal periods of the partnership ending in the year. For example, if a corporation receives $100,000 of partnership income for the partnership's fiscal period ending in its taxation year, and that income is composed of $40,000 of active business income, $30,000 of income from property, and $30,000 as a taxable capital gain, the corporation's adjusted stub period accrual in respect of the partnership would be 40% active business income, 30% property income and 30% taxable capital gains. In the case of a taxable capital gain, no amount would be a "capital gain from a disposition" included in the corporation's capital dividend account under the definition "capital dividend account" in subsection 89(1) of the Act.
- A new corporate partner's designated income under subsection 34.2(3) in respect of a partnership is deemed to be income and taxable capital gains having the same character and to be in the same proportions as any income and taxable capital gains that were allocated by the partnership to the corporation in a year for the particular period referred to in subsection 34.2(3).

- An amount deductible for a year by a corporate partner under subsection 34.2(4) in respect of a partnership is deemed to have the same character and to be in the same proportions as the income and taxable capital gains included in the corporation's income for the immediately preceding taxation year under subsection 34.2(2) or (3).
- An amount deductible as a reserve in respect of a corporation's qualifying transitional income (QTI) in respect of a partnership under subsection 34.2(11) is deemed to have the same character and to be in the same proportions as the QTI in respect of the partnership for the year.
- An amount that is included in a corporation's income under subsection 34.2(12) is deemed to have the same character and to be in the same proportions as the amount deducted under subsection 34.2(11) by the corporation for the immediately preceding taxation year.

Paragraph 34.2(5)(*b*) deems a corporation to have realized at the end of a taxation year an allowable capital loss in certain circumstances. The deemed allowable capital loss is equal to, in general, the amount by which the amount deductible under subsection 34.2(4) that is related to a prior year deemed taxable capital gain exceeds the actual taxable capital gains allocated to the corporation by the partnership for the year in which subsection 34.2(4) applies to allow a deduction of the prior year income inclusion.

**Designation – qualified resource expense**

ITA
34.2(6)

New subsection 34.2(6) of the Act limits the amount that a corporation may designate as its "qualified resource expense" for the purposes of the definition "adjusted stub period accrual" in respect of a partnership (see the description of E in paragraph (*a*) of the definition "adjusted stub period accrual").

Subsection 34.2(6) provides two rules. First, a corporation cannot designate an amount as its qualified resource expense for the stub period in respect of a partnership except to the extent the corporation obtains in writing from the partnership, before the corporation's filing-due date for the taxation year for which adjusted stub period accrual is being calculated, information identifying the relevant expenses. These identified expenses are those identified by the partnership as being the corporation's qualified resource expenses incurred by the partnership, determined as if those expenses had been incurred by the partnership in its last fiscal period that ended in the taxation year (*i.e.*, based on the corporation's share for the last fiscal period, and not at the end of the taxation year).

Second, the amount designated cannot exceed the maximum amount that would be deductible by the corporation for the identified resource expenses under sections 66.1, 66.2, 66.21 and 66.4 in computing its income if the partnership's fiscal period ended at the end of the corporation's taxation year. Limiting the designation to the maximum amount deductible for the taxation year recognizes that, while some resource expenses such as Canadian exploration expenses are 100% deductible in a taxation year, a lower percentage applies to other resource expenses, such as 10% for Canadian oil and gas property expenses. The maximum amount deductible is also computed on the basis that

- the only resources expenses the corporation has for its taxation year are those identified resource expenses,
- the partnership's fiscal period that includes the stub period ends at the end of the corporation's taxation year, and
- subsection 66(18) of the Act applies to deem the corporation's share of the resource expenses incurred by the partnership to have been incurred by the corporation.

Despite a designation of a qualified resource expense for the purpose of calculating a corporation's adjusted stub period accrual, qualified resource expenses are not the corporation's share of those resource expenses for other purposes of the Act. Other than for the purposes of sections 34.2 and 34.3, the share of particular resource expenses of a corporation are subject to the Act's general rules, including the requirement that the corporation be a member of the partnership at the end of the fiscal period of the partnership for which it receives its share of partnership expenses and when subsection 66(18) actually applies to those expenses.

**No additional income – bankrupt**

ITA
34.2(7)

New subsection 34.2(7) of the Act provides that the income inclusion rules in subsection 34.2(2) and (3) do not apply to a corporate bankrupt.

**Foreign affiliates**

ITA
34.2(8)

New subsection 34.2(8) of the Act provides rules for the purposes of new section 34.2 that address the taxation of income of a corporation resident in Canada whose foreign affiliate is a member of a partnership. It ensures that, in respect of the affiliate, the rules in new section 34.2 do not apply in computing, for a taxation year of the affiliate,

- the affiliate's foreign accrual property income (FAPI) in respect of the corporation, and
- except to the extent that the context otherwise requires, the affiliate's exempt surplus or deficit, and taxable surplus or deficit, in respect of the corporation.

If not for the exclusion of FAPI from these rules, a foreign affiliate that is a member of a partnership could, because paragraph 95(2)(*f*) of the Act deems it to be a Canadian resident, require the rules in section 34.2 to be applied in computing the foreign affiliate's FAPI. However, the rules in section 34.2 could apply to a corporation resident in Canada that is itself a member of a partnership that in turn owns a foreign affiliate that directly earns FAPI.

A similar carve-out from these new rules is being provided in respect of the computation of the surplus balances of a foreign affiliate that is a member of a partnership. For example, a foreign affiliate that is required under subparagraph (*a*)(iii) of the definition "earnings" in subsection 5907(1) of the *Income Tax Regulations* to compute its income from an active business carried on by a partnership of which it is a member using Canadian tax rules does not, by virtue of this specific carve-out, have to apply section 34.2. In the case of surplus, it is also notable that a Canadian resident corporation that is itself a member of a partnership that owns a foreign affiliate can also escape the application of the rules in section 34.2. This is because a foreign affiliate only has surplus balances in respect of a corporation: it cannot have surplus in respect of a partnership.

However, there are circumstances in which it is appropriate for the rules in section 34.2 to apply in the computation of surplus balances. These situations are addressed by having paragraph 34.2(8)(*b*) apply "except to the extent that the context otherwise requires". One such situation is where the affiliate has earnings from an active business that are required to be computed under subparagraph (*a*)(ii) of the definition "earnings" in subsection 5907(1) of the *Income Tax Regulations* where the active business is one that is carried on, and taxable, in Canada. Another situation is where the affiliate has capital gains from the disposition of taxable Canadian property that are not treaty protected. In these situations, section 34.2 will already apply to the foreign affiliate in computing its taxable income earned in Canada,

and where Canadian rules are the relevant rules for surplus purposes, the context would require that such rules be applied for surplus purposes.

Consistent with the intended application of section 34.2 to non-resident corporations in respect of their taxable income earned in Canada, subsection 34.2(8) has no impact on the determination of a foreign affiliate's own tax liability in Canada. Section 34.2 could still apply in the determination of any taxable income earned in Canada by the affiliate through a partnership.

**Special case – application of ss. (2) to corporation with income from multi-tier alignment**

ITA
34.2(9)

New subsection 34.2(9) of the Act provides that a corporation that is a member of a partnership that is part of a multi-tier partnership structure is not required to include under subsection 34.2(2) any adjusted stub period accrual in respect of the partnership until the taxation year that includes the end of the first fiscal period of the partnership that is aligned under the multi-tier alignment. This alignment may occur because of either a multi-tier alignment election under new subsection 249.1(9) or the application of the deeming rule in new subsection 249.1(11). A partnership's fiscal period can be aligned to that of the other partnerships in the structure even if the fiscal period of the specific partnership does not change (*i.e.*, the fiscal period of one or more other partnerships changes).

**Designations may not be amended or revoked**

ITA
34.2(10)

New subsection 34.2(10) of the Act provides that a corporation may not amend or revoke a designation in calculating its adjusted stub period accrual where that designation concerns any of the description of E or F of paragraph (*a*), the description of E or F of subparagraph (*b*)(i) and the description of F or G of subparagraph (*b*)(ii), of the definition "adjusted stub period accrual". In general, designations for a taxation year may not be amended or revoked because excess designations by a corporation under those descriptions may result in the corporation being required under new section 34.3 of the Act to include in its income for the following taxation year an amount in respect of its "income shortfall adjustment".

**Transitional reserve**

ITA
34.2(11)

New subsection 34.2(11) of the Act sets out the deduction that a corporation may take as a transitional reserve, consequential on the enactment of the new corporate partnership deferral rules in subsections 34.2(1) to (10). In any particular taxation year, a corporation that has "qualifying transitional income" (QTI) in respect of a partnership may deduct, as a reserve, under subsection 34.2(11) an amount not exceeding the least of three amounts. These amounts are described below.

*Specified percentage of QTI*

Paragraph 34.2(11)(*a*) refers to the specified percentage of a corporation's QTI in respect of the partnership for the year for which the reserve is being calculated. The specified percentage decreases over a five or six-year period while the corporation's QTI in respect of the partnership remains constant (subject to a one-time adjustment under new subsection 34.2(17)).

Although the specified percentage of QTI is normally 100% in the first taxation year in which a corporation has QTI in respect of the particular partnership, the specified percentage for the first taxation year is 85% in cases where the aligned fiscal period under a multi-tier alignment of the fiscal periods of two or more partnerships ends in the corporation's 2013 taxation year.

If a corporation has more than one taxation year ending in a calendar year, the specified percentage applicable to the corporation's QTI in respect of that partnership is the same percentage for all taxation years ending in that calendar year. This situation could arise where the corporation has a short taxation year because of an amalgamation or an acquisition of control.

Paragraph 34.2(11)(*a*) applies to a corporation's QTI on a partnership-by-partnership basis. As a result, the specified percentage that applies to the corporation's QTI in respect of a particular partnership for a taxation year may not be the same percentage that applies to the corporation's QTI in respect of another partnership for the same year.

*Prior year deduction included in income in current year*

Paragraph 34.2(11)(*b*) ensures that the deduction available under subsection 34.2(11) does not exceed the portion of QTI in respect of the partnership that has not yet been included in income. Paragraph 34.2(11)(*b*) is, in general, the total of

- the amount included under subsection 34.2(12) in respect of the partnership in computing the corporation's income for the year, and
- the amount by which the corporation's QTI in respect of the partnership is increased in the particular year because of a one-time adjustment under subsections 34.2(16) and (17). For further information, see the commentary on those subsections.

Paragraph (*b*) generally applies to limit a corporation's subsection 34.2(11) deduction in cases where the corporation's deduction under the subsection for a preceding taxation year is limited by the application of paragraph 34.2(11)(*c*).

*Income before deducting an amount under subsection 34.2(11)*

Paragraph 34.2(11)(*c*) provides, in general, that a corporation's deduction under subsection 34.2(11) for a taxation year cannot exceed the corporation's income before deducting any amount under subsection 34.2(11) in respect of the partnership or under sections 61.3 and 61.4.

The operation of the above-mentioned limitations is highlighted in Example 1 following the commentary on new subsection 34.2(18).

**Inclusion of prior year reserve**

ITA
34.2(12)

New subsection 34.2(12) of the Act provides that a corporation is required to include in computing its income from a partnership the amount deducted by the corporation under subsection 34.2(11) in respect of the partnership for the immediately preceding taxation year.

**No reserve**

ITA
34.2(13)

New subsection 34.2(13) of the Act sets out the circumstances under which a corporation may not deduct, as a reserve, an amount in respect of a partnership under subsection 34.2(11).

Paragraph 34.2(13)(*a*) provides that a corporation is required to satisfy partnership continuation rules to be eligible to deduct, as a reserve, an amount in computing income in respect of a partnership for a taxation year under new subsection 34.2(11). The rules are:

- If there is a multi-tier alignment in respect of the partnership, the corporation cannot deduct an amount under subsection 34.2(11) for a taxation year in respect of the partnership unless the corporation has been a member of the partnership continuously since before March 22, 2011 to the end of the year.
- If there is no multi-tier alignment, the corporation cannot deduct an amount under subsection 34.2(11) for a taxation year in respect of the partnership unless the corporation is a member of the partnership
  - at the end of the partnership's fiscal period that begins before March 22, 2011 and ends in the taxation year of the corporation that includes March 22, 2011,
  - at the end of the partnership's fiscal period commencing immediately after the fiscal period that began before March 22, 2011 and ends in the taxation year of the corporation that includes March 22, 2011, and until after the end of the taxation year of the corporation that includes March 22, 2011, and
  - continuously since before March 22, 2011 until the end of the taxation year. Also see subsection 34.2(14) for a rule deeming a corporation to be a partner in certain circumstances.

The application of the general anti-avoidance (GAAR) to the partners of a multi-tier partnership structure will be considered in cases where it is reasonable to conclude that the primary reason why there is a multi-tier partnership structure created after March 21, 2011 is to have transitional relief based on a multi-tier partnership structure instead of a single-tier partnership structure.

Paragraph 34.2(13)(*b*) provides that a corporation may not deduct an amount in respect of a partnership for a taxation year under subsection 34.2(11) if, at the end of the taxation year or at any time in the following taxation year,

- the corporation's income is exempt from tax under Part I of the Act, or
- the corporation is non-resident and the partnership does not carry on business through a permanent establishment in Canada.

Paragraph 34.2(13)(*c*) provides that a corporation may not deduct an amount in respect of a partnership for a taxation year under subsection 34.2(11) if the taxation year ends immediately before a taxation year

- at the beginning of which the partnership no longer principally carries on the activities to which the reserve relates,
- in which the corporation becomes a bankrupt, or
- in which the corporation is dissolved or wound up (other than in circumstances to which subsection 88(1) applies.)

**Deemed partner**

ITA
34.2(14)

New subsection 34.2(14) of the Act provides that a corporation that was a member of a partnership, but does not satisfy paragraph 34.2(11)(*a*) at the end of a taxation year solely because it disposed of its interest in the partnership, is deemed to be a member of the partnership for the purposes of subsection 34.2(13) if

- the corporation disposed of the interest to another corporation related to, or affiliated with, the corporation at the time of the disposition, and
- a corporation related to, or affiliated with, the corporation has the partnership interest at the end of the particular taxation year. This related or affiliated corporation does not have to be the corporation to which the partnership interest was originally disposed of.

**Computing qualifying transitional income – special rules**

ITA
34.2(15)

New subsection 34.2(15) of the Act provides that, for the purposes of computing a corporation's qualifying transitional income (QTI), the income or loss, as the case may be, of a partnership for a fiscal period of the partnership shall be computed as if

- the partnership had deducted for the period the maximum amount deductible in respect of any expenses, reserve, allowance or other amount,
- the Act were read without reference to the flexible inventory adjustment rule in paragraph 28(1)(*b*), and
- a work-in-progress election is made under paragraph 34(*a*).

The above rules apply whenever a corporation's income (or loss) for a fiscal period of a partnership is relevant for calculating the corporation's QTI in respect of the partnership. This is the case where the partnership's income (or loss) is used to compute the adjusted stub period accrual included in the corporation's QTI; the partnership computes "eligible alignment income" included in the corporation's QTI; and when the corporation's QTI is adjusted or "trued up", as described in the commentary on subsections 34.2(16) and (17).

**Qualifying transitional income adjustment – conditions for application**

ITA
34.2(16)

New subsection 34.2(16) of the Act sets out a two-prong test for determining if subsection 34.2(17) applies for a particular taxation year (and each subsequent taxation year) of a corporation for which the corporation may deduct an amount, as a reserve, under subsection 34.2(11). New subsection 34.2(17), if applicable, adjusts a corporation's qualifying transitional income (QTI) in respect of a particular partnership for the particular taxation year (and each subsequent taxation year) if the initial taxation year estimate of QTI is overstated or understated as a result of the calculation applicable in that first year.

Under subsection 34.2(16), the "particular year" is the first taxation year

- that is after the taxation year in which the corporation has an adjusted stub period accrual that is included in its QTI in respect of the partnership; and

- in which ends the fiscal period of the partnership that began in the taxation year in which QTI in respect of the partnership was first determined.

Although the "particular year" is normally the taxation year immediately following the taxation year in which a corporation's QTI in respect of a particular partnership is first determined, this is not necessarily the case. For example, the corporation may have a short taxation year between the end of the taxation year in which the fiscal period of the partnership began and the beginning of the taxation year in which that fiscal period ends.

**Adjustment of stub period accrual included in QTI**

ITA
34.2(17)

New subsection 34.2(17) of the Act provides two rules that apply to adjust the amount of a corporation's adjusted stub period accrual included in the corporation's QTI in respect of the partnership. This adjustment occurs only once, and in the "particular year" identified by subsection 34.2(16). Once the adjustment to a corporation's QTI in respect of a particular partnership is made, that QTI, as adjusted, is the corporation's QTI in respect of the partnership for the particular taxation year and each subsequent taxation year.

In general, while a corporation's adjusted stub period accrual initially included in its QTI in respect of a partnership is calculated based on the fiscal period(s) of the partnership that ended in the corporation's first taxation year ending after March 22, 2011, the adjusting rules in subsection 34.2(17) refer to the "particular period" of the partnership. The particular period of the partnership is its fiscal period that begins in the corporation's first taxation year for which the QTI was initially calculated and ends in the corporation's taxation year (the particular year).

Once the particular period of the partnership ends in the particular taxation year of the corporation, the corporation is allocated its share of the partnership's income or loss for the particular period. Thus, the corporation knows the actual portion of that income (loss) that should be the corporation's adjusted stub period accrual included in its QTI. The corporation's QTI may increase or decrease, depending on the particular case.

No adjustment of QTI occurs if it includes only "eligible alignment income" because such income is not subject to a similar adjustment.

Paragraph 34.2(17)(*a*) provides that the descriptions of A to F of the formula in paragraph (*a*) and subparagraph (*b*)(i) of the definition "adjusted stub period accrual" are to be read with certain changes. The changes provided by paragraph 34.2(17)(*a*) ensure that the income of the partnership used to calculate a corporation's adjusted stub period accrual is the partnership's income for the "the particular period" and that the proration of that income is based on the number of days in the particular period.

Paragraph 34.2(17)(*b*) provides for similar changes to the formula in subparagraph (*b*)(ii) of the definition "adjusted stub period accrual", which applies in the case of certain multi-tier alignments.

The adjustment of qualifying transitional income is highlighted in Example 2 following the commentary on new subsection 34.2(18).

**Anti-avoidance**

ITA
34.2(18)

New subsection 34.2(18) of the Act provides that, if it is reasonable to conclude that one of the main reasons a corporation is a member of a partnership is to avoid the application of subsection 34.2(13), the corporation is deemed not to be a partner for the purposes of that subsection.

**Examples**

The following examples illustrate particular aspects of the rules in new section 34.2. They are intended to aid readers in understanding the rules; however, the examples are of a general nature without specific details. Consequently, they should not be viewed as superseding the legislation or related explanatory notes. The examples simplify certain aspects of those rules (*e.g.*, by referring to the corporation's partnership income without regard to its character and by referring to months in a fiscal period and taxation year instead of days) in order to highlight the relevant points. It should also be recognized that a corporate partner is to apply the adjusted stub period accrual and transitional relief rules on a partnership-by-partnership interest basis.

**Example 1**

**The operation of the basic adjusted stub period accrual rule, including the reserve in respect of qualifying transitional income.**

Assume

- A corporation has a December 31 year-end and is a longstanding member of a partnership, which has a fiscal period end of January 31.
- The corporation's share of income from the partnership is $12 million for the partnership's fiscal period ending January 31, 2011; $15 million for the fiscal period ending January 31, 2012; and $16 million for the fiscal period ending January 31, 2013.
- The corporation's share of Canadian development expenses (CDE – deductible at a maximum rate of 30%) incurred by the partnership in its fiscal period that ends on January 31, 2012 (during the stub period ending December 31, 2011) is $10 million. No resource expenses are incurred by the partnership in its fiscal periods ending January 31, 2013 and January 31, 2014.
- All of the corporation's income is derived from the partnership.

Calculation of the corporation's income for the 2011, 2012 and 2013 taxation years

| (millions $) | | 2011 | 2012 | 2013 |
|---|---|---|---|---|
| Income from partnership (A) | | 12 | 15 | 16 |
| Accrual income inclusion: | | | | |
| Add: Current year stub period accrual (A x 11/12) | | 11 | 13.75 | 14.67 |
| Deduct: Designated Resource Expense (CDE x 30%) | | (3) | 0 | 0 |
| Adjusted stub period accrual | | 8 | 13.75 | 14.67 |
| Deduct: Prior year adjusted stub period accrual | | n/a | (8) | (13.75) |
| Net adjusted stub period accrual inclusion | | 8 | 5.75 | 0.92 |
| Income before transitional reserve | | 20 | 20.75 | 16.92 |
| Deduct reserve: | | | | |
| Lesser of<br>(a) Specified percentage x QTI | | | | |
| For 2011: | 100% of QTI of 8* | **8** | | |
| For 2012: | 85% of QTI of 10.75** | | **9.14** | |
| For 2013: | 65% of QTI of 10.75*** | | | **6.99** |
| (b) Preceding year reserve plus increase in QTI if s. 34.2(17) applies in year**** | | n/a | 10.75 | 9.14 |
| (c) Income from all sources before reserve | | 20 | 20.75 | 16.92 |
| Deduct: | | (8) | (9.14) | (6.99) |
| Add: Prior year reserve | | n/a | 8 | 9.14 |
| Income | | 12 | 19.61 | 19.07 |

* QTI is $8 million for the 2011 taxation year based on the corporation's adjusted stub period accrual, *i.e.*, 8 = 12 x (11/12) - 3 (designated resource expense).

** QTI is "trued up" for the 2012 taxation year to $10.75 million at the end of the particular period, *i.e.*, 10.75 = 15 (based on the partnership's actual income for the fiscal period) x 11/12 – 3.

*** QTI remains constant for the 2013 taxation year and subsequent years.

**** Paragraph 34.2(11)(*b*)(ii) applies. For the 2012 taxation year, paragraph 34.2(11)(*b*) is $10.75 million, being the $8 million prior year reserve plus $2.75 million (*i.e.*, the amount by which QTI is increased).

**Example 2**

**The adjustment or "true-up" of qualifying transitional income under subsection 34.2(16) and (17), and deduction in respect of that qualifying transitional income under subsection 34.2(11).**

The corporation is a member of a partnership and is subject to the adjusted stub period accrual rules in its first taxation year ending after March 22, 2011, which is December 31, 2011. The adjusted stub period accrual in respect of the partnership is $2,000, which is included in income under subsection 34.2(2). The corporation also has a loss from another source that reduces its income from all sources to $1,000 for the taxation year (before deducting a reserve under subsection 34.2(11)).

The 2011 taxation year is the first taxation year in which the corporation has qualifying transitional income (QTI) in respect of the partnership. The corporation deducts, as a reserve, $1,000 under subsection 34.2(11) for the year. The $1,000 is the least of the following three amounts:

- $2,000 (100% x QTI of $2,000) under paragraph 34.2(11)(*a*),
- Paragraph 34(11)(*b*) is not applicable in the first taxation year, and
- $1,000 under paragraph 34.2(11)(*c*), which is the corporation's income from all sources for the year (before deducting an amount under subsection 34.2(11)). As noted above, the corporation has a loss from another source that reduces its income from all sources to $1,000.

In the following taxation year (the 2012 taxation year), the "particular period" that includes the prior-year stub period ends. If the pro-rated portion of the actual income of the partnership allocated to the corporation for the particular period is $2,750 for the prior-year stub period, subsection 34.2(17) applies to increase the QTI in respect of the partnership from $2,000 to $2,750. This increase in QTI applies for the corporation's 2012 and subsequent taxation years.

Subsection 34.2(12) applies in the 2012 taxation year to include in the corporation's income its prior year subsection 34.2(11) deduction of $1,000. For the 2012 taxation year, the corporation's income is $3,400 before deducting any amount under subsection 34.2(11). For the 2012 taxation year, the corporation may deduct $1,750 under subsection 34.2(11), which is the least of:

- $2,337 (85% x $2,750) under paragraph 34.2(11)(*a*),
- $1,750 under paragraph 34.2(11)(*b*), which is made up of $1,000 under subparagraph 34.2(11)(*b*)(i) and $750 under subparagraph 34.2(11)(*b*)(ii), and
- $3,400 under paragraph 34.2(11)(*c*).

For the taxation year 2013, the corporation has $4,000 of income before deducting an amount under subsection 34.2(11). The corporation may deduct $1,750 under subsection 34.2(11), which is the least of

- $1,787 (65% of QTI of $2,750) under paragraph 34.2(11)(*a*),
- $1,750 under paragraph 34.2(11)(*b*), and
- $4,000 under paragraph 34.2(11)(*c*).

The corporation can continue to deduct amounts under subsection 34.2(11) until the taxation year in which its reserve in respect of the partnership expires. Note that although the corporate has a net income inclusion for the 2011 taxation year in respect of its QTI, it has no net income inclusion for its 2012 or 2013 taxation years. The corporation will have a net inclusion of QTI in respect of the partnership for the 2015 taxation year because the relevant amount under paragraph 34.2(11)(*a*) will be $1,237 (45% of $2,750), which is less than $1,750.

**Corporate partners – income shortfall adjustment**

ITA
34.3

*Overview*

New section 34.3 of the Act is introduced as part of the Budget 2011 measure to limit the deferral of tax on income earned by a corporation through a partnership that arises if the partnership has a fiscal period that differs from the corporation's taxation year. New section 34.2 requires a corporate partner to include in computing its income for a taxation year its adjusted stub period accrual in respect of certain partnerships (referred to as "qualifying partnerships"). An adjusted stub period accrual is an estimate of the amount of income otherwise deferred under a partnership structure where the partnership has a fiscal period that differs from the corporate partner's taxation year.

Section 34.3 requires a corporate partner of a partnership for a taxation year to include in its income an "income shortfall adjustment" to account for under-reported income in circumstances where the corporate partner has made a designation to reduce the adjusted stub period accrual inclusion for a preceding taxation year. The income shortfall adjustment is essentially the interest on the under-reported adjusted stub period accrual with the interest rate being equal to the prescribed rate of interest applicable for the period between the end of the taxation year in which the designation is made and the end of the taxation year in which the income shortfall adjustment is included in income.

In addition, if the income shortfall adjustment inclusion is greater than 25% of a base amount multiplied by the prescribed rate of interest for the relevant period (*i.e.*, the threshold amount), the corporate partner is required to include, in computing its income, an additional amount equal to 50% of the difference between the income shortfall adjustment and the threshold amount. In this context, the base amount is the lesser of

- the pro-rated portion of the actual income of the partnership for the fiscal period that includes the stub period; and
- the adjusted stub period accrual that the corporate partner would have included in its income in the preceding taxation year had it not made a designation to reduce the adjusted stub period accrual.

Where the corporate partner is a member of more than one qualifying partnership, in determining its income inclusion under section 34.3 for a taxation year, the corporation may offset an over-reported adjusted stub period accrual in respect of a qualifying partnership against an under-reported adjusted stub period accrual of another qualifying partnership. In addition, in calculating the actual stub period accrual for the purpose of determining the income inclusion, the corporate partner may offset all or a portion of its allowable capital losses from one qualifying partnership against all or a portion of its taxable capital gains from another qualifying partnership.

New section 34.3 has three subsections. Subsection (1) provides definitions that apply for the purposes of the section. Subsection (2) lists two basic rules for the application of subsection (3). Subsection (3) requires an income inclusion in respect of a corporate partner's income shortfall adjustment, and provides for the computation of the amount included.

New section 34.3 applies to taxation years ending after March 22, 2011.

**Definitions**

ITA
34.3(1)

New subsection 34.3(1) of the Act defines "actual stub period accrual", "base year", "income shortfall adjustment" and "qualifying partnership" for the purposes of section 34.3. The definitions in section 34.2 also apply for the purposes of section 34.3.

**"actual stub period accrual"**

The new definition "actual stub period accrual" is relevant in determining whether a corporate partner under-reported its adjusted stub period accrual in respect of a qualifying partnership. The actual stub period accrual is the recalculation of the adjusted stub period accrual in respect of a fiscal period of a partnership based on the actual partnership income for the fiscal period that includes the stub period. While the adjusted stub period accrual is calculated at the end of a corporate partner's taxation year in which a particular fiscal period of a qualifying partnership (see the commentary on the definition "qualifying partnership" for further information) begins, the actual stub period accrual is calculated for the corporate partner's taxation year in which the particular fiscal period ends.

The actual stub period accrual of a corporate partner in respect of a qualifying partnership for a taxation year, means the positive or negative amount determined by the formula

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

where

A is the total of all amounts each of which is the corporate partner's share of an income or taxable capital gain of the qualifying partnership for the last fiscal period of the partnership that began in the base year (other than any amount for which a deduction was available under section 112 or 113),

B is the total of all amounts each of which is the corporate partner's share of a loss or allowable capital loss of the qualifying partnership for the last fiscal period of the partnership that began in the base year (to the extent that the total of all or a portion of the allowable capital losses included under this description in respect of all qualifying partnerships for the taxation year does not exceed the total of all or a portion of taxable capital gains of all qualifying partnerships for the taxation year),

C is the number of days that are in both the base year and the fiscal period,

D is the number of days in the fiscal period, and

E is the amount of the qualified resource expense in respect of the qualifying partnership that was designated by the corporate partner for the base year under subsection 34.2(6) in its return of income for the base year filed with the Minister of National Revenue on or before its filing-due date for the base year.

**"base year"**

The new definition "base year" means the preceding taxation year of the corporate partner in which began a fiscal period of the qualifying partnership that ends in the corporate partner's taxation year. It is relevant in determining a corporate partner's taxation year to which under-reported adjusted stub period accrual in respect of a qualifying partnership relates and in establishing the time frame relevant for the determination of an "income shortfall adjustment" (see the commentary on the definition "income shortfall adjustment" for further information).

**"income shortfall adjustment"**

The new definition "income shortfall adjustment" is equal to the accrued interest on the under-reported adjusted stub period accrual. The relevant rate of interest is the prescribed rate of interest applicable for the time period between the end of the taxation year for which the designation in respect of adjusted stub period accrual was made and the end of the taxation year for which the income shortfall adjustment is included in income.

For this purpose, the prescribed rate of interest is the rate prescribed under paragraph 4301(*a*) of the *Income Tax Regulations.* Paragraph 4301(*a*) establishes the prescribed interest rate as 4% plus a base rate. The base rate is established every quarter and is based on the average rate paid on 90-day Treasury Bills during the first month of the preceding quarter. These prescribed rates are published by the Canada Revenue Agency and can be viewed at: http://www.cra-arc.gc.ca/tx/fq/ntrst_rts/menu-eng.html (in English) and at http://www.cra-arc.gc.ca/tx/fq/ntrst_rts/menu-fra.html (in French).

The income shortfall adjustment is calculated on a partnership-by-partnership basis and can be either a positive or negative amount. In computing its income inclusion under subsection 34.3(3), a corporate partner can offset a positive income shortfall adjustment for a particular taxation year in respect of a qualifying partnership against a negative shortfall adjustment for that year in respect of another qualifying partnership.

The income shortfall adjustment of a corporate partner in respect of a qualifying partnership for a taxation year means the positive or negative amount determined by the formula

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

where

A is the amount that is the lesser of

(*a*) the actual stub period accrual in respect of the qualifying partnership,

and

(*b*) the amount that would be the corporate partner's adjusted stub period accrual for the base year in respect of the qualifying partnership if the value of F in paragraph (*a*) of the definition adjusted stub period accrual in subsection 34.2(1) were nil, *i.e.*, the adjusted stub period accrual in respect of the qualifying partnership is re-calculated as if the corporate partner had not made a designation to reduce the adjusted stub period accrual for the base year, while holding all other variables in that definition constant;

B is the amount included under subsection 34.2(2) in computing the corporate partner's income for the base year in respect of the qualifying partnership, (*i.e.*, the adjusted stub period accrual);

C is the number of days in the period that

(*a*) begins on the day after the day on which the base year ends,

and

(*b*) ends on the day on which the taxation year ends; and

D is the average daily rate of interest determined by reference to the rate of interest prescribed under paragraph 4301(*a*) of the *Income Tax Regulations* for the period referred to in the description of C.

**"qualifying partnership"**

The new definition "qualifying partnership" determines which partnerships a corporate partner uses in determining its income shortfall adjustment inclusion under subsection 34.3(3).

A qualifying partnership in respect of a corporate partner for a taxation year is a partnership that meets two conditions. First, paragraph (*a*) requires that a particular fiscal period of the partnership that began in a preceding taxation year must have ended in the taxation year. Second, paragraph (*b*) requires that the corporate partner was required to calculate an adjusted stub period accrual in respect of the partnership for the preceding taxation year in which the particular fiscal period of the partnership began.

**Application of subsection (3)**

ITA
34.3(2)

New subsection 34.3(2) of the Act provides the rules for determining whether new subsection 34.3(3) applies. Paragraph 34.3(2)(*a*) provides that subsection 34.3(3) will apply if a corporate partner made a discretionary designation to reduce its adjusted stub period accrual in respect of a qualifying partnership in the base year. A corporate partner, at its discretion, may designate an amount for the purpose of the description of F in paragraph (*a*) of the definition "adjusted stub period accrual" in subsection 34.2(1) in calculating its adjusted stub period accrual for the base year in respect of a qualifying partnership.

Paragraph 34.3(2)(*b*) provides that where a corporate partner has qualifying transitional income, subsection 34.3(3) will apply for a taxation year if the taxation year is after the first taxation year of the corporate partner to which subsection 34.2(17) applies. In other words, where the corporate partner has qualifying transitional income, subsection 34.3(3) will not apply for the taxation year if it is the year for which subsection 34.2(17) applies for the first time.

**Income shortfall adjustment - inclusion**

ITA
34.3(3)

New subsection 34.3(3) of the Act provides the income inclusion in respect of a corporation's income shortfall adjustments. It is generally equal to the total of all income shortfall adjustments in respect of all qualifying partnerships of the corporate partner for the particular taxation year. If however, the total of all income shortfall adjustment amounts is greater than the total of all threshold amounts in respect of the qualifying partnerships, the corporate partner is required to include an additional amount equal to 50% of the difference between the total of all income shortfall adjustment amounts and the total of all calculated threshold amounts. The threshold amount in respect of a qualifying partnership is equal to the 25% of a base amount, if any, multiplied by the prescribed rate of interest applicable for the relevant period. The base amount is equal to the amount that is the lesser of

- the pro-rated portion of the actual income of the partnership that relates to the corporate partner's preceding year, *i.e.*, actual stub period accrual;

and

- the adjusted stub period accrual that the corporate partner would have included in its income in the preceding taxation year had the corporate partner not made a designation to reduce the adjusted stub period accrual (in the case where the corporate partner made the designation in respect of the qualifying partnership).

New subsection 34.3(3) applies to a corporate partner for a taxation year if the conditions in paragraphs 34.3(2)(*a*) and (*b*) are met. If subsection 34.3(3) applies to a corporate partner for a taxation year, the corporate partner is required to include in computing its income for the taxation year the amount determined by the formula

$$A + 0.50 \times (A - B)$$

where

A is the amount that is the total of all amounts each of which is the corporate partner's income shortfall adjustment in respect of a qualifying partnership for the year. Since the income shortfall adjustment in respect of a qualifying partnership for the year could be a positive or a negative amount, the corporate partner, in determining its income shortfall adjustment for a taxation year, may offset an over-reported adjusted stub period accrual in respect of a qualifying partnership against an under-reported adjusted stub period accrual of another qualifying partnership, and

B is the amount that is the total of all amounts each of which is 25% of the positive amount, if any, that would be the income shortfall adjustment in respect of a qualifying partnership for the year if the value of the description of B in the definition "income shortfall adjustment" were nil.

**Example – application of section 34.3**

Corporation A is a long-standing partner of Partnerships X, Y and Z. Corporation A has a June 30 taxation year end. Partnership X has a fiscal period end of January 31, Partnership Y has a fiscal period end of March 31 and Partnership Z has a fiscal period end of July 31, respectively. For simplicity, assume that references to days in a fiscal period and taxation year are references to months; that Partnerships X, Y and Z are not part of a multi-tier partnership structure; and that corporate partners of Partnerships X, Y and Z do not file a "single-tier alignment election" under new subsection 249.1(8) during the relevant periods.

*2011 Taxation Year*

Corporation A's share of partnership income for the taxation year ending June 30, 2011 is:

- $300 for Partnership X for the fiscal period ending January 31, 2011;
- $240 for Partnership Y for the fiscal period ending March 31, 2011; and
- $360 for Partnership Z for the fiscal period ending July 31, 2010.

For the taxation year ending June 30, 2011, Corporation A is required to calculate an adjusted stub period accrual in respect of each of the three partnerships. Corporation A makes no designations under the description of E or F under paragraph (*a*) of the definition "adjusted stub period accrual" in subsection 34.2(1) in respect of any of the partnerships. The adjusted stub period accrual for each partnership is as follows:

- $125 for Partnership X ($300 x 5/12);
- $60 for Partnership Y ($240 x 3/12); and
- $330 for Partnership Z ($360 x 11/12).

Corporation A includes $515 ($125 + $60 + $330) as the adjusted stub period accruals in respect of Partnerships X, Y and Z for its taxation year ending June 30, 2011. For further information on the calculation of adjusted stub period accrual, see the commentary on new section 34.2.

Section 34.3 does not apply to Corporation A for its 2011 taxation year. None of the partnerships are qualifying partnerships in respect of Corporation A because there was no calculation of an adjusted stub period accrual in respect of any of the partnerships for a preceding taxation year.

*2012 Taxation Year*

The income earned for the fiscal periods of the three partnerships ending in Corporation A's 2012 taxation year is the same as that for the fiscal periods ending in its 2011 taxation year and Corporation A includes in income its share of partnership income from the partnerships for the year.

For the taxation year, Corporation A is required to calculate an adjusted stub period accrual in respect of each of the three partnerships:

- Corporation A's adjusted stub period accrual in respect of Partnership X is the same as for the prior year, $125, as Corporation A does not make a designation under paragraph (*a*) of the description of F in the definition "adjusted stub period accrual" in respect of Partnership X;
- Corporation A expects a loss to be allocated to it from Partnership Y for the Partnership's fiscal period ending March 31, 2013. Therefore, Corporation A makes a designation of $60 under paragraph (*a*) of the description of F in the definition "adjusted stub period accrual" in respect of Partnership Y that reduces adjusted stub period accrual in respect of Partnership Y to $0; and
- Corporation A also expects that some of its income from Partnership Z can be offset by the expected loss from Partnership Y. Corporation A therefore designates $305 under paragraph (*a*) of the description of F in the definition "adjusted stub period accrual" in respect of Partnership Z that reduces the adjusted stub period accrual in respect of that partnership to $25.

Corporation A may deduct the prior year adjusted stub period accrual inclusion in computing its income for the taxation year.

Partnerships X, Y and Z are qualifying partnerships for Corporation A's taxation year ending June 30, 2012; however, section 34.3 does not apply to Corporation A for its 2012 taxation year because the conditions set out in new subsection 34.3(2) have not been met. New subsection 34.2(17) applies in respect of Corporation A's qualifying transitional income in respect of Partnerships X, Y and Z for the first time for its 2012 taxation year.

*2013 Taxation Year*

For Corporation A's taxation year ending June 30, 2013, new subsection 34.3(3) applies for the first time because both conditions in new subsection 34.3(2) are met. The application of subsection 34.3 is shown below.

**Step 1: Calculate actual stub period accrual for each qualifying partnership**

Corp A's share of partnership income (loss) from each qualifying partnership:

- $288 for Partnership X for the fiscal period ending January 31, 2013;
- ($480) for Partnership Y for the fiscal period ending March 31, 2013; and
- $300 for Partnership Z for the fiscal period ending July 31, 2012.

Corporation A's actual stub period accrual for the taxation year ending June 30, 2013 in respect of each of the partnerships is essentially the partnership income (loss) allocated to Corporation A for the relevant fiscal period times the portion of that fiscal period that is in the taxation year. The actual stub period accrual for each partnership is:

- $120 for Partnership X ($288 x 5/12);
- ($120) for Partnership Y (($480) x 3/12); and
- $275 for Partnership Z ($300 x 11/12).

An actual stub period accrual in respect of a partnership can be negative, as is the case for Partnership Y.

**Step 2: Calculate income shortfall adjustment for each qualifying partnership**

Corporation A must calculate its income shortfall adjustment for each qualifying partnership:

Income Shortfall Adjustment = (A – B) x C x D

For simplicity, assume the applicable prescribed rate of interest on an annual basis is 5% and C x D in the formula in the definition "income shortfall adjustment" in subsection 34.3(1) is 0.05.

For Partnership X:

- A is $120, being the lesser of (a) $120 and (b) $125;
- B is $125; and
- its income shortfall adjustment is ($120 - $125) x 0.05 = ($0.25).

For Partnership Y:

- A is ($120), being the lesser of (a) ($120) and (b) $60;
- B is $0; and
- its income shortfall adjustment is (($120) - 0) x 0.05 = ($6.00).

For Partnership Z:

- A is $275, being the lesser of (a) $275 and (b) $330;
- B is $25; and
- its income shortfall adjustment is ($275 - $25) x 0.05 = $12.50

**Step 3: Calculate subsection 34.3(3) income inclusion**

Corporation A must determine the amount, if any, of its income inclusion under subsection 34.3, which is given by the formula:

$$A + 0.50 \times (A-B)$$

where

A is the sum of the income shortfall adjustment for all qualifying partnerships.

Therefore, A is ($0.25) + ($6.00) + $12.50 = $6.25.

B is an amount that is the sum of 25% of the income shortfall adjustment for each partnership, if any, that would be calculated if the description of B in the formula "income shortfall adjustment" were nil.

For Partnership X:

- A is $120, being the lesser of (a) $120 and (b) $125;
- B is $0; and
- its recalculated income shortfall adjustment is 0.25 x ($120 - $0) x 0.05 = $1.50.

For Partnership Y:

- A is ($120), being the lesser of (a) ($120) and (b) $60;
- B is $0;
- its recalculated income shortfall adjustment is 0.25 x (($120) - 0) x 0.05 = ($1.50); and
- the recalculated income shortfall adjustment is negative, thus nil for the purposes of description of B in subsection 34.3(3).

For Partnership Z:

- A is $275, being the lesser of (a) $275 and (b) $330;
- B is $0; and
- its recalculated income shortfall adjustment is 0.25 x ($275 - $0) x 0.05 = $3.44.

Therefore the description of B is the sum of the recalculated income shortfall adjustments for Partnership X and Z, *i.e.*, $1.50 + $3.44 = $4.94.

The income shortfall adjustment inclusion under subsection 34.3(3) for Corporation A is

= $6.25 + 0.5 x ($6.25 – $4.94)

= $6.25 + $0.66

= $6.91

**Clause 2**

**Tax-deferred transaction – flow-through shares**

ITA
38.1

New section 38.1 of the Act is introduced in the context of the Budget 2011 proposal to allow the exemption from capital gains tax on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011 only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flow-through shares.

New section 38.1 of the Act is introduced concurrently with new subsection 40(12) of the Act, which deems a taxpayer to have a capital gain on a disposition of a property if the taxpayer has donated another property that is included in a "flow-through share class of property" and the taxpayer also has, at the time of the donation, a positive balance in a pool in respect of that property, defined in section 54 of the Act as the taxpayer's "exemption threshold" in respect of the flow-through share class of property. For further information, refer to the commentary on that definition and on subsection 40(12). In effect, to the extent that a taxpayer has incurred costs to acquire flow-through shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011 (and in respect of which the taxpayer may become entitled to a deduction in computing income), the taxpayer will be required to pay tax at normal capital gains rates on capital gains realized on dispositions of those shares whether the shares are sold for

consideration, or are donated to a qualified donee. Those gains will reduce the balance of the taxpayer's exemption threshold. To the extent that the exemption threshold has been reduced to nil, a capital gain from the donation of publicly-listed shares to a qualified donee is, as under existing section 38, exempt from tax.

Section 38.1 applies to property that is included in a "flow-through share class of property" acquired by a donor in a tax-deferred transaction (a "rollover"). Generally, in such circumstances,

- if the property received in return is publicly-listed shares, the taxpayer is deemed to have a new exemption threshold for the new property received, equal to a proportion of the exemption threshold of the property that was transferred; and
- the transferee is deemed to have an exemption threshold for property transferred, equal to a proportion of the taxpayer's exemption threshold for that property.

The effect of new section 38.1, therefore, is that any capital gain of the transferor on a donation of the new publicly-listed shares will be taxable, notwithstanding that those shares may not have been flow-through shares, to the extent of the exemption threshold "transferred". It also has the effect of applying the rule to the entity that received the original property from the taxpayer, should that entity make a donation of that property.

For an explanation of the coming-into-force of section 38.1, refer to the commentary on the definition "exemption threshold" in section 54.

**Clause 3**

**Donated flow-through shares**

ITA
40(12)

New subsection 40(12) of the Act is introduced in the context of the Budget 2011 proposal to allow the exemption from capital gains tax on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011 only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flow-through shares.

New subsection 40(12) of the Act is generally intended to allow the exemption from capital gains tax, on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011, only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flow-through shares.

Generally, if a taxpayer donates property included in a "flow-through share class of property" to a qualified donee, subsection 40(12) will deem the taxpayer to have an additional capital gain (from another property) equal to the lesser of:

- the amount of the taxpayer's "exemption threshold" in respect of the flow-through share class of property; and
- the total capital gains from the disposition of the actual property.

Section 54 of the Act provides new definitions "flow-through share class of property" and "exemption threshold". The definition "flow-through share class of property" generally includes

- shares of the capital stock of a corporation if any other shares of the class are at any time a flow-through share; and
- any right to acquire such a share.

The definition may also include an interest in a partnership having assets that include property included in a flow-through share class of property.

The exemption threshold of a taxpayer at a particular time in respect of a particular flow-through share class of property is generally equal to the amount by which:

- the sum of the original cost to the taxpayer of all flow-through shares of the particular class (determined without regard to the deemed zero-cost of flow-through shares) issued to the taxpayer on or after the taxpayer's "fresh-start date" and before the particular time,

exceeds

- the amount of each capital gain realized by the taxpayer on a disposition, after the taxpayer's "fresh-start date" and before the particular time, of any flow-through shares of the flow-through share class of property, not exceeding the amount of the exemption threshold immediately before the time of disposition.

The exemption threshold of a taxpayer of an interest in a partnership for which the rules apply is the taxpayer's adjusted cost base of that interest, in general computed without reference to any deductions for Canadian exploration and development expense or Canadian exploration expenses that might be available to the taxpayer under the Act in respect of flow-through shares held by a partnership.

As such, if a taxpayer has not acquired flow-through shares (or an interest in a partnership that has acquired flow-through shares), then the taxpayer will generally not have an exemption threshold and will not be subject to subsection 40(12). (However, a taxpayer may have an exemption threshold if shares have been acquired in a "rollover" transaction to which section 38.1 of the Act applies.)

The exemption threshold of a taxpayer is calculated only in respect of the actual original cost of flow-through shares issued on or after the taxpayer's "fresh-start date", which is generally the later of March 22, 2011 and the last day, if any, before a particular time, on which the taxpayer disposed of all property included in the flow-through share class of property. However, no amount is required to be included in computing the exemption threshold of a taxpayer in respect of a flow-through share issued by a corporation to the taxpayer on or after March 22, 2011 if the taxpayer was obligated to acquire the share pursuant to the terms of a flow-through share agreement entered into before March 22, 2011 between the corporation and the taxpayer.

In the case of a partnership interest, the exemption threshold of a taxpayer is calculated only in respect of the adjusted cost base of the interest if

- the taxpayer made a contribution to the partnership on or after August 16, 2011; or
- the taxpayer acquired the interest after the taxpayer's "fresh-start date", which in the case of a partnership interest is the later of August 16, 2011 and the last day, if any, before a particular time, on which the taxpayer held an interest in the partnership. However, no amount is required to be included in computing the exemption threshold of a taxpayer in respect of a partnership interest acquired on or after August 16, 2011 if the taxpayer was obligated to acquire the interest pursuant to the terms of an agreement in writing entered into before August 16, 2011 between the partnership and the taxpayer.

For further information, refer to the commentary on section 38.1 and the definitions "exemption threshold", "flow-through share class of property" and "fresh start date" in section 54.

**Clause 4**

**Life estates in real property**

ITA
43.1(1)

Section 43.1 of the Act deals with the disposition of a remainder interest in real property by a taxpayer who retains the life estate or estate *pur autre vie* in the property. Subsection 43.1(1) provides that in such a case the taxpayer will be considered to have disposed of the life estate, that has been retained, for proceeds equal to its fair market value at the time the remainder interest is disposed of, and to have reacquired the life estate immediately after that time at the same fair market value.

However, subsection 43.1(1) does not apply in cases where the remainder interest is a gift to a donee described in the definition “total charitable gifts” or “total Crown gifts” in subsection 118.1(1) of the Act. Subsection 43.1(1) is amended to also preclude its application to gifts made to donees described in the definition “total ecological gifts” in subsection 118.1(1).

This amendment applies to dispositions of life interests that occur after February 27, 1995, when ecological gifts were first defined for the purposes of section 118.1.

Subsection 43.1(1) is further amended to replace the reference to a donee described in the definition “total charitable gifts”, “total Crown gifts” or “total ecological gifts” with a reference to a “qualified donee”, consequential on the amendment to the definition to “qualified donee” in subsection 149.1(1) of the Act.

The definition “qualified donee” is amended, generally to directly list specific donees, rather than referencing the lists of donees in paragraphs 110.1(1)(*a*) and (*b*) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1(1). For further information see the commentary on the amended definition “qualified donee” in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 5**

**Gain when small business corporation becomes publicly listed**

ITA
48.1

Section 48.1 of the Act allows an individual who owns shares of a corporation to access the capital gains deduction under subsection 110.6(2.1) of the Act in respect of those shares when they cease to be qualified small business corporation shares as a result of being listed on a designated stock exchange. Such a shareholder may elect to be treated as having disposed of the shares immediately before the change in the corporation's status, for proceeds of disposition equal to the greater of the adjusted cost base of the shares and an amount that the shareholder may designate not exceeding their fair market value at the time of the change. This allows the shareholder to realize for tax purposes all or any part of any latent capital gain on the shares. The shareholder is then treated as having reacquired the shares at a cost equal to their deemed proceeds of disposition.

With some exceptions, the Act generally applies to a deemed disposition under subsection 48.1(1) in the same manner as it would to an actual disposition. Subsection 48.1(1) is amended to provide that new subsections 120.4(4) and (5) of the Act do not apply to a deemed disposition under subsection 48.1(1). A capital gain realized by an individual under the age of 18 as a result of a deemed disposition under subsection 48.1(1) is, therefore, not subject to the tax on split income under amended section 120.4. For further information, refer to the commentary on section 120.4.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Clause 6**

**Interest in a partnership**

ITA
53(2)(*c*)(i.4)

Paragraph 53(2)(*c*) of the Act provides for reductions of the adjusted cost base (ACB) of a taxpayer's interest in a partnership, including under subparagraph (i.4) for a reduction of the ACB of a passive partner (*i.e.*, in general, a specified member as defined in subsection 248(1)) for amounts deducted, as a reserve, in respect of "December 31, 1995 income". Reserves in respect of "December 31, 1995 income" expired in 2004.

Subparagraph 53(2)(*c*)(i.4) is replaced by a similar provision that provides for a reduction of the ACB of a partnership interest held by a passive corporate partner that has "qualifying transitional income" (QTI) in respect of a partnership under the rules in new section 34.2. This reduction applies if the corporate partner's QTI in respect of a particular partnership includes "eligible alignment income", as provided by the rules in section 34.2. In such a case, the corporation's eligible alignment income increases the corporation's ACB by virtue of paragraph 53(1)(*e*), even though the corporation may deduct an amount, as a reserve, under new subsection 34.2(11) for the QTI that includes the eligible alignment income. Subparagraph 53(2)(*c*)(i.4) effectively reduces the corporation's ACB to what it would have been in the absence of paragraph 53(1)(*e*).

The reduction of the ACB of a partner's interest in a partnership under this subparagraph is tied to the corporation's entitlement to a reserve for QTI in respect of the partnership under section 34.2. For the first taxation year for which the corporation is eligible to deduct an amount as a reserve for its QTI in respect of the partnership under subsection 34.2(11), the ACB reduction is the portion of the amount deducted by the corporation for the first taxation year in which it has the QTI that would have been deductible for that year if the definition "qualifying transitional income" in subsection 34.2(1) did not include adjusted stub period accrual. For any other taxation year, the ACB reduction is the portion of the amount that would have been deducted in the immediately preceding taxation year in computing the taxpayer's income for that year if the definition "qualifying transitional income" in subsection 34.2(1) did not include adjusted stub period accrual.

The ACB of a passive corporate partner's partnership interest will not be reduced in two circumstances. First, there is no reduction in the ACB of the partnership interest at the time that is immediately before the interest is disposed of. Second, as noted above, there is no ACB reduction in respect of adjusted stub period accrual amounts included in a corporation's QTI in respect of a partnership. This is not necessary since such amounts are not added to the ACB of the partner's partnership interest.

This amendment applies to 2011 and subsequent taxation years.

**Clause 7**

**Taxable capital gains – definitions**

ITA
54

Section 54 of the Act defines various terms for the purposes of the rules relating to taxable capital gains and allowable capital losses.

The new definitions "exemption threshold", "flow-through share class of property" and "fresh-start date" are introduced in the context of the Budget 2011 proposal to allow the exemption from capital gains tax on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011 only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flow-through shares.

**"exemption threshold"**

The new definition "exemption threshold" of a taxpayer is used to determine the deemed gain, if any, of a taxpayer under subsection 40(12) of the Act. The exemption threshold of a taxpayer in respect of a flow-through share class of property is generally a pool of the actual cost (*i.e.*, without reference to the deemed cost of nil under subsection 66.3(3) of the Act) to the taxpayer of flow-through shares acquired after the later of March 22, 2011 and the taxpayer's "fresh-start date", less prior capital gains of the taxpayer from the disposition of the shares or identical properties.

In general, if a taxpayer at any time sells all shares that the taxpayer owns that were either flow-through shares or other shares of the taxpayer of the same class as the flow-through shares, the calculation of the taxpayer's exemption threshold starts again beginning from the next time that the taxpayer acquires such shares.

As well, the amount of the pool is reduced to the extent that the taxpayer has realized capital gains, after the fresh-start date, from the disposition of the shares or identical shares. This does not include gains referred to in the description of A in the formula in paragraph 38.1(*a*) of the Act, which generally is the capital gain on a transfer of shares or identical shares in a rollover transaction.

Further, no amount is included in computing the exemption threshold of a taxpayer in respect of a flow-through share issued by a corporation to the taxpayer on or after March 22, 2011 if the taxpayer was obligated to acquire the share pursuant to the terms of a flow-through share agreement entered into before March 22, 2011 between the corporation and the taxpayer.

Both flow-through shares and shares identical to them are included in a "flow-though share class of property", which is also defined in section 54 of the Act. A flow-through share class of property will also include a right to acquire a share of the class, if any share of that class or any right described in this subparagraph is, at any time, a flow-through share to any person.

A flow-through share class of property will also include a partnership interest, if at any time more than 50% of the fair market value of the partnership's assets is attributable to property included in a flow-through share class of property. A taxpayer may also have an exemption threshold in respect of such a partnership interest. The amount of the threshold is, generally, the taxpayer's adjusted cost base of that interest, computed without reference to any deductions of Canadian exploration and development expense or Canadian exploration expenses that might be available to the taxpayer under the Act in respect of flow-through shares held by the partnership, but only if

- the taxpayer made a contribution of capital to the partnership on or after August 16, 2011 or the taxpayer acquired the interest on or after the taxpayer's fresh-start date in respect of the flow-through share class of property at the particular time (and the taxpayer was not obligated, before August 16, 2011, to acquire that interest, pursuant to the terms of a written agreement);
- at any time after the taxpayer acquired the interest or made the contribution of capital, the taxpayer is deemed by subsection 66(18) of the Act to have made or incurred an outlay or expense in respect of a flow-through share held by the partnership, either directly or indirectly through another partnership; and
- at any time that the taxpayer held the interest or after a time at which the taxpayer made the contribution of capital, more than 50% of the fair market value of the assets of the partnership is attributable to property included in a flow-through share class of property.

For further information, refer to the commentary on section 38.1, subsection 40(12) and the definitions "flow-through share class of property" and "fresh start date" in section 54.

**"flow-through share class of property"**

The new definition "flow-through share class of property" in section 54 of the Act applies for the purpose of the calculation of a taxpayer's deemed gain under subsection 40(12) of the Act, including the calculation of the taxpayer's exemption threshold in respect of a class of shares of the capital stock of a corporation. Generally, a flow-through share class of property is comprised of all shares of a class if any share in the class is a flow-though share to any person. The definition also includes rights to acquire a share of such a class, and property identical to such shares or such rights. Finally, a flow-through share class of property also means a group of properties, each of which is an interest in a partnership, if at any time more than 50% of the fair market value of the partnership's assets is attributable to property included in another flow-through share class of property.

Although a taxpayer may own a share that is included in a flow-through share class of property, by virtue of another person owning a flow-through share of that class, and without ever having themselves owned a flow-though share or a right to acquire a flow-though share, this will be of no consequence for that taxpayer because it is necessary to purchase a flow-through share (or certain partnership interests) in order for the taxpayer to have an exemption threshold to which subsection 40(12) would apply.

For further information, refer to the commentary on subsection 40(12) and the definition "exemption threshold" in section 54 of the Act.

**"fresh-start date"**

The fresh-start date of a taxpayer in respect of a flow-through share class of property is, except in the case of a partnership interest, the day that is the later of March 22, 2011, and the last day, if any, on which the taxpayer disposed of a property that is included in the flow-through share class of property and at the end of which the taxpayer held no such property.

In the case of a partnership interest, a taxpayer's fresh-start date at any particular time is the later of August 16, 2011 and the last day, if any, before the particular time, on which the taxpayer held an interest in the partnership.

The new definition "fresh-start date" applies for the purpose of calculating a taxpayer's "exemption threshold" (as defined in section 54 of the Act) in respect to a particular flow-through share class of property. A taxpayer's exemption threshold is, generally, a pool of the cost to the taxpayer of flow-through shares of a class that is calculated on an ongoing basis unless the taxpayer divests of all property in the class.

For further information, refer to the commentary on section 38.1 and subsection 40(12) of the Act and on the definitions "exemption threshold" and "flow-through share class of property" in section 54 of the Act.

**Clause 8**

**Resource expenses**

ITA
66

Section 66 of the Act provides rules in respect of resource expenses.

**Definitions**

ITA
66(15)

Subsection 66(15) of the Act contains various definitions for the purposes of section 66.

**"Canadian resource property"**

A Canadian resource property is defined to include various interests in oil and gas and mineral resources located in Canada. The cost of a Canadian resource property is either a Canadian oil and gas property expense or a Canadian development expense.

The definition "Canadian resource property" is amended in three respects.

First, the definition is amended to ensure that the cost of oil sands property acquired after March 21, 2011 is treated as a Canadian oil and gas property expense and not as a Canadian development expense. In particular, subparagraph (*b*)(ii) and paragraphs (*c*) to (*f*) of the definition, are amended as follows:

- the phrase "other than a bituminous sands deposit or an oil shale deposit," is added to subparagraph (*b*)(ii) and paragraph (*e*);
- the phrase "or related hydrocarbon content," is added to paragraph (*c*);
- the phrase "or a related hydrocarbon," is added to paragraph (*d*); and
- the phrase "other than where the mineral resource is a bituminous sands deposit or oil shale deposit," is added to paragraph (*f*).

These amendments apply to properties and rights acquired after March 21, 2011, other than a property or a right acquired by a taxpayer after March 21, 2011 and before 2012 (if the taxpayer was obligated to acquire the property or right pursuant to an agreement in writing entered into by the taxpayer before March 22, 2011).

Second, paragraphs (*d*) and (*e*) of the definition "Canadian resource property" are further amended to ensure that a rental or royalty described therein will not qualify as a Canadian resource property unless the person paying the rental or royalty has an interest in the property to which the rental or royalty relates and 90% or more of the rental or royalty is payable out of the production from the property. These amendments apply to property acquired after December 20, 2002.

Third, paragraphs (*c*) to (*h*) of the definition "Canadian resource property" are amended to add appropriate terms referring to a real property or a right, to reflect appropriately both the common law and the civil law concepts in both official languages. The amendments to paragraph (*c*) and (*f*) to (*h*) of the definition apply after March 21, 2011, while the amendments to paragraphs (*d*) and (*e*) of the definition apply after December 20, 2002.

**Clause 9**

**Canadian exploration expense**

ITA
66.1

Section 66.1 of the Act provides rules relating to the deduction of "Canadian exploration expense" (CEE), as defined in subsection 66.1(6).

**Definitions**

ITA
66.1(6)

Subsection 66.1(6) of the Act provides definitions for the purpose of section 66.1.

The definition "Canadian exploration expense" is amended to implement the transition from CEE to Canadian development expense (CDE) of pre-production development expenses incurred after March 21, 2011 for the purpose of bringing a new oil sands mine into production in reasonable commercial quantities. The new definitions "bitumen mine development project", "bitumen upgrading development project", "completion", "designated asset", "eligible mine development expense", "preliminary work activity", "specified oil sands mine development expense" and "specified oil sands mine development project" are added to the subsection for this purpose.

The new definitions are relevant in determining whether a specified oil sands mine development expense or an eligible oil sands mine development expense will continue to be treated as a CEE.

A pre-production oil sands mine development expense incurred before 2015 to achieve completion of a specified oil sands mine development project of a taxpayer will continue to be treated as a CEE. A specified oil sands mine development project is defined with reference to a threshold level of activity involving a designated asset that must have been acquired or under construction before March 22, 2011. Reference is made to the planned level of average daily output from the oil sands mine development project in determining whether a particular expense of a taxpayer is necessary for a specified oil sands mine development project to reach completion.

Transitional relief is also provided for eligible oil sands mine development expenses incurred after March 21, 2011 and before 2016. A portion of an eligible oil sands mine development expense, if incurred by a taxpayer before 2016, will continue to qualify as a CEE of the taxpayer based on the following rates: 100% of the expense in 2011 and 2012, 80% of the expense in 2013, 60% of the expense in 2014, and 30% of the expense in 2015. Consequentially, a taxpayer can allocate pre-production development expenses proportionally between two resource expense categories -- CEE and CDE -- based on the year in which the expense is incurred.

**"bitumen mine development project"**

A bitumen mine development project of a taxpayer means an undertaking for the sole purpose of developing a new mine to extract and process tar sands from a mineral resource of the taxpayer to produce bitumen or a similar product.

This new definition applies after March 21, 2011.

**“bitumen upgrading development project”**

A bitumen upgrading development project of a taxpayer means an undertaking for the sole purpose of constructing an upgrading facility to process bitumen or a similar feedstock (all or substantially all of which is from a mineral resource of the taxpayer) from a new oil sands mine to the crude oil stage or its equivalent.

This new definition applies after March 21, 2011.

**“Canadian exploration expense”**

The definition “Canadian exploration expense” (CEE) defines oil, gas, mining, and Canadian renewable and conservation expenses that qualify for treatment as CEE, which expenses are fully deductible in the taxation year incurred or in a future taxation year. The definition is amended in two respects.

First, paragraph (*k.2*) of the definition provides that mining exploration expenses and pre-production expenses described in paragraph (*f*) or (*g*) of the definition (other than in subparagraph (*f*)(ii)), do not include any portion of the expenses that may reasonably be considered to have resulted in revenue earned by the taxpayer before the mineral resource or mine referred to in those paragraphs comes into production in reasonable commercial quantities. Paragraphs (*f*) and (*g*) of the definition are reworded to include the netting referred to in paragraph (*k.2*) for production revenue earned prior to the commencement of production in reasonable commercial quantities. Paragraph (*k.2*) is therefore repealed. The amendments to paragraph (*f*), (*g*) and (*k.2*) generally apply in respect of expenses incurred after November 5, 2010.

Second, the phrase “other than a bituminous sands deposit or an oil shale deposit” is added to paragraph (*g*) of the definition, and new paragraph (*g.2*) is added to the definition, consequential on the introduction of new paragraph (*c.1*) in the definition “Canadian development expense” in subsection 66.2(5) of the Act. The addition of this new phrase to paragraph (*g*) ensures that pre-production mine development expenses relating to an oil sands mine cannot be included in CEE of a taxpayer under paragraph (*g*). However, the new paragraph (*g.2*) permits taxpayers to include certain pre-production mine development expenses relating to the development of a new oil sands mine in CEE of the taxpayer if the expense is either an “eligible oil sands mine development expense” or a “specified oil sands mine development expense” (see commentary on the definitions “eligible oil sands mine development expense” and “specified oil sands mine development expense” for further detail).

This amendment applies to expenses incurred after March 21, 2011.

**“completion”**

The definition “completion” is important in determining when a “specified oil sands mine development project” of a taxpayer is complete. See commentary on the new definition “specified oil sands mine development project” for further detail.

The completion of a specified oil sands mine development project means the first attainment of a level of average output measured over a 60-day period, equal to at least 60% of the planned level of average daily output (as determined in paragraph (*b*) of the definition “specified oil sands mine development project”).

This new definition applies after March 21, 2011.

**“designated asset”**

The definition “designated asset” is important in determining whether an “oil sands mine development project” of a taxpayer is a “specified oil sands mine development project”. See commentary on the new definitions “oil sands mine development project” and “specified oil sands mine development project” for further detail.

Paragraph (*a*) of the definition "designated asset" lists the designated assets used in "bitumen mine development project" of a taxpayer. In this case, a designated asset means a property that is a building, a structure, machinery or equipment and is, or is an integral and substantial part of,

(i) a crusher,

(ii) a froth treatment plant,

(iii) a primary separation unit,

(iv) a steam generation plant,

(v) a cogeneration plant, or

(vi) a water treatment plant.

Similarly, paragraph (*b*) of the definition "designated asset" lists the designated assets used in a "bitumen upgrading development project" of a taxpayer. In this case, a designated asset means a property that is a building, a structure, machinery or equipment and is, or is an integral and substantial part of,

(i) a gasifier unit,

(ii) a vacuum distillation unit,

(iii) a hydrocracker unit,

(iv) a hydrotreater unit,

(v) a hydroprocessor unit, or

(vi) a coker.

This new definition applies after March 21, 2011.

**"eligible oil sands mine development expense"**

The definition "eligible oil sands mine development expense" is important in determining the proportion of oil sands mine development expenses incurred over the calendar years 2011-2015 transition period that will be treated as CEE. An eligible oil sands mine development expense is determined by the formula:

$$A \times B$$

where

A is an expense that would be a Canadian exploration expense of the taxpayer described in paragraph (*g*) of the definition "Canadian exploration expense" if that paragraph were read without reference to the words "other than a bituminous sands deposit or an oil shale deposit", but does not include an expense that is a specified oil sands mine development expense; and

B is

(i) 100% if the expense is incurred before 2013,

(ii) 80% if the expense is incurred in 2013,

(iii) 60% if the expense is incurred in 2014, and

(iv) 30% if the expense is incurred in 2015.

A taxpayer therefore can allocate pre-production oil sands mine development expense incurred after March 21, 2011 and before 2016 proportionally to the two resource expense categories, based on the year

in which the expense is incurred, respectively as 100% CEE in 2011 and 2012, 80% CEE and 20% CDE in 2013, 60% CEE and 40% CDE in 2014 and 30% CEE and 70% CDE in 2015.

An eligible oil sands mine development expense does not include a specified oil sands mine development expense because a taxpayer can continue to treat the latter expense as CEE.

This new definition applies after March 21, 2011.

**"oil sands mine development project"**

The definition "oil sands mine development project" of a taxpayer means either a "bitumen mine development project" or a "bitumen upgrading development project" of the taxpayer.

This new definition applies after March 21, 2011.

**"preliminary work activity"**

The definition "preliminary work activity" is important in determining whether an "oil sands mine development project" of a taxpayer is a "specified oil sand mine development project". The definition of preliminary work activity lists the activities that are excluded in this determination.

A preliminary work activity means an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a taxpayer of designated assets in respect of the taxpayer's oil sands mine development project including, without limiting the generality of the foregoing, the following activities:

(*a*) obtaining permits or regulatory approvals,

(*b*) performing design or engineering work,

(*c*) conducting feasibility studies,

(*d*) conducting environmental assessments, and

(*e*) entering into contracts.

This new definition applies after March 21, 2011.

**"specified oil sands mine development expense"**

The definition "specified oil sands mine development expense" of a taxpayer means an expense incurred by the taxpayer after March 21, 2011 and before 2015, to achieve completion of a "specified oil sands mine development project" of the taxpayer, that would be a Canadian exploration expense described in paragraph (*g*) of the definition "Canadian exploration expense" if that paragraph were read without reference to the words "other than a bituminous sands deposit or an oil shale deposit".

This new definition applies after March 21, 2011.

**"specified oil sands mine development project"**

The definition "specified oil sands mine development project" is important in determining whether a pre-production mine development expense incurred by a taxpayer after March 21, 2011 and before 2015 in respect of a new oil sands mine is eligible for transitional relief.

A specified oil sands mine development project of a taxpayer, means an oil sands mine development project (not including any preliminary work activity) in respect of which

- one or more designated assets were, before March 22, 2011, acquired by the taxpayer, or were in the process of being constructed, fabricated or installed, by or on behalf of the taxpayer, and

- the planned level of average daily output (where that output is bitumen or a similar product in the case of a bitumen mine development project, or synthetic crude oil or a similar product in the case of a bitumen upgrading development project) that can reasonably be expected, is the lesser of the level that was the demonstrated intention of the taxpayer as of March 21, 2011 to produce from the oil sands mine development project, and the maximum level of output associated with the design capacity, as of March 21, 2011, of the designated asset that was, before March 22, 2011, acquired by the taxpayer, or was in the process of being constructed, fabricated or installed, by or on behalf of the taxpayer.

This new definition applies after March 21, 2011.

**Clause 10**

**Canadian development expense**

ITA
66.2

Section 66.2 of the Act provides rules relating to the deduction of "Canadian development expense" (CDE), as defined in subsection 66.2(5).

**Definitions**

ITA
66.2(5)

Subsection 66.2(5) of the Act contains the definitions "Canadian development expense" and "cumulative Canadian development expense" of a taxpayer.

**"Canadian development expense"**

New paragraph (*c.1*) is added to the definition "Canadian development expense" (CDE) to include as CDE any expense incurred in bringing a new oil sands mine into production and incurred before the new mine comes into production in reasonable commercial quantities, including an expense for clearing the land, removing overburden and stripping, or building an entry ramp. New paragraph (*c.1*) does not include an expense that is a specified oil sands mine development expense or an eligible oil sands mine development expense, because such expenses qualify as a Canadian exploration expense. See the commentary on the new definitions "specified oil sands mine development expense" and "eligible oil sands mine development expense" for further detail.

This amendment applies to expenses incurred after March 21, 2011.

**"cumulative Canadian development expense"**

A taxpayer's cumulative Canadian development expense (CCDE) includes the taxpayer's undeducted pool of Canadian development expenses. A taxpayer is permitted a deduction under subsection 66.2(2) with respect to a positive CCDE. The definition is amended in two respects.

First, the description of F in the definition is amended consequential on the amendments to the definition of "Canadian resource property" in subsection 66(15) of the Act. This amendment ensures that proceeds from the disposition, after March 21, 2011, of a taxpayer's oil sands resource property will be applied to reduce the taxpayer's CCDE, or cumulative Canadian oil and gas property expense pool (CCOGPE), consistent with the manner in which the cost of the property was treated by the taxpayer when the oil sands resource property was acquired by the taxpayer, *i.e.*, if the cost of an oil sands resource property acquired by a taxpayer before March 21, 2011 was treated as CDE, then the proceeds of disposition of that property, if disposed of after March 21, 2011, will reduce the taxpayer's CCDE pool rather than the taxpayer's CCOGPE pool (notwithstanding that cost of such property if acquired after March 21, 2011 would be treated as COGPE).

Second, the description is amended to include the phrase "or for civil law, any right in or to," to reflect appropriately both the common law and the civil law concepts in both official languages.

This amendment applies after March 21, 2011.

**Clause 11**

**Payments for volunteer services**

ITA
81(4)

Subsection 81(4) of the Act provides for an exemption from income for the first $1,000 of amounts received by an individual from a government, municipality or public authority for the performance, as a volunteer, of the individual's duties as an ambulance technician, a firefighter or a person who assists in the search or rescue of individuals or in other emergency situations.

Subsection 81(4) is amended consequential on the introduction of the Volunteer Firefighter Tax Credit in new section 118.06 of the Act, to provide that, if an individual claims the Volunteer Firefighter Tax Credit for a taxation year, the individual's income in respect of duties as a volunteer firefighter will not be exempt under subsection 81(4). For further information, refer to the commentary on section 118.06.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 12**

**Capital dividend account**

ITA
89(1)

Subsection 89(1) of the Act defines certain terms that apply to corporations and their shareholders.

**"capital dividend account"**

Where the appropriate elections have been made by a private corporation, dividends paid out of the capital dividend account of the corporation are received tax-free by the corporation's shareholders who are resident in Canada. A corporation's capital dividend account generally includes the untaxed portion of gains in respect of dispositions of capital property.

The definition "capital dividend account" in subsection 89(1) of the Act is amended in the context of the Budget 2011 proposal to allow the exemption from capital gains tax on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011 only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flow-through shares.

The definition "capital dividend account" is amended consequential on the addition of subsection 40(12) of the Act, to ensure that only the non-taxable portion of a gift of listed securities that is subject to that provision is included in the capital dividend account. This is effected by two amendments:

- clause (*a*)(i)(A) of the definition is amended so that it is computed without reference to dispositions that are deemed to occur under new subsection 40(12) of the Act, and
- clause (*a*)(i)(B.1) is added to the definition to provide that the corporation's capital dividend account is decreased by the amount of the corporation's taxable capital gain in respect of a deemed gain under subsection 40(12). This clause is intended to ensure that the non-taxable portion of a taxpayer's capital gain from a disposition of a flow-through share which is exempt from tax by reason of subparagraphs 38(*a.1*)(i) or (iii) is not entirely added to the capital dividend account. The amount that would otherwise be added is reduced by an amount equal to the taxable portion of the deemed gain under subsection 40(12).

Subsection 40(12) is a rule that generally may deem a capital gain to arise when at a particular time a taxpayer gifts to a qualified donee a capital property that is included in a flow-through share class of property. The amount of the deemed capital gain is equal to the lesser of the taxpayer's exemption threshold and the total of the capital gains from the actual disposition before that time of other capital property that is included in the flow-through share class of property of the taxpayer.

These amendments apply to dispositions that occur on or after March 22, 2011.

**Clause 13**

**Partnerships and their members**

ITA
96(1)(*d*)(i) and (ii)

Subsection 96(1) requires that the income earned and the losses incurred by a partnership be calculated at the partnership level and attributed to partners in accordance with their respective interests.

Paragraph 96(1)(*d*) is amended consequential on the introduction of new section 34.2. Subparagraph 96(1)(*d*)(i) is amended to clarify that new section 34.2 does not apply to the computation of the income or losses of a partnership. Further, the reference in subparagraph 96(1)(*d*)(ii) to subsection 34.2(4), which concerned the reserve previously available in respect of an individual's "December 31, 1995 income", is deleted.

This amendment applies to 2011 and subsequent taxation years.

**Clause 14**

**Gifts deduction**

ITA
110.1

Section 110.1 of the Act provides rules for calculating the deduction in computing the taxable income of a corporation in respect of gifts made by the corporation to registered charities and other qualified donees.

**Deduction for gifts**

ITA
110.1(1)

Paragraphs 110.1(1)(*a*) to (*d*) of the Act provide for the deduction by a corporation of amounts in respect of charitable gifts, gifts of medicine, gifts to Her Majesty, gifts to institutions and ecological gifts.

**Deduction for charitable gifts**

ITA
110.1(1)(*a*)

Paragraph 110.1(1)(*a*) provides for a deduction by a corporation of charitable gifts made to registered charities and other donees listed in subparagraphs 110.1(1)(*a*)(i) to (vii). New subparagraph 110.1(1)(*a*)(iv.1) expands the list of donees referred to in paragraph 110.1(1)(*a*) to include a municipal or public body performing a function of government in Canada.

The amendment to add subparagraph 110.1(1)(*a*)(iv.1) applies in respect of gifts made after May 8, 2000.

Subsection 110.1(1) is further amended to replace the list of qualified donees in subparagraphs 110.1(1)(*a*)(i) to (vii) with a reference to a "qualified donee", consequential on the amendment to the definition "qualified donee" in subsection 149.1(1) of the Act.

The definition "qualified donee" in subsection 149.1(1) of the Act is amended, generally to directly list specific donees, rather than referencing the lists of donees in paragraphs 110.1(1)(*a*) and (*b*) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1). For further information see the commentary on the amended definition "qualified donee" in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Gift of capital property**

ITA
110.1(3)(*a*)(i)

Subsection 110.1(3) of the Act provides that, if a corporation donates capital property to certain charities or other donees, it may designate a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating its capital gain and the amount of the gift for the purpose of the deduction allowed for charitable donations under subsection 110.1(1) of the Act.

Subparagraph 110.1(3)(*a*)(i) is amended to replace the reference to a donee described in paragraph 110.1(1)(*a*), (*b*) or (*d*) with a reference to a "qualified donee" as defined in subsection 149.1(1) of the Act, consequential on an amendment to that definition.

The definition "qualified donee" in subsection 149.1(1) of the Act is amended, generally to directly list specific donees, rather than referencing the lists of donees in paragraphs 110.1(1)(*a*) and (*b*) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1). For further information see the commentary on the amended definition "qualified donee" in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Non-qualifying securities**

ITA
110.1(6)

Subsection 110.1(6) of the Act provides that the non-qualifying security rules in section 118.1 of the Act, which apply to deny or defer an individual's charitable donations tax credit, apply similarly in determining a corporation's charitable donation deduction.

Subsection 110.1(6) is amended consequential on the addition of new subsections 118.1(13.1), (13.2) and (13.3), to ensure that those subsections also apply to corporations. Subsections 118.1(13.1) to (13.3) generally narrow the set of factual circumstances under which the period of deferral of the tax credit or deduction will end. For further information, see the commentary on new subsections 118.1(13.1) to (13.3).

This amendment applies after March 21, 2011.

**Granting of options to qualified donees**

ITA
110.1(10) to (13)

New subsections 110.1(10) to (13) of the Act clarify that a charitable donations tax deduction is not available to a corporation in respect of the granting of an option to a qualified donee, except if the option is to acquire property of the corporation, in which case a deduction may be available at such time as the donee acquires the property. The deduction allowed to the corporation at that later time is generally based on the amount by which the fair market value of the property at that time exceeds the total of amounts, if any, paid by the donee for the option and the property. However, a deduction will generally not be available to the corporation if that total amount paid by the donee for the property and the option exceeds 80% of the fair market value of the property at the time of its acquisition by the donee.

In particular, new subsection 110.1(10) provides that an option granted by the corporation to a qualified donee is not deductible as a charitable donation under 110.1(1) unless new subsections 110.1(12) and (13) provide otherwise.

New subsection 110.1(11) describes the circumstances under which new subsection 110.1(12) will apply. Subsection 110.1(12) sets out the consequences of the exercise by a qualified donee of an option to acquire property of a corporation.

Subsection 110.1(11) provides that subsection (12) will apply if an option to acquire a property of a corporation is granted to a qualified donee, the option is subsequently exercised (at a particular time) so that the property is disposed of to the qualify donee, and either

- the amount that is equal to 80% of the fair market value of the property at the particular time is greater than or equal to the total of
  - the consideration received by the corporation from the qualified donee to acquire the property, and
  - the consideration received by the corporation from the qualified donee to acquire the option; or
- the corporation has established to the satisfaction of the Minister of National Revenue that the granting of the option or the disposition of the property was made with the intention to make a gift.

New subsection 110.1(12) describes the consequences of the exercise of an option by a qualified donee, where all the conditions in new subsection (11) are met. For the purposes of the Act and notwithstanding subsection 49(3) of the Act, a corporation is deemed to have received proceeds of disposition of the property equal to the property's fair market value at the time of the exercise of the option. Subsection 110.1(12) also permits the corporation, as a charitable donation deduction under paragraph 110.1(1)(*a*) in the taxation year in which the option was exercised, an amount equal to that fair market value minus the total consideration received by the corporation as described above. This deduction is permitted notwithstanding that the disposition of a property as a result of the exercise of the right of an option holder may not be a gift at law.

New subsection 110.1(13) of the Act describes the consequences of a disposition by a qualified donee of an option to acquire a property of a corporation that was granted in favour of the donee. In such a case, at the time of the disposition by the qualified donee, the corporation is deemed to have disposed of another property

- the adjusted cost base of which, immediately before the disposition by the qualified donee, is equal to the consideration, if any, paid by the qualified donee to acquire the option, and
- the proceeds of disposition of which are equal to the lesser of the fair market value of any consideration (other than a non-qualifying security of any person) received by the qualified donee for the option and the fair market value of the property that was the subject of the option.

Similar to subsection 110.1(12), subsection 110.1(13) permits a deduction in computing income of the corporation, as a charitable donation under paragraph 110.1(1)(*a*), for the taxation year in which the option was disposed of by the qualified donee. The amount of the deduction is equal to the proceeds of disposition (as calculated above) minus any consideration, if any, paid by the qualified donee to acquire the option.

These new subsections apply to options granted after March 21, 2011.

**Returned property**

ITA
110.1(14) to (17)

New subsections 110.1(14) to (17) of the Act ensure that a corporation cannot improperly retain tax assistance in the form of a charitable donation deduction in respect of a property transferred to a qualified donee if the property or substituted property is returned to the corporation. These measures address situations where a transfer of property was not a gift, yet a charitable donations receipt has been issued, as well as situations where a transfer of property was a gift at law and nevertheless has been returned.

New subsection 110.1(14) describes the circumstances under which new subsection 110.1(15) will apply. New subsection 110.1(14) applies where a property was transferred by a corporation to a qualified donee, an official receipt for a charitable donation was issued to the corporation, and the property is subsequently returned to the corporation or another property is returned to the corporation as compensation for or in substitution for the property.

New subsection 110.1(15) of the Act describes the consequences of a transfer of property by any person to a corporation, if all the conditions in new subsection (14) are met. To the extent that a property (or a substituted property) has been returned in circumstances to which subsection 110.1(14) applies, subsection 110.1(15) generally provides that

- no gift is recognized, whether or not the transfer to the donee was a gift at law;

- where the original property or an identical property is returned, no disposition is recognized, such that the application of the rules of the Act to a future disposition of the returned property will have the same result as if the property had never been disposed of to the donee (in the case of an original transfer to a donee of a number of separate properties, such as many shares of the capital stock of a corporation, these rules should be applied to each property separately);
- where the returned property is in compensation or substitution for the original property, the original disposition will not be recognized but the corporation will be considered to have disposed of the original property for consideration that is the returned property, and at the time that the returned property is transferred to the corporation: in this regard, in applying the technical language of paragraph 110.1(15)(*c*), if the property returned to a corporation is a part of the original property that has been subdivided, the portion returned is considered to be not the same nor an identical property to the original.

***Example 1***

*In Year 1, Corporation X transfers land worth $1 million to a qualified donee on which a building is to be constructed to accommodate the donee's charitable activities. The donee incorrectly issues a receipt for income tax purposes, as it has promised to return the property if the building is not constructed. In Year 5 the land is returned to Corporation X.*

- *In this example, no charitable donations deduction was available to Corporation X in Year 1 under section 110.1 of the Act because the original transfer was not, at that time, a gift at law.*
- *Corporation X is deemed not to have disposed of the land.*

***Example 2***

*This is the same as Example 1, except that the donee subdivides the land and builds on part of it. The portion of the land returned to Corporation X in Year 5 is worth $400,000 at that time.*

- *It is arguable that Corporation X has made a gift at law in Year 5.*
- *Corporation X is deemed to have disposed of the entire parcel of land in Year 5 (not Year 1), for proceeds of disposition of $1 million.*
- *If the original transfer by Corporation X is a gift at law, its claim for a charitable donations deduction in Year 1 is to be reduced to $600,000 (i.e. $1 million less $400,000).*

New subsection 110.1(16) of the Act provides that, where a transfer of property to which subsection 110.1(15) applies has been made, an information return containing prescribed information must be filed by the transferor of the property within 90 days of the transfer, if the fair market value of the property so transferred is greater than $50.

New subsection 110.1(17) of the Act provides that the Minister of National Revenue may reassess a return of income of any person if the reassessment can reasonably be regarded as relating to a transfer of property to which subsection 110.1(15) applies.

These new subsections apply to transfers of property made after March 21, 2011, except that an information return required to be filed under subsection 110.1(16) of the Act that is filed before the day that is 90 days after August 16, 2011 is deemed to have been filed on time.

**Clause 15**

**Loss on share that is capital property — excluded dividends**

ITA
112(3.01)

Subsection 112(3) of the Act provides a "stop-loss" rule that reduces a taxpayer's loss arising on the disposition of a share of the capital stock of a corporation held as capital property by the amount of certain dividends received by the taxpayer on the share.

Subsection 112(3.01) provides an exception to that stop-loss rule. The exception applies where the taxpayer establishes that the dividends were received on a share that was owned by the taxpayer throughout the 365-day period that ends immediately before its disposition and received when the taxpayer (and persons who did not deal at arm's length with the taxpayer) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(3.01) is amended to limit the application of the exception to the stop-loss rule to cases where the taxpayer establishes that it has received a “qualified dividend” as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share held by partnership — excluded dividends**

ITA
112(3.11)

Subsection 112(3.1) of the Act provides a "stop-loss" rule that applies when a taxpayer is a member of a partnership (other than a partner that is another partnership or a mutual fund trust). This rule reduces the taxpayer's share of a loss of the partnership arising on the disposition of a share of the capital stock of a corporation (that is owned by the partnership as capital property) by the amount of certain dividends received by the taxpayer on the share.

Subsection 112(3.11) provides an exception to that stop-loss rule. The exception applies where the taxpayer establishes that the dividends were received on a share that was owned by the partnership throughout the 365-day period that ends immediately before its disposition and received when the partnership (and the taxpayer as well as persons who did not deal at arm's length with the taxpayer) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(3.11) is amended to limit the application of the exception to the stop-loss rule to cases where the taxpayer establishes that it has received a “qualified dividend” as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share held by trust**

ITA
112(3.2)(*a*)(ii)(C)

Subsection 112(3.2) of the Act provides a "stop-loss" rule that applies to reduce the loss of a trust on the disposition of a share of the capital stock of a corporation that was held by the trust as capital property, in situations other than those addressed in subsection 112(3.3).

Paragraph 112(3.2)(*a*) provides that a trust's loss on the disposition of the share is reduced by capital dividends received by the trust on the share only to the extent that the loss is not attributable to certain taxable dividends received on the share. Among the taxable dividends which count for this purpose are dividends designated to beneficiaries (other than a beneficiary who is an individual other than a trust) where the trust establishes that the dividends were received on a share that was owned by the trust throughout the 365-day period that ended immediately before its disposition and received when the trust (and the beneficiary as well as persons who did not deal at arm's length with the beneficiary) owned in total less than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation (as provided in clause 112(3.2)(*a*)(ii)(C)).

Clause 112(3.2)(*a*)(ii)(C) is amended to limit the types of dividends described therein to cases where the trust establishes that the dividend received on the share is a "qualified dividend" as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share held by trust – special cases**

ITA
112(3.3)(*a*)(ii)(C)

Subsection 112(3.3) of the Act provides a "stop-loss" rule that applies to reduce the loss of a trust from the disposition of a share of the capital stock of a corporation that is considered to have been acquired by the trust because of the application of subsection 104(4).

Paragraph 112(3.3)(*a*) provides that a trust's loss on the disposition of the share is reduced by capital dividends received by the trust on the share only to the extent that the loss is not attributable to certain taxable dividends received on the share. Among the taxable dividends which count for this purpose are dividends designated by the trust to beneficiaries (other than a beneficiary who is an individual other than a trust) where the trust establishes that the dividends were received on a share that was owned by the trust throughout the 365-day period ending immediately before its disposition and received when the trust (and the beneficiary as well as persons who did not deal at arm's length with the beneficiary) owned in total less than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation (as provided in clause 112(3.3)(*a*)(ii)(C)).

Clause 112(3.3)(*a*)(ii)(C) is amended to limit the types of dividends described therein to cases where the trust establishes that the dividend received on the share is a "qualified dividend" as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share held by trust — excluded dividends**

ITA
112(3.31)

Subsections 112(3.2) and (3.3) of the Act provide "stop-loss" rules that apply to reduce the loss of a trust from the disposition of a share of the capital stock of a corporation by the amount of certain dividends received on the share. Subsection 112(3.31) provides an exception to those stop-loss rules. The exception applies where the trust establishes that the dividends were received on a share that was owned by the trust throughout the 365-day period that ended immediately before its disposition and received when the trust (and the beneficiary as well as persons who did not deal at arm's length with the beneficiary) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(3.31) is amended to limit the application of the exception to the stop-loss rules to cases where the trust establishes that the dividend received on the share is a “qualified dividend” as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share held by trust — excluded dividends**

ITA
112(3.32)

Subsections 112(3.2) and (3.3) of the Act provide "stop-loss" rules that apply to reduce the loss of a trust from the disposition of a share of the capital stock of a corporation by the amount of certain dividends received on the share. Subsection 112(3.32) provides an exception to those stop-loss rules. The exception applies where the trust establishes that:

- the dividends were received by a beneficiary that was an individual (other than a trust), or
- the dividends were received on a share that was owned by the trust throughout the 365-day period that ended immediately before its disposition and received when the trust (and the beneficiary as well as persons who did not deal at arm's length with the beneficiary) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(3.32) is amended to limit the application of the exception to the stop-loss rules to cases where the trust establishes that the dividend received on the share is a “qualified dividend” as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share that is not capital property — excluded dividends**

ITA
112(4.01)

Subsection 112(4) of the Act provides a "stop-loss" rule in respect of losses arising with respect to a share that is not held as capital property. Such losses are reduced by the amount of dividends received by a taxpayer on the share. Subsection 112(4.01) provides an exception to that stop-loss rule. The exception applies where the taxpayer establishes that the dividends were received on a share that the taxpayer owned throughout the 365-day period that ended immediately before its disposition and received when

the taxpayer (and persons who did not deal at arm's length with the taxpayer) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(4.01) is amended to limit the application of the exception to the stop-loss rule to cases where the taxpayer establishes that it has received a "qualified dividend" as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Fair market value of shares held as inventory — excluded dividends**

ITA
112(4.11)

Subsection 112(4.1) of the Act applies for the purposes of inventory valuation under subsection 10(1) and provides that a dividend received on a share must be added to the fair market value of the share otherwise determined. Subsection 112(4.11) provides an exception to this rule. The exception applies where the shareholder establishes that the dividends were received on a share that the shareholder owned throughout the 365-day period that ended immediately before its disposition and received when the shareholder (and persons who did not deal at arm's length with the shareholder) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(4.11) is amended to limit the application of the exception to this rule to cases where the shareholder establishes that it has received a "qualified dividend" as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share held by trust — excluded dividends**

ITA
112(4.21)

Subsection 112(4.2) of the Act provides a "stop-loss" rule in respect of losses arising with respect to a share that is not held as capital property by a trust. Such losses are reduced by certain dividends received on the share. Subsection 112 (4.21) provides an exception to the stop-loss rule. The exception applies where the trust establishes that the dividends were received on a share that was owned by the trust throughout the 365-day period that ended immediately before its disposition and received when the trust (and persons who did not deal at arm's length with the trust) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(4.21) is amended to limit the application of the exception to the stop-loss rules to cases where the trust establishes that the dividend received on the share is a "qualified dividend" as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Loss on share held by trust — excluded dividends**

ITA
112(4.22)

Subsection 112(4.2) of the Act provides a "stop-loss" rule in respect of losses arising with respect to a share that is not held as capital property by a trust. Such losses are reduced by certain dividends received on the share. Subsection 112(4.22) provides an exception to the stop-loss rule. The exception applies where the trust establishes that the dividends were received on a share that the trust owned throughout the 365-day period that ended immediately before its disposition and received when the trust (and the beneficiary as well as persons who did not deal at arm's length with the beneficiary) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(4.22) is amended to limit the application of the exception to the stop-loss rule to cases where the trust establishes that the dividend received on the share is a “qualified dividend” as defined in new subsection 112(6.1) of the Act. This new requirement is in addition to the requirements that are currently provided in the stop-loss rule exception.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Disposition of share by financial institution**

ITA
112(5)(*c*)

Subsections 112(5) to (5.4) of the Act set out the rules for determining when the stop-loss rules apply to the disposition of a share by a taxpayer that is a financial institution, if the share is mark-to-market property to the taxpayer. Subsections 112(5) and (5.1) set out the criteria for determining when the stop-loss rule in subsection 112(5.2) applies. Subsection 112(5) is amended to add that the stop-loss rule in 112(5.2) applies in all cases where a dividend was received on a share under subsection 84(3), regardless of the percentage of shares of the dividend-paying corporation that were owned or the period of time during which the share was owned.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Subsection (5.2) — excluded dividends**

ITA
112(5.21)

Subsection 112(5.2) of the Act is a “stop-loss rule” that applies to taxpayers that are financial institutions. Subsection 112(5.2) applies to adjust a taxpayer’s proceeds of disposition arising from the disposition of a mark-to-market share in certain circumstances.

In general terms, subsection 112(5.2) prevents a taxpayer from obtaining a deduction for the part of the taxpayer's overall loss in respect of a share to the extent that the taxpayer has received dividends on the share. Subsection 112(5.21) provides an exception to that stop-loss rule. The exception applies where the taxpayer establishes that the dividends were received on a share that the taxpayer owned throughout the 365-day period that ended immediately before its disposition and received when the taxpayer (and persons who did not deal at arm's length with the taxpayer) did not own in total more than 5% of the issued shares of any class of the capital stock of the dividend-paying corporation.

Subsection 112(5.21) is amended to limit the application of the exception to the stop-loss rule to cases where the taxpayer received dividends on the share other than under subsection 84(3). Thus, subsection 112(5.2) applies to adjust a taxpayer's proceeds of disposition by dividends received on a share under subsection 84(3), regardless of the percentage of shares of the dividend-paying corporation that were owned or the period of time during which the share was owned.

This amendment applies to dispositions that occur on or after March 22, 2011.

**Interpretation**

ITA
112(6.1)

New subsection 112(6.1) of the Act defines a "qualified dividend", which is relevant for the purpose of determining if a dividend qualifies for an exception to the stop-loss rules provided in subsections 112(3) to (4.22). These subsections apply in respect of a share owned by a taxpayer as capital property or inventory (other than a share that is mark-to-market property owned by a corporation that is a financial institution), and reduce the loss that may arise on the disposition of the share by the amount of certain dividends received by the taxpayer on the share. In general, the current exceptions require that a dividend meet both a 365-day ownership test and a 5% ownership test to be exempted from the stop-loss rules.

Amendments to subsections 112(3) to (4.22) add a new requirement to the exceptions. In order to meet the exceptions, the dividend must also be a "qualified dividend", as defined in new subsection 112(6.1). Amendments are also made to subsections 112(5) and (5.21), which are stop-loss rules that apply to financial institutions. These amendments also restrict the scope of the exceptions, but do not rely on the new definition "qualified dividend".

As a result of the amendments to the stop-loss rules in subsections 112(3) to (4.22), and new subsection 112(6.1), dividends received on a share other than those arising under subsection 84(3) are qualified dividends. These dividends fall under the scope of the stop-loss rules exceptions provided that the dividends meet the other requirements in the exceptions. However, in the case of dividends arising under subsection 84(3), whether the dividends are qualified dividends depends on the type of taxpayer that receives the dividend, as described below.

If an individual (other than a trust) holds the share on which the dividend is paid, subparagraph 112(6.1)(*b*)(i) provides that the dividend received on the share by the individual is a qualified dividend.

If a corporation holds the share on which the dividend is paid, subparagraph 112(6.1)(*b*)(ii) provides that the dividend is a qualified dividend only if it is received by a corporation while it is a private corporation and the dividend is paid by another private corporation.

If a trust holds the share on which the dividend is paid, subparagraph 112(6.1)(*b*)(iii) provides that only the following dividends are qualified dividends:

- a dividend received by the trust and taxed at the trust level;
- a dividend received on the share and designated under subsection 104(19) by the trust in respect of the following beneficiaries:
  - (a) an individual other than a trust,
  - (b) a corporation that is a private corporation when the dividend is received by it, where the dividend was paid by another private corporation,
  - (c) another trust that does not designate the dividend under subsection 104(19), or

(d) a partnership all of the members of which are, when the dividend is received, persons described by any of (a), (b) or (c) above;

- a dividend received on the share and designated by the trust under subsection 104(19) in respect of a beneficiary that is another trust or a partnership, where the trust establishes that the dividend was received on the share by a person described by any of (a), (b) or (c) above.

If a partnership holds the share on which the dividend is paid, subparagraph 112(6.1)(*b*)(iv) provides that the dividend is a qualified dividend only if:

- the dividend is included in the income of a member of the partnership that is
  - an individual (including a trust that does not designate the dividend under subsection 104(19)), or
  - a corporation that is a private corporation when the dividend is received by it, where the dividend was paid to the partnership by another private corporation, or
- the member of the partnership is a trust, and the trust designates the dividend under subsection 104(19) in respect of a beneficiary described in subparagraph 112(6.1)(*b*)(iii).

This amendment applies to dispositions that occur on or after March 22, 2011.

**Clause 16**

**Personal tax credits**

ITA
118(1)

Section 118 of the Act provides for the calculation of various personal tax credits. The amounts on which these credits are based relate to the personal status of an individual as single, married or in a common-law partnership, to the age of the individual, and to the dependent children and infirm dependants of the individual.

In order to implement the Family Caregiver Tax Credit, various amendments are made to the amounts and formulas in the description of B in the formula in subsection 118(1). These amendments, described below, apply to the 2011 and subsequent taxation years, except that:

- for the 2011 taxation year, the amount of $2,000 referred to in paragraphs (*a*), (*b*), (*b.1*), (*c.1*) and (*d*) of the description of B in subsection 118(1) is to be read as nil; and
- with respect to the indexation of amounts under subsection 117.1(1) of the Act:
  - for the 2011 taxation year, indexation does not apply for the purposes of computing the amounts referred to in paragraphs (*a*), (*b*), (*b.1*), (*c.1*) and (*d*) of the description of B in subsection 118(1);
  - for the 2012 taxation year, as it applies to the infirm dependant credit in paragraph (*d*) of the description of B in subsection 118(1), the references to the amounts of $10,358 and $6,067 are replaced with references to the amounts of $10,527 and $6,245 respectively; and
  - for the 2012 taxation year, indexation does not apply to the amount of $2,000 referred to in paragraphs (*a*), (*b*), (*b.1*), (*c.1*) and (*d*) of the description of B in subsection 118(1).

**Married or common-law partnership status**

Paragraph (*a*) of the description of B in the formula in subsection 118(1) provides a tax credit to individuals who are married or in a common-law partnership. Subparagraphs (*a)*(i) and (ii) are amended to replace the references to $10,320 with references to $10,527.

The formula in subparagraph (*a*)(ii) is amended to renumber the description of C as C.1.

A new description of C in the formula in subparagraph (*a*)(ii) is added in order to increase the amount that is eligible for a tax credit by $2,000 for an individual if their spouse or common-law partner is dependent on them by reason of mental or physical infirmity.

**Wholly dependent person**

Paragraph (*b*) of the description of B in the formula in subsection 118(1) provides a tax credit to individuals who are single and have a wholly dependent relative. Subparagraphs (*b*)(iii) and (iv) are amended to replace the references to $10,320 with references to $10,527.

The formula in subparagraph (*b*)(iv) is amended to renumber the description of D as D.1.

A new description of D in the formula in subparagraph (*b*)(iv) is added in order to increase the amount that is eligible for a tax credit by $2,000 for an individual if a dependent person, who is 18 years of age or older at the end of the taxation year, is dependent on the individual by reason of mental or physical infirmity. If a person dependent on the individual is under 18 years of age throughout the taxation year, the individual is eligible for the increased tax credit if the dependant is likely to be, for a long and continuous period of indefinite duration, dependent on others by reason of mental or physical infirmity for significantly more assistance in attending to the dependant's personal needs and care, when compared to other children of the same age.

**Child tax credit**

Paragraph (*b.1*) of the description of B in the formula in subsection 118(1) provides the Child Tax Credit. Paragraph (*b.1*) is amended to replace the references to $2,000 with references to $2,131. The amount eligible for a tax credit is $2,131 for each eligible child who is under the age of 18 years at the end of the taxation year. The credit is amended so that it is available to:

- in the case of a child who resides with two parents throughout the taxation year, either of those parents; and
- in the case of a child who does not reside with two parents throughout the taxation year, the parent who is eligible to claim the wholly dependent relative credit for the taxation year in respect of the child (or would be so eligible if that child were the parent's only child). Also, as a consequence of the amendment to the Child Tax Credit in paragraph 118(4)(*b*), the same domestic establishment restriction for the wholly dependent credit does not apply. Therefore two single parents living in the same domestic establishment will be able to each claim the Child Tax Credit in respect of their own child/children.

Paragraph (*b.1*) is also amended to implement the Family Caregiver Tax Credit. New clauses (*b.1*)(i)(B) and (*b.1*)(ii)(B) increase the amount that is eligible for a tax credit by $2,000 for an individual for an eligible child who, by reason of mental or physical infirmity, is likely to be, for a long and continuous period of indefinite duration, dependent on others for significantly more assistance in attending to the child's personal needs and care, when compared to children of the same age.

**Caregiver tax credit**

Paragraph (*c.1*) of the description of B in the formula in subsection 118(1) provides a tax credit to an individual who provides in-home care for an adult relative. Paragraph (*c.1*) is amended to replace the reference to the amounts of $15,453 and $11,953 with references to the amounts of $18,906 and $14,642.

The formula in paragraph (*c.1*) is amended to renumber the description of E as E.1.

A new description of E in the formula in paragraph (*c.1*) is added to increase the amount that is eligible for a tax credit by $2,000 for an individual if an adult relative is dependent on them by reason of mental or physical infirmity.

**Infirm dependant tax credit**

Paragraph (*d*) of the description of B in the formula in subsection 118(1) provides a tax credit to an individual who supports an infirm dependent adult relative. Paragraph (*d*) is amended to replace the references to $8,466 and $4,966 with references to $10,358 and $6,076.

The formula in paragraph (*d*) is also amended to increase the amount that is eligible for a tax credit by $2,000.

**Personal credits**

ITA
118(4)

Subsection 118(4) of the Act provides rules governing the tax credits available under subsection 118(1) of the Act. Paragraph 118(4)(*b*) provides that not more than one individual is entitled to the wholly dependent relative credit or the child tax credit for the same person or the same domestic establishment. Where more than one individual may otherwise be entitled to the credit, they must agree on which individual will claim the credit. If they fail to agree, the credit will not be allowed to any of them.

Paragraph 118(4)(*b*) is amended, and paragraph 118(4)(*b.1*) is added, to remove the requirement that only one person per household may claim the child tax credit. In particular, the reference to the child tax credit is removed from paragraph 118(4)(*b*) and added to new paragraph 118(4)(*b.1*). New paragraph 118(4)(*b.1*) provides that not more than one individual is entitled to the child tax credit for the same person. Where more than one individual may otherwise be entitled to the credit, they must agree on which individual will claim the credit. If they fail to agree, the credit will not be allowed to any of them.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 17**

**Children's arts tax credit**

ITA
118.031

New section 118.031 of the Act introduces the Children's Arts Tax Credit in respect of up to $500 of eligible expenses paid in a taxation year for each qualifying child of an individual. The credit is calculated by reference to the total of such costs multiplied by the appropriate percentage for that taxation year. The appropriate percentage for a taxation year is defined in subsection 248(1) of the Act and is the lowest personal income tax rate, expressed as a percentage, applicable for the taxation year. For 2011, the appropriate percentage is 15%.

New section 118.031 applies to the 2011 and subsequent taxation years.

**Definitions**

ITA
118.031(1)

New subsection 118.031(1) of the Act sets out definitions that apply for the purpose of the Children's Arts Tax Credit.

**"eligible expense"**

An "eligible expense" is a fee paid to a qualifying entity as a cost for the registration or for a membership of a qualifying child in a prescribed program of artistic, cultural, recreational or developmental activity. Such cost includes the cost of the qualifying entity of the program in respect of its

- administration,
- instruction,
- rental of required facilities, and
- uniforms and equipment that are not available to be acquired by a participant in the program for an amount less than its fair market value at the time it is acquired.

An "eligible expense" does not include

- the cost of accommodation, travel, food or beverages,
- any amount deductible in computing any person's income for any taxation year, or
- any amount included in computing a deduction from any person's tax payable under any Part of the Act, for the taxation year.

**"qualifying child"**

A "qualifying child" of an individual for a taxation year is a child of the individual who has not, before the taxation year, attained the age of 16 years, or is a child of the individual who has not, before the taxation year, attained the age of 18 years, if the child is eligible for the disability tax credit under section 118.3.

**"qualifying entity"**

A "qualifying entity" is a person or partnership that offers one or more programs of artistic, cultural, recreational or developmental activity prescribed for the purposes of the definition "eligible expense".

**Calculation of the children's arts tax credit**

ITA
118.031(2)

New subsection 118.031(2) of the Act provides for the calculation of the Children's Arts Tax Credit for a taxation year. The credit is determined, in respect of each qualifying child of an individual, by applying the appropriate percentage for the taxation year to the lesser of $500 and the amount obtained when reimbursements and other forms of assistance that any individual is or was entitled to receive in respect of an eligible expense (other than an amount that is included in computing that individual's income and that is not deductible in computing that individual's taxable income) are subtracted from the amount of eligible expenses incurred in respect of a qualifying child.

**Children's arts tax credit – child with disability**

ITA
118.031(3)

New subsection 118.031(3) of the Act provides an enhancement to the Children's Arts Tax Credit in respect of each qualifying child, of an individual, that is eligible for the disability tax credit. This additional credit is available where $100 or more of eligible expenses are claimed under the general children's arts tax credit in subsection 118.031(2). The amount of the credit is equal to $500 multiplied by the appropriate percentage for the taxation year.

**Apportionment of credit**

ITA
118.031(4)

New subsection 118.031(4) of the Act provides that, where more than one individual is entitled to the Children's Arts Tax Credit in respect of a qualifying child (for example, the individual and the individual's spouse or common-law partner), the total amounts claimed by those individuals under section 118.031 cannot exceed the maximum amount that would be allowed if only one individual were claiming the Children's Arts Tax Credit. If the individuals cannot agree as to what portion of the expense each can claim, the Minister of National Revenue may fix the portions.

**Clause 18**

**Volunteer firefighter tax credit**

ITA
118.06

New section 118.06 of the Act introduces a non-refundable Volunteer Firefighter Tax Credit for eligible volunteer firefighting services provided to one or more fire departments. The amount of the credit is $3,000 multiplied by the appropriate percentage for the taxation year. The appropriate percentage for a taxation year is defined in subsection 248(1) of the Act and is the lowest personal income tax rate, expressed as a percentage, applicable for the taxation year. For 2011, the appropriate percentage is 15%.

New section 118.06 applies to the 2011 and subsequent taxation years.

**Eligible volunteer firefighting services**

ITA
118.06(1)

New subsection 118.06(1) of the Act defines "eligible volunteer firefighting services" for the purposes of new section 118.06. "Eligible volunteer firefighting services" are services, provided to a fire department by an individual in the individual's capacity as a volunteer firefighter, that consist primarily of responding to and being on call for firefighting and related emergency calls, attending meetings held by the fire department and participating in required training related to the prevention or suppression of fires.

Eligible volunteer firefighting services do not include services performed by an individual for a fire department if the individual also provides firefighting services, otherwise than as a volunteer, to that fire department.

**Volunteer firefighter tax credit**

ITA
118.06(2)

New subsection 118.06(2) of the Act provides for the calculation of the non-refundable Volunteer Firefighter Tax Credit for a taxation year. A credit may be claimed if the individual has performed at least 200 hours of eligible volunteer firefighting services in the taxation year for one or more fire departments. The credit is determined by applying the appropriate percentage for the taxation year to $3,000.

**Certificate**

ITA
118.06(3)

New subsection 118.06(3) of the Act provides that, if the Minister of National Revenue so demands, an individual claiming the Volunteer Tax Credit will be required to provide to the Minister a written certificate from a fire chief or a delegated official of each fire department at which the individual provided eligible volunteer firefighting services for the year, attesting to the number of hours of eligible volunteer firefighting services performed by the individual for the particular fire department.

**Clause 19**

**Charitable donations tax credit**

ITA
118.1

Section 118.1 of the Act provides rules regarding the tax credit for individuals in respect of gifts made to registered charities and other qualified donees.

**Definitions**

ITA
118.1(1)

Subsection 118.1(1) provides definitions of the terms “total charitable gifts”, “total Crown gifts”, “total cultural gifts” and “total ecological gifts”. These definitions apply for the purpose of the tax credit available under subsection 118.1(3) to individuals who make such gifts.

**“total charitable gifts”**

An individual’s “total charitable gifts” is defined as generally the total of amounts, each of which is the fair market value of the individual’s gifts to registered charities and other donees listed in paragraphs (*a*) to (*g.1*) of the definition. New paragraph (*d.1*) expands the list of donees referred to in the definition “total charitable gifts” to include a municipal or public body performing a function of government in Canada, applicable in respect of gifts made after May 8, 2000.

The definition “total charitable gifts” is further amended to replace the list of donees in paragraphs (*a*) to (*g.1*) of the definition with a reference to a “qualified donee”, consequential on the amendment to the definition “qualified donee” in subsection 149.1(1) of the Act.

The definition “qualified donee” in subsection 149.1(1) of the Act is amended, generally to directly list specific donees, rather than referencing the lists of donees in paragraphs 110.1(1)(*a*) and (*b*) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1(1). For further information see the commentary on the amended definition “qualified donee” in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Gift of capital property**

ITA
118.1(6)

Subsection 118.1(6) of the Act provides that, if an individual donates capital property to certain charities or other donees, the individual may designate a value between the adjusted cost base and the fair market value of the donated property to be treated both as the proceeds of disposition for the purpose of calculating the individual’s capital gain and the amount of the gift for the purpose of calculating the tax credit allowed for charitable donations under subsection 118.1(3) of the Act.

Paragraph 118.1(6)(*a*) is amended to replace the reference to a donee described in the definitions “total charitable gifts”, “total crown gifts”, or “total ecological gifts” in subsection 118.1(1) with a reference to a “qualified donee” as defined in subsection 149.1(1) of the Act, consequential on the amendment to that definition.

The definition “qualified donee” in subsection 149.1(1) of the Act is amended, generally to directly list specific donees, rather than referencing the lists of donees in paragraphs 110.1(1)(*a*) and (*b*) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1(1). For further information see the commentary on the amended definition “qualified donee” in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Non-qualifying securities**

ITA
118.1(13), (13.1), (13.2) and (13.3)

Subsection 118.1(13) of the Act provides that, if an individual makes a gift of a “non-qualifying security”, that gift will not qualify for the charitable donations tax credit. A non-qualifying security is defined in subsection 118.1(18) of the Act and represents an obligation or security issued by the individual or by a person not dealing at arm’s length with the individual, or an interest of the individual in an affiliated trust or in a trust that holds a non-qualifying security of the individual. Subsection 118.1(13) therefore addresses, in general, situations in respect of which a donee receives from an individual a right to a particular property, rather than the property itself, such that the individual may not at that time be impoverished by the transfer of the particular property to the donee. The definition of a non-qualifying security extends to a share, in a corporation not dealing at arm’s length with the individual, which represents an indirect interest in the property of the corporation (even though the share is itself a property).

The rules in subsections 118.1(13) and (18) and new subsections 118.1(13.1) to (13.3) reflect this general intent. It is not intended that an inference be drawn that the results of arrangements that may not be subject to these rules and yet under which charities are not immediately enriched are in compliance with this general intent.

Paragraph 118.1(13)(*b*) and (*c*) provide generally that a gift will instead be recognized in the year in which the non-qualifying security either ceases to be a non-qualifying security, or the donee disposes of the security, if either of these events occur within five years of the actual donation. More specifically, paragraph 118.1(13)(*c*) provides that if the non-qualifying security is disposed of by the qualified donee within 5 years of the gift, the individual will be deemed to have made the gift to the qualified donee at the time that the qualified donee disposes of the security. The value of the gift cannot exceed the lesser of the fair market value of the consideration (other than a non-qualifying security of the individual if the individual where alive at that time) received by the donee from the disposition and the amount of the actual gift.

Paragraph 118.1(13)(*c*) is amended to provide that the consideration (that limits the value of the deemed gift) does not include the non-qualifying security of *any* person.

New subsections 118.1(13.1) to (13.3) of the Act provide anti-avoidance rules with respect to the rule provided in subsection 118.1(13) for non-qualified securities. These rules are intended to ensure that, if as a result of a series of transactions, a particular person holds a non-qualifying security of a donor, and the donor has acquired, directly or indirectly, a non-qualifying security of the particular person or of the donor, the gift of the donor will be subject to the non-qualifying security rules unless, within five years, the donee has disposed of the non-qualifying security for consideration that is not, to any person, another non-qualifying security.

Subsection 118.1(13.1) describes the circumstances in which the anti-avoidance rule in subsection 118.1(13.2) will apply. In particular, subsection 118.1(13.2) will apply where, as part of a series of transactions,

- an individual makes a gift to a qualified donee;
- a particular person holds a non-qualifying security of the individual; and
- the qualified donee acquires a non-qualifying security of the individual or of the particular person.

New subsection 118.1(13.2) provides that in these circumstances the fair market value of the gift will be reduced by the value of a non-qualifying security acquired by the qualified donee and that, for the purposes of subsection 118.1(13),

- if the non-qualifying security acquired by the qualified donee is a non-qualifying security of the particular person, it is deemed to be a non-qualifying security of the individual;
- the individual is deemed to have made a gift of the non-qualifying security; and
- paragraph 118.1(13)(*b*) does not apply in respect of the gift (paragraph 118.1(13)(*b*) provides generally that if the non-qualifying security ceases to be a non-qualifying security within five years of the gift, the individual is deemed to have made the gift at the time that the non-qualifying security cases to be a non-qualifying security).

***Example 1***

*Mr. X transfers $100,000 in cash to Ms. Y in exchange for a demand note payable by Ms. Y. Ms. Y transfers the $100,000 in cash to Mr. Z in exchange for a demand note payable by Mr. Z. Mr. Z then makes a gift of $120,000 to a private foundation that is a registered charity. The foundation pays Mr. X $100,000 to acquire the demand note due from Ms. Y. At this point, the charity holds only $20,000 in cash, and a $100,000 note payable by Ms. Y. Ms. Y, in turn, holds a $100,000 note payable by Mr. Z. (This example assumes that the transfer by Mr. Z to the charity is not conditional on the other transactions and that it is a gift at law.)*

- *In this example, the value for tax purposes of Mr. Z's cash gift is reduced by $100,000, the value of the note due from Ms. Y that has been acquired by the foundation, to $20,000.*
- *The note due from Ms. Y is deemed to be a non-qualifying security of Mr. Z, and Mr. Z is deemed to have made a gift of that non-qualifying security, having a deemed value of the actual value of the cash gift less the deemed value of the gift ($120,000 - $20,000 = $100,000). Subsection 118.1(13) further deems that gift not to have been made at that time.*
- *If, within five years, the foundation disposes of the demand note of Ms. Y, then Mr. Z will be considered to have made a gift having a value not exceeding the amount of consideration (other than a non-qualifying security of any person) paid to the foundation for the note.*

New subsection 118.1(13.3) applies for the purposes of subsection 118.1(13.1) and (13.2). Subsection 118.1(13.3) provides that, if as part of a series of transactions,

- an individual makes a gift to a qualified donee;
- the qualified donee acquires a non-qualifying security of a person (other than the individual or particular person referred to in subsection (13.1)); and
- it may reasonably be considered, having regard to all the circumstances, that one of the purposes or results of the acquisition of the non-qualifying security by the qualified donee was to facilitate, directly or indirectly, the making of the gift by the individual;

then the non-qualifying security acquired by the qualified donee is deemed to be a non-qualifying security of the individual.

***Example 2***

*This is the same as Example 1, except that Mr. X, instead of selling the note of Ms. Y to the foundation, transfers a demand note due from himself to the foundation in exchange for $100,000. In the result, the foundation has $20,000 and a $100,000 note due from Mr. X, who holds a $100,000 note due from Ms. Y, who holds a $100,000 note due from Mr. Z (the donor).*

*In these circumstances, it may reasonably be considered that the result of the acquisition of the demand note of Mr. X by the foundation was to facilitate the making of the gift by Mr. Z. Accordingly,*

- *The demand note of Mr. X is deemed to be a non-qualifying security of Mr. Z.*
- *The value for tax purposes of the cash gift of Mr. Z is reduced by $100,000, the value of that non-qualifying security that has been acquired by the foundation, to $20,000.*
- *Mr. Z is deemed to have made a gift of the non-qualifying security, having a deemed value of the actual value of the cash gift less the deemed value of the gift ($120,000 - $20,000 = $100,000). Subsection 118.1(13) further deems that gift not to have been made at that time.*
- *If , within five years, the foundation disposes of the demand note of Mr. X, then Mr. Z will be considered to have made a gift having a value not exceeding the amount of consideration (other than a non-qualifying security of any person) paid to the foundation for the note.*

These amendments apply after March 21, 2011.

**Granting of options to qualified donees**

ITA
118.1(21) to (24)

New subsections 118.1(21) to (24) of the Act clarify that the charitable donations tax credit is not available to an individual in respect of the granting by the individual of an option to a qualified donee to acquire a property until such time as the donee acquires a property of the individual that is the subject of the option. The credit allowed to the individual at that later time is generally based on the amount by which the fair market value of the property at that time exceeds the total of amounts, if any, paid by the donee for the option and the property. However, a deduction will generally not be available to the individual if the total amount paid by the donee for the property and the option exceeds 80% of the fair market value of the property at the time of the acquisition by the donee.

In particular, new subsection 118.1(21) of the Act provides that an option (to acquire property of an individual) granted by an individual to qualified donee is not eligible for a charitable donation tax credit under 118.1(3) unless new subsections 118.1(23) and (24) provide otherwise.

New subsection 118.1(22) provides that subsection (23) will apply if an option to acquire a property of an individual is granted to a qualified donee, the option is subsequently exercised (at a particular time) so that the property is disposed of to the qualify donee, and either

- the amount that is equal to 80% of the fair market value of the property at the particular time is greater than or equal to the total of
  - the consideration received by the individual from the qualified donee to acquire the property, and
  - the consideration received by the individual from the qualified donee to acquire the option; or

- the individual has established to the satisfaction of the Minister of National Revenue that the granting of the option or the disposition of the property was made with the intention to make a gift.

New subsection 118.1(23) describes the consequences of the exercise of an option by a qualified donee, where all the conditions in new subsection 118.1(22) are met. For the purposes of the Act and notwithstanding subsection 49(3) of the Act, an individual is deemed to have received proceeds of disposition of the property equal to the property's fair market value at the time of the exercise of the option. Subsection 118.1(23) also permits the individual, as a charitable donation tax credit under 118.1(3) in the taxation year in which the option was exercised, a credit based on an amount equal to the fair market value minus the total consideration received by the individual as described above. This credit is permitted notwithstanding that the disposition of a property as a result of the exercise of the right of an option holder may not be a gift at law.

New subsection 118.1(24) of the Act describes the consequences of a disposition by a qualified donee of an option to acquire a property of an individual that was granted in its favour. In such a case, at the time of the disposition by the qualified donee, the individual is deemed to have disposed of another property

- the adjusted cost base of which, immediately before the disposition by the qualified donee, is equal to the consideration, if any, paid by the qualified donee to acquire the option, and
- the proceeds of disposition of which are equal to the lesser of the fair market value of any consideration (other than a non-qualifying security of any person) received by the qualified donee for the option and the fair market value of the property that was the subject of the option.

Similar to subsection 110.1(23), subsection 110.1(24) permits an individual to claim a charitable donation tax credit under subsection 118.1(3) in the taxation year in which the option was disposed of by the qualified donee. The credit is based on an amount equal to the proceeds of disposition (as calculated above) minus any consideration, if any, paid by the qualified donee to acquire the option.

These new subsections apply to options granted after March 21, 2011.

**Returned property**

ITA
118.1(25) to (28)

New subsections 118.1(25) to (28) of the Act ensure that an individual cannot improperly retain tax assistance in the form of a charitable donation tax credit in respect of a property transferred to a qualified donee if the qualified donee returns the property or substituted property to the individual. These measures address situations where a transfer of property was not a gift, yet a charitable donations receipt has been issued, as well as situations where a transfer of property was a gift at law and nevertheless has been returned.

New subsection 118.1(25) describes the circumstances under which new subsection 118.1(26) will apply. New subsection 118.1(25) applies where a property was transferred by an individual to a qualified donee, an official receipt for a charitable donation was issued to the individual, and the property is subsequently returned to the individual or another property is returned to the individual as compensation for or in substitution for the property.

New subsection 118.1(26) of the Act describes the consequences of a transfer of property by any person to an individual, if all the conditions in new subsection 118.1(25) are met. To the extent that a property (or a substituted property) has been returned in circumstances to which subsection 118.1(25) applies, subsection 118.1(26) generally provides that

- no gift is recognized, whether or not the transfer to the donee was a gift at law;

- where the original property or an identical property is returned, no disposition is recognized, such that the application of the rules of the Act to a future disposition of the returned property will have the same result as if the property had never been disposed of to the donee (in the case of an original transfer to a donee of a number of separate properties, such as many shares of the capital stock of a corporation, these rules should be applied to each property separately); and
- where the returned property is in compensation or substitution for the original property, the original disposition will not be recognized but the individual will be considered to have disposed of the original property for consideration that is the returned property, and at the time that the returned property is transferred to the individual: in this regard, in applying the technical language of paragraph 118.1(26)(*c*), if the property returned to an individual is a part of the original property that has been subdivided, the portion returned is considered to be not the same nor an identical property to the original.

Subsections 118.1(25) and (26) apply to individuals in a manner similar to the manner in which subsections 110.1(14) and (15) of the Act apply to corporations. Refer to the commentary on those subsections for examples of how they apply.

New subsection 118.1(27) of the Act provides that where a where a transfer of property to which subsection 118.1(26) applies has been made, an information return containing prescribed information must be filed by the transferor of the property within 90 days of the transfer, if the property has a fair market value greater than $50.

New subsection 118.1(28) of the Act provides that the Minister of National Revenue may reassess a return of income of any person if the reassessment can reasonably be regarded as relating to a transfer of property to which new subsection 118.1(26) applies.

These new subsections apply to transfers of property made after March 21, 2011, except that an information return required to be filed under subsection 118.1(27) of the Act that is filed before the day that is 90 days after August 16, 2011 is deemed to have been filed on time.

**Clause 20**

**Medical expense tax credit**

ITA
118.2(1)

Subsection 118.2(1) of the Act provides a formula for the calculation of an individual's medical expense tax credit. The description of D in that formula provides a limit to the amount of medical expenses that an individual may claim for a taxation year in respect of their dependant (other than the individual's spouse, the individual's common-law partner or a child of the individual who has not attained the age of 18 years before the end of the taxation year). This limit is the lesser of $10,000 and the amount by which the expenses paid by the individual on behalf of the dependant exceeds the dependant's medical expense threshold for the year (which is the lesser of 3% of the dependant's net income and an indexed amount ($2,052 in 2011)).

The description of D in the formula is amended to remove the $10,000 limit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 21**

**Dependant having impairment**

ITA
118.3(2)

Subsection 118.3(2) of the Act provides criteria for determining the entitlement of a supporting individual of a disabled person to claim that person's unused disability tax credit. The French version of subsection 118.3(2) and the English version of paragraph 118.3(2)(*d*) are amended to add references to new sections 118.031 and 118.06, consequential on the introduction of the Children's Arts Tax Credit and the Volunteer Firefighter Tax Credit.

These amendments apply to the 2011 and subsequent taxation years.

**Clause 22**

**Tuition tax credit**

ITA
118.5

Section 118.5 of the Act provides a tax credit in respect of tuition fees paid to certain educational institutions.

The portion of paragraph 118.5(1)(*a*) before subparagraph (ii.1) is amended as a consequence of the amendment to the Tuition Tax Credit to apply to fees paid in respect of occupational, trade or professional examinations. The requirement that the total tuition fees paid to an educational institution in respect of a year must exceed $100 has been moved to new subsection 118.5(1.1).

Paragraph 118.5(1)(*b*) provides for a tax credit in respect of fees paid by a full-time student enrolled at a university outside of Canada in a course, of no less than 13 consecutive weeks duration, leading to a degree. Subparagraph 118.5(1)(*b*)(i) is amended to reduce the minimum course-duration to three consecutive weeks from 13 consecutive weeks.

New paragraph 118.5(1)(*d*) is added to allow a tax credit in respect of fees paid to an educational institution, professional association, provincial ministry or other similar institution for an examination that is required to obtain a professional status recognized under a federal or provincial statute, or a license or certification as a tradesperson, where such status, license or certification allows the individual to practice the profession or carry on the trade in Canada. An amount paid as an examination fee will be considered to have been paid in respect of the year in which the examination is taken. The amount of the credit is determined by applying the appropriate percentage to the eligible fees paid for an occupational, trade and professional examination. The appropriate percentage for a taxation year is defined in subsection 248(1) of the Act and is the lowest personal income tax rate, expressed as a percentage, applicable for the taxation year. For 2011, the appropriate percentage is 15%.

New subparagraph 118.5(1)(*d*)(i) provides that an amount paid on behalf of, or reimbursed to, an individual by the individual's employer is not eligible for the credit unless the amount is required to be included in computing the individual's income.

New subparagraph 118.5(1)(*d*)(ii) provides that, where fees are paid under a federal or provincial job training program for the benefit of an individual who is entitled to a reimbursement or assistance in respect of the program, those fees will qualify for the credit only where the reimbursement or assistance is included in the individual's income.

New subsection 118.5(1.1) is added to provide that, in computing the credit under subsection 118.5(1), an individual is eligible to deduct tuition fees and examination fees if the total of those fees, paid to an

educational institution, professional association, provincial ministry or other similar institution in respect of a year, exceeds $100.

New subsection 118.5(4) is added to allow an individual to include certain mandatory ancillary fees and charges paid in respect of the individual's occupational, trade or professional examination if the payment of such fees or charges is made to the institution, professional association or ministry.

Fees or charges do not qualify for the tuition tax credit to the extent that they are levied in relation to property to be acquired by students, the provision of financial assistance to the individual or the construction, renovation or maintenance of a building or facility.

Also, ancillary fees or charges paid in respect of an individual's occupational, trade or professional examination that are not required to be paid by all individuals taking the examination may not be included in computing the individual's tuition fee credit to the extent that that such fees and charges exceed $250.

These amendments apply with respect to tuition fees paid for, and examinations taken in, the 2011 and subsequent taxation years.

**Clause 23**

**Education tax credit**

ITA
118.6(1)

Subsection 118.6(1) of the Act provides various education-related definitions for the purposes of the child care expense deduction and the tuition and education tax credits. A foreign university at which a student was enrolled in a course, of not less than 13 consecutive weeks duration, leading to a degree, is a "designated educational institution" under paragraph (*b*) of that definition.

Paragraph (*b*) in the definition "designated educational institution" in subsection 118.6(1) is amended to reduce the minimum course duration to three consecutive weeks from 13 consecutive weeks.

This amendment applies with respect to tuition fees paid for the 2011 and subsequent taxation years.

**Clause 24**

**Unused tuition, textbook and education tax credits**

ITA
118.61(1) and (2)

Subsection 118.61(1) of the Act provides a formula for the calculation of a student's unused tuition and education tax credits that may be carried forward to future taxation years. The description of C of that formula requires that any unused tuition, textbook and education tax credits be claimed in advance of certain personal credits. Subsection 118.61(2) of the Act determines the amount of the carry-forward of unused tuition and education tax credits that can be claimed in the current year.

The description of C in subsection 118.61(1) and paragraph 118.61(2)(*b*) are amended to add references to new sections 118.031 and 118.06, consequential on the introduction of the Children's Arts Tax Credit and the Volunteer Firefighter Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 25**

**Transfer of unused credits to spouse or common-law partner**

ITA
118.8

Subsection 118.8 of the Act provides a formula that governs the amount of certain unused personal income tax credits that can be transferred to a taxpayer from a spouse or common-law partner. Paragraphs (*a*) and (*b*) of the description of C in the formula are amended to add reference to new sections 118.031 and 118.06, consequential on the introduction of the Children's Arts Tax Credit and the Volunteer Firefighter Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 26**

**Tuition, textbook and education tax credits transferred**

ITA
118.81

Paragraph 118.81(*a*) of the Act provides a formula for the calculation of the maximum amount of tuition, textbook and education tax credits that may be transferred by a student to the student's spouse or common law partner or to a parent or grandparent. The description of B in the formula is amended to add references to new sections 118.031 and 118.06, consequential on the introduction of the Children's Arts Tax Credit and the Volunteer Firefighter Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 27**

**Ordering of credits**

ITA
118.92

Section 118.92 of the Act provides that the tax credits allowed in computing an individual's tax payable for a taxation year are to be applied in a specific order. This section is amended to add references to new sections 118.031 and 118.06, consequential on the introduction of the Children's Arts Tax Credit and the Volunteer Firefighter Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 28**

**Tax payable by non-residents (credits restricted)**

ITA
118.94

Section 118.94 of the Act provides rules with respect to non-refundable tax credits available to individuals who, at any time in a taxation year, did not reside in Canada. Subject to a special rule in section 217, such individuals are allowed to claim certain non-refundable credits for a taxation year only where all or substantially all of their income for the taxation year is included in computing their taxable income in Canada. This section is amended to add references to new sections 118.031 and 118.06, consequential on the introduction of the Children's Arts Tax Credit and the Volunteer Firefighter Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 29**

**Tax on split income**

ITA
120.4(1)

Section 120.4 of the Act generally applies a 29% tax on certain passive income (referred to as "split income") of an individual under the age of 18 years.

**"excluded amount"**

The definition "excluded amount" in subsection 120.4(1) describes income that is excluded from the split income of an individual. There are two types of income that qualify as an excluded amount. The first is income from property inherited by the individual from a parent of the individual. The second is income from property inherited by the individual from anyone, if the individual is, in the year in which the income is required to be reported, either a full time student enrolled at a post-secondary educational institution as defined in subsection 146.1(1) or eligible for the disability tax credit.

The definition "excluded amount" is amended to include a taxable capital gain from the disposition of a property inherited in the circumstances described above. This amendment is concurrent with the introduction of new subsections 120.4(4) and 120.4(5), to ensure that a taxable capital gain of an individual from such a property is not included in split income.

The amendment applies to dispositions that occur on or after March 22, 2011.

**Taxable capital gain**

ITA
120.4(4) and (5)

New subsection 120.4(4) of the Act generally provides that the taxable capital gain of a specified individual (generally an individual under the age of 18 years), from a disposition of certain shares that are transferred, directly or indirectly in any manner whatever, to a person that does not deal at arm's length with the individual, is subject to the tax on split income. More specifically, twice the amount that would otherwise have been the individual's taxable capital gain in respect of the disposition is deemed to be a taxable dividend received by the individual in the year.

New subsection 120.4(5) of the Act generally applies in a similar manner in respect of certain amounts if a specified individual would otherwise be required under paragraph 104(13)(*a*) or subsection 105(2) of the Act to include the amount in computing their income for a taxation year. Paragraph 104(13)(*a*) and subsection 105(2) normally apply to include an amount in computing the income of a beneficiary under a trust if that amount has become payable to the beneficiary, or has been paid for the benefit of the beneficiary, out of the income of the trust. Subsection 104(6) of the Act generally applies to provide a trust with a corresponding deduction.

Under subsection 120.4(5), if a particular amount otherwise required to be included in the income of a specified individual under paragraph 104(13)(*a*) or subsection 105(2) can reasonably be considered to be attributable to a taxable capital gain (other than an excluded amount) of any trust from the disposition of shares that are transferred, directly or indirectly in any manner whatever, to a person with whom the specified individual does not deal at arm's length, twice the particular amount is deemed to be a taxable dividend received by the specified individual in the year. This applies whether or not the amount is deemed under subsection 104(21) of the Act to be a taxable capital gain of the beneficiary. Although the particular amount is, to avoid a double income inclusion, deemed not to be included in the income of the specified individual under paragraph 104(13)(*a*) or subsection 105(2), subsection 120.4(5) is not intended to affect the application of subsection 104(6) to the trust in respect of the particular amount.

As a result, the special 29% tax on split income under section 120.4 applies to the taxable dividend deemed under subsection 120.4(4) or (5). Further, the taxable dividend is not an "eligible dividend", such that the rules in the Act relating to eligible dividends (such as the particular rate of dividend tax credit) do not apply. However, these rules do not result in a dividend having been paid for the purposes of the application of the Act to the corporation.

Subsections 120.4(4) and (5) apply in respect of dispositions of shares other than shares of a corporation that are listed on a designated stock exchange or are shares of a mutual fund corporation.

These amendments apply to dispositions that occur on or after March 22, 2011.

**Clause 30**

**GST/HST credit**

ITA
122.5(3.1)

Subsection 122.5(3.1) of the Act sets out the requirements governing the advance payment of GST/HST Credit amounts that is provided for under subsection 122.5(3.2) of the Act. Advance lump-sum GST/HST Credit payments are available to an eligible individual in relation to a particular month specified for a taxation year (and each subsequent month specified for that taxation year) if a particular quarterly payment is less than $25 and it is reasonable to conclude that each subsequent quarterly payment in relation to the same year will not exceed $25.

Subsection 122.5(3.1) is amended to increase the advance payment threshold from $25 per quarter to $50 per quarter.

This amendment applies to amounts deemed to be paid during months specified for the 2010 and subsequent taxation years.

**Clause 31**

**Canada child tax benefit**

ITA
122.61(2)

Subsection 122.61(2) of the Act provides that, where the monthly Canada Child Tax Benefit for two or more consecutive months is less than $10, the benefit for those months is to be paid in a lump sum rather than by monthly instalments.

Subsection 122.61(2) is amended to increase the advance payment threshold from $10 per month to $20 per month.

This amendment applies to overpayments deemed to arise during months that are after June 2011.

**Clause 32**

**Canada child tax benefit – eligible individuals**

ITA
122.62

Section 122.62 of the Act deals with various situations in which an individual becomes or ceases to be eligible for a Canada Child Tax Benefit in respect of a dependent child, or becomes or ceases to be a cohabiting spouse or common-law partner of an eligible individual.

**Death of cohabiting spouse or common-law partner**

ITA
122.62(5)

Subsection 122.62(5) of the Act applies for the purpose of determining an eligible individual's adjusted income, which is relevant for the determination of the Canada Child Tax Benefit, when the cohabiting spouse or common-law partner of an eligible individual has died. Subsection 122.62(5) is amended to provide that, upon the death of an eligible individual's cohabiting spouse or common-law partner, the individual must notify the Minister of National Revenue, in prescribed form, of the death before the end of the first calendar month following the month of death.

The deceased person's income and earned income will not be taken into account in calculating the individual's adjusted income for the relevant taxation year for the purpose of computing the Canada Child Tax Benefit for each month subsequent to the month of death.

This amendment applies in respect of deaths that occur after June 2011.

**Separation from cohabiting spouse or common-law partner**

ITA
122.62(6)

Subsection 122.62(6) of the Act applies for the purpose of determining an eligible individual's adjusted income, which is relevant for the determination of the Canada Child Tax Benefit, when the eligible individual separates from the individual's cohabiting spouse or common-law partner.
Subsection 122.62(6) is amended to provide that, where a person ceases to be an eligible individual's cohabiting spouse or common-law partner, as defined in section 122.6 of the Act, the individual must notify the Minister of National Revenue, in prescribed form, of this event before the end of the first calendar month that begins after the change in status.

The spouse or common-law partner's income and earned income will not be taken into account in calculating the individual's adjusted income for the relevant taxation year for the purpose of computing the Canada Child Tax Benefit for each month subsequent to the month the event occurred.

This amendment applies to changes in marital status that occur after June 2011.

**Becoming a cohabiting spouse or common-law partner**

ITA
122.62(7)

Subsection 122.62(7) of the Act applies for the purpose of determining an eligible individual's adjusted income, which is relevant for the determination of the Canada Child Tax Benefit, when a person becomes the cohabiting spouse or common-law partner of the eligible individual. Subsection 122.62(7) is amended to provide that, where a taxpayer becomes the cohabiting spouse or common-law partner, as defined in section 122.6, of an eligible individual, the individual must notify the Minister of National Revenue, in prescribed form, of this event before the end of the first calendar month that begins after the change in status.

The spouse or common-law partner's income and earned income will be taken into account for the purpose of computing the Canada Child Tax Benefit from the period beginning immediately before the end of the relevant taxation year.

This amendment applies to changes in marital status that occur after June 2011.

**Ordering of events**

ITA
122.62(8)

New subsection 122.62(8) of the Act is added to provide that, where more than one change in marital status, as provided for in subsections (5) to (7), occurs in a calendar month, only the last of those events is to be taken into account for purposes of computing the Canada Child Tax Benefit.

This amendment applies in respect of events that occur after June 2011.

**Clause 33**

**Investment tax credit**

ITA
127

Section 127 of the Act permits deductions in computing tax payable in respect of logging taxes, political contributions and the investment tax credit (ITC).

**Definitions**

ITA
127(9)

Subsection 127(9) of the Act provides various definitions relevant for the purpose of calculating the ITC of a taxpayer.

**“flow-through mining expenditure”**

The definition "flow-through mining expenditure" in subsection 127(9) of the Act defines the expenses ("eligible expenses") that qualify for the 15% ITC in respect of specified surface "grass-roots" mineral exploration. Under the existing definition, the credit is available only in respect of eligible expenses renounced under a flow-through share agreement made after March 2010 and before April 2011.

The definition is amended to include eligible expenses incurred by a corporation after March 2011 and before 2013, where the expenses are incurred under a flow-through share agreement made after March 2011 and before April 2012.

**Clause 34**

**Basic minimum tax credit determined**

ITA
127.531(*a*)

Section 127.531 of the Act permits an individual to claim a deduction in computing the alternative minimum tax for most non-refundable personal tax credits. Paragraph 127.531(*a*) is amended to add references to new sections 118.031 and 118.06, consequential on the introduction of the Children’s Arts Tax Credit and the Volunteer Firefighter Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 35**

**Where individual bankrupt**

**ITA**
128(2)(e)(iii)(A)

Subsection 128(2) of the Act contains a number of special rules that apply in cases of personal bankruptcy. Clause 128(2)(*e*)(iii)(A) is amended to add references to new sections 118.031 and 118.06, consequential on the introduction of the Children’s Arts Tax Credit and the Volunteer Firefighter Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Clause 36**

**Surplus funds derived from operations**

ITA
138(12)

Subsection 138(12) provides definitions for the purpose of computing an insurer's income from carrying on an insurance business in Canada.

The amount of an insurer's "surplus funds derived from operations" is determined by a formula in that definition. The "surplus funds derived from operations" of an insurer applies for the purposes of the rules in section 138 applicable to insurance corporations and for a number of other purposes, including the special tax on the capital of a financial institution under Part VI of the Act. The description of G in the formula reduces the amount of the "surplus funds derived from operations" of an insurer by the total of all gifts made in the period by the insurer to a registered charity or other donee described in paragraph 110.1(1)(*a*) or (*b*).

The description of G in the formula is amended to replace the reference to the list of donees in paragraphs 110.1(*a*) and (*b*) with a reference to a "qualified donee", consequential on the amendment to the definition "qualified donee" in subsection 149.1(1).

The definition "qualified donee" is amended to directly list qualified donees, rather than referencing the lists of qualified donees in paragraphs 110.1(1)(*a*) and (*b*) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1). The definition "qualified donee" is also amended to require that entities listed under paragraph (*a*) of the amended definition be "registered" by the Minister of National Revenue in order to be qualified donees. For further information see the commentary on the amended definition "qualified donee" in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 37**

**Registered retirement savings plan**

**Definitions**

ITA
146(1)

Subsection 146(1) of the Act defines a number of terms that apply for the purposes of section 146.

**"benefit"**

The definition "benefit" describes amounts required to be included in an annuitant's income in respect of an RRSP. This definition is amended to exclude amounts that are taxed under Part XI.01 in relation to an RRSP, unless the tax is waived, cancelled or refunded. The effect of this amendment is to prevent an amount in respect of an RRSP from being taxed under both Part XI.01 as an advantage and under Part I as an RRSP benefit.

This amendment applies to transactions occurring, income earned, capital gains accruing and investments acquired after March 22, 2011.

**"non-qualified investment"**

The definition "non-qualified investment" in subsection 146(1) is repealed, consequential on the extension of the definition "non-qualified investment" in subsection 207.01(1) to RRSPs and RRIFs.

This amendment applies in respect of investments acquired after March 22, 2011.

**Registration conditions**

ITA
146(2)(*c.4*)

Paragraph 146(2)(*c.4*) of the Act requires, as a condition of registration, that an RRSP must preclude the extension of any advantage (subject to a list of exceptions) to the annuitant (or to a person at non-arm's length with the annuitant) that is conditional in any way on the existence of the RRSP. Paragraph 146(2)(*c.4*) is repealed, consequential on the general extension of the more comprehensive tax-free savings account (TFSA) advantage rules to RRSPs and RRIFs. For further information, please refer to the commentary on the amendments to section 207.01 and following.

This amendment applies after March 22, 2011.

**Disposition of non-qualified investment**

ITA
146(6)

Subsection 146(6) of the Act provides a deduction in computing income in respect of a disposition of a non-qualified investment by an RRSP. The deduction is equal to the lesser of the proceeds of disposition of the investment and the amount that was included in income in relation to the non-qualified investment pursuant to subsection 146(10). Subsection 146(6) is repealed, consequential on the extension of the tax-free savings account (TFSA) non-qualified investment rules in Part XI.01 of the Act to RRSPs and RRIFs. For further information, please refer to the commentary on the amendments to section 207.04.

This amendment applies in respect of investments acquired after March 22, 2011.

**Property used as a security for a loan**

ITA
146(10)

Subsection 146(10) of the Act requires the inclusion of two amounts in the income of an annuitant of an RRSP for a year. The first is the fair market value of a non-qualified investment acquired by the RRSP in the year. The second is the fair market value of any property of the RRSP that is pledged as security for a loan.

Subsection 146(10) is amended, consequential on the extension of the tax-free savings account (TFSA) non-qualified investment rules in Part XI.01 of the Act to RRSPs and RRIFs, to eliminate the requirement to include any amount in income in relation to the acquisition of a non-qualified investment by the RRSP. Instead, under amended section 207.04, a 50% tax applies on the acquisition of such an investment by an RRSP. For further information, please refer to the commentary on the amendments to section 207.04.

This amendment applies in respect of investments acquired after March 22, 2011.

**Life insurance policies**

ITA
146(11) and (11.1)

Subsection 146(11) of the Act deems an acquisition of a life insurance policy not to be the acquisition of a non-qualified investment in certain cases. When subsection 146(11) was enacted, the Act did not define the term "life insurance policy" and the term had its ordinary meaning, which did not include an annuity contract. However, the term "life insurance policy" was subsequently defined in subsections 138(12) and 248(1) to include an annuity contract. Accordingly, subsection 146(11) permitted an RRSP trust to acquire and hold an annuity contract in some cases. Subsection 146(11.1) was introduced to limit the application of subsection 146(11) to annuity contracts issued before 1998. Paragraphs (*c*) to (*c.2*) of the definition "qualified investment" in subsection 146(1) expressly set out the types of annuity contracts that are qualified investments for trusteed RRSPs. Subsections 146(11) and (11.1) are being repealed as they are no longer necessary.

These amendments apply in respect of investments acquired after March 22, 2011.

**RRSP advantages**

ITA
146(13.1)

Subsection 146(13.1) of the Act imposes a penalty on an RRSP issuer if the issuer extends an advantage to the RRSP annuitant or to a person at non-arm's length with the annuitant. Subsection 146(13.1) is repealed, consequential on the general extension of the more comprehensive tax-free savings account (TFSA) advantage rules to RRSPs and RRIFs. For further information, please refer to the commentary on the amendments to section 207.01 and following.

This amendment applies to transactions occurring, income earned, capital gains accruing and investments acquired after March 22, 2011.

**Clause 38**

**Registered education savings plan – "post-secondary educational institution"**

ITA
146.1(1)

Subsection 146.1(1) of the Act defines a number of terms for the purposes of registered education savings plans (RESPs) under section 146.1.

The definition "post-secondary educational institution", which is relevant for the payment of educational assistance payments to a beneficiary under an RESP, includes a condition that requires the beneficiary to be in full-time attendance in a course of a minimum duration of 13 consecutive weeks.

This definition is amended to reduce the 13-consecutive-week minimum course duration requirement to a minimum of three consecutive weeks when the beneficiary is enrolled at a university in full-time attendance.

This amendment is made in conjunction with the amendment to paragraph (*b*) in the definition "designated educational institution" in subsection 118.6(1). For further information, refer to the commentary on that paragraph.

This amendment applies with respect to educational assistance payments made after 2010.

**Clause 39**

**Registered retirement income funds**

**Registration conditions**

ITA
146.3(2)(*g*)

Paragraph 146.3(2)(*g*) of the Act requires, as a condition of registration, that a RRIF must preclude the extension of any advantage (subject to a list of exceptions) to the annuitant (or to a person at non-arm's length with the annuitant) that is conditional in any way on the existence of the RRIF. Paragraph 146.3(2)(*g*) is repealed, consequential on the general extension of the more comprehensive tax-free savings account (TFSA) advantage rules to RRSPs and RRIFs. For further information, please refer to the commentary on the amendments to section 207.01 and following.

This amendment applies after March 22, 2011.

**Use of property as security for a loan**

ITA
146.3(7)

Subsection 146.3(7) of the Act requires the inclusion of two amounts in the income of an annuitant of a RRIF for a year. The first is the fair market value of a non-qualified investment acquired by the RRIF in the year. The second is the fair market value of any property of the RRIF that is used as security for a loan.

Subsection 146.3(7) is amended, consequential on the extension of the tax-free savings account (TFSA) non-qualified investment rules in Part XI.01 of the Act to RRSPs and RRIFs, to eliminate the requirement to include any amount in income in relation to the acquisition of a non-qualified investment by the RRIF. Instead, under amended section 207.04, a 50% tax applies on the acquisition of such an investment by a RRIF. For further information, please refer to the commentary on the amendments to section 207.04.

This amendment applies in respect of investments acquired after March 22, 2011.

**Disposition of non-qualified investment**

ITA
146.3(8)

Subsection 146.3(8) of the Act provides a deduction in computing income where a RRIF has disposed of a non-qualified investment. The deduction is equal to the lesser of the proceeds of disposition of the investment and the amount that was included in income in relation to the non-qualified investment pursuant to subsection 146.3(7). Subsection 146.3(8) is repealed, consequential on the extension of the tax-free savings account (TFSA) non-qualified investment rules in Part XI.01 of the Act to RRSPs and RRIFs. For further information, please refer to the commentary on the amendments to section 207.04.

This amendment applies in respect of investments acquired after March 22, 2011.

**Benefit or loan**

ITA
146.3(13)

Subsection 146.3(13) of the Act extends the circumstances under which the registration of a RRIF may be revoked under subsection 146.3(11). In particular, it permits the revocation of the registration of a RRIF if a benefit or loan (*i.e.*, an advantage) is extended to the RRIF annuitant (or to a person at non-arm's length with the annuitant) contrary to the requirements of the registration condition set out in existing paragraph 146.3(2)(*g*). Subsection 146.3(13) is repealed, consequential on the general extension of the more comprehensive tax-free savings account (TFSA) advantage rules to RRSPs and RRIFs. For further information, please refer to the commentary on the amendments to section 207.01 and following.

This amendment applies to transactions occurring, income earned, capital gains accruing and investments acquired after March 22, 2011.

**Clause 40**

**Exemptions**

ITA
149

Section 149 of the Act provides that no tax is payable under Part I on the taxable income of a person for a period during which the person is a person listed in that section.

**Registered Canadian amateur athletic associations**

ITA
149(1)(*g*)

New paragraph 149(1)(*g*) of the Act clarifies that registered Canadian amateur athletic associations are exempt from tax.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Trusts established pursuant to the *Environment Quality Act* (Quebec) or the *Nuclear Fuel Waste Act***

ITA
149(1)(*z.1*) and (*z.2*)

New paragraph 149(1)(*z.1*) of the Act exempts, from tax under Part I of the Act, a trust created pursuant to section 56 of the *Environment Quality Act* (Quebec). That provision requires certain residual materials elimination facilities to provide financial guarantees to fund environmental reclamation costs after the closure of the facility, and to establish a social trust to do so. The income tax exemption under paragraph 149(1)(*z.1*) applies only where no persons are beneficially interested in the trust other than Her Majesty in right of Canada, Her Majesty in right of a province and municipalities that are exempt from income taxation under subsection 149(1) of the ITA.

Similarly, new paragraph 149(1)(*z.2*) exempts from tax under Part I a trust created pursuant to subsection 9(1) of the *Nuclear Fuel Waste Act*. That provision requires specified entities to contribute moneys to a trust fund for the management of nuclear fuel waste. In this case, the exemption applies only where no persons are beneficially interested in the trust other than Her Majesty in right of Canada, Her Majesty in right of a province, a Crown-owned nuclear energy corporation that is exempt from taxation under

subsection 149(1) of the ITA or the waste management organization that is required to be established under the provisions of the *Nuclear Fuel Waste Act* (provided that all of the shares of the waste management organization are owned by nuclear energy corporations).

These provisions ensure that the tax consequences to a municipality or Crown-owned nuclear energy corporation that is required by federal or provincial legislation to establish a trust to fund an environmental obligation are the same as if the municipality or the Crown-owned nuclear energy corporation were to have accumulated the funds internally rather than in a trust.

These amendments apply to the 1997 and subsequent taxation years.

**Information returns**

ITA
149(12)

Subsection 149(12) of the Act provides that entities, that are exempt from tax because they are listed under paragraphs 149(1)(*e*) or (*l*) of the Act, are under certain circumstances required to file an information return within six months after the end of each fiscal year.

Subsection 149(12) is amended to exclude registered Canadian amateur athletic associations from the requirement to file an information return under subsection 149(12). This amendment is concurrent to the amendment to subsection 149.1(14) which requires a registered Canadian amateur athletic association to file an information return and a public information return. For further information, see the commentary on subsection 149.1(14).

This amendment applies for fiscal periods that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Clauses 41 and 42**

**Qualified donees**

ITA
149.1

Section 149.1 of the Act provides the rules that must be met for charities to obtain and keep registered status. A registered charity is exempt from tax on its taxable income and can issue receipts which entitle its donors to claim tax relief in respect of their donations. This section is amended to extend certain of its provisions to Canadian amateur athletic associations and other qualified donees. The heading before section 149.1 is changed from “Charities” to “Qualified donees”.

**Definitions**

ITA
149.1(1)

Subsection 149.1(1) of the Act contains definitions that are relevant for the purposes of sections 149.1 and 149.2 and Part V of the Act. The following definitions are amended or added, applicable on and after the later of the day on which the amending act is assented to and January 1, 2012.

**“Canadian amateur athletic association”**

The new definition “Canadian amateur athletic association” in subsection 149.1(1) of the Act provides the requirements that must be met in order for an association to be a Canadian amateur athletic association. A

Canadian amateur athletic association is an association having the promotion of amateur athletics in Canada on a nation-wide basis as its exclusive purpose and its exclusive function. Apart from this, the new definition generally describes an association previously described in the definition "registered Canadian amateur athletic association" in subsection 248(1) of the Act, except for the requirement of registration. More specifically, a "Canadian amateur athletic association" is an association

- created under any law in force in Canada,
- resident in Canada,
- having no part of its income payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder of the association unless the proprietor, member or shareholder was a club, society or association the primary purpose and primary function of which was the promotion of amateur athletics in Canada,
- having the promotion of amateur athletics in Canada on a nation-wide basis as its exclusive purpose and exclusive function, and
- devoting all of its resources to that purpose and function.

The definition "registered Canadian amateur athletic association" in subsection 248(1) is amended concurrently to refer to the new definition "Canadian amateur athletic association".

**"ineligible individual"**

The new definition "ineligible individual" in subsection 149.1(1) of the Act is added concurrently with the addition of new paragraphs 149.1(4.1)(*e*) and 149.1(4.2)(*c*) and subsection 149.1(25) of the Act, which are intended to restrict the privileges, such as issuing tax receipts, of charities and Canadian amateur athletic associations if an individual with significant influence within the charity or association has a recent history of certain relevant misconduct. The definition "ineligible individual" provides a list of the types of relevant misconduct.

An ineligible individual will include, for example, an individual who has been involved with charities or associations that have had their registered status revoked for conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under the Act and for which the registration of the charity or association was revoked within the preceding five-year period.

New paragraphs 149.1(4.1)(*e*) and (4.2)(*c*) provide, respectively that the registration of a charity or amateur athletic association can be revoked if an ineligible individual is a director, trustee, officer or like official of the association, or controls or manages the association, directly or indirectly, in any manner whatever.

New subsection 149.1(25) provides that the Minister of National Revenue may refuse to register a charity or Canadian amateur athletic association if the application is made by an ineligible individual, or an ineligible individual controls or manages the charity or association, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the charity or association.

For this purpose, an "ineligible individual" at any time is someone who has been:

(a) convicted of a relevant criminal offence for which a pardon has not been granted,
(b) convicted of a relevant offence in the five-year period preceding that time,
(c) a director, trustee, officer or like official of a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under the Act and for which the registration of the charity or association was revoked in the five-year period preceding that time,
(d) an individual who controlled or managed, directly or indirectly, in any manner whatever, a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have

constituted a serious breach of the requirements for registration under the Act and for which its registration was revoked in the five-year period preceding that time, or

(e) a promoter in respect of a tax shelter that involved a registered charity or a registered Canadian amateur athletic association, the registration of which was revoked in the five-year period preceding that time for reasons that included or were related to participation in the tax shelter.

A relevant criminal offence is defined in subsection 149.1(1) as a criminal offence under the laws of Canada, or an offence that would be criminal if it were committed in Canada, that relates to financial dishonesty or is relevant to the operation of the charity or Canadian amateur athletic association.

A relevant offence is defined in subsection 149.1(1) as a non-criminal offence under the laws of Canada, or an offence that would be such an offence if it were committed in Canada, that relates to financial dishonesty, or is relevant to the operation of the charity or Canadian amateur athletic association.

**"promoter"**

The new definition "promoter" in subsection 149.1(1) provides that, for the purposes of sections 149.1 and 149.2 and Part V of the Act, "promoter" has the meaning assigned by section 237.1.

Subsection 237.1(1) provides definitions of terms that apply for the purpose of the tax shelter rules in section 237.1.

A tax shelter promoter is any person who sells, issues or promotes the sale, issuance or acquisition of a tax shelter or who acts as an agent or advisor in respect of such activities.

This definition is relevant for the purposes of the new definition "ineligible individual" in subsection 149.1(1). Paragraph (*e*) of the definition "ineligible individual" provides that an individual will be an ineligible individual if the individual was a promoter in respect of a tax shelter that involved a registered charity or a registered Canadian amateur athletic association, the registration of which was revoked in the five-year period preceding that time for reasons that included or were related to participation in the tax shelter.

For further information see the commentary on the new definition "ineligible individual" in subsection 149.1(1).

**"qualified donee"**

The definition "qualified donee" in subsection 149.1(1) lists the entities that are eligible to issue receipts for the purposes of the charitable donations deduction and the charitable donations tax credit. Subsection 248(1) of the Act provides that this definition applies for the purposes of the Act.

The definition "qualified donee" in subsection 149.1(1) is amended to directly list these donees, rather than referencing the lists of donees in paragraphs 110.1(1)(*a*) and (*b*) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1) of the Act. This includes registered charities, registered Canadian amateur athletic associations, Her Majesty in right of Canada or a province, and the United Nations or an agency of the United Nations.

Paragraph (*a*) of the amended definition "qualified donee" also includes the following list of entities if they are registered by the Minister of National Revenue:

(i) housing corporations resident in Canada and exempt from tax under Part I of the Act because of paragraph 149(1)(*i*) of the Act that have applied for registration,

(ii) municipalities in Canada,

(iii) municipal or public bodies performing a function of government in Canada that have applied for registration,

(iv) universities outside Canada that are prescribed to be universities the student bodies of which ordinarily include students from Canada, and

(v) charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift in the 36–month period that begins 24 months before that time.

To maintain registration, donees are required to meet the requirements of subsection 168(1) of the Act. New subsection 149.1(4.3) provides that the Minister of National Revenue may, in the manner described in section 168, revoke the registration of a qualified donee listed under paragraph (*a*) of the definition "qualified donee" for any reason listed in subsection 168(1). Amended subsection 168(1) generally requires such a qualified donee to:

- comply with the requirements of the Act for its registration;
- issue receipts only in accordance with the Act and the *Income Tax Regulations*; and
- comply with sections 230 to 231.5 of the Act, relating to books and records.

**"related business"**

Subsections 149.1(2) and (3) provide, respectively, that the registration of a charitable organization or a public foundation can be revoked if the organization or foundation carries on a business that is not a related business. The definition "related business" provides that a related business of a charity includes a business that is unrelated to the purposes of the charity if substantially all of the persons employed by the charity in carrying on that business are not remunerated for that employment.

The definition "related business" is amended to provide that the definition applies to Canadian amateur athletic associations in the same way that it applies to charities. This amendment is consequential on the introduction of subsection 149.1(4.2), which provides that the registration of a Canadian amateur athletic association may be revoked if the association carries on a business that is not a related business.

**"relevant criminal offence"**

The new definition "relevant criminal offence" applies for the purposes of the new definition "ineligible individual" in subsection 149.1(1). A relevant criminal offence is a criminal offence under the laws of Canada, or an offence that would be criminal if it were committed in Canada, that relates to financial dishonesty or is relevant to the operation of the charity or Canadian amateur athletic association.

For further information see the commentary on the new definition "ineligible individual" in subsection 149.1(1).

**"relevant offence"**

The new definition "relevant offence" applies for the purposes of the new definition "ineligible individual". A relevant offence is a non-criminal offence under the laws of Canada, or an offence that would be such an offence if it were committed in Canada, that relates to financial dishonesty, or is relevant to the operation of the charity or Canadian amateur athletic association.

For further information see the commentary on the new definition "ineligible individual" in subsection 149.1(1).

**"taxation year"**

The definition "taxation year" in subsection 149.1(1) of the Act provides that the taxation year of a registered charity is the charity's fiscal period. The definition is amended to also provide that the taxation year of a registered Canadian amateur athletic association is the association's fiscal period.

**Revocation of registration of a registered charity**

ITA
149.1(4.1)(*e*)

Subsection 149.1(4.1) of the Act sets out reasons for which the Minister of National Revenue may revoke the registration of a registered charity.

New paragraph 149.1(4.1)(*e*) provides that the registration of a registered charity can be revoked if an ineligible individual is a director, trustee, officer or like official of the charity or controls or manages the charity, directly or indirectly, in any manner whatever.

Paragraph 149.1(4.1)(*e*) is intended to restrict the privileges, such as issuing tax receipts, of charities and Canadian amateur athletic associations if an individual with significant influence within the charity or association has a recent history of certain relevant misconduct. The new definition "ineligible individual" provides a list of the types of relevant misconduct.

The procedure for the revocation of the registration of a charity under subsection 149.1(4.1) is set out in section 168 of the Act, which provides that the Minister of National Revenue must give notice of intention to revoke and that the charity may object to the notice.

For further information see the commentary on the new definition "ineligible individual" in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Revocation of registration of a registered Canadian amateur athletic association**

ITA
149.1(4.2)

New subsection 149.1(4.2) of the Act provides that the Minister of National Revenue may revoke the registration of a registered Canadian amateur athletic association:

- for any reason described in subsection 168(1) of the Act;
- if the association carries on a business that is not a related business of the association (for further information, see the commentary on the new definition "related business"); or
- if an ineligible individual is a director, trustee, officer or like official of the association, or controls or manages the association, directly or indirectly, in any manner whatever (for further information see commentary on the new definition "ineligible individual").

Reasons for revoking the registration of a registered Canadian amateur athletic association could include, for example, if the registered Canadian amateur athletic association ceases to be a Canadian amateur athletic association as defined in subsection 149.1(1) of the Act. It could also include the issuance of a receipt for a gift otherwise than in accordance with the Act or the failure to file an information return.

For further information, refer to the commentary on amended subsection 149.1(1) regarding the definitions "Canadian amateur athletic association", "ineligible individual" and "related business", and on amended subsection 168(1).

The procedure for the revocation of the registration of a registered Canadian amateur athletic association under subsection 149.1(4.2) is set out in section 168 of the Act, which provides that the Minister of National Revenue must give notice of intention to revoke and that the registered Canadian amateur athletic association may object to the notice.

New subsection 149.1(4.2) applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Revocation of a qualified donee**

ITA
149.1(4.3)

New subsection 149.1(4.3) of the Act provides that the Minister of National Revenue may revoke the registration of a qualified donee listed under paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) of the Act, for any reason described in subsection 168(1) of the Act.

The entities listed under paragraph (*a*) of the definition "qualified donee" are:

(i) housing corporations resident in Canada and exempt from tax under Part I of the Act because of paragraph 149(1)(*i*) that have applied for registration,
(ii) a municipalities in Canada,
(iii) a municipal or public bodies performing a function of government in Canada that have applied for registration,
(iv) universities outside Canada that are prescribed to be universities the student bodies of which ordinarily include students from Canada, and
(v) charitable organizations outside Canada to which Her Majesty in right of Canada has made a gift in the 36–month period that begins 24 months before that time

The reasons for revocation described in subsection 168(1) of the Act include if an entity has:

- ceased to comply with the requirements of the Act for its registration;
- issued a receipt for a gift otherwise than in accordance with the Act and the *Income Tax Regulations*; or
- failed to comply with or contravenes any of sections 230 to 231.5 of the Act, including the requirement to keep adequate books and records.

The procedure for the revocation of the registration of a qualified donee under subsection 149.1(4.3) is set out in section 168 of the Act and provides that the Minister of National Revenue must give notice of intention to revoke and that the qualified donee may object to the decision.

For further information, refer to the commentary on amended subsection 168(1).

New subsection 149.1(4.3) applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Political activities of a Canadian amateur athletic association**

ITA
149.1(6.201)

New subsection 149.1(6.201) of the Act provides that a Canadian amateur athletic association may engage in non-partisan political activities that are ancillary and incidental to its exclusive purpose and exclusive function.

A Canadian amateur athletic association has the promotion of amateur athletics in Canada on a nation-wide basis as its exclusive purpose and exclusive function and is required to devote all of its resources to that purpose and function. New subsection 149.1(6.201) recognizes that there may be circumstances where it is not inappropriate for a registered Canadian amateur athletic association use its resources, within defined limits, for ancillary and incidental political activities in its promotion of amateur athletics in Canada on a nation-wide basis. However, purely partisan activities such as supporting or opposing a

political party or candidate could be viewed as not being in devotion to an association's purpose and function.

New subsection 149.1(6.201) applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Information returns**

ITA
149.1(14)

Subsection 149.1(14) of the Act requires registered charities to annually file an information return, and a public information return, containing prescribed information, part of which the Minister of National Revenue may disclose to the public under subsection 149.1(15) of the Act. The returns are required to be filed within six months from the end of the taxation year of the charity.

This subsection is amended to require registered Canadian amateur athletic associations to also file these returns.

The amendment applies for fiscal periods that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Listing of qualified donees**

ITA
149.1(15)(*b*)

Subsection 149.1(15) of the Act authorizes the Minister of National Revenue to communicate certain information in respect of charities, such as the prescribed information that is required to be contained in the public information return under subsection 149.1(14).

Section 241 of the Act prohibits the use or communication by an official of information obtained under the Act unless specifically authorized by one of the exceptions found in that section.

Paragraph 149.1(15)(*b*) provides that, notwithstanding section 241, the Minister of National Revenue may publish a listing of all registered or previously registered charities indicating the name, location, registration number and, where the charity is no longer registered, the effective date of the revocation, annulment or termination of the charity's registration.

Paragraph 149.1(15)(*b*) is amended to allow for the release of certain information in respect of registered Canadian amateur athletic associations and qualified donees referred to in paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) of the Act. Since donations to such qualified donees are eligible for the same tax relief that is available in respect of donations to registered charities, this amendment to subsection 149.1(15) is intended to provide greater transparency to potential donors and the public.

For further details regarding information that will be made public with respect to registered Canadian amateur athletic associations, refer to the commentary on subsection 241(3.2). For a list of other qualified donees to which amended subsection 149.1(15) will now also apply, refer to the commentary on paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Refusal to register**

ITA
149.1(22)

Subsection 149.1(22) provides that the Minister of National Revenue may notify a person of the decision to refuse the application of the person for registration as a registered charity.

Subsection 149.1(22) is amended to provide that the Minister of National Revenue may also notify a person of the decision to refuse the application of the person for registration as a registered Canadian amateur athletic association or for registration as a qualified donee referred to in subparagraphs (*a*)(i) or (iii) of the definition "qualified donee" in subsection 149.1(1). Amended subsection 168(4) of the Act provides the person with the right to file a notice of objection to the decision of the Minister of National Revenue.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Refusal to register – ineligible individual**

ITA
149.1(25)

New subsection 149.1(25) of the Act provides that the Minister of National Revenue may refuse to register a charity or Canadian amateur athletic association if the application is made by an ineligible individual, or an ineligible individual controls or manages the charity or association, directly or indirectly in any manner whatever, or is a director, trustee, officer or like official of the charity or association.

Subsection 149.1(25) is intended to prevent the registration of charities and Canadian amateur athletic associations if an individual with significant influence within the charity or association has a recent history of certain relevant misconduct. The new definition "ineligible individual" in subsection 149.1(1) of the Act provides a list of the types of relevant misconduct.

For further information, see the commentary on the definition "ineligible individual" in subsection 149.1(1).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 43**

**Revocation of registration**

ITA
168

Section 168 of the Act provides administrative rules with respect to application for and revocation of the registration of a charity or a registered Canadian amateur athletic association. Section 168 is amended to extend its application in limited circumstances to certain other qualified donees.

**Notice of intention to revoke registration**

ITA
168(1)

Subsection 168(1) of the Act describes the circumstances under which the Minister of National Revenue may give notice of the Minister's intention to revoke the registration of a registered charity or registered Canadian amateur athletic association.

Subsection 168(1) is amended concurrently with the introduction of new subsection 149.1(4.3) of the Act, to provide that the Minister of National Revenue may also give notice of an intention to revoke the registration of a person described under paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) under the same circumstances, except for the failure of that to file an information return (since such a qualified donee is not required to file an information return). For further information, refer to the commentary on subsection 149.1(4.3).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Objection to proposal or designation**

ITA
168(4)

Subsection 168(4) of the Act provides that the objection and review process of the Minister of National Revenue applicable to assessments under Part I of the Act also applies to certain notices of decisions of the Minister regarding charities. Decisions that can be objected to include rejections of applications for registration and notices of revocation or annulment of registration. Filing an objection is a required step before an appeal to the Federal Court of Appeal may be made under subsection 172(3) of the Act.

Subsection 168(4) is amended concurrently with amendments to subsection 172(3) to provide that the objection and review process will also apply to certain notices of decisions regarding Canadian amateur athletic associations or persons described in paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) of the Act.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 44**

**Appeals to the Federal Court of Appeal**

ITA
172

Section 172 of the Act provides rules with respect to certain appeals to the Federal Court of Appeal.

**Appeals to the Federal Court of Appeal**

ITA
172(3)

Subsection 172(3) of the Act provides a right to appeal certain decisions of the Minister of National Revenue to the Federal Court of Appeal.

Paragraph 172(3)(*a*) provides that a decision of the Minister of National Revenue to refuse to register an applicant for registration as a Canadian amateur athletic association can be appealed to the Federal Court of Appeal. Paragraph 172(3)(*a*) is amended concurrently with the amendment to 168(4) of the Act to provide generally that a decision of the Minister, to confirm a decision in respect of which a notice was issued and an objection was filed under subsection 168(4) regarding a Canadian amateur athletic association, may be appealed to the Federal Court of Appeal. An appeal may be made to the Federal Court of Appeal after the Minister confirms the decision or within 90 days after the service of the notice of objection if the Minister does not confirm of vacate the decision.

New paragraph 172(3)(*a.2*) provides generally that a decision of the Minister of National Revenue, to confirm a decision in respect of which a notice was issued and an objection was filed under subsection 168(4) regarding a person described under paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) of the Act, may be appealed to the Federal Court of Appeal. An appeal may be made to the Federal Court of Appeal after the Minister confirms the decision or within 90 days after the service of the notice of objection if the Minister does not confirm or vacate the decision.

Paragraph 172(3)(*d*) provides for the appeal of decisions to refuse to issue a certificate of exemption under subsection 212(14) of the Act. Paragraph 172(3)(*d*) is repealed consequential on the repeal of subsection 212(14).

These amendments apply on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Deemed refusal by Minister of National Revenue**

ITA
172(4)

Subsection 172(4) of the Act provides that, if certain applications are made to the Minister of National Revenue (such as an application for registration as a registered Canadian amateur athletic association) and the Minister has not notified the applicant of the disposition of the application within 180 days after the filing of the application, then the Minister is deemed to have refused the application. This generally provides the applicant with a right of appeal to the Federal Court of Appeal under subsection 180(1) of the Act.

Paragraph 172(4)(*c*) provides that the deeming rule in subsection 172(4) can apply to deem the Minister of National Revenue to have refused to issue a certificate of exemption under subsection 212(14) of the Act. Paragraph 172(4)(*c*) is repealed consequential on the repeal of subsection 212(14).

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 45**

**Appeals to the Federal Court of Appeal**

ITA
180(1)(*b*)

Section 180 of the Act provides rules governing appeals to the Federal Court of Appeal of certain decisions made or actions taken by the Minister of National Revenue. Subsection 180(1) generally provides that an appeal to the Federal Court of Appeal authorized under subsection 172(3) of the Act may not be filed after 30 days from the time that notice of the Minister of National Revenue's decision was sent.

Paragraph 180(1)(*b*) provides that the deadline in paragraph 180(1)(*b*) applies to appeals from a notice to a registered Canadian amateur athletic association under subsection 168(1) of the Act. This paragraph is repealed consequential on the amendment to subsection 168(4) to provide for the Minister of National Revenue to issue various notices of decisions applicable to Canadian amateur athletic associations and certain other persons referred to in paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) of the Act. Notices under subsection 168(4) are referenced in paragraph 180(1)(*a*): accordingly, paragraph 180(1)(*b*) is repealed.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 46**

**Tax and penalties in respect of qualified donees**

ITA
Part V

Part V of the Act provides for special taxes and sanctions in connection with registered charities. The reference in the heading to Part V to registered charities is replaced with a reference to qualified donees. Part V is generally amended to provide that certain penalties may also apply to registered Canadian amateur athletic associations and to persons described in paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1).

**Clause 47**

**Eligible donee**

ITA
188(1.4)

A charity that is subject to taxes or penalties under Part V of the Act is entitled to reduce its liability to pay such amounts by the transfer of property to an eligible donee, as defined in subsection 188(1.3) of the Act. An eligible donee in respect of such an indebted charity is, generally, another charity that is a registered charity, that deals at arm's length with the indebted charity and that is fully compliant with its obligations under the Act.

New subsection 188(1.4) of the Act is added concurrently with other amendments to Part V that impose penalties on Canadian amateur athletic associations. In this regard, subsection 189(6.3) of the Act is amended to permit a Canadian amateur athletic association to reduce its liability to penalties under section 188.1 by transferring property to an eligible donee in respect of the association. New subsection 188(1.4) provides that an eligible donee in respect of a particular indebted Canadian amateur athletic association is, generally, another association that is a registered Canadian amateur athletic association that deals at arm's length with the indebted association and that is fully compliant with its obligations under the Act.

New subsection 188(1.4) applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 48**

**Penalties for charities and Canadian amateur athletic associations**

ITA
188.1

Section 188.1 of the Act provides for the application of penalties to charities and the suspension of the privilege of issuing charitable donation tax receipts. These sanctions generally apply in respect of activities that charities are not permitted to undertake. Section 188.1 is amended to provide that certain sanctions may also apply in respect of Canadian amateur athletic associations and certain other donees.

**Penalty – carrying on a business**

ITA
188.1(1) and (2)

Subsection 188.1(1) of the Act provides that a registered charity, other than a private foundation, is liable to a penalty equal to 5% of its gross revenue for a taxation year from any business that is not a related business. A private foundation is liable to a penalty equal to 5% of its gross revenue from any business. Subsection 188.1(2) provides the amount of the penalty is increased to 100% of its gross revenue for a taxation year if, within the previous 5 years it was liable for a tax under subsection 188.1(1).

Subsections 188.1(1) and (2) are amended to provide that a registered Canadian amateur athletic association will also be liable to the penalties in subsection 188.1(1) and (2) if it carries on a business that is not a related business. For further information see the commentary on the new definition "related business" in subsection 149.1(1) of the Act.

These amendments apply to taxation years that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Penalty – undue benefit**

ITA
188.1(4) and (5)

Subsection 188.1(4) of the Act provides that a registered charity is liable to a penalty of equal to 105% of the value of any undue benefit conferred on a person. The penalty is increased to 110% of the undue benefit if, within the previous five taxation years it was liable for a tax under subsection 188.1(4).

Subsection 188.1(4) is amended to also apply to registered Canadian amateur athletic associations.

Subsection 188.1(5) provides that an undue benefit conferred on a person is:

- a disbursement by way of a gift (other than a gift to a qualified donee); and
- the amount of any part of the income, rights, property or resources of the charity that is paid, payable, assigned or otherwise made available for the personal benefit of any person who
  - is a proprietor, member, shareholder, trustee or settler of the charity,
  - has contributed or otherwise paid into the charity more than 50% of the capital of the charity, or
  - does not deal at arm's length with a person described above, or with the charity.

However, an undue benefit does not include a benefit conferred by a charitable act in the ordinary course of the charitable activities of a charity, unless it can reasonably be considered that the eligibility of the beneficiary relates solely to the relationship of that person to the charity. An undue benefit also does not include reasonable consideration or remuneration for property acquired by the charity or for services received.

Subsection 188.1(5) is amended to provide that the meaning of undue benefit also applies to registered Canadian amateur athletic associations, except that the exception for a benefit conferred by a charitable act in the ordinary course of the charitable activities of a charity does not apply to registered Canadian amateur athletic associations. Instead, in the case of a registered Canadian amateur athletic association, an undue benefit does not include a disbursement or benefit to the extent that it is a gift made or a benefit conferred in the ordinary course of promoting amateur athletics in Canada on a nation-wide basis.

These amendments apply to taxation years that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Penalty – failure to file information return**

ITA
188.1(6)

Subsection 188.1(6) of the Act provides that a registered charity is liable to a penalty equal to $500 if it fails to file a return for a taxation year as required by subsection 149.1(14) of the Act.

Subsection 188.1(6) is amended, concurrently with the amendment to 149.1(14), to provide that a registered Canadian amateur athletic association is also liable to the penalty if it fails to file a return as required by subsection 149.1(14).

This amendment applies to taxation years that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Penalty – incorrect or false information**

ITA
188.1(7) to (9)

Subsection 188.1(7) of the Act provides that a registered charity is liable to a penalty, equal to 5% of the amount reported on a charitable donation receipt as representing an amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3), if the charity issues the receipt for a gift otherwise than in accordance with the Act and the *Income Tax Regulations*.

Subsection 188.1(8) of the Act provides that the amount of the penalty is increased to 10% of the amount reported on the receipt if, within the previous five taxation years the charity was liable for a tax under subsection 188.1(7).

Subsection 188.1(9) of the Act provides that a person or charity is liable to a penalty, equal to 125% of the amount reported on a charitable donation receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) of the Act or a credit under subsection 118.1(3) of the Act, generally if the person or charity makes or furnishes, a statement that the person or charity knows (or would reasonably be expected to know but for circumstances amounting to culpable conduct) is a false statement on the receipt. If the penalty under subsection 188.1(9) applies, the penalties under subsection 188.1(7) and (8) do not apply.

Subsections 188.1(7) to (9) are amended to provide that a registered Canadian amateur athletic association will also be liable to the penalties in subsections 188.1(7) to (9) in the same way that a registered charity is liable to those penalties.

These amendments apply to taxation years that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 49**

**Suspension of receipting privileges**

ITA
188.2(1) to (4)

Subsection 188.2(1) of the Act provides for the suspension of a registered charity's tax-receipting privileges concurrently with the assessment of certain penalties under section 188.1 of the Act by the Minister of National Revenue. For the one-year period that begins seven days after the assessment date, a suspended charity is prohibited from issuing official receipts, and other registered charities are not permitted to provide them with gifts. Subsection 188.2(1) is amended so that it may also apply to a registered Canadian amateur athletic association.

Subsection 188.2(2) of the Act provides for the suspension of a registered charity's tax-receipting privileges if the registered charity:

- fails to comply with certain provisions of the Act relating to administration and enforcement, such as the requirement to keep proper books and records; or
- assists another charity in avoiding the effects of a suspension by accepting gifts or transfers of property on behalf of the suspended charity.

Subsection 188.2(2) is amended to provide that the Minister of National Revenue may also in such circumstances suspend the tax-receipting privileges of a registered Canadian amateur athletic association or a person described in paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) of the Act.

New paragraph 188.2(2)(*c*) further provides for such a suspension of a person described in paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) if the person has issued a receipt for a gift otherwise than in accordance with the Act and the *Income Tax Regulations*.

New paragraph 188.2(2)(*d*) also provides for the suspension of a person that is a registered charity or registered Canadian amateur athletic association if an ineligible individual is a director, trustee, officer or like official of the person, or controls or manages the person, directly or indirectly, in any manner whatever. For further information, see the commentary on the new definition "ineligible individual" in subsection 149.1(1).

Subsection 188.2(3) of the Act generally prescribes the duration of a suspension of receipting privileges under subsections 188.2(1) or (2), being a one-year period beginning seven days after the Minister of National Revenue issues a notice of suspension. During that period, a registered charity is deemed not to be a qualified donee for the purposes of the Act, such that no charitable donations deduction or tax credit may be claimed by any person who makes a gift to the charity during that period. However, official receipts may continue to be issued in respect of gifts made before that period. If a charity is offered a gift while under suspension, the charity must inform the potential donor of the suspension, that it is not a qualified donee while under while under suspension and that, if the gift is made during the suspension, no charitable donations deduction or tax credit may be claimed by the donor in respect of the gift.

Subsection 188.2(3) is amended to provide that subsection 188.2(3) also applies to registered Canadian amateur athletic associations and to persons described by paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1)

Subsection 188.2(4) of the Act provides that a charity may file an application to the Tax Court of Canada for a postponement of the suspension under subsection 188.2(3) if a notice of objection, to the suspension under subsections 188.2(1) and (2), has been filed.

Subsection 188.2(4) is amended to provide that subsection 188.2(3) also applies to a registered Canadian amateur athletic association and a person described by paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1).

These amendments apply to taxation years that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 50**

**Reduction of liability for penalties**

ITA
189(6.3)

Subsection 189(6.3) of the Act applies to a registered charity on which the Minister of National Revenue has assessed penalties under section 188.1. If those penalties for a taxation year of the charity are in excess of $1,000. In such a case, subsection 189(6.3) allows the charity to reduce the liability by the amount by which the value of property transferred to an "eligible donee", within one year following the assessment date, exceeds any consideration given to the charity for the property transferred.

Subsection 189(6.3) is amended to provide that a registered Canadian amateur athletic association may similarly reduce its liability for penalties under section 188.1.

This amendment applies to taxation years that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Minister of National Revenue may assess**

ITA
189(7)

Subsection 189(7) of the Act provides the Minister of National Revenue with the authority to at any time assess a taxpayer in respect of any amount that a taxpayer is liable for under Part V. Subsection 189(7) also clarifies that this authority does not limit the authority of the Minister to revoke the registration of a registered charity.

Subsection 189(7) is amended to clarify that the Minister of National Revenue's authority to assess a taxpayer under Part V also does not limit the Minister's authority to revoke the registration of a registered Canadian amateur athletic association.

This amendment applies to taxation years that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 51**

**Transfers between registered educations savings plans**

ITA
204.9(5)

Subsection 204.9(5) of the Act sets out the mechanism for allowing property to be transferred from one registered education savings plan (RESP) to another. Subsection 204.9(5) is amended to provide greater flexibility for subscribers of individual RESPs to allocate RESP assets among siblings.

Generally, existing paragraph 204.9(5)(*c*) allows a transfer of property from one RESP to another to occur without tax consequences in two cases:

- under subparagraph (i), where there is a common beneficiary under the transferor plan and the transferee plan; or
- under subparagraph (ii), where a beneficiary under the transferor plan is a sibling of a beneficiary under the transferee plan, and the beneficiary under the transferee plan is under 21 years of age at the time of the transfer.

Subparagraph 204.9(5)(*c*)(ii) is amended to allow a transfer of property from an RESP of a beneficiary to

- an RESP of a sibling of the beneficiary, provided the sibling was under 21 years of age at the time the transferee RESP was entered into; or
- an RESP that is a plan that allows more than one beneficiary at any one time (commonly referred to as a "family plan") and under which the beneficiary's sibling is a beneficiary.

This amendment applies in respect of property transferred after 2010.

**Clause 52**

**Taxes in respect of RRSPs, RRIFs and TFSAs**

ITA
Part XI.01

Existing Part XI.01 of the Act imposes special taxes in relation to tax-free savings accounts (TFSAs). The heading of Part XI.01 of the Act is being amended to also refer to RRSPs and RRIFs, consequential on the introduction of measures announced in Budget 2011 in respect of registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs). In general terms, many of the anti-avoidance and tax integrity provisions in Part XI.01 that currently apply to TFSAs are being extended to also apply to RRSPs and RRIFs.

Section 207.01 provides definitions and interpretation rules for the purposes of Part XI.01 of the Act and, in particular, subsection 207.01(1) of the Act provides definitions of a number of terms for the purposes of Part XI.01. Most of the substantive amendments to implement the Budget 2011 RRSP and RRIF measures are being made by expanding the definitions contained in subsection 207.01(1) of the Act.

Most of the other amendments to Part XI.01 (and to sections 146 and 146.3 of the Act) are more minor consequential changes. For example, references to "TFSA" are being replaced with references to a new defined term, "registered plan" (a RRIF, RRSP or TFSA) in a number of provisions.

These amendments to Part XI.01 generally apply after March 22, 2011, but in some cases apply to income earned or capital gains accruing after March 22, 2011, regardless of when the investment generating the income or gain was acquired. In this regard, a special transitional rule in new subsection 207.05(4) modifies the tax consequences for income and gains in relation to prohibited investments that were held by an RRSP or RRIF at the time that the new RRSP measures were announced.

**Clause 53**

**Definitions**

ITA
207.01

Subsection 207.01(1) of the Act provides definitions for the purposes of Part XI.01 of the Act. It incorporates by reference the definitions in subsection 146.2(1), which relate to TFSAs. The opening sentence in subsection 207.01(1) is amended to also incorporate by reference the definitions in subsections 146(1) (other than the definition "benefit") and 146.3(1) of the Act, which relate to RRSPs and RRIFs respectively. The term "benefit" as used in Part XI.01 is intended to have its ordinary meaning and not to have the meaning assigned by subsection 146(1).

**"advantage"**

Section 207.05 of the Act imposes a tax if an advantage in relation to a TFSA is extended to any person who is, or who does not deal at arm's length with, the holder of the TFSA. An advantage is defined to include, in paragraph (*a*), any benefit, loan or indebtedness that is in any way dependent on the existence of the TFSA, with certain exceptions to the application of paragraph (*a*) listed in subparagraphs (*a*)(i) to (iv). Under existing paragraph (*b*), an advantage includes a benefit that is an increase in the fair market value of property held in connection with the TFSA where it is reasonable to conclude that the increased value is attributable to certain events or circumstances described in subparagraphs (i) to (iv) thereof. Paragraph (*c*) of the existing definition "advantage" refers to income (including a capital gain) that is reasonably attributable, directly or indirectly, to a "deliberate over-contribution" or a "prohibited investment" in respect of the TFSA or any other TFSA of the holder. Paragraph (*d*) refers to "prescribed benefits". No benefits are currently prescribed for the purposes of the definition "advantage".

The definition "advantage" is amended to also generally apply in the context of RRSPs and RRIFs. The definition "deliberate over-contribution" will continue to apply exclusively to TFSAs. In addition to extending the application of paragraphs (*a*) to (*c*) to apply to RRSPs and RRIFs, the following provisions are added:

- new subparagraph (*c*)(ii), which generally describes the receipt of investment returns outside an RRSP or RRIF by the RRSP/RRIF annuitant or a person at non-arm's length with the annuitant where it is reasonable to conclude that the payment is made in relation to (or would not have been made but for) an investment inside the RRSP or RRIF; and
- new paragraph (*d*), an "RRSP strip". Further detail regarding this new defined term is provided below.

Existing subparagraph (*c*)(ii) (deliberate over-contributions to a TFSA) is re-numbered as subparagraph (*c*)(iii). Existing paragraph (*d*) (prescribed benefits) is being re-numbered as paragraph (*e*). No benefits are currently prescribed for the purposes of this definition.

This amendment applies to transactions occurring, income earned, capital gains accruing and investments acquired after March 22, 2011.

**“controlling individual”**

This definition is introduced to provide a term to refer to the holder of a TFSA or the annuitant of an RRSP or RRIF.

This amendment applies after March 22, 2011.

**“non-qualified investment”**

This definition is amended to replace its reference to a TFSA with a reference to a “registered plan” – a new defined term in subsection 207.01(1) that refers to a RRIF, RRSP or TFSA – consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs.

This amendment applies to transactions occurring, income earned, capital gains accruing and investments acquired after March 22, 2011.

**“prohibited investment”**

This definition is amended to refer to registered plans, which include RRSPs and RRIFs. This amendment is consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs.

This amendment applies after March 22, 2011 in respect of investments acquired at any time.

**“RRSP strip”**

The new definition “RRSP strip” generally describes amounts extracted from an RRSP or RRIF without being included in income under Part I of the Act. The definition includes any amount used or obtained by the annuitant of an RRSP or RRIF (or by a person at non-arm’s length with the annuitant) where one of the main purposes of the transaction (or series of transactions) is to enable the annuitant of an RRSP or RRIF (or a person at non-arm’s length with the annuitant) to use or obtain the benefit of property held in connection with the RRSP or RRIF, subject to a list of exceptions. The definition is intended to apply even in situations where no amount was traceably removed from a plan but where nevertheless the value of the plan has been used.

The listed exceptions to the definition are, in general terms, amounts included in the income of the annuitant or his or her spouse or common-law partner, amounts withdrawn under the Home Buyers’ Plan or the Lifelong Learning Plan, permitted transfers of funds from one plan to another, or the holding of a “prescribed excluded property” (generally insured mortgages) in an RRSP. The latter could be viewed as the use of the RRSP funds by the annuitant, in cases where the annuitant’s own mortgage is held by his or her RRSP.

A swap transaction undertaken to reduce the balance of an RRSP or RRIF is one example of an RRSP strip. Other examples of RRSP strips involve artificial loan transactions where there is no expectation of repayment (structured to make the application of section 15 of the Act difficult or impossible) or payments to the annuitant or to nominees of the annuitant for services.

This amendment applies after March 22, 2011.

**“specified non-qualified investment income”**

This definition is amended to refer to registered plans, which include RRSPs and RRIFs, consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs.

This amendment applies to transactions occurring, income earned, capital gains accruing and investments acquired after March 22, 2011.

**"swap transaction"**

This definition is amended to refer to registered plans, which include RRSPs and RRIFs, consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs. Swap transactions – prior to the introduction of these amendments – could potentially be used in attempts to transfer value either into or out of an RRSP. These transactions generally involved the exploitation of volatility in pricing of securities, such that an asset potentially worth more or less than its (sometimes momentary) trading price could be purchased from an RRSP at that price, creating a shift in value of the difference between the purchase price and the actual value. In general, younger individuals could obtain tax benefits by increasing RRSP balances to shelter more of their savings and investment income from tax annually, while older individuals could obtain tax benefits from reducing the balance of their RRSPs to avoid income inclusions on withdrawal.

Under the definition "advantage", as amended under these proposals, an *increase* in the fair market value of a registered plan that is in any way attributable to a swap transaction is considered an advantage that is subject to the tax. A swap transaction that results in a *decrease* in an RRSP or RRIF balance would come within the new definition "RRSP strip".

The definition "swap transaction" is also amended to introduce certain exceptions. In particular, a transfer from an annuitant's RRSP to another RRSP of the annuitant is made an exception to the "swap transaction" definition in new paragraph (*a*). Paragraph (*a*) also includes a pre-existing exception to the definition for payments that are distributions from a registered plan. Paragraph (*b*) provides an exception for plan contributions. This exception also existed in the TFSA-only definition "swap transaction". However, contributions are described differently for RRSPs and RRIFs and consequently the exception has been set out in its own paragraph. Finally, new paragraph (*c*) creates an exception to enable annuitants to "swap out" prohibited investments in certain circumstances. It is anticipated that paragraph (*c*) could assist an annuitant of an RRSP or RRIF that holds an investment that becomes a prohibited investment through the actions of third parties (for example, the purchase of additional equity by a relative, or the redemption of existing investments held by others that increases the percentage ownership of a business by an annuitant or non-arm's length persons).

The amended definition generally applies after June 30, 2011. However, it will only apply after 2012 in relation to a swap transaction undertaken for the purpose of removing a property from an RRSP or RRIF that has resulted in, or would otherwise result in, a tax being payable under Part XI.01 in relation to the holding of the property in the RRSP or RRIF.

**"transitional prohibited investment benefit"**

The definition "transitional prohibited investment benefit" is introduced in order to facilitate the provision of partial relief from the advantage tax on income (including capital gains) on prohibited investments for investments held by an RRSP or RRIF on March 23, 2011. The definition describes income earned and capital gains realized by a trust governed by an RRSP or RRIF where three conditions are met.

The first condition is that the income or gain must be attributable to a property that was a prohibited investment for the RRSP or RRIF trust on March 23, 2011 (*i.e.*, the first day that the definition "prohibited investment" applies to RRSPs and RRIFs under the Budget 2011 measures).

The second condition is that, in the case of income, it must be earned after March 22, 2011 and before 2017. In the case of a gain, it must accrue after March 22, 2011 and be realized before 2017. The start dates for these time frames reflect the application date of the new rules. In other words, income earned before March 23, 2011 and capital gains that accrued before March 23, 2011 are not subject to the new rules under Part XI.01.

The last year that this transitional relief will be available is 2016. In order to benefit from this transitional relief in relation to capital appreciation of a prohibited investment, it will be necessary to dispose of the investment (generally by sale, redemption or through a distribution in kind from the RRSP or RRIF) by the end of 2016.

The third condition is that the amount of the income or gain be paid from the RRSP or RRIF within 90 days after the end of the year in which it is earned or realized. An amendment to the definition "benefit" in subsection 146(1) will prevent this amount from also being taxable under Part I.

Where income (or all or a portion of a realized capital gain) meets these three conditions, new subsection 207.05(4) reduces the amount of the advantage tax from the fair market value of the income or gain (the income or gain is referred to in the advantage provisions as the "benefit") to 42.9% of the income or gain. This amount reflects the weighted average combined federal-provincial top marginal personal tax rate. This transitional relief eliminates the tax deferral and tax-free growth characteristics associated with affected investment income, and imposes a tax rate comparable to that which would in any case have been payable by most annuitants on withdrawal of these amounts from their RRSP.

This amendment applies after March 22, 2011.

**Obligation of issuer**

ITA
207.01(5)

Subsection 207.01(5) of the Act requires that the issuer of a TFSA that governs a trust exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the trust holds a non-qualified investment. This provision is amended to also refer to the issuer of an RRSP and the carrier of a RRIF, consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs.

This amendment applies after March 22, 2011.

**Clause 54**

**Prohibited or non-qualified investment**

ITA
207.04

Section 207.04 of the Act imposes taxes on the holder of a tax-free savings account (TFSA) if a trust governed by the TFSA holds a non-qualified investment or a prohibited investment (as those terms are defined in subsection 207.01(1)). Section 207.04 is amended so that the tax will also apply to annuitants of RRSPs and RRIFs that hold non-qualified or prohibited investments, consequential on the extension of the application various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs.

**Tax payable on prohibited or non-qualified investment**

ITA
207.04(1)

Subsection 207.04(1) of the Act imposes a tax liability on the holder of a TFSA where the trust governed by the TFSA holds a prohibited investment or non-qualified investment. The subsection is amended to also refer to the annuitant of an RRSP or RRIF. To accomplish this, the reference to the "holder" of a TFSA is replaced by a reference to the "controlling individual" of a "registered plan". "Controlling individual" is a new defined term in subsection 207.01(1) and refers to the holder of a TFSA or the annuitant of an RRSP or RRIF, while "registered plan" is a new defined term to refer to a RRIF, RRSP or TFSA.

**Where both prohibited and non-qualified investment**

ITA
207.04(3)

Subsection 207.04(3) of the Act applies if property would otherwise be, at the same time, both a non-qualified investment and a prohibited investment. In those circumstances, the property is deemed to be a prohibited investment and not a non-qualified investment. Subsection 207.04(3) is amended to expand its application to provisions related to RRSPs and RRIFs. In particular, subsections 146(10.1) and 146.3(9) create a Part I tax liability for income earned on non-qualified investments held in RRSPs and RRIFs respectively. In contrast, income earned on a prohibited investment is an advantage and is consequently taxable under Part XI.01. As a result of this amendment, only Part XI.01 will apply to investment income in circumstances where both Part I and Part XI.01 would otherwise apply. The commentary to new subsection 207.05(4) provides information regarding a transitional rule relevant to income earned in relation to prohibited investments held by an RRSP or RRIF on March 23, 2011.

**Refund of tax on disposition of investment**

ITA
207.04(4)

Subsection 207.04(4) of the Act provides that a TFSA holder is entitled to a refund of any tax imposed under subsection 207.04(1) if the TFSA trust disposes of the relevant property before the end of the calendar year following the calendar year for which the tax arose (or such later time permitted by the Minister of National Revenue). However, no refund is available if it is reasonable to consider that the holder knew or ought to have known at the time the property was acquired by the TFSA trust that the property was, or would become, a non-qualified investment or prohibited investment.
Subsection 207.04(4) is amended so that it also applies to the annuitant of an RRSP or RRIF who has been subject to tax under section 207.04. Amended subsection 207.04(4) refers to the controlling individual of the registered plan, which includes the annuitant of an RRSP or RRIF.

These amendments to section 207.04 apply in respect of investments acquired after March 22, 2011. As a result, the 50% tax on the fair market value of a prohibited investment will not apply to RRSP and RRIF prohibited investments that were last acquired before March 23, 2011.

**Clause 55**

**Advantage**

ITA
207.05

Section 207.05 of the Act imposes a tax for a calendar year if, in the year, an advantage (defined in subsection 207.01(1)) in relation to a TFSA is extended to any person who is, or who does not deal at arm's length with, the holder of the TFSA. Section 207.05 is amended so that the tax will also apply to annuitants (and, in some cases, issuers) of RRSPs and RRIFs in situations where an advantage exists, consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs.

**Tax payable in respect of advantage**

ITA
207.05(1)

Subsection 207.05(1) of the Act sets out the charging provision for the tax imposed on an advantage in relation to a TFSA. A separate tax is payable for each advantage. Similar to the amendments to subsection 207.04(1) above, subsection 207.05(1) is amended to refer to the "controlling individual" (defined in subsection 207.01(1) as the holder of a TFSA or the annuitant of an RRSP or RRIF) and to refer to a "registered plan" (*i.e.*, a RRIF, RRSP or TFSA).

This amendment applies after March 22, 2011.

**Amount of tax payable**

ITA
207.05(2)

Subsection 207.05(2) of the Act provides the amount of tax payable in respect of different types of advantages. Subsection 207.05(2) is amended to provide that the amount of tax payable in relation to an "RRSP strip" is the amount of the strip.

This amendment applies after March 22, 2011.

**Liability for tax**

ITA
207.05(3)

Subsection 207.05(3) of the Act provides that liability for the advantage tax under section 207.05 generally rests with the TFSA holder. However, if the advantage is extended by the TFSA issuer or by a person not dealing at arm's length with the issuer, the issuer is liable to pay the tax, rather than the holder. Subsection 207.05(3) is amended to refer to the "controlling individual" (defined in subsection 207.01(1) as the holder of a TFSA or the annuitant of an RRSP or RRIF) and to refer to a "registered plan" (*i.e.*, a RRIF, RRSP or TFSA).

This amendment applies after March 22, 2011.

**Transitional rule**

ITA
207.05(4)

New subsection 207.05(4) provides a special reading of subsection 207.05(2) of the Act in relation to "transitional prohibited investment benefit". (For further information regarding this new defined term, see the commentary above under subsection 207.01(1)). Where the definition "transitional prohibited investment benefit" is met, new subsection 207.05(4) provides that the tax under section 207.05 in respect of such a benefit is imposed at the rate of 42.9% rather than the full amount of the income. The 42.9% rate is a weighted average of the combined federal-provincial top marginal personal tax rate.

This amendment applies after March 22, 2011.

**Clause 56**

**Waiver of tax payable and other ministerial powers**

ITA
207.06(2) to (4)

Section 207.06 of the Act provides authority to the Minister of National Revenue to waive or cancel tax imposed under Part XI.01 of the Act. In particular, subsections 207.06(1) and (2) provide the authority to waive or cancel all or part of any tax imposed under sections 207.02, 207.03, 207.04 or 207.05 under certain circumstances. Subsection 207.06(3) requires that an amount, not less than the amount of the tax liability that is being waived or cancelled, must be removed from a TFSA as a condition of obtaining a waiver of all or part of the advantage tax imposed in section 207.05. Subsection 207.06(4) allows the Minister to require the removal of "specified non-qualified investment income" from a TFSA.

Subsection 207.06(2), which creates a waiver power in relation to situations involving prohibited or non-qualified investments under section 207.04 or advantages under section 207.05, is amended to specifically enable the Minister of National Revenue to consider the extent to which a different transaction in a series of transactions, or the series as a whole, may already result in tax payable under Part XI.01.

Subsections 207.06(3) and (4) are amended, consequential on the extension of the taxes under sections 207.04 and 207.05 to RRSP and RRIF situations, to allow these provisions to also apply in the RRSP and RRIF context.

These amendments apply after March 22, 2011.

**Clause 57**

**Tax payable by trust under registered retirement savings plan**

ITA
207.1(1) and (4)

Subsection 207.1(1) of the Act imposes a tax on an RRSP for each month that it holds a non-qualified investment at the end of any month equal to 1% of the fair market value of the investment (at the time it was acquired by the RRSP). Subsection 207.1(4) imposes a similar tax in relation to RRIFs. Subsections 207.1(1) and (4) are repealed, consequential on the extension of the non-qualified investment tax that applies to TFSA holders under section 207.04 of the Act to annuitants of RRSPs and RRIFs.

These amendments apply in respect of property acquired after March 22, 2011.

**Clause 58**

**Tax on qualifying environmental trusts**

ITA
211.6

Part XII.4 of the Act, which is comprised of section 211.6 of the Act, imposes a special tax on qualifying environmental trusts, as defined under subsection 248(1). Section 211.6 is being restructured for the 2012 and subsequent taxation years. Subsection 211.6(1) will contain the definitions that apply for purposes of the section. New subsection 211.6(2) will contain the "charging" provision that both imposes the requirement for a trust to pay a tax under Part XII.4 for a year and computes the amount of that tax for the year. Subsections 211.6(3) to (5) remain unchanged.

**Charging provision**

ITA
211.6(1)

Subsection 211.6(1) is the charging provision of Part XII.4 for taxation years that end before 2012.

Subsection 211.6(1) is amended, for the 1997 to 2011 taxation years, to provide that a trust that is described by new paragraphs 149(1)(*z.1*) or (*z.2*), even if it is a qualifying environmental trust, is not subject to Part XII.4 tax.

For the 2012 and subsequent taxation years, new subsection 211.6(2) will contain the "charging" provision that both imposes the requirement for a trust to pay a tax under Part XII.4 for a year and computes the amount of that tax for the year. Subsection 211.6(2) also preserves the exemption from Part XII.4 tax for a trust that is described by new paragraphs 149(1)(*z.1*) or (*z.2*).

**Definitions**

ITA
211.6(1)

Subsection 211.6(1) of the Act contains the charging provision for Part XII.4, and includes both the requirement for a qualifying environmental trust to pay a tax under that Part and a computation of the amount of tax. Subsection 211.6(1) is being replaced with a number of definitions that are applicable for the purposes of Part XII.4. The charging provision for Part XII.4 is moved to subsection 211.6(2). For further detail on amended subsection 211.6(2), see the commentary on that provision.

These amendments apply to the 2012 and subsequent taxation years.

**"excluded trust"**

The definition "excluded trust" replaces existing paragraphs (*a*) to (*j*) of the definition "qualifying environmental trust" in subsection 248(1) of the Act, which become paragraphs (*a*) to (*g*) of the definition "excluded trust" in subsection 211.6(1). A trust that would otherwise be a qualifying environmental trust will not be a qualifying environmental trust if it satisfies any of the conditions described by the paragraphs in the definition "excluded trust".

Paragraphs (*a*), (*b*), (*d*), (*i*) and (*j*) of the existing definition "qualifying environmental trust" in subsection 248(1) are preserved as paragraphs (*a*), (*b*), (*c*), (*f*) and (*g*), respectively, of the new definition "excluded trust" in subsection 211.6(1).

The condition contained in existing paragraph (*c*) of the definition "qualifying environmental trust" in subsection 248(1) is preserved as paragraph (*a*) of the new definition "qualifying environmental trust" in subsection 211.6(1). For additional commentary on this change, see the commentary on that definition.

Existing paragraph (*e*) of the definition "qualifying environmental trust" in subsection 248(1), as it applied for the 2011 and earlier taxation years, excluded from status as a qualifying environmental trust a trust that acquired property other than property described in any of paragraphs (*a*), (*b*) and (*f*) of the definition "qualified investment" in section 204 of the Act, allowing, for example, a trust to hold certain guaranteed investment certificates. Paragraph (*d*) of the new definition "excluded trust" preserves the condition contained in existing paragraph (*e*) of the definition "qualifying environmental trust" in subsection 248(1) for trusts created before 2011, subject to an election described in the commentary on paragraph (*e*) of the new definition "excluded trust".

Paragraph (*e*) of the definition "excluded trust" applies to trusts created after 2011, and to trusts created before 2012 that elect, together with the relevant government authority, to have that paragraph apply. Paragraph (*e*) of the definition "excluded trust" provides that a trust will be an excluded trust if, subject to a prohibited investment rule, the trust acquires any property that is not described by any of paragraphs (*a*), (*b*), (*c*), (*c.1*), (*d*) and (*f*) of the definition "qualified investment" in section 204 of the Act. Such qualified investments include debt of public corporations, investment-grade debt and certain securities that are listed on a designated stock exchange. However, even where such a trust limits its acquisitions to such property, the trust will be an excluded trust (and, therefore, not a qualifying environmental trust) if it holds a prohibited investment. For further information on prohibited investments, see the commentary on the definition of that expression in subsection 211.6(1).

Paragraph (*f*) of the definition "excluded trust" preserves paragraph (*i*) of the definition "qualifying environmental trust" in subsection 248(1), such that a trust will not be a qualifying environmental trust if it has elected in writing filed with the Minister of National Revenue, before 1998 or before April of the year following the year in which the first contribution to the trust was made, not to be a qualifying environmental trust.

Paragraph (*g*) of the definition "excluded trust" preserves, in amended form, paragraph (*j*) of the definition "qualifying environmental trust" in subsection 248(1). In particular, paragraph (*g*) of the definition "excluded trust" provides that a trust that was not a qualifying environmental trust (or, where applicable, a mining reclamation trust or qualifying environmental trust) at all previous times during its existence will not be a qualifying environmental trust at the current time (and, in effect, at any time after the time at which it first ceased to be a qualifying environmental trust). In determining whether a particular trust qualified to be a qualifying environmental trust at any particular time, the definition of a qualifying environmental trust that was applicable at the particular time is to be applied. This is intended to ensure that, even though paragraphs (*f*), (*g*) and (*h*) of the existing definition "qualifying environmental trust" in subsection 248(1) are not expressly carried forward to the new definition "excluded trust" (since these three paragraphs contain conditions that relate solely to events that that would have occurred in the past), a trust that failed, by reason of any of those paragraphs or any other condition, to meet any of the requirements to be a qualifying environmental trust at any time before its 2012 taxation year will be an excluded trust (and continue not to be a qualifying environmental trust) for the 2012 and later taxation years.

**“prohibited investment”**

Prohibited investment is a new term used to describe investments that would, but for their status as prohibited investments, be permitted investments for certain qualifying environmental trusts. The trusts affected by this new definition are those created after 2011, and trusts created before 2012 that elect together with the relevant government authority to have paragraph (*e*) of the definition “excluded trust” apply. A trust that holds a prohibited investment will be an excluded trust (as determined under subparagraph (*e*)(ii) of the definition “excluded trust” in subsection 211.6(1)) and, therefore, not a qualifying environmental trust.

A prohibited investment of a trust is a property that was described by any of paragraphs (*c*), (*c.1*) and (*d*) of the definition “qualified investment” in section 204 of the Act at the time the property was acquired by the trust, that was issued by:

- a person or partnership that has contributed property to, or that is a beneficiary under, the trust, or a person that is related to (or a partnership that is affiliated with) such a person or partnership; or
- a person or partnership in which a particular person or partnership that is a contributor to, or a beneficiary under, the trust has a significant interest (in accordance with the meaning of the term “significant interest” in subsection 207.01(4) of the Act, with such modifications as the circumstances require).

For this purpose, a person or partnership will be considered to have a significant interest in a corporation if the particular person or partnership is a “specified shareholder” (as defined in subsection 248(1)) of the corporation. Generally, a person (including, where the holder of the shares is a partnership, each member of the partnership) is a specified shareholder of a corporation if the person, together with related parties (and in the case where the holder of the shares is a partnership, each member of the partnership), owns or is deemed to own 10% or more of the shares of any class of the capital stock of the corporation. In the case of an interest in a partnership or trust, a particular person or partnership is considered to have a significant interest in that partnership or trust if the particular person, together with non-arm's length parties, or the particular partnership, together with persons affiliated with the partnership, hold interests in that trust or partnership that have a fair market value equal to 10% or more of the fair market value of all the interests in the trust or partnership.

**“QET income tax rate”**

The rate of tax payable by a qualifying environmental trust under Part XII.4 of the Act is, for the 2012 and later taxation years, the generally applicable corporate income tax rate. Specifically, the definition “QET income tax rate” provides that such a trust’s rate of tax is computed as the general corporate tax rate less the total of the general corporate tax rate reduction applicable for a corporation for the taxation year and the percentage applicable for the “provincial abatement”. For 2012, the rate of tax payable by a qualifying environmental trust under Part XII.4 of the Act is 15%.

**“qualifying contract”**

To qualify as a qualifying environmental trust, the maintenance of a trust must be required by a federal, provincial or territorial law or under the terms of a contract entered into with the federal or provincial Crown. The term “qualifying contract” is added to describe the type of contracts under which a qualifying environmental trust is required. For this purpose, it is sufficient that the trust be established in anticipation of the entering into of the contract (or the enactment of the law), provided that the contract is entered into (or the law is enacted) within one year after the trust is created. This new term preserves the existing requirements and is not intended to represent a change in policy or the substance of the qualifying environmental trust regime. For information on a related amendment, see the commentary on the definition “qualifying law” in subsection 211.6(1).

**“qualifying environmental trust”**

The definition “qualifying environmental trust” is restructured. Under the amended definition, a qualifying environmental trust at any time is a trust that is, at that time, maintained for the sole purpose of funding the reclamation of a “qualifying site” and is, or may become, required to be maintained under the terms of a “qualifying contact”, or a “qualifying law”. In addition, the Canadian residence requirement of a qualifying environmental trust is preserved through the condition that each of its trustees be one of Her Majesty in right of Canada, Her Majesty in right of a province, or a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering its services as a trustee to the public. The revised definition, however, no longer requires that the trust be resident in the province in which the reclamation site in respect of the trust is located. This change recognizes that the site of reclamation for a pipeline may be located in more than one province.

Consistent with the existing limitations found in paragraphs (*a*) to (*j*) of the definition “qualifying environmental trust” in subsection 248(1), a qualifying environmental trust does not include an “excluded trust”.

For further information on the definitions “excluded trust”, “qualifying contract”, “qualifying law” and “qualifying site”, see the commentary on those definitions.

**“qualifying law”**

In order for a trust to qualify as a qualifying environmental trust, the maintenance of the trust must be required by a federal, provincial or territorial law or under the terms of a contract entered into with the federal or provincial Crown. The term “qualifying law” is added to describe a law under which the maintenance of a qualifying environmental trust is, or may become, required. In addition to preserving the laws identified in the current legislation, this new term adds, in respect of trusts created after 2011, an order of a tribunal (such as the National Energy Board) constituted by a law of Canada or a province. For this purpose, it is sufficient that the trust be established in anticipation of the law being enacted, or the order being made, provided that the law is enacted, or the order is made, within one year after the trust is created.

**"qualifying site"**

A qualifying environmental trust must be maintained for the purpose only of funding the reclamation of certain sites, including sites used for the operation of a mine or the deposit of waste. "Qualifying site" is a new term used to describe these sites. In addition to preserving the types of sites currently identified in the legislation, this new term adds, in respect of trusts created after 2011, a site that had been used for the operation of a pipeline. This ensures that trusts created after 2011 and that are required to be established to fund future reclamation costs incurred in the context of pipeline abandonment can be eligible as qualifying environmental trusts.

**Charging provision**

ITA
211.6(2)

Subsection 211.6(2) of the Act provides a special rule for computing the income of a qualifying environmental trust (other than a trust that is described by new paragraphs 149(1)(*z.1*) or (*z.2*)) for the purpose of determining the amount of tax that the trust is required to pay under Part XII.4 of the Act. For this purpose, a qualifying environmental trust's income is to be computed without regard to many of the taxation rules that are relevant in determining the income of a trust (*i.e.*, subsections 104(4) to (31) and sections 105 to 107). While this special measurement of income that applies in computing the Part XII.4 tax of a trust is being preserved, subsection 211.6(2) is amended as a result of the reorganization of subsections 211.6(1) and (2).

New subsection 211.6(2) contains the charging provision that requires a qualifying environmental trust to pay Part XII.4 tax for a taxation year and also contains the formula for computing the amount of that tax. Specifically, the amount of tax payable under Part XII.4 is the product of the trust's income for the year (computed as if the Act were read without reference to subsections 104(4) to (31) and sections 105 to 107, thus preserving the rule contained in "old" subsection 211.6(2)) multiplied by the QET income tax rate for the year. For further information on the QET income tax rate, see the commentary on the definition of that expression in subsection 211.6(1).

This amendment applies to the 2012 taxation year and subsequent taxation years.

**Clause 59**

**Records and books**

ITA
230(2)

Section 230 of the Act provides rules relating to the maintenance of books and records by taxpayers and other specified parties. Subsection 230(2) requires that a registered charity or registered Canadian amateur athletic association keep books and records at an address in Canada that contain

- information in such form as will enable the Minister of National Revenue to determine whether there are any grounds for the revocation of its registration;
- a duplicate of each receipt containing prescribed information for a donation received by it; and
- other information in such form as will enable the Minister of National Revenue to verify the donations to it for which a deduction or tax credit is available.

Subsection 230(2) is amended to provide that it also applies to qualified donees referred to in paragraph (*a*) of the definition "qualified donee" in subsection 149.1(1) of the Act, except that qualified donees in subparagraphs (*a*)(ii), (iv) and (v) are not required to keep their records at an address in Canada. For further information, refer to the commentary on that definition.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 60**

**Information**

ITA
241(3.2)

Section 241 of the Act contains a general prohibition on the use or communication by an official of taxpayer information obtained under the Act. Various provisions of the Act authorize specific exceptions to this rule. For example, subsection 241(3.2) permits an official to release, to any person, certain information relating to an organization that was at any time a registered charity.

In this regard, paragraph 241(3.2)(*h*) permits an official to release information that a registered charity has filed in support of an application for special status or an exemption under the Act, as well as any response to such an application (*e.g.*, a request for permission to accumulate assets). Paragraph 241(3.2)(*h*) is amended to include information relating to an application made under subsection 149.1(5) of the Act for an amount to be deemed an expenditure on charitable activities carried on by the charity.

This amendment applies in respect of documents that are, after May 13, 2005,

- sent by the Minster of National Revenue; or
- filed or required to be filed with the Minister.

Subsection 241(3.2) is also amended so that it applies (except for paragraph 241(3.2)(*h*)) also in respect of information relating to registered Canadian amateur athletic associations. Since donations to registered Canadian amateur athletic associations are eligible for the same tax relief that is available in respect of donations to registered charities, this amendment is intended to provide greater transparency to potential donors and the public.

This information generally includes:

- governing documents;
- applications for registration;
- names of directors;
- notifications of registration;
- letters sent by the Minister of National Revenue regarding revocation and, in the case of charities, annulment;
- financial statements; and
- notices of suspension.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 61**

**Interpretation**

ITA
248

Section 248 of the Act defines a number of terms that apply for the purposes of the Act, and sets out various rules relating to the interpretation and application of various provisions of the Act.

**Definitions**

ITA
248(1)

**"foreign accrual property income"**

The new definition "foreign accrual property income" is added in subsection 248(1) so that the definition of this expression in section 95 of the Act applies for the purposes of the Act.

This amendment applies to taxation years that begin after 2006.

**"net income stabilization account"**

A "net income stabilization account" ("NISA") is an account of a taxpayer under the "net income stabilization program" under the *Farm Income Protection Act*. A taxpayer's NISA is made up of two separate funds. Fund No. 1 of a NISA includes amounts contributed by a farm producer to a NISA. NISA Fund No. 2 is defined separately in subsection 248(1) and relates to amounts paid to a NISA, other than contributions by the farm producer.

The definition "net income stabilization account" is amended to include a prescribed account. New subsection 5503(2) of the *Income Tax Regulations* provides that an account created under the Agri-Québec program established by La Financière agricole du Québec is a prescribed account.

This amendment applies to the 2011 and subsequent taxation years.

**"NISA Fund No. 2"**

"NISA Fund No. 2" means the portion of a taxpayer's "net income stabilization account" ("NISA") described in paragraph 8(2)(*b*) of the *Farm Income Protection Act*. This paragraph provides that Fund No. 2 includes all amounts paid to a NISA in respect of a farm producer, other than contributions by the producer. In effect, a taxpayer's NISA Fund No. 2 is the portion of the NISA that includes all third-party contributions, interest and bonuses credited to the producer's NISA.

The definition NISA Fund No. 2 is amended to include a prescribed fund. New subsection 5503(1) of the *Income Tax Regulations* provides that Fonds 2 as defined under the Agri-Québec program established by La Financière agricole du Québec is a prescribed fund.

This amendment applies to the 2011 and subsequent taxation years.

**“qualifying environmental trust”**

The expression “qualifying environmental trust” is defined for purposes of the Act in subsection 248(1) of the Act. The expression is used in paragraphs 12(1)(*z.1*) and (*z.2*), 20(1)(*ss*) and (*tt*) and 75(3)(*c.1*), sections 107.3 and 127.41, Part XII.4 and subsection 250(7), of the Act, all of which affect the taxation of qualifying environmental trusts and their beneficiaries. A qualifying environmental trust is generally a trust maintained for the sole purpose of funding certain environmental reclamation costs in respect of a site in Canada that had been used primarily for, or for any combination of, the operation of a mine, the extraction of clay, peat, sand, shale or aggregates (including dimension stone and gravel) or the deposit of waste.

The definition “qualifying environmental trust” in subsection 248(1) is amended to have the meaning assigned by subsection 211.6(1). Subsection 211.6(1) is amended to define a number of expressions relevant to the taxation regime for qualifying environmental trusts. Among the defined terms will be the definition “qualifying environmental trust”, which will contain the requirements for a trust to be a qualifying environmental trust, incorporating most of the provisions of the existing definition in subsection 248(1), as well as including new rules that apply for the 2012 and subsequent taxation years.

This amendment applies to the 2012 taxation year and subsequent taxation years.

**“registered Canadian amateur athletic association”**

The definition “registered Canadian amateur athletic association” in subsection 248(1) of the Act provides the requirements that must be met in order for an association to be registered as a Canadian amateur athletic association.

The requirements that were provided by the definition have generally been moved to the new definition “Canadian amateur athletic association” in subsection 149.1(1) of the Act. The definition “registered Canadian amateur athletic association” in subsection 248(1) now refers to a Canadian amateur athletic association that has applied to the Minister of National Revenue in prescribed form for registration, that has been so registered and whose registration has not been revoked. For further information, refer to the commentary on that definition.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**“registered retirement income fund” or “RRIF”**

The definition registered retirement income fund is amended to introduce the acronym “RRIF” for drafting convenience and to improve readability.

This amendment applies after March 22, 2011.

**“registered retirement savings plan” or “RRSP”**

The definition registered retirement savings plan is amended to introduce the acronym “RRSP” for drafting convenience and to improve readability.

This amendment applies after March 22, 2011.

**“TFSA” (« *compte d’épargne libre d’impôt* »)**

The definition “compte d’épargne libre d’impôt” in the French version of the Act is amended to introduce the acronym “CELI” for drafting convenience and to improve readability.

This amendment applies after March 22, 2011.

**Gift of bare ownership of immovables**

ITA
248(3.1)

Subsection 248(3) of the Act contains certain rules applicable to property that is subject to an institution or arrangement governed by the laws of the Province of Quebec. Subsection 248(3.1) of the Act provides an exception to the application of subsection 248(3) in respect of a usufruct or a right of use of an immovable in circumstances where a taxpayer disposes of the bare ownership of the immovable by way of a gift to a donee described in the definition "total charitable gifts", "total Crown gifts" or "total ecological gifts" in subsection 118.1(1) of the Act and the taxpayer retains, for life, the usufruct or right of use. Subsection 248(3.1) is amended consequential on the amendment of those definitions and the introduction of the definition "qualified donee" in subsection 149.1(1) of the Act, to instead make reference to a disposition to a qualified donee.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 62**

**Fiscal periods**

ITA
249.1

Section 249.1 defines "fiscal period" for the purposes of the Act. Subsection 249.1(1) is amended consequential on the introduction of the rules that apply to corporate partners under new section 34.2 of the Act. These amendments introduce a new paragraph (*c*) to subsection 249.1(1), move current paragraph (*c*) to new paragraph (*d*) of subsection 249.1(1) and add new subsections 249.1(8) to (11). Each of these changes is discussed below.

**Fiscal period of tiered-corporate partnership structure and other cases**

ITA
249.1(1)(*c*) and (*d*)

New paragraph 249.1(1)(*c*) of the Act provides that, where the paragraph applies, a fiscal period of a partnership in a tiered partnership structure ends on December 31 of the calendar year in which the fiscal period began. The paragraph applies to a partnership (other than a partnership that has an individual or professional corporation as a member, or a partnership for which a one-time multi-tier alignment election is made) that is a member of a partnership or has a partnership as a member if any one of four conditions applies:

- A corporation has a significant interest, as defined in section 34.2, in the partnership;
- The partnership is a member of another partnership in which a corporation has a significant interest, as defined by section 34.2;
- A membership interest in the partnership is held directly, or indirectly through one or more partnerships, by a partnership described in the first two cases above; or
- The partnership holds directly, or indirectly through one or more partnerships, a membership interest in a partnership that meets any of the above three conditions.

Existing paragraph 249.1(1)(*c*), which concerns situations not covered by other paragraphs in subsection 249.1(1), is moved to paragraph (*d*). Paragraph (*d*) provides that, in any other case, a fiscal period of a partnership is to end no more than 12 months after it began.

**Single-tier fiscal period alignment**

ITA
249.1(8)

New subsection 249.1(8) of the Act provides that the members of a single-tier partnership may elect (single-tier alignment election) to end the fiscal period of the partnership that begins before March 22, 2011 on a particular day that is after March 22, 2011 and before the day it would otherwise end if:

- each member of the partnership is, on the particular day, a corporation that is not a professional corporation;
- the partnership is not, on the particular day, a member of another partnership;
- at least one member of the partnership is, on the particular day, a corporation that has a significant interest, as defined in section 34.2, in the partnership;
- at least one member with a significant interest in the partnership has a taxation year end that differs from the day on which the fiscal period of the partnership would end if there was not a valid single-tier alignment election;
- the particular day is after March 22, 2011 and no later than the latest day that is the last day of the first taxation year that ends after March 22, 2011 of any corporation that has been a member of the partnership continuously since March 21, 2011; and
- subsection 249(10) applies to the single-tier alignment election. Subsection 249.1(10) requires that certain conditions be satisfied before a single-tier alignment election is valid.

**Multi-tier fiscal period alignment – one-time alignment**

ITA
249.1(9)

New subsection 249.1(9) of the Act provides that the members of a partnership to which paragraph 249.1(1)(*c*) would otherwise apply may make a multi-tier alignment election to end the fiscal period of the partnership on a particular day that differs from December 31, 2011 if:

- as a consequence of the election, the fiscal period of the partnership, and of each other partnership described in relation to the partnership by any of subparagraphs 249.1(1)(*c*)(ii) to (iv), end on the particular day;
- the particular day is before March 22, 2012; and
- subsection 249.1(10) applies to the multi-tier alignment election. Subsection 249.1(10) requires that certain conditions be satisfied before a multi-tier alignment election is valid.

**Conditions to align partnership fiscal period**

ITA
249.1(10)

New subsection 249.1(10) of the Act provides conditions that must be met before a single-tier alignment election or a multi-tier alignment election under either subsection 249.1(8) or (9) is valid.

Paragraph 249.1(10)(*a*) provides that the alignment election must be filed in writing and in prescribed form with the Minister of National Revenue

- in the case of a single-tier alignment, by a corporation that is a member of the partnership on or before the day that is the earliest filing-due date of any corporation that is a member of the partnership for its first taxation year ending after March 22, 2011; or
- in the case of a multi-tier alignment election,
  - by a corporation that is a member of the partnership, or of a partnership described in relation to the partnership by any of subparagraphs 249.1(1)(*c*)(ii) to (iv), and
  - on or before the day that is the earliest filing-due date of any corporation that is a member of the partnership, or of a partnership described in relation to the partnership by any of subparagraphs 249.1(1)(*c*)(ii) to (iv), for the first taxation year of the corporation ending after March 22, 2011.

Paragraph 249.1(10)(*b*) requires that, as a consequence of the election, the fiscal period of the partnership to which the election applies is no more than 12 months in duration.

Paragraph 249.1(10)(*c*) requires that the election be made by a corporation that has the authority to act for the members of the partnership and each member of any other partnership described in relation to the partnership in any of subparagraphs 249.1(1)(*c*)(ii) to (iv).

Paragraph 249.1(10)(*d*) requires that no other election be filed with the Minister of National Revenue that attempts to align the fiscal periods of the partnerships on any other day. If more than one election is filed with respect to a partnership, and there are two or more different days elected for the alignment of the partnership fiscal periods, none of the elections are valid. In the case of a multi-tier structure, new subsection 249.1(11) would apply to align the fiscal periods of the partnerships to December 31, 2011.

**Deemed multi-tier alignment election – December 31, 2011**

ITA
249.1(11)

New subsection 249.1(11) of the Act provides that if the fiscal period of a partnership that is part of a tiered partnership structure ends on December 31, 2011 because of the application of paragraph 249.1(1)(*c*), a valid multi-tier alignment election is deemed to have been filed to end the fiscal period of the partnership on that date. This ensures that the rules in section 34.2 apply appropriately regardless of whether a valid multi-tier election has been filed by a corporate member of a partnership.

The amendments in section 249.1 apply to 2011 and subsequent fiscal periods.

**Clause 63**

**Residence of a qualifying environmental trust**

ITA
250(7)

The definition “qualifying environmental trust” in subsection 248(1) of the Act generally requires, for the 2011 and earlier taxation years, that the trust to be resident in the province in which the mine or other future remediation site is located. Subsection 250(7) applies in this context to deem the trust to be resident in the province in which the site is located. As noted in the commentary on the new definition “qualifying environmental trust” in subsection 211.6(1), the requirement that a trust be resident in the province where the qualifying site is located is modified – in contemplation of trusts required to be established to fund reclamation costs related to pipelines, which may in some cases involve sites in more than one province – by removing the requirement that a qualifying environmental trust be resident in the province in which a qualifying site is located. Accordingly, subsection 250(7) is repealed, effective for the 2012 and subsequent taxation years.

**Clause 64**

**Proportional holdings in trust property**

ITA
259(1)

Subsection 259(1) of the Act provides a "look-through" rule that applies to certain taxpayers (including trusts governed by RRSPs) that acquire units of a "qualified trust". If the qualified trust so elects, each taxpayer is deemed to acquire, hold and dispose of its proportionate interest in the underlying assets of the qualified trust. This rule can benefit a taxpayer where the direct investment in the units of the qualified trust would constitute a non-qualified investment. By "looking through" to the underlying assets of the qualified trust, a taxpayer may be able to reduce or eliminate the tax penalties that result from holding non-qualified investments.

Subsection 259(1) is amended to update its cross-references, consequential on the introduction of new rules in relation to non-qualified investments and prohibited investments for RRSPs and RRIFs.

There are a number of outstanding technical amendments proposed for subsection 259(1) relating to registered education savings plans, registered disability savings plans, and the 2005 repeal of the “foreign property rule”. In order to avoid complex coordinating amendments, all of these relieving technical amendments have been consolidated.

The resulting coming-into-force provisions ensure that the amendments refer only to registered plan provisions that were or are in force during various periods between 2000 and the present. The amendments that relate to the Budget 2011 RRSP and RRIF proposals apply to taxation years ending after March 22, 2011.

## Income Tax Regulations

**Clause 65**

**Registered retirement savings plan**

ITR
214

Section 214 of the *Income Tax Regulations* deals with information return requirements for issuers of registered retirement savings plans (RRSPs). Subsection 214(2) requires the trustee of an RRSP to file an information return in prescribed form if one of several provisions of section 146 of the Act (relating to the acquisition and disposition of non-qualified investments by the RRSP, non-fair market value transactions, and the use of RRSP property as security for a loan) apply.

Subsection 214(2) is amended, consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs, and the related repeal of some provisions in section 146 of the Act. In particular, the reference to subsection 146(6) is eliminated because that rule is being repealed, and references are added to subsection 207.04(1) and (4), as they relate to non-qualified investments.

This amendment applies in respect of investments acquired after March 22, 2011.

**Clause 66**

**Registered retirement income funds**

ITR
215

Section 215 of the Regulations deals with information return requirements for carriers of registered retirement income funds (RRIFs). Subsection 215(3) requires the carrier of a RRIF to file an information return in prescribed form if one of several provisions of section 146.3 of the Act (relating to the acquisition and disposition of non-qualified investments by the RRIF, non-fair market value transactions, and the use of RRIF property as security for a loan).

Subsection 215(3) is amended, consequential on the extension of the application of various provisions in Part XI.01 to RRSPs and RRIFs, as well as TFSAs, and the related repeal of some provisions in section 146.3 of the Act. In particular, the reference to subsection 146.3(8) is eliminated because that rule is being repealed, and references are added to subsection 207.04(1) and (4), as they relate to non-qualified investments.

This amendment applies in respect of investments acquired after March 22, 2011.

**Clause 67**

**Information return – registered Canadian amateur athletic associations**

ITR
216

Section 216 of the Regulations provides that a registered Canadian amateur athletic association must file an information return for each of its fiscal periods within six months after the end of the fiscal period.

Section 216 of the Regulations is repealed concurrently with the amendment to subsection 149.1(14) of the Act, which requires a registered Canadian amateur athletic association to file a return within six months from the end of each taxation year. For further information, see commentary under subsection 149.1(14).

This amendment applies to fiscal periods of registered Canadian amateur athletic associations that begin on or after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 68**

**Capital cost allowance**

ITR
Part XI

Part XI of the Regulations provides rules in respect of the capital cost allowance system that applies in respect of depreciable property.

**Class 43.1 and 43.2 – energy conservation property**

ITR
1104(13)

Subsection 1104(13) of the Regulations defines a number of terms used in that subsection, in subsections 1104(14) to (16) and in capital cost allowance (CCA) classes 43.1 and 43.2 in Schedule II to the Regulations.

The definition "thermal waste" in subsection 1104(13) is amended consequential on amendments made to extend Class 43.1 (and indirectly Class 43.2) to certain property used to generate electrical energy in a process in which all or substantially all of the energy input is from thermal waste (the related amendment is discussed below in the commentary on amended Class 43.1).

**"thermal waste"**

The definition "thermal waste" currently means heat energy extracted from a distinct point of rejection in an industrial process. The definition "thermal waste" is amended to mean waste heat energy extracted from a distinct point of rejection in an industrial process that would otherwise

- be vented to the atmosphere or transferred to a liquid, and
- not be used for a useful purpose.

This amendment applies in respect of property acquired on or after March 22, 2011.

**Clause 69**

**Receipts for gifts**

ITR
Part XXXV

Part XXXV of the Regulations provides rules with respect to gifts to qualified donees. The heading of Part XXXV is changed to "Gifts".

This amendment applies after March 22, 2011.

**Clause 70**

**Definitions**

ITR
3500

**"other recipient of a gift"**

The definition "other recipient of a gift" in section 3500 of the Regulations applies for the purposes of Part XXXV and generally includes qualified donees other than registered charities, registered Canadian amateur athletic associations and national arts services organizations. The definition is amended, consequential on the amendments reorganizing the definition "qualified donee" in subsection 149.1(1) of the Act. For further information see the commentary on the amended definition "qualified donee" in subsection 149.1(1) of the Act.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 71**

**Contents of information returns**

ITR
3501.1

New section 3501.1 of the Regulations prescribes the information that is required to be to be included on an information return required to be filed under new subsection 110.1(16) or 118.1(27) of the Act. Such an information return is required if subsection 110.1(15) or 118.1(26) of the Act apply, in particular if a corporation or an individual has transferred property to a qualified donee for which an official receipt for tax purposes was issued, and the property or a substituted property has subsequently been returned to the corporation or individual. New section 3501.1 of the Regulations prescribes the following information that is required to be submitted with the information return:

- A description of the property returned.
- The fair market value at the time of the transfer of the returned property.
- The date on which the property was returned.
- The name and address of the transferee of the returned property including, in the case of an individual, the individual's full name and initial.
- If the transferor of the returned property, or a person not dealing at arm's length with the transferor, issued the receipt referred to in subsection 110.1(14) or 118.1(25) of the Act in respect of the original property received by the qualified donee, the information contained in that receipt.

This amendment applies after March 22, 2011.

**Clause 72**

**Universities outside Canada**

ITR
3503

Section 3503 of the Regulations provides that, for the purposes of subparagraph 110.1(1)(*a*)(vi) and paragraph (*f*) of the definition "total charitable gifts" in subsection 118.1(1) of the Act, the universities outside Canada named in Schedule VIII of the Regulations are prescribed to be universities the student bodies of which ordinarily include students from Canada.

Section 3503 of the Regulations is amended to apply for the purpose of subparagraph (*a*)(iv) of the definition "qualified donee" in subsection 149.1(1) of the Act, consequential on the amendments reorganizing the definition "qualified donee" in subsection 149.1(1) of the Act. For further information see the commentary on the definition "qualified donee" in subsection 149.1(1) of the Act.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 73**

**Deferred income plans – qualified investments**

ITR
Part XLIX

A number of amendments are being introduced to section 4900 in Part XLIX of the Regulations, which prescribes additional qualified investments for certain registered savings plans and provides related rules.

These amendments are consequential on the extension of the rules in Part XI.01 of the Act to registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) and their annuitants. In general terms, these amendments cause certain rules in section 4900 to apply only in relation to registered education savings plans (RESPs), and extend certain rules in section 4900 that currently apply only in the tax-free savings account (TFSA) context to RRSPs and RRIFs.

**Small business investment**

ITR
4900(6)

Subsection 4900(6) of the Regulations prescribes certain investments in small businesses to be qualified investments for RRSPs, RRIFs and RESPs. Subsection 4900(6) is amended in two respects. First, the requirement that an investment described in subsection 4900(6) not be a "prohibited investment" for the trust that governs a plan is added to the portion of the provision before paragraph (*a*).

Second, the restriction related to ensuring that an "eligible corporation" has no "designated shareholder" in relation to a registered savings plan is narrowed so that it applies only in the case of RESPs. The "prohibited investment" concept in Part XI.01 of the Act which will now apply in relation to RRSPs and RRIFs makes the "designated shareholder" restriction unnecessary for RRSPs and RRIFs.

This amendment applies in respect of investments acquired after March 22, 2011.

**Small business investment – payment for services**

ITR
4900(8)

Subsection 4900(8) disqualifies certain small business investments from being qualified investments for a trust governed by an RESP, RRSP, or RRIF, if a plan annuitant, beneficiary or subscriber provides services to the small business, and it is reasonable to consider that part of the return on the small business investment held in the RESP, RRSP, or RRIF is payment for those services. Subsection 4900(8) is amended, consequential on the extension of Part XI.01 of the Act to RRSPs and RRIFs, to limit the application of subsection 4900(8) to RESPs. A similar rule relating to the provision of services by the controlling individual of an RRSP or RRIF is included in the definition "advantage" in amended subsection 207.01(1) of the Act. Consequently, it is no longer necessary to apply subsection 4900(8) in the context of RRSPs and RRIFs.

This amendment applies in respect of investments acquired after March 22, 2011.

**Arm's length**

ITR
4900(10)

Subsection 4900(10) deems, for specified purposes, a trust governed by "a plan or fund" (*i.e.*, an RESP, RRSP or RRIF) not to deal at arm's length with a trust governed another plan or fund of the same annuitant, beneficiary or subscriber, or a trust governed by the plan or fund of a non-arm's length person in relation to the annuitant, beneficiary or subscriber. Subsection 4900(10) is repealed in conjunction with the extension of Part XI.01 of the Act to RRSPs and RRIFs. As a registered plan does not deal at arm's length with its own annuitant, beneficiary or subscriber, with other registered plans of the same individual (annuitant, beneficiary or subscriber), or with registered plans belonging to non-arm's length persons in relation to that individual, subsection 4900(10) is unnecessary.

This amendment applies upon Royal Assent.

**Small business corporations and qualified investments**

ITR
4900(12) and (14)

Subsection 4900(12) of the Regulations allows certain shares of small business corporations, venture capital corporations and cooperative corporations to be qualified investments for RESPs, RRSPs and RRIFs under certain conditions. Subsection 4900(14) provides a similar rule for tax-free savings accounts (TFSAs). The main difference between the two rules is that subsection 4900(12) requires that the annuitant, beneficiary or subscriber not be a “connected shareholder” (as defined in subsection 4901(2)) in relation to the investment immediately after the acquisition of the investment by the trust, while subsection 4900(14) requires that the investment not be a prohibited investment (as defined in subsection 207.01(1) of the Act) for a TFSA trust at any particular time.

Subsections 4900(12) and (14) are amended so that subsection 4900(12) now applies only in relation to RESPs, while subsection 4900(14) applies in relation to RRSPs and RRIFs, as well as TFSAs.

These amendments apply in respect of investments acquired after March 22, 2011.

**Return on investment**

ITR
4900(13)

Subsection 4900(13) of the Regulations is an anti-avoidance rule intended to ensure that amounts received in respect of shares described in subsection 4900(12) by an RESP, RRSP or RRIF trust are in the nature of a return on investment, and not a diverted payment for goods or services. Subsection 4900(13) is amended so that it applies in relation to RESPs (and not RRSPs or RRIFs), consistent with the amendments to subsections 4900(12) and (14) described above.

Similar rules related to payments for goods or services are incorporated in the definition “advantage” in subsection 207.01(1) of the Act, which is being extended to also apply to RRSPs and RRIFs.

This amendment applies in respect of investments acquired after March 22, 2011.

**Clause 74**

**Non-prohibited investment**

ITR
5000

Section 5000 of the Regulation prescribes certain property for the purposes of the preamble to the definition "prohibited investment" in subsection 207.01(1) of the Act. Prescribed property is *not* a prohibited investment. Section 5000 currently refers to property described in paragraph 4900(1)(*j.1*), which is, in general terms, a debt obligation that is secured by a mortgage or hypothecary claim in respect of real or immovable property situated in Canada, insured either under the National Housing Act or by an approved private insurer.

Section 5000 is amended in two respects. First, it is amended to reflect the new term for prescribed property that is not a prohibited investment, “prescribed excluded property”. This change in the subsection 207.01(1) of the Act definition “prohibited investment” is introduced to improve clarity. Second, a new type of “prescribed excluded property” is created. In particular, certain retail mutual funds, which operate under the requirements of National Instrument 81-102, will benefit from a two-year exemption period from the application of the prohibited investment rules. This exemption is intended to provide adequate time for newly established mutual funds to develop sufficiently diversified ownership to avoid the 10% test in the definition “prohibited investment”.

This amendment applies after March 22, 2011 in respect of investments acquired at any time.

**Clause 75**

**Prohibited investment**

ITR

5001

Section 5001 of the Regulations provides that certain investments are prescribed to be prohibited investments for TFSAs. In general terms, the investments that are prescribed as prohibited investments are investments that are qualified investments solely because of subsection 4900(14) of the Regulations, but which are no longer described in any of subparagraphs 4900(14)(*a*)(i) to (iii). For example, if a TFSA acquires shares of a specified small business corporation and that corporation ceases to meet the requirements to be a specified small business corporation (as defined in subsection 4901(2)) then it becomes a prohibited investment for the TFSA at the time of the cessation because of section 5001.

Section 5001 is amended so that such investments are also prescribed to be prohibited investments for RRSPs and RRIFs, consequential on the extension of the TFSA prohibited investment rules, among other things, to RRSPs and RRIFs.

This amendment applies after March 22, 2011 in respect of investments acquired at any time.

**Clause 76**

**Stabilization of farm income**

ITR
5503

New section 5503 of the Regulations prescribes certain accounts and funds for the purposes of the definitions “net income stabilization account” and “NISA Fund No. 2” in subsection 248(1) of the Act. New section 5503 is added and those definitions are amended so that investments held under the Agri-Québec program are accorded the same tax treatment as is currently provided to investments held under the AgriInvest program.

New subsection 5503 applies to the 2011 and subsequent taxation years.

**Clause 77**

**Retention of books and records**

ITR
5800

Section 5800 of the Regulations provides the required retention periods for certain records.

Subparagraph 5800(1)(*d*)(iv) is repealed, as the Act no longer has special rules for the keeping records relating a gift that is subject to a donor's direction that the gift be held by a charity for at least ten years.

Paragraph 5800(1)(*f*) generally provides, for the purposes of paragraph 230(4)(*a*) of the Act, that for duplicates of receipts for gifts to registered charities and registered Canadian amateur athletic associations that are required to be kept under subsection 230(2) of the Act, the retention period ends two years after the end of the calendar year to which the receipt relates. This paragraph is amended to apply to all qualified donees that are required to keep duplicates of receipts under subsection 230(2) of the Act. For further information, refer to the commentary on subsection 230(2) of the Act.

This amendment applies on and after the later of the day on which the amending act is assented to and January 1, 2012.

**Clause 78**

**Definitions**

ITA
Part LXXXIII

Part LXXXIII of the Regulations, which deals with pension calculations including pension adjustments, past service pension adjustments and pension adjustment reversals, is amended to implement the Budget 2011 measures related to individual pension plans.

**Definitions**

ITR
8300(1)

Subsection 8300(1) of the Regulations provides definitions of various terms used in Part LXXXIII of the Regulations. Subsection 8300(1) is amended to introduce the new definitions "designated savings arrangement" and "individual pension plan".

**"designated savings arrangement"**

A "designated savings arrangement" is defined to be an individual's registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or account under the money purchase provision of a registered pension plan (RPP). The definition is relevant for the purposes of new subsection 8304(10). For further information, please refer to the commentary on that subsection.

**"individual pension plan"**

An "individual pension plan" is defined to be a defined benefit RPP with three or fewer members, if at least one of those members is related to the employer that is the sponsor of the RPP. An RPP will also be an "individual pension plan" if it is a "designated plan" (as defined in subsection 8515(1)) and it is reasonable to conclude that one or more members have been added to the plan in an attempt to avoid individual pension plan status (*i.e.*, to increase the plan membership to four or more members).

These amendments apply after March 22, 2011.

**Waiver**

ITR
8300(1.1)

New subsection 8300(1.1) of the Regulations allows the Minister of National Revenue to waive individual pension plan status where it is just and equitable to do so, having regard to all the circumstances.

This amendment applies after March 22, 2011.

**Clause 79**

**Qualifying transfers**

ITR
8303(6)

Subsection 8303(6) of the Regulations defines, for the purposes of calculating provisional PSPAs under subsections 8303(3) and 8304(5), the amount of an individual's qualifying transfers made in connection with a past service event. In general terms, it is defined to be the total of the amounts transferred to fund the past service benefits, where the amounts are transferred from an RRSP, a deferred profit sharing plan, a money purchase provision of an RPP, a specified-multi-employer plan, or an RPP on the breakdown of a marriage or common-law relationship or on the death of a member. The amount of an individual's qualifying transfers are to be applied to offset the provisional PSPA associated with the crediting of the past service benefits.

Subsection 8303(6) is amended, consequential on the individual pension plan measures, to add new subsection 8304(10) to the list of provisions for the purposes of which subsection 8303(6) applies. For further information, please see the commentary on new subsection 8304(10) below.

This amendment applies after March 22, 2011.

**Clause 80**

**Past service benefits – additional conditions**

ITR
8304(5)

Subsection 8304(5) of the Regulations contains special rules related to past service pension adjustments (PSPAs) for determining an individual's provisional PSPA in certain circumstances. A "provisional PSPA" is determined under Part LXXXIII of the Regulations in respect of each member of a registered pension plan who is affected by a "past service event". "Past service event" is defined in subsection 8300(1) and may generally be described as an improvement in pension benefits related to an employee's past service. A provisional PSPA generally ensures that the individual's unused RRSP deduction room (as defined in subsection 146(1) of the Act) is reduced by a PSPA value associated with the increased pension benefits related to past service. Subsection 8304(5) is amended so that it is subject to new subsection 8304(10) of the Regulations.

New subsection 8304(10) modifies the calculation of an individual's provisional PSPA in the circumstances of a past service event in relation to an individual pension plan. For further information, please see the commentary on that subsection below.

This amendment applies to past service events that occur after March 22, 2011.

**Provisional PSPA**

ITR
8304(10)

New subsection 8304(10) of the Regulations provides a special rule for calculating the provisional PSPA of an individual in the context of a past service event in relation to an individual pension plan. The purpose of the new rule is to, in effect, require that past service purchases under an individual pension plan be first funded out of a plan member's existing registered retirement savings and unused RRSP deduction room before new deductible RPP contributions may be made to the individual pension plan.

Where new subsection 8304(10) applies, an individual's provisional PSPA will be determined using the formula A – B.

Variable A is the greater of two amounts, described in paragraphs (*a*) and (*b*) respectively. The amount described in paragraph (*a*) is the provisional PSPA otherwise determined under subsection 8303(3) or 8304(5), calculated on the assumption that the provisional PSPA under that other subsection is not reduced by any qualifying transfers made in connection with the past service event (*i.e.*, without reference to variable C under subsection 8303(3) and without reference to variable D under subsection 8304(5)).

The amount described in paragraph (*b*) is itself the lesser of two amounts. The first of these two amounts is, in general terms, the total of the fair market value of the assets held under the individual's "designated savings arrangements" plus the individual's unused RRSP room. "Designated savings arrangement" is a new definition in subsection 8300(1) that in general terms refers to an individual's RRSP, RRIF or money purchase account of an RPP. The second amount is, in general terms, the amount of the actuarial liabilities associated with the past service.

Variable B is the amount of the individual's qualifying transfers made in connection with the past service event. An individual's qualifying transfers made in connection with a past service event are determined under subsection 8303(6). For further information, please refer to the commentary on the amendments to that subsection above.

This amendment applies to past service events that occur after March 22, 2011.

**Example**

Pierre, the sole owner of PPP Incorporated, establishes a new individual pension plan effective January 1, 2012 to provide retirement benefits in respect of his prior 18 years of employment (together with future employment years) with PPP Incorporated. The documents implementing the new plan are signed (*i.e.*, the past service event will occur) on March 15, 2012. His actuary determined that the actuarial cost of providing benefits for the past pensionable service is $600,000. If the new registered pension plan had not been an IPP, the provisional PSPA (prior to any qualifying transfers) for crediting the 18 years of past service would be $360,000. On March 15, 2011, Pierre had assets in RRSPs with a total value of $475,000 and he had $50,000 of unused RRSP room.

In this circumstance, variable A is $525,000, being the greater of (a) $360,000, being the amount of the provisional PSPA that would be determined under subsection 8303(3), without reference to qualifying transfers, if the RPP were not an individual pension plan, and (b) $525,000, being the lesser of the $600,000 actuarial cost of the 18 years of past service and Pierre's $525,000 ($475,000 + $50,000) of assets under his designated savings arrangement at the time of the past service event (March 15, 2012) plus unused RRSP deduction room at December 31, 2011.

In this circumstance, without a qualifying transfer (*i.e.*, if variable B were nil), Pierre's provisional PSPA under subsection 8304(10) would be $525,000 and the Minister of National Revenue would not certify the PSPA (as required by section 8307 of the Regulations) because Pierre has only $50,000 of unused RRSP deduction room. (Note that, under subsection 147.1(10) of the Act, benefits related to a past service event in respect of a member may not be paid to the member prior to the certification of the provisional PSPA.) Pierre would need to do a qualifying transfer of $475,000 (variable B) of his RRSP assets to the individual pension plan, in which case his $50,000 provisional PSPA (A – B equals $525,000 – $475,000) would be certified by the Minister of National Revenue and Pierre's unused RRSP deduction room would be reduced to nil.

The balance of the $600,000 cost of the pension benefits for the past 18 years of service may subsequently be funded by employer or member contributions to the plan, such contributions deductible from the contributor's taxable income for the year of contribution, as provided under section 147.2 of the Act.

**Limitation**

ITR
8304(11)

New subsection 8304(11) of the Regulations limits the application of new subsection 8304(10) to those past service events that are the result of an employer establishing an individual pension plan or amending an individual pension plan to provide additional benefits to one or more members.

Subsection 8304(10) generally requires that the cost of new or additional past service benefits under an individual pension plan be funded first out of a plan member's existing registered retirement savings before new deductible RPP contributions may be made to the individual pension plan. For further information, please refer to the commentary on subsection 8304(10) above.

It is not intended that the new requirement under subsection 8304(10) apply to past service events related to automatic adjustments to past service benefits such as inflationary increases in a member's pensionable compensation or inflationary increases in the defined benefit limit (as defined in subsection 8500(1)). Accordingly, subsection 8304(11) excludes from the application of the new rule in subsection 8304(10) any past service events that are not related to establishing an individual pension plan or amending the terms of the plan.

These amendments apply to past service events that occur after March 22, 2011.

**Clause 81**

**Definitions**

ITR
8500(1)

Subsection 8500(1) of the Regulations, which provides definitions for the purpose of registered pension plans (RPPs), is amended to implement the Budget 2011 measures related to individual pension plans. In particular, subsection 8500(1) is amended to introduce the new definition "IPP minimum amount".

**"IPP minimum amount"**

In cases of individual pension plans with only one member, the IPP minimum amount is defined to be the amount that would have been the RRIF minimum amount (under subsection 146.3(1) of the Act) if the IPP were a RRIF and the member were the annuitant.

In cases of IPPs with more than one member, a formula is provided to determine the IPP minimum amount of each member based on a pro-rated amount. The pro-rated amount in respect of each member is based on the member's rights to benefits under the IPP (expressed as the IPP's liabilities in relation to the member) as a proportion of the total benefits to be provided by the IPP (again expressed in terms of plan liabilities).

As is the case with RRIF minimum amounts, an IPP minimum amount for a particular year applies only to members of an individual pension plan who have attained 71 years of age before the particular year.

This definition applies to the 2012 and subsequent taxation years.

**Clause 82**

**Conditions for registration applicable to registered pension plans**

ITR
8501(1)

Subsection 8501(1) of the Regulations lists the prescribed conditions for the registration of a pension plan. Paragraph 8501(1)(*e*) requires that there be no reason to expect that the plan will become revocable. Paragraph 8501(1)(*e*) is amended to add a reference to new subsection 8503(26) of the Regulations. New subsection 8503(26) describes circumstances under which an individual pension plan becomes a revocable plan, consequential on the amendments related to individual pension plans. For further information, please see the commentary to that subsection below.

This amendment applies to the 2012 and subsequent taxation years.

**Clause 83**

**Permissible distributions**

ITR
8502(*d*)

Paragraph 8502(*d*) of the Regulations restricts the distributions that may be made from a registered pension plan (RPP). Paragraph 8502(*d*) is amended to ensure that the payment of an "IPP minimum amount payment" is a permitted distribution for an IPP. For further information, please see the commentary on the new definition "IPP minimum amount" and on new subsection 8503(26).

This amendment applies to the 2012 and subsequent taxation year.

**Clause 84**

**Revocable plan**

ITR
8503(26)

New subsection 8503(26) of the Regulations is introduced consequential on the Budget 2011 measures related to individual pension plans. It describes the circumstances under which an individual pension plan becomes a revocable plan. In general terms, an individual pension plan will become a revocable plan at the end of a year if the "IPP minimum amount" has not been paid to each member or beneficiary under the plan who had attained 71 years of age before the year and who is in receipt of retirement benefits under the plan.

This amendment applies to the 2012 and subsequent taxation years.

**Clauses 85 and 86**

**Children's arts tax credit**

ITR
9400

The heading "Prescribed Program of Physical Activity" before section 9400 of the Regulations is amended to read "Prescribed Children's Programs".

This amendment applies to the 2011 and subsequent taxation years.

**Definition of "artistic, cultural, recreational or developmental activity"**

ITR
9401(1)

New subsection 9401(1) of the Regulations defines "artistic, cultural, recreational or developmental activity" for the purpose of subsection 9401(2), which prescribes certain types of programs of artistic, cultural, recreational or developmental activity that qualify under section 118.031 of the Act for the Children's Arts Tax Credit.

An "artistic, cultural, recreational or developmental activity" means a supervised activity suitable for children, other than a physical activity, that

- contributes to a child's ability to develop creative skills or expertise, acquire and apply knowledge, or improve dexterity or co-ordination, in an artistic or cultural discipline including literary arts, visual arts, performing arts, music, media, languages, customs and heritage;
- provides a substantial focus on wilderness and the natural environment;
- assists with the development and use of intellectual skills;
- includes structured interaction among children where supervisors teach or assist children to develop interpersonal skills; or
- provides enrichment or tutoring in academic subjects.

"Artistic, cultural, recreational or developmental activity" also includes similar activities that have been adapted to accommodate the needs and abilities of a child who is eligible for the disability tax credit under section 118.3 of the Act.

This amendment applies to the 2011 and subsequent taxation years.

**Prescribed program of artistic, cultural, recreational or developmental activity**

ITR
9401(2)

New subsection 9401(2) of the Regulations prescribes programs of artistic, cultural, recreational or developmental activity for the purposes of the definition "eligible expense" in subsection 118.031(1) of the Act.

A prescribed program of artistic, cultural, recreational or developmental activity is

- a weekly program of a minimum eight consecutive weeks duration in which substantially all of the activities are eligible artistic, cultural, recreational or developmental activities (as defined in subsection 9401(1)),
- a program of five or more consecutive days duration in which more than half of the daily activities are eligible artistic, cultural, recreational or developmental activities;
- a program of a minimum eight consecutive weeks duration offered to children by a club, association or similar organization offering a variety of different activities, where either
  - more than 50% of the activities offered are eligible artistic, cultural, recreational or developmental activities, or
  - more than 50% of the time scheduled for activities offered to children is for activities that are eligible artistic, cultural, recreational or developmental activities; or
- a membership of eight or more consecutive weeks duration in an organization, if more than 50% of all of the activities offered to children by the organization are eligible artistic, cultural, recreational or developmental activities.

Programs that are part of a school curriculum are not eligible for the Children's Arts Tax Credit.

This amendment applies to the 2011 and subsequent taxation years.

**Mixed-use facility**

ITR
9401(3)

New subsection 9401(3) of the Regulations applies in cases where a program of a minimum duration of eight weeks is not a prescribed program of artistic, cultural, recreational or developmental activity because it does not meet the 50% requirement set out in paragraph 9401(2)(*c*). In such cases, subsection 9401(3) allows a taxpayer to claim a portion of the amount that is paid for the program as an "eligible expense". In such circumstances, the "portion of the program" that is considered to be a prescribed program of artistic, cultural, recreational or developmental activity is either

- the percentage of activities offered to children by the organization that are activities that include a significant amount of artistic, cultural, recreational or developmental activity, or
- the percentage of the time scheduled for activities in the program that include a significant amount of artistic, cultural, recreational or developmental activity.

This amendment applies to the 2011 and subsequent taxation years.

**Membership**

ITR
9401(4)

New subsection 9401(4) of the Regulations provides for cases where a membership in an organization does not meet the 50% requirement set out in paragraph 9401(2)(*d*). Assuming the activity is not part of a school's curriculum, the portion of the expense that will be eligible for the purpose of the definition "eligible expense" in subsection 118.031(1) of the Act is the portion of the activities offered to children by the organization that are activities that include a significant amount of artistic, cultural, recreational or developmental activity.

This amendment applies to the 2011 and subsequent taxation years.

**Clauses 87 and 88**

**Schedule II to the *Income Tax Regulations***

ITR
Schedule II

Schedule II to the Regulations sets out various classes of property that apply to depreciable property meeting the descriptions of property provided in the various classes. In general, the capital cost allowance rate that applies to each particular class of property is set out in Part XI of Regulations.

**Manufacturing and processing equipment**

ITR
Schedule II
Class 29 (50% Straight-line CCA rate)

Class 29 in Schedule II to the Regulations provides, in general, capital cost allowance (CCA) on a 50% straight-line basis (see Regulation 1100(1)(*ta*)) in respect of qualifying machinery and equipment used primarily in Canada for manufacturing or processing of goods for sale or lease if such machinery or equipment is acquired after March 18, 2007 and before 2012. Class 29 is amended to extend its application to qualifying machinery and equipment acquired before 2014.

**Renewable energy and energy conservation equipment**

ITR
Schedule II
Class 43.1 and Class 43.2 (30% and 50% declining-balance CCA rate, respectively)

Class 43.1 in Schedule II to the Regulations currently provides an accelerated CCA rate of 30% per year (on a declining balance basis) for certain renewable energy and energy conservation equipment. Class 43.2 provides an accelerated CCA rate of 50% per year (on a declining balance basis) for property included in the Class. In general, Class 43.2 applies to property described in Class 43.1, if the property is acquired on or after February 23, 2005 and before 2020. Unlike Class 43.1, however, Class 43.2 applies to co-generation equipment described in paragraphs (*a*) to (*c*) of Class 43.1 only if the heat efficiency of fuels used in the eligible co-generation system does not exceed a 4,750 BTU requirement instead of a 6,000 BTU requirement.

Class 43.1 (and indirectly Class 43.2) is amended to include in paragraph (*c*) certain property used to generate electrical energy in a process in which all or substantially all of the energy input is from thermal waste. More specifically, Class 43.1 is amended in three respects.

- New subparagraph (*c*)(iii) is added to apply to equipment that is used by the taxpayer, or by a lessee of the taxpayer, to generate electrical energy in a process all or substantially all of the energy input of which is thermal waste (see the definition “thermal waste” in subsection 1104(13) of the Regulations), other than
  - equipment that uses heat from a gas turbine in the first stage of a combined cycle system; and
  - equipment that, on the date of its acquisition, uses chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs), within the meaning assigned by the *Ozone-Depleting Substances Regulations, 1998*, made under the *Canadian Environmental Protection Act*, *1999*.

Unlike subparagraphs (*c*)(i) and (ii), new subparagraph (*c*)(iii) does not impose a heat rate efficiency threshold.

- Clause (*c*)(ii)(A) of Class 43.1 is amended to replace the words "waste heat" with the words "thermal waste", which is defined in subsection 1104(13).
- The French version of the portion of paragraph (*c*) before clause (i)(A) and of the portion subparagraph (*c*)(ii) before clause (A) are amended to ensure internal coherence in the French version of that paragraph (*c*).

These amendments apply to property acquired on or after March 22, 2011.

## Canada Education Savings Regulations

### Clause 89

**Transfers between registered education savings plans**

CESR
16

Generally, section 16 of the *Canada Education Savings Regulations* (CESR) sets out the rules pursuant to which transfers from a Registered Education Savings Plan (RESP) to another RESP are eligible transfers for the purposes of the payment of Canada Education Savings Grants and additional Canada Education Savings Grants.

Consequential on the amendment to subparagraph 204.9(5)(*c*)(ii) of the Act – which is intended to provide greater flexibility for subscribers of individual RESPs to allocate RESP assets among siblings – subparagraph 16(1)(*a*)(ii) of the CESR is modified to ensure that where assets are so allocated, the transfer from the transferring RESP to the receiving RESP is an eligible transfer.

This amendment applies in respect of property transferred after 2010.