

Immediate release

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96-015

## **DRAFT FOREIGN REPORTING REQUIREMENTS RELEASED**

Finance Minister Paul Martin and Revenue Minister Jane Stewart today jointly released draft legislation to implement the new foreign reporting requirements announced in the February 27, 1995 budget. Also released are drafts of the information returns that will be required to be filed under these new rules.

Mr. Martin noted that the new reporting requirements signify the government's commitment to preserve the integrity of the Canadian income tax base, particularly with respect to the use of foreign tax havens by Canadians.

"These reporting requirements will give Revenue Canada more ability to scrutinize offshore investments held by Canadians and to ensure the complete reporting of income," Mr. Martin said.

"It would be unfair to Canadians if we allowed some in our society to hide financial assets offshore to avoid paying their fair share of taxes," said Minister Stewart. "We will make sure that all Canadians report income earned outside the country."

The new reporting obligations will require taxpayers with interests in foreign property (shares, bank accounts, real property, etc.) in excess of \$100,000 to report and provide details on such holdings. Taxpayers with foreign affiliates will have to provide additional financial and tax information with respect to each affiliate. Beneficiaries of certain non-resident trusts will also be required to file an information return for the year in which they receive a distribution from the trust. In addition, persons who have transferred or loaned property to a non-resident trust will generally be required to file an annual information return in respect of the trust. Failure to comply with these requirements will result in the imposition of substantial penalties.

The proposed amendments are being released in draft form, together with an overview, explanatory notes and the draft information returns, to provide taxpayers and their advisors an opportunity to consider and comment on the proposals. In addition, the release at this time should give taxpayers sufficient opportunity to comply with the

new reporting requirements. It is anticipated that these measures will be included in a bill to be introduced later this year.

References to "Announcement Date" in the draft legislation and explanatory notes should be read as referring to today's date.

Draft information returns are available on Internet at <http://www.revcan.ca> or on Revenue Canada's E.D.D.S.

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Press release also available on Internet at  
<http://www.fin.gc.ca/>

## OVERVIEW OF INFORMATION RETURNS WITH RESPECT TO FOREIGN PROPERTY

	<b>Interests in Foreign Property</b>	<b>Foreign Affiliates</b>
<b>Form</b>	T1135	T1134
<b>Reference in Income Tax Act</b>	Draft section 233.3	Draft section 233.4
<b>Who must file?</b>	Persons or partnerships which own specified foreign property, the total cost of which exceeds \$100,000.	Where a corporation or trust is a foreign affiliate of a person resident in Canada or partnership, the person or partnership is required to file a return in respect of the affiliate.
<b>When must return be filed?</b>	Partnership filers must file by the deadline for partnership returns in section 229 of the Regulations. All other filers must file by their normal tax filing deadlines. (But the first filing deadline is April 30, 1997 or later.)	Same as for form T1135, except that first filing deadline is December 31, 1997 or later.
<b>Total minimum penalty for failure to file a return</b>	\$12,000 (\$500 per month for up to 24 months)	\$12,000 (\$500 per month for up to 24 months)
<b>Additional penalty for failure to file for more than 24 month</b>	10% of the total cost of the foreign property, minus penalty otherwise determined.	10% of the total cost amount of the filer's cost of shares or debts issued by the foreign affiliate, minus the penalty otherwise determined.
<b>Main Exclusions</b>	Information in respect of foreign affiliates, property used exclusively in an active business, personal-use property, and property in RRSPs, RRIFs and registered pension plans.	

	<b>Transfers and Loans to a Foreign Trust</b>	<b>Distributions from Foreign Trusts</b>
<b>Form</b>	T1141	T1142
<b>Reference in Income Tax Act</b>	Draft section 233.2	Draft section 233.5
<b>Who must file?</b>	A person who has transferred or loaned any amount to the trust or to a controlled foreign affiliate of the trust, including transfers by a partnership of which the person was a member. In addition, any person whose controlled foreign affiliate has transferred or loaned any amount to the trust or a controlled foreign affiliate of the trust.	Persons or partnerships who received distributions from, or who are indebted to, foreign trusts in which they are beneficially interested.
<b>When must return be filed?</b>	By the normal tax filing deadline for the filer. (But, first filing deadline is April 30, 1997 or later.)	Same as for form T1135.
<b>Total minimum penalty for failure to file a return</b>	\$12,000 (\$500 per month for up to 24 months)	\$2,500 (\$25 per day for up to 100 days)
<b>Additional penalty for failure to file for more than 24 month</b>	10% of the amount transferred or loaned, minus penalty otherwise determined.	Not applicable
<b>Main Exclusions</b>	Information in respect of specified foreign pension plans and specified foreign mutual fund trusts.	Reporting not required for distributions from, or debt owed to, a trust in respect of which Forms T1134, T1135 or T1141 have been filed by the filer.

## **DRAFT AMENDMENTS ON INFORMATION RETURNS**

**1.(1) The portion of subparagraph 94(1)(c)(i) of the *Income Tax Act* before clause (A) is replaced by the following:**

(i) the trust is deemed for the purposes of this Part and sections 233.3 and 233.4, to be a person resident in Canada not exempt from tax under section 149 whose taxable income for the taxation year is the total of

**(2) The portion of paragraph 94(1)(d) of the Act before subparagraph (i) is replaced by the following:**

(d) in any other case, for the purposes of subsections 91(1) to (4) and sections 95 and 233.4,

**(3) Subsections (1) and (2) apply after 1995.**

**2.(1) Subsections 162(7) and (7.1) of the Act are replaced by the following:**

Failure to comply

(7) Every person (other than a registered charity) or partnership who fails

(a) to file an information return as and when required by this Act or the regulations, or

(b) to comply with a duty or obligation imposed by this Act or the regulations

is liable in respect of each such failure, except where another provision of this Act sets out a penalty for the failure, to a penalty equal to the greater of \$100 and the product obtained when \$25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

Failure to make partnership information return

(7.1) Where a member of a partnership fails to file an information return as a member of the partnership for a fiscal period of the partnership as and when required by this Act or the regulations and subsection (10) does not set out a penalty for the failure, the partnership is liable to a penalty equal to the greater of \$100 and the product obtained when \$25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

**(2) Subsection 162(8.1) of the Act is replaced by the following:**

Where partnership liable to penalty

(8.1) Where a partnership is liable to a penalty under subsection (7), (7.1), (8) or (10), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

**(3) Subsection 162(10) of the Act is replaced by the following:**

Failure to furnish foreign-based information

(10) Every person or partnership who fails to file an information return as and when required by any of sections 233.1 to 233.4 is liable to a penalty equal to the amount determined by the formula

$$\$500 \times A \times B$$

where

A is the lesser of 24 and the number of months during any part of which the failure continues; and

B is

(a) where a demand under section 233 has been served for the return and the person or partnership does not comply with the demand within the time stipulated in the demand, 2, and

(b) in any other case, 1.

Additional penalty

(10.1) Every person or partnership who fails to file an information return as and when required by any of sections 233.2 to 233.4 is, where the number of months during any part of which the failure continues exceeds 24, in addition to the penalty determined under subsection (10) liable to a penalty equal to the amount determined by the formula

$$A - B$$

where

A is

(a) where the return is required to be filed under section 233.2, 10% of the total of all amounts each of which is the amount of any transfer or loan (determined as of the time of the transfer or loan) because of which there would, if no other transfer or loan were taken into account, be an obligation to file the return,

(b) where the return is required to be filed under section 233.3 for a taxation year or fiscal period, 10% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a specified foreign property (as defined by subsection 233.3(1)), and

(c) where the return is required to be filed under section 233.4 for a taxation year or fiscal period in respect of a foreign affiliate of the person or partnership, 10% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a property of the person or partnership that is a share of the capital stock or indebtedness of the affiliate; and

B is the amount determined under subsection (10) in respect of the failure.

Shares or debt owned by controlled foreign affiliate

(10.2) For the purpose of paragraph (c) of the description of A in subsection (10.1),

(a) shares or indebtedness owned by a controlled foreign affiliate of a person or partnership are deemed to be owned by the person or partnership; and

(b) the cost amount at any time of such shares or indebtedness to the person or partnership is deemed to be equal to 20% of the cost amount at that time to the controlled foreign affiliate of the shares or indebtedness.

Application to partnerships

(10.3) For the purposes of paragraph (c) of the description of A in subsection (10.1) and subsection (10.2), in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a partnership,

(a) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(b) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

#### Application to non-resident trusts

(10.4) For the purposes of this subsection, paragraph (c) of the description of A in subsection (10.1) and subsection (10.2),

(a) a non-resident trust is deemed to be a controlled foreign affiliate of each beneficiary of which the trust is a controlled foreign affiliate for the purpose of section 233.4;

(b) the trust is deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares;

(c) each beneficiary under the trust is deemed to own at any time the number of the issued shares of the corporation that is equal to the proportion of 100 that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust; and

(d) the cost amount to a beneficiary at any time of a share of the corporation is deemed to be equal to the amount determined by the formula

$$A/B$$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the number of shares deemed under paragraph (c) to be owned at that time by the beneficiary in respect of the corporation.



**(4) Subsections (1) and (2) apply to returns required to be filed on or before a day that is after April 29, 1997 and to duties and obligations first imposed after that day.**

**(5) Subsection (3) applies to returns required to be filed on or before a day that is after April 29, 1997.**

**3.(1) Section 163 of the Act is amended by adding the following after subsection (2.3):**

False statement or omission

(2.4) Every person or partnership who, knowingly or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in, the making of a false statement or omission in a return is liable to a penalty of

(a) where the return is required to be filed under section 233.1, \$24,000,

(b) where the return is required to be filed under section 233.2, the greater of

(i) \$24,000, and

(ii) 10% of the total of all amounts each of which is the amount of any transfer or loan (determined as of the time of the transfer or loan) because of which there would, if no other transfer or loan were taken into account, be an obligation to file the return,

(c) where the return is required to be filed under section 233.3 for a taxation year or fiscal period, the greater of

(i) \$24,000, and

(ii) 10% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of specified foreign property (as defined by subsection 233.3(1)) in respect of which the false statement or omission is made,

(d) where the return is required to be filed under section 233.4 for a taxation year or fiscal period, the greater of

(i) \$24,000, and

(ii) 10% of the greatest of all amounts each of which is the total of the cost amounts to the person or partnership at any time in the year or period of a property of the person or partnership that is a share of the capital stock or indebtedness of the foreign affiliate in respect of which the return is being filed, and

(e) where the return is required to be filed under section 233.5 for a taxation year or fiscal period, the greater of

(i) \$2,500, and

(ii) 10% of the total of

(A) all amounts each of which is the fair market value of a property that is distributed to the person or partnership in the year or period by the trust and in respect of which the false statement or omission is made, and

(B) all amounts each of which is the greatest unpaid principal amount of a debt that is owing to the trust by the person or partnership in the year or period and in respect of which the false statement or omission is made.

#### Shares or debt owned by controlled foreign affiliate

(2.5) For the purpose of paragraph (2.4)(d),

(a) shares or indebtedness owned by a controlled foreign affiliate of a person or partnership are deemed to be owned by the person or partnership; and

(b) the cost amount at any time of such shares or indebtedness to the person or partnership is deemed to be equal to 20% of the cost amount at that time to the controlled foreign affiliate of the shares or indebtedness.

#### Application to partnerships

(2.6) For the purposes of paragraph (2.4)(d) and subsection (2.5), in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a partnership

(a) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(b) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

#### Application to partnerships

(2.7) For the purpose of subsection (2.4), each act or omission of a member of a partnership in respect of an information return required to be filed by the partnership under any of sections 233.3 to 233.5 is deemed to be an act or omission of the partnership in respect of the return.

#### Application to members of partnerships

(2.8) For the purposes of this subsection and subsection (2.7), a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

#### Where partnership liable to penalty

(2.9) Where a partnership is liable to a penalty under subsection (2.4), sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any modifications that the circumstances require, to the penalty as if the partnership were a corporation.

#### Application to non-resident trusts

(2.91) For the purposes of this subsection, paragraph (2.4)(d) and subsection (2.5),

(a) a non-resident trust is deemed to be a controlled foreign affiliate of each beneficiary of which the trust is a controlled foreign affiliate for the purpose of section 233.4;

(b) the trust is deemed to be a non-resident corporation having a capital stock of a single class divided into 100 issued shares;

(c) each beneficiary under the trust is deemed to own at any time the number of the issued shares of the corporation that is equal to the proportion of 100 that

(i) the fair market value at that time of the beneficiary's beneficial interest in the trust

is of

(ii) the fair market value at that time of all beneficial interests in the trust; and

(d) the cost amount to a beneficiary at any time of a share of the corporation is deemed to be equal to the amount determined by the formula

$A/B$

where

A is the fair market value at that time of the beneficiary's beneficial interest in the trust, and

B is the number of shares deemed under paragraph (c) to be owned at that time by the beneficiary in respect of the corporation.

**(2) Subsection (1) applies to returns required to be filed on or before a day that is after April 29, 1997.**

**4.(1) Section 233 of the Act is replaced by the following:**

Information return

233.(1) Every person shall, on written demand from the Minister served personally or otherwise, whether or not the person has filed an information return as required by this Act or the regulations, file with the Minister, within such reasonable time as is stipulated in the demand, such information as is designated in the demand.

Partnerships

(2) Every partnership shall, on written demand from the Minister served personally or otherwise on any member of the partnership, file with the Minister, within such reasonable time as is stipulated in the demand, an information return under section 233.3 or 233.4.

Application to members of partnerships

(3) For the purposes of this subsection and subsection (2), a person who is a member of a partnership that is a member of another partnership is deemed to be a member of the other partnership.

**(2) Subsection (1) applies to returns required to be filed on or before a day that is after April 29, 1997.**

**5.(1) The Act is amended by adding the following after section 233.1 of the Act:**

Definitions

233.2(1) In this section,

"exempt trust"  
«fiducie exonérée»

"exempt trust" means

(a) a trust that is governed by a foreign retirement arrangement,

(b) a trust that

(i) is resident in a country under the laws of which an income tax is imposed,

(ii) is exempt under the laws referred to in subparagraph (i) from the payment of income tax to the government of that country,

(iii) is established principally in connection with, or the principal purpose of which is to administer or provide benefits under, one or more superannuation, pension or retirement funds or plans or any funds or plans established to provide employee benefits, and

(iv) is maintained primarily for the benefit of non-resident individuals, or

(c) a trust where

(i) the interest of each beneficiary under the trust is described by reference to units, and

(ii) it complies with prescribed conditions;

"specified beneficiary"  
«bénéficiaire déterminé»

"specified beneficiary" at any time under a trust means

(a) any person beneficially interested in the trust who is not at that time

(i) a mutual fund corporation,

(ii) a non-resident-owned investment corporation,

(iii) a corporation all of the taxable income of which for its taxation year that includes that time is exempt from tax under Part I,

(iv) a trust all of the taxable income of which for its taxation year that includes that time is exempt from tax under Part I,

(v) a mutual fund trust,

(vi) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1), and

(vii) a particular person who is beneficially interested in the trust solely because the particular person is beneficially interested in an exempt trust or a trust described in this subparagraph or any of subparagraphs (iv) to (vi), or

(b) any person described at that time in any of subparagraphs (a)(i) to (vii) who is beneficially interested in the trust, where it is reasonable to consider that the person became beneficially interested in the trust as part of a transaction or event or series of transactions or events one of the purposes of which is to limit the reporting in respect of the trust that would, but for this paragraph, be required under subsection (4);

"specified foreign trust"  
«fiducie étrangère déterminée»

"specified foreign trust" at any time means a trust (other than an exempt trust)

(a) that is non-resident at that time, and

(b) either

(i) there is a specified beneficiary under the trust who at that time

(A) is resident in Canada,

(B) is a corporation or trust with which a person resident in Canada does not deal at arm's length, or

(C) is a controlled foreign affiliate of a person resident in Canada, or

(ii) subparagraph (i) does not apply to the trust at that time and the terms of the trust

(A) permit persons to be added as beneficiaries under the trust after that time who are not beneficially interested in the trust at that time and who may be resident in Canada at the time of being so added, or

(B) allow property to be distributed, directly or indirectly, to another trust that immediately after the receipt of the distribution can reasonably be expected to be a specified foreign trust.

Non-arm's length indicators

(2) For the purpose of this section,

(a) a non-arm's length indicator applies to a trust at a particular time with respect to a transfer of property made at an earlier time to the trust or a corporation where

(i) immediately after the earlier time the transferor was

(A) a specified beneficiary under the trust,

(B) a person related to a specified beneficiary under the trust,

(C) an uncle, aunt, nephew or niece of a specified beneficiary under the trust, or

(D) a trust or corporation that had, directly or indirectly in any manner whatever, previously acquired the transferred property from a person described in clause (A), (B) or (C),

(ii) the fair market value at the earlier time of the transferred property was greater than the amount, if any, by which

(A) the total fair market value at the earlier time of the consideration, if any, given to the transferor for the transfer of property at the earlier time

exceeds

(B) the portion of the total described in clause (A) that is attributable to the fair market value of an interest as a beneficiary in the trust or a share or debt issued by the corporation,

(iii) the consideration received by the transferor in respect of the transfer included indebtedness on which

(A) interest was not charged in respect of a period that began before the particular time,

(B) interest was charged in respect of a period that began before the particular time at a rate that was less than the lesser of

(I) the prescribed rate that was in effect at the earlier time, and

(II) the rate that would, having regard to all the circumstances, have been agreed on at the earlier time between parties dealing with each other at arm's length,

(C) any interest that was payable at the end of any calendar year that ended at or before the particular time was unpaid on the day that is 180 days after the end of that calendar year, or

(D) the amount of interest that was payable at the end of any calendar year that ended at or before the particular time was paid on or before the day that is 180 days after the end of that calendar year and it is established, by subsequent events or otherwise, that the payment was made as part of a series of loans or other transactions and repayments,



(iv) the property transferred was a share of the capital stock of a corporation or an interest in another trust and a specified beneficiary under the trust is related to the corporation or the other trust or would be so related if paragraph 80(2)(j) applied for the purposes of this subparagraph, or

(v) the transfer was made as part of a series of transactions or events one of the purposes of which was to avoid the application of this paragraph; and

(b) a non-arm's length indicator applies to a trust at a particular time with respect to a loan made at an earlier time where

(i) interest was not charged on the loan in respect of a period that began before the particular time,

(ii) interest was charged on the loan in respect of a period that began before the particular time at a rate that was less than the lesser of

(A) the prescribed rate that was in effect at the earlier time, and

(B) the rate that would, having regard to all the circumstances, have been agreed on at the earlier time between parties dealing with each other at arm's length,

(iii) any interest on the loan that was payable at the end of any calendar year that ended at or before the particular time was unpaid on the day that is 180 days after the end of that calendar year,

(iv) the amount of interest on the loan that was payable at the end of any calendar year that ended at or before the particular time was paid on or before the day that is 180 days after the end of that calendar year and it is established, by subsequent events or otherwise, that the payment was made as part of a series of loans or other transactions and repayments, or

(v) the loan was made as part of a series of transactions or events one of the purposes of which was to avoid the application of this paragraph.

(3) For the purposes of this section, where property is transferred or lent at any time by a partnership, the property is deemed to have been transferred or lent at that time by each of the members of the partnership.

Filing information on specified foreign trusts

(4) Where

(a) at any time (in this subsection referred to as the "transfer time") before the end of a trust's taxation year (in this subsection referred to as the "trust's year"), property was transferred or lent, either directly or indirectly in any manner whatever, by any person (in this subsection referred to as the "transferor") to

(i) the trust, or

(ii) a corporation that, at the transfer time, would have been a controlled foreign affiliate of the trust if the trust had been resident in Canada,

(b) the trust was a specified foreign trust at any time in the trust's year, and

(c) if paragraph (b) applies solely because of the application of subparagraph (b)(i) of the definition "specified foreign trust" in subsection (1), a non-arm's length indicator applied to the trust at the end of the trust's year with respect to the transfer or loan,

the following rules apply:

(d) where the transferor is resident in Canada at the end of the trust's year, the transferor shall make an information return in respect of the trust's year in prescribed form and file it with the Minister on or before the transferor's filing-due date for the transferor's taxation year that includes the end of the trust's year; and

(e) where

(i) the transferor was, at the transfer time, a corporation that would have been a controlled foreign affiliate of a particular person if the particular person had been resident in Canada, and

(ii) the particular person is resident in Canada at the end of the trust's year,

the particular person shall make an information return in respect of the trust's year in prescribed form and file it with the Minister on or before the filing-due date for the particular person's taxation year that includes the end of the trust's year.

#### Joint filing

(5) Where information returns in respect of a trust's taxation year would, but for this subsection, be required to be filed under subsection (4) by a particular person and another person and the particular person identifies the other person in an election filed in writing with the Minister, for the purposes of applying this Act to the particular person

(a) the information return filed by the other person shall be treated as if it had been filed by the particular person;

(b) the information required to be provided with the return by the particular person shall be deemed to be the information required to be provided by the other person with the return;

(c) the day on or before which the return is required to be filed by the particular person is deemed to be the later of the day on or before which

(i) the return would, but for this subsection, have been required to have been filed by the particular person, and

(ii) the return is required to have been filed by the other person; and

(d) each act and omission of the other person in respect of the return is deemed to be an act or omission of the particular person.

#### Definitions

233.3(1) For the purpose of this section,

"reporting entity"  
«déclarant»

"reporting entity" for a taxation year or fiscal period means a specified Canadian entity for the year or period where, at any time in the year or period, the total of all amounts each of which is the cost amount to the entity of a specified foreign property of the entity exceeds \$100,000;

"specified Canadian entity"  
«entité canadienne déterminée»

"specified Canadian entity" for a taxation year or fiscal period means

- (a) a taxpayer resident in Canada in the year that is not
  - (i) a mutual fund corporation,
  - (ii) a non-resident-owned investment corporation,
  - (iii) a corporation all of the taxable income of which for the year is exempt from tax under Part I,
  - (iv) a trust all of the taxable income of which for the year is exempt from tax under Part I,
  - (v) a mutual fund trust, and
  - (vi) a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1); and
- (b) a partnership (other than a partnership all the members of which are taxpayers referred to in any of subparagraphs (a)(i) to (vi)) where the total of all amounts, each of which is a share of the partnership's income or loss for the period of a non-resident member, is less than 90% of the income or loss of the partnership for the period, and, where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be \$1,000,000 for the purpose of determining a member's share of the partnership's income for the purpose of this paragraph;

"specified foreign property"  
«bien étranger déterminé»

"specified foreign property" of a specified Canadian entity means

- (a) any funds or intangible property which are situated, deposited or held outside Canada,
- (b) tangible property situated outside Canada,

- (c) any share of the capital stock of a non-resident corporation,
- (d) any interest in a non-resident trust or a trust that, but for section 94, would be a non-resident trust for the purpose of this section,
- (e) any interest in a partnership,
- (f) any interest in, or right with respect to, an entity that is non-resident,
- (g) indebtedness owed by a non-resident person,
- (h) any interest in or right, under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to any property that is specified foreign property, and
- (i) any property that, under the terms or conditions thereof or any agreement relating thereto, is convertible into, is exchangeable for or confers a right to acquire, property that is specified foreign property,

but does not include

- (j) property that is used or held exclusively in the course of carrying on an active business of the entity (determined, where the entity is a partnership or trust, as if the entity were a corporation resident in Canada),
- (k) a share of the capital stock of a non-resident corporation that is a foreign affiliate of the entity for the purpose of section 233.4,
- (l) an interest in a non-resident trust that is a foreign affiliate of the entity for the purpose of section 233.4,
- (m) an interest in a non-resident trust that was not acquired for consideration by either the entity or a person related to the entity,
- (n) an interest in a trust described in paragraph (a) or (b) of the definition "exempt trust" in subsection 233.2(1),
- (o) an interest in a partnership that is a specified Canadian entity,
- (p) personal-use property of the entity, and

(q) an interest in or right to acquire a property that is referred to in any of paragraphs (j) to (p).

#### Application to members of partnerships

(2) For the purpose of this section, a person who is a member of a partnership that is a member of another partnership

(a) is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

#### Returns respecting foreign property

(3) A reporting entity for a taxation year or fiscal period shall file with the Minister for the year or period a return in prescribed form on or before the day that is

(a) where the entity is a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the partnership or would be required to be so filed if that section applied to the partnership; and

(b) where the entity is not a partnership, the entity's filing-due date for the year.

#### Reporting entity

233.4(1) For the purpose of this section, "reporting entity" for a taxation year or fiscal period means

(a) a taxpayer resident in Canada (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) of which a non-resident corporation is a foreign affiliate at any time in the year;

(b) a taxpayer resident in Canada (other than a taxpayer all of whose taxable income for the year is exempt from tax under Part I) of which a non-resident trust is a foreign affiliate at any time in the year; and

(c) a partnership where

- (i) the total of all amounts, each of which is a share of the partnership's income or loss for the period of a non-resident member, is less than 90% of the income or loss of the partnership for the period, and, where the income and loss of the partnership are nil for the period, the income of the partnership for the period is deemed to be \$1,000,000 for the purpose of determining a member's share of the partnership's income for the purpose of this subparagraph, and
- (ii) a non-resident corporation or trust is a foreign affiliate of the partnership at any time in the fiscal period.

#### Rules of application

(2) For the purpose of this section, in determining whether a non-resident corporation or trust is a foreign affiliate or a controlled foreign affiliate of a taxpayer resident in Canada or of a partnership

(a) paragraph (b) of the definition "equity percentage" in subsection 95(4) shall be read as if the reference to "any corporation" were a reference to "any corporation other than a corporation resident in Canada";

(b) the definitions "direct equity percentage" and "equity percentage" in subsection 95(4) shall be read as if a partnership were a person; and

(c) the definitions "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) shall be read as if a partnership were a taxpayer resident in Canada.

#### Application to members of partnerships

(3) For the purpose of this section, a person who is a member of a partnership that is a member of another partnership

(a) is deemed to be a member of the other partnership; and

(b) the person's share of the income or loss of the other partnership is deemed to be equal to the amount of that income or loss to which the person is directly or indirectly entitled.

Returns respecting foreign affiliates

(4) A reporting entity for a taxation year or fiscal period shall file with the Minister for the year or period a return in prescribed form in respect of each foreign affiliate of the entity in the year or period on or before the day that is

(a) where the entity is a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the partnership or would be required to be so filed if that section applied to the partnership; and

(b) where the entity is not a partnership, the entity's filing-due date for the year.

Returns respecting distributions from non-resident trusts

233.5 (1) Where a specified Canadian entity (as defined by subsection 233.3(1)) for a taxation year or fiscal period receives a distribution of property from, or is indebted to, a non-resident trust (other than a trust that was an excluded trust in respect of the year or period of the entity) in the year or period and the entity is beneficially interested in the trust at any time in the year or period, the entity shall file with the Minister for the year or period a return in prescribed form on or before the day that is

(a) where the entity is a partnership, the day on or before which a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the fiscal period of the partnership or would be required to be so filed if that section applied to the partnership; and

(b) where the entity is not a partnership, the entity's filing-due date for the year.

Excluded trust defined

(2) For the purpose of subsection (1), an excluded trust in respect of the taxation year or fiscal period of an entity means

(a) a trust described in paragraph (a) or (b) of the definition "exempt trust" in subsection 233.2(1);

(b) a trust in respect of which the entity is required by section 233.2 to file a return in respect of each taxation year of the trust that ends in the entity's year;



(c) a trust an interest in which is at any time in the year or period specified foreign property (as defined by subsection 233.3(1)) of the entity, where the entity is a reporting entity (as defined by subsection 233.3(1)) for the year or period; and

(d) a trust in respect of which the entity is required by section 233.4 to file a return for the year or period.

**(2) Section 233.2 of the Act, as enacted by subsection (1), applies to returns in respect of trusts' taxation years that begin after 1995, except that such a return in respect of a taxation year that ends in 1996 or 1997 is required to be filed on or before the later of**

**(a) April 30, 1997; and**

**(b) the day on or before which the return is otherwise required to be filed.**

**(3) Sections 233.3 and 233.5 of the Act, as enacted by subsection (1), apply to returns for taxation years and fiscal periods that begin after 1995, except that such a return for a taxation year or fiscal period that ends in 1996 or 1997 is required to be filed on or before the later of**

**(a) April 30, 1997; and**

**(b) the day on or before which the return is otherwise required to be filed.**

**(4) Section 233.4 of the Act, as enacted by subsection (1), applies to returns for taxation years and fiscal periods that begin after 1995, except that such a return for a taxation year or fiscal period that ends in 1996 or 1997 is required to be filed on or before the later of**

**(a) December 31, 1997; and**

**(b) the day on or before which the return is otherwise required to be filed.**

**6.(1) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:**

"controlled foreign affiliate"  
«société étrangère affiliée contrôlée»

| "controlled foreign affiliate" has the meaning assigned by subsection 95(1);

**(2) Subsection (1) applies after 1995.**

## **EXPLANATORY NOTES TO DRAFT AMENDMENTS ON INFORMATION RETURNS**

ITA  
94(1)(c)(i)

Subparagraph 94(1)(c)(i) of the Income Tax Act treats certain non-resident discretionary trusts as residents of Canada for the purpose of Part I of the Act.

Subparagraph 94(1)(c)(i) is amended so that it also applies for the purposes of new sections 233.3 and 233.4, which set out reporting obligations in respect of foreign property and foreign affiliates of taxpayers. In conjunction with the rules in sections 233.3 and 233.4, this amendment has the effect of extending the foreign reporting obligations under those sections to the discretionary trusts referred to in the subparagraph.

This amendment applies after 1995.

ITA  
94(1)(d)

Paragraph 94(1)(d) of the Act treats certain non-resident trusts as non-resident corporations that are controlled by certain beneficiaries of such trusts. As well, it deems the non-resident trust to be a corporation with a single class of shares divided into 100 issued shares. Each beneficiary is considered to own a proportion of the issued shares that is commensurate with the fair market value of the beneficiary's beneficial interest in the trust.

Paragraph 94(1) is amended so that it applies for the purpose of section 233.4, thus ensuring that the new reporting requirements in respect of foreign affiliates apply in respect of non-resident trusts that are foreign affiliates because of paragraph 94(1)(d).

This amendment applies after 1995.

ITA  
162(7)

Subsection 162(7) of the Act provides a penalty for the failure to file an information return and for the failure to comply with a duty or obligation imposed under the Act or the Income Tax Regulations. The penalty is equal to \$25 per day of default, subject to a \$100 minimum and a \$2,500 maximum.

Subsection 162(7) is amended to provide that the penalty also applies to partnerships. This is because new section 233.5 requires both persons and partnerships to file an information return

in respect of distributions from non-resident trusts received in a taxation year or fiscal period. Failure to file such a return will, therefore, result in the person or partnership being liable for the penalty under subsection 162(7).

Subsection 162(7) is also amended so that, where a person or partnership is liable to a penalty under amended subsection 162(10), that person or partnership cannot also be liable to the penalty under subsection 162(7).

These amendments apply to information returns that are due after April 29, 1997.

ITA  
162(7.1)

Subsection 162(7.1) of the Act imposes a penalty on a partnership where a member of the partnership fails to file a partnership information return as and when required by the Act or the regulations. The penalty is equal to \$25 per day of default, subject to a \$100 minimum and a \$2,500 maximum.

Subsection 162(7.1) is amended to ensure that, like subsection 162(7), a partnership cannot be concurrently liable for a penalty under amended subsection 162(10) and subsection 162(7.1) in respect of the same failure to comply.

This amendment applies to information returns that are due after April 29, 1997.

ITA  
162(8.1)

Subsection 162(8.1) of the Act allows the penalties imposed under subsections 162(7.1) and (8) to be assessed against a partnership and applies the provisions of the Act relating to assessments, objections and appeals with respect to those penalties as if the partnership were a corporation.

Subsection 162(8.1) is amended so that it also applies to penalties imposed under subsections 162(7) and 162(10). These amendments are required because the penalties under amended subsections 162(7) and 162(10) are applicable to both persons and partnerships.

This amendment applies to information returns due after April 29, 1997.

ITA  
162(10) and (10.1)

Subsection 162(10) of the Act levies a penalty for failure to file an information return under section 233.1 in respect of non-arm's length transactions between non-resident persons and corporations resident in Canada or carrying on business in Canada. The penalty under existing subsection 162(10) applies only where a corporation is served with a demand for the information return and does not comply with the demand within 90 days of service. The penalty imposed for a failure to meet this requirement is equal to \$1,000 for each of the first 24 months during which such failure continues.

Subsection 162(10) is amended so that it also applies to information returns required to be filed under new sections 233.2 to 233.4, whether or not a demand is served. The penalty is \$500 per month, where no demand is served. Where a demand is served and not complied with, the penalty is \$1,000 per month.

Subsection 162(10.1) is introduced so that, in the case of information returns under sections 233.2 to 233.4, an additional penalty is imposed where the return is more than 24 months late. The additional penalty under subsection 162(10.1) is equal to a specified amount with respect to an information return, minus the \$12,000 or \$24,000 penalty determined under subsection 162(10) for the failure to file the return. Because of section 257, this penalty can only be a positive amount. The specified amount with respect to an information return under section 233.2 is equal to 10% of the total of all amounts transferred to the trust that gave rise to an obligation to file the return. The specified amount with respect to an information return under section 233.3 for a taxation year or fiscal period is 10% of the greatest total cost amount to the reporting person or partnership of "specified foreign property" (as defined by section 233.3) in the year or period. The specified amount with respect to an information return on a foreign affiliate under section 233.4 is equal to 10% of the greatest total cost amount to the reporting person or partnership of shares and debt in the affiliate that are owned by the reporting person or partnership.

Further rules for determining the specified amount with respect to an information return under section 233.4 are contained in new subsections 162(10.2) and (10.3).

These amendments apply to returns due after April 29, 1997.

ITA

162(10.2) to (10.4)

New subsections 162(10.2) to (10.4) of the Act provide rules that apply for the purposes of determining the additional penalty imposed under subsection 162(10.1) with respect to the failure to file an information return under new section 233.4. This additional penalty applies where a person or partnership has failed for 24 months to file an information return in respect of a foreign affiliate of the person or partnership. The penalty equals the amount by which 10% of the greatest total cost amount to the person or partnership of shares or debt of the foreign affiliate in respect of which the return was not filed exceeds the penalty payable under subsection 162(10) in respect of the failure to file the required return.

New subsection 162(10.2) provides that any shares or indebtedness owned by a controlled foreign affiliate of a person or partnership are deemed to be owned by the person or partnership. It also ascribes a cost amount to such shares or debt equal to 20% of their cost amount to the controlled foreign affiliate. As a consequence, the penalty in subsection 162(10.1) can apply where the person or partnership required to report in respect of the affiliate does not own shares or debt of the affiliate, but, rather, has an interest in the shares through one or more controlled foreign affiliates.

New subsection 162(10.3) provides rules to ensure that partnerships have foreign affiliates and controlled foreign affiliates for the purposes of subsections 162(10.1) and (10.2).

New subsection 162(10.4) provides rules which, for the purposes of the additional penalty under subsection 162(10.1), treat non-resident trusts as foreign affiliates or controlled foreign affiliates of their beneficiaries, in the event they are treated as such for the purposes of the reporting requirements under section 233.4. In addition, a cost amount is ascribed to shares deemed to be issued by such trusts to beneficiaries. The cost amount to beneficiaries of shares deemed to be issued by such trusts is based on the fair market value of beneficiaries' interests in the trust.

Subsections 162(10.2) to (10.4) apply to information returns due after April 29, 1997.

ITA

163(2.4)

New subsection 163(2.4) of the Act provides a penalty for a person or partnership who, knowingly or under circumstances amounting to gross negligence, has made or has participated in, assented to, or acquiesced in the making of a false statement or omission in a return required to be filed under any of sections 233.1 to 233.5.

The penalty in respect of an information return under section 233.1 is \$24,000. The penalty in respect of information returns under sections 233.2 to 233.4 is the greater of \$24,000 and 10% of

- in the case of an information return under section 233.2, the total of all amounts transferred or loaned that gave rise to the filer's obligation to file the return;
- in the case of an information return under section 233.3, the greatest total cost amount to the person or partnership of specified foreign property in respect of which the false statement or omission was made; and
- in the case of an information return under section 233.4, the greatest total cost amount to the person or partnership of shares and debt of the foreign affiliate in respect of which the return is being filed.

The penalty in respect of an information return under section 233.5 is the greater of \$2,500 and 10% of the total of two amounts: the fair market value of property distributed to the person or partnership and the greatest unpaid principal amount of each debt that is owing to the trust by the person or partnership.

In some cases, a person who makes an omission with respect to an information return may claim that the omission is attributable to foreign privacy laws. Subsection 163(2.4) is intended to apply to the omission made by a person who made a transfer or loan and knew, or ought to have known, that foreign privacy laws would preclude compliance with Canadian reporting requirements.

Subsection 163(2.4) applies to information returns due after April 29, 1997.

ITA  
163(2.5) to (2.91)

New subsections 163(2.5) to (2.91) of the Act provide rules which are relevant for the purposes of determining the penalties under subsection 163(2.4) in respect of information returns filed under sections 233.3 to 233.5.

New subsection 163(2.5) applies for the purposes of determining the penalty under subsection 163(2.4) in respect of information returns filed under section 233.4. This penalty is based, in part, on the cost amount to the reporting person or partnership of shares and debt of the foreign affiliate in respect of which the return was made. Paragraph 163(2.5)(a) provides that

any shares or indebtedness owned by a controlled foreign affiliate of a reporting person or partnership are deemed to be owned by the person or partnership. Paragraph 163(2.5)(b) ascribes a cost amount to such shares or debt equal to 20% of their cost amount to the controlled foreign affiliate. As a consequence, this penalty applies where the reporting person or partnership does not own shares or debt of a foreign affiliate, but, rather, has an interest in the shares through one or more controlled foreign affiliates.

New subsection 163(2.6) provides rules to ensure that partnerships have foreign affiliates and controlled foreign affiliates for the purposes of subsections 163(2.4) and (2.5).

New subsection 163(2.7) provides, for the purpose of the penalties under subsection 163(2.4) in respect of false statements or omissions in an information return required to be filed under new sections 233.3, 233.4 and 233.5, that each act or omission of a member of a partnership is deemed to be an act or omission of the partnership required to file the return.

New subsection 163(2.8) provides, for the purpose of subsection 163(2.7), that a person who is a member of a partnership which in turn is a member of another partnership is deemed to be a member of the other partnership. As a consequence, the Minister of National Revenue may look through tiers of partnerships in order to establish the persons responsible for making false statements or omissions in a return filed under any of sections 233.3 to 233.5, where a partnership has filed such a return.

New subsection 163(2.9) allows the penalty imposed under new subsection 163(2.4) to be assessed against a partnership and applies the provisions of the Act relating to assessments, objections and appeals with respect to those penalties as if the partnership were a corporation.

New subsection 163(2.91) provides rules which, for the purposes of the penalty provided under subsection 163(2.4) in respect of information returns for foreign affiliates, treat non-resident trusts as foreign affiliates or controlled foreign affiliates of their beneficiaries, in the event they are treated as such for the purposes of the reporting requirements under section 233.4. In addition, a cost amount is ascribed to shares deemed to be issued by such trusts to beneficiaries. The cost amount to beneficiaries of shares deemed to be issued by such trusts is based on the fair market value of beneficiaries' interests in the trust.

Subsections 163(2.5) to (2.91) apply to information returns due after April 29, 1997.



ITA  
233

Section 233 of the Act authorizes the Minister of National Revenue to demand information from persons required to file information returns. Failure to comply with demands under this section can affect the level of penalties assessed under amended subsection 162(10).

Existing section 233 is renumbered as subsection 233(1), as a consequence of the introduction of subsection 233(2).

New subsection 233(2) authorizes the Minister of National Revenue to issue a demand to member of a partnership for an information return required to be filed under section 233.3 or 233.4 by the partnership. New subsection 233(3) provides that, for this purpose, a person who is a member of a partnership which in turn is a member of another partnership is deemed to be a member of the second partnership.

These amendments apply to returns due after April 29, 1997.

ITA  
233.2

New section 233.2 of the Act requires certain persons who have made transfers or loans to a specified foreign trust, or to a non-resident corporation that is a controlled foreign affiliate of a specified foreign trust, to file annual information returns with respect to the trust. In some cases, persons required to file an information return under section 233.2 may also be required to file an information return under section 233.3 or 233.4 with respect to their interests in a foreign trust.

These amendments apply with respect to taxation years of trusts that begin after 1995. However, no return is due until April 30, 1997.

ITA  
233.2(1)  
"exempt trust"

There are no reporting requirements under new section 233.2 of the Act with respect to "exempt trusts", as defined in subsection 233.2(1). Three types of trust qualify as "exempt trusts".

The first type of exempt trust is one governed by a "foreign retirement arrangement". Further to the definition of that expression in subsection 248(1) of the Act, foreign retirement arrangements are described in section 6803 of the Income Tax Regulations.

The second type of exempt trust is one established in connection with a superannuation, pension or retirement fund or plan or any fund or plan established to provide employee benefits. (However, the exemption applies only where the trust is exempt from income tax imposed by the country of its residence and the trust is maintained primarily for the benefit of non-resident individuals.)

The third type of exempt trust is, in general terms, a foreign mutual fund trust. Reporting in respect of such trusts is, instead, provided under new section 233.3. More specifically, this exemption applies to a trust the interests in which are described by reference to units and which satisfies prescribed conditions. For this purpose, conditions will be prescribed in Part XLVIII of the Regulations. It is proposed to prescribe the following conditions in respect of a trust:

- there are at least 150 beneficiaries who are beneficiaries in respect of the same class of units of the trust, and
- 150 or more of those beneficiaries each hold at least
  - one "block of units" of that class (as defined in Part XLVIII of the Regulations), and
  - units of that class having a total fair market value of at least \$500.

233.2(1)

"specified beneficiary"

"specified foreign trust"

The reporting requirements under new subsection 233.2(4) of the Act apply only in respect of "specified foreign trusts". A "specified foreign trust" is a trust (other than an "exempt trust", as described above) that satisfied two conditions.

The first condition is satisfied where the trust is not resident in Canada. In this context, it is noted that the rule in paragraph 94(1)(c) that deems a non-resident trust to be resident in Canada has no relevance because the rule applies only for the purposes of Part I and sections 233.3 and 233.4 of the Act.

The second condition is satisfied where:

- there is a "specified beneficiary", as described below, under the trust who is resident in Canada, is a corporation or trust with which a person resident in Canada does not deal at arm's length or is a controlled foreign affiliate of a person resident in Canada;
- the terms of the trust permit persons (other than persons beneficially interested in the trust) to be added as beneficiaries under the trust who could be resident in Canada at the time of being so added; or
- the terms of the trust allow property to be distributed, directly or indirectly, to another trust that, immediately after the receipt of the distribution, can reasonably be expected to be a "specified foreign trust".

Subject to an anti-avoidance rule, a "specified beneficiary" under a trust is defined as any person "beneficially interested" in the trust (as defined in subsection 248(25)), except for excluded beneficiaries. The excluded beneficiaries comprise:

- mutual fund corporations,
- non-resident-owned investment corporations,
- corporations and trusts the taxable income of which is exempt from tax under Part I,
- mutual fund trusts,
- trusts described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1) of the Act, and
- persons beneficially interested in the trust solely because they are beneficially interested in an "exempt trust" or in another trust that is an excluded beneficiary under the trust.

Notwithstanding the exclusions above, a "specified beneficiary" under a trust also includes any excluded beneficiary under the trust, if the beneficiary became beneficially interested in the trust in order to limit the reporting in respect of the trust that would otherwise be required.

ITA  
233.2(2)

For reporting requirements to apply as of any time with respect to a specified foreign trust, new subsection 233.2(4) of the Act generally provides that a non-arm's length indicator must apply to the trust with respect to an earlier transfer or loan of property. New subsection 233.2(2) describes these non-arm's length indicators.

ITA  
233.2(3)

New subsection 233.2(3) of the Act is a special rule which deals with transfers and loans by partnerships. It provides that, for the purposes of section 233.2, property transferred by a partnership is considered to have been transferred or lent by each of the members of the partnership. Consequently, each member of a partnership may be responsible under subsection 233.2(4) for filing an information return for a trust to which the partnership has transferred or loaned property. However, subsection 233.2(5) allows for joint filing of these returns in some cases.

ITA  
233.2(4)

New subsection 233.2(4) of the Act imposes reporting requirements that apply in respect of a "specified foreign trust" (as described in the commentary on subsection 233.2(1)) where property has been previously transferred or lent to the trust or to a controlled foreign affiliate of the trust. For these requirements to apply, a non-arm's length indicator must generally apply to the trust at the end of the year in respect of the transfer or loan. ("Non-arm's length indicators" are defined in subsection 233.2(2).) However, non-arm's length indicators are relevant only to those specified foreign trusts which have

- at least one specified beneficiary who is resident in Canada, or
- at least one specified beneficiary that is either a controlled foreign affiliate of a person resident in Canada or a corporation or trust with which a person resident in Canada was not dealing at arm's length.

Returns required to be filed under this provision by a person, must be filed by the filing deadline for the person's income tax return under Part I of the Act. (However, a transitional

rule in the coming-into-force provision for section 233.2 provides that no returns are due before April 30, 1997.)

The person who transferred or loaned property as described above is required to file an information return in respect of a taxation year of a trust under paragraph 233.2(4)(d). However, this paragraph applies only where such person was resident in Canada at the end of the trust's year.

Where the transferor or lender was, at the time of the transfer/loan, a controlled foreign affiliate of a person resident in Canada, that person is required to make an information return in respect of the trust's year under paragraph 233.2(4)(e).

It should also be noted that, at the discretion of the Minister of National Revenue, relief from subsection 233.2(4) may be available under section 220 in certain circumstances.

ITA  
233.2(5)

New subsection 233.2(5) of the Act attempts to ease the administrative burden with respect to the reporting required in respect of specified foreign trusts. It allows a person otherwise required to file an information return for a taxation year of a trust to identify another person required to file the same information return for the year in respect of the trust. The identification is to be made by an election filed in writing with the Minister of National Revenue.

The information return filed by the designated person is then treated as if it were filed by the electing person and as if the filing deadline were the later of the filing deadline otherwise determined for the electing person and the filing deadline for the designated person. The information required on the return is deemed to be the information required of the designated person. Each act and omission of the designated person in respect of the return is treated as an act or omission of the electing person.

ITA  
233.3

New section 233.3 of the Act establishes reporting requirements in respect of foreign property. In general terms, it provides that certain taxpayers resident in Canada and certain partnerships must file an information return with respect to their foreign property if the total cost amount of such property exceeds \$100,000.

This section applies to taxation years and fiscal periods that begin after 1995. However, returns in respect of taxation years and fiscal periods ending before 1998 are not due before April 30, 1997.

ITA

233.3(1)

New subsection 233.3(1) of the Act defines a number of terms for the purpose of section 233.3.

A "reporting entity" for a taxation year or fiscal period is defined as a "specified Canadian entity" for the taxation year or fiscal period that, at any time in the year or period, owned specified foreign property the total cost amount of which exceeded \$100,000 to the entity.

A "specified Canadian entity" for a taxation year or fiscal period means

- a taxpayer resident in Canada in the year other than
  - a mutual fund corporation,
  - a non-resident-owned investment corporation,
  - a corporation or trust exempt from tax under Part I,
  - a mutual fund trust, or
  - a trust described in paragraphs (a) to (e.1) of the definition of "trust" in subsection 108(1), or
- a partnership where the share of the income or loss of the partnership for the fiscal period accruing to or for the benefit of taxpayers not resident in Canada is less than 90% of the total income or loss of the partnership for the period. (For this purpose, a special rule where there is more than one tier of partnership is provided in new subsection 233.3(2).)

"Specified foreign property" is defined as the following types of property:

- funds or intangible property held outside Canada (including foreign bank accounts, securities held outside Canada and shares of Canadian companies deposited with a foreign broker);
- tangible property situated outside Canada;
- a share of the capital stock of a non-resident corporation;
- an interest in a non-resident trust (not including an "exempt trust" described in the commentary to subsection 233.2(1) that is not a foreign mutual fund described in that commentary);
- an interest in a partnership (other than a partnership that is a "specified Canadian entity");
- an interest in, or right with respect to, a non-resident entity;
- indebtedness owed by a non-resident person;
- an interest in or right to any specified foreign property; and
- a property that is convertible into, exchangeable for or confers a right to acquire specified foreign property.

However, such property is excluded from the definition of "specified foreign property" where it is:

- exclusively used or held in the course of carrying on an active business of the specified Canadian entity;
- personal-use property of the entity;
- a share of the capital stock of a foreign affiliate of the entity;
- an interest in a non-resident trust that is either a foreign affiliate of the entity or that was not acquired for consideration by the entity or a person related to the entity; and
- an interest in or right to acquire any such property.

ITA  
233.3(2)

New subsection 233.3(2) of the Act provides that a person who is a member of a partnership which in turn is a member of another partnership is deemed to be a member of that other partnership. It also provides that a member's share of the income or loss of a lower tier partnership is deemed to be the amount to which it is directly or indirectly entitled. This provision is relevant in determining whether a partnership is a "specified Canadian entity" and, therefore, whether the partnership is required to file an information return in respect of its "specified foreign property" under section 233.3.

ITA  
233.3(3)

New subsection 233.3(3) of the Act requires a reporting entity for a taxation year or fiscal period to file an information return in prescribed form for the year or period. The information return will provide information in respect of the entity's specified foreign property. As previously discussed, a specified Canadian entity will be a reporting entity if the cost amount of specified foreign property to the entity, at any time in the year, exceeds \$100,000.

The filing deadline for the information return for a taxation year is the same deadline that applies for the purposes of filing the reporting entity's income tax return for the year under Part I of the Act.

A partnership's information return is required to be filed by the day by which the partnership's return under section 229 of the Income Tax Regulations must be filed. If no section 229 return is required, the partnership's information return under section 233.3 must be filed by the day by which the section 229 return would be required to be filed if section 229 applied to the partnership.

A transitional rule in the coming-into-force provision for section 233.3 provides that for taxation years or fiscal periods ending before 1998, no return is due before April 30, 1997.

ITA  
233.4

New section 233.4 of the Act establishes reporting requirements in respect of foreign affiliates. In general terms, it provides that taxpayers resident in Canada (or certain



partnerships) of which a non-resident corporation is a foreign affiliate, must file an information return in respect of the affiliate.

This section applies to taxation years and fiscal periods that begin after 1995. However, returns in respect of taxation years or fiscal periods that end before 1998 are not due before December 31, 1997.

ITA

233.4(1)

New subsection 233.4(1) of the Act defines the expression "reporting entity" for the purpose of section 233.4.

A "reporting entity" for a taxation year or fiscal period means

- a taxpayer resident in Canada of which a non-resident corporation or trust is a foreign affiliate at any time in the year; or
- a partnership where the share of the income or loss of the partnership for the period of members not resident in Canada is less than 90% of the total income or loss of the partnership for the period, and a non-resident corporation or trust would be a foreign affiliate of the partnership at any time in the period if the partnership were a taxpayer resident in Canada.

A reporting entity does not include a taxpayer all of whose income is exempt from tax under Part I of the Act.

ITA

233.4(2)

New subsection 233.4(2) of the Act provides rules for the purpose of determining the foreign affiliate status of a non-resident corporation for the purpose of section 233.4.

In determining whether a non-resident corporation is a foreign affiliate of a taxpayer resident in Canada or a partnership

- paragraph (b) of the definition of "equity percentage" in subsection 95(4) is to be read as if the reference in the definition to "any corporation" were read as a reference to "any corporation other than a corporation resident in Canada";

- the definitions of "direct equity percentage" and "equity percentage" in subsection 95(4) are to be read as if a partnership were a person; and
- the definitions of "controlled foreign affiliate" and "foreign affiliate" in subsection 95(1) are to be read as if a partnership were a taxpayer resident in Canada.

The purpose of these rules is to ensure that a non-resident corporation can be a foreign affiliate of only the lowest tier corporation in a group of Canadian corporations under common control. This will limit the circumstances in which the same information is required to be reported by two or more Canadian corporations in respect of the same foreign affiliate. These rules also ensure that a non-resident corporation can be a foreign affiliate of a partnership.

ITA  
233.4(3)

New subsection 233.4(3) of the Act provides that a person who is a member of a partnership which in turn is a member of another partnership is considered to be a member of that other partnership. It also provides that a member's share of the income or loss of the other partnership is deemed to be the amount to which it is directly or indirectly entitled. This provision is relevant in determining whether a partnership is a "reporting entity" and, therefore, whether the partnership is required to file an information return under section 233.4.

ITA  
233.4(4)

New subsection 233.4(4) of the Act requires a reporting entity for a taxation year or fiscal period to file an information return in prescribed form in respect of each foreign affiliate of the entity in the year or period.

The filing deadline for the information return for a taxation year is the same deadline that applies for the purpose of filing the reporting entity's income tax return for the year under Part I.

A partnership's information return is required to be filed by the day by which the partnership's return under section 229 of the Income Tax Regulations must be filed. If no section 229 return is required, the partnership's information return under section 233.4 must be filed by the day by which the section 229 return would be required to be filed if section 229 applied to the partnership.

A transitional rule in the coming-into-force provision for section 233.4 provides that for taxation years or fiscal periods ending before 1998, no return is due before December 31, 1997.

ITA  
233.5

New section 233.5 of the Act requires a "specified Canadian entity" (as defined by subsection 233.3(1)) that is beneficially interested in a non-resident trust to file an information return for each taxation year or fiscal period in which the entity receives a distribution of property from, or is indebted to, the trust, unless the trust is an "excluded trust".

New subsection 233.5(1) provides that the filing deadline for the information return for a taxation year is the same deadline that applies for the purpose of filing the specified Canadian entity's income tax return for the year under Part I of the Act.

A partnership's information return is required to be filed by the day by which the partnership's return under section 229 of the Regulations must be filed. If no section 229 return is required, the partnership's information return under section 233.5 must be filed by the day by which the section 229 return would be required to be filed if section 229 applied to the partnership.

New subsection 233.5(2) defines an "excluded trust" to mean:

- an "exempt trust", as described in the commentary on subsection 233.2(1), other than a foreign mutual fund trust described in that commentary,
- a trust in respect of which the entity is already required to file an information return under section 233.2,
- a trust an interest in which the entity is required to report under section 233.3, and
- a trust in respect of which the entity is required to file an information return under section 233.4.

A transitional rule in the coming-into-force provision for section 233.5 provides that for taxation years or fiscal periods ending before 1998, no return is due before April 30, 1997.

ITA

248(1)

"controlled foreign affiliate"

Subsection 248(1) of the Act is amended by providing a definition of the expression "controlled foreign affiliate" for the purposes of the Act. It is defined in the same manner that the expression is defined under subsection 95(1).

The amendment applies after 1995.