

Immediate release

Ottawa, June 20, 1996
96-045

INCOME TAX AMENDMENTS INTRODUCED

Finance Minister Paul Martin today tabled a Notice of Ways and Means Motion in the House of Commons to implement the draft technical amendments to the Income Tax Act and related statutes originally released on April 26, 1995.

The Minister said that in many cases the proposed amendments have been modified to take into account comments and suggestions received from the public.

The Notice also incorporates a number of other income tax amendments, many of which were released in draft form in 1995 in order to allow consultation with taxpayers and advisors. As well, the Notice contains the amendment to the Excise Tax Act announced in the Minister's budget of March 6, 1996 which would exempt from the tax on split-run magazines the first split-run issue of a magazine if the person who would otherwise be responsible for paying the tax is the distributor, printer or wholesaler.

Detailed explanatory notes on the legislation will be released in the coming days. The attached backgrounder highlights some of the more significant amendments. References to "Announcement Date" in the legislation and explanatory notes should be read as referring to today's date.

New Canadian Film or Video Production Tax Credit

Minister Martin also released today information concerning the regulations for the purposes of the new Canadian film or video production tax credit which was introduced in the 1995 budget. The proposed income tax regulations, which were developed with the assistance of the Department of Canadian Heritage, are attached.

For further information:

Tax Legislation Division
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Also available on Internet
at <http://www.fin.gc.ca>

BACKGROUNDER

The draft amendments to the *Income Tax Act* deal with a wide variety of unrelated matters. The following note describes those items of greater significance.

Loss Trading

The proposed amendments address the utilization of losses by what are termed "affiliated" parties where property is transferred between them. The amendments, which generally apply to transfers of property that take place after April 26, 1995, simplify the rules and curtail the transferability of such losses.

Treatment of Bankrupt Individuals

Amendments are being proposed to replace the provisions of the *Income Tax Act* that allow bankrupt individuals to claim certain personal tax credits twice in the year of bankruptcy with provisions that require credits to be pro-rated between the pre- and post-bankruptcy periods. These amendments, which apply to bankruptcies that occur after April 26, 1995, also ensure that income from both periods will be considered in determining the child tax benefit and GST credit.

Farmers' Prepaid Expenses

These proposed amendments ensure that capital costs cannot be converted into up-front deductions by, for example, the prepayment of rents on long-term leases. The effect of these changes, which generally apply to amounts paid after April 26, 1995, is to defer the deduction of the portion of prepaid expenses that relates to a taxation year that is two or more years after the year of the payment.

Changes to Tax Status of Corporations

These proposed amendments clarify the rules applying where a corporation becomes or ceases to be exempt from tax. They eliminate the carry-over of losses, deductions and credits by a corporation from a tax-exempt period to a taxable period and clarify that the Large Corporations Tax and certain other taxes apply to Crown corporations (with effect as of the date on which those taxes were introduced).

Tax Shelters

These proposed amendments include measures to prevent abuses through aggressive tax shelter promotions by affecting limited-recourse financing, extending the income base on which the alternative minimum tax is calculated and modifying the tax shelter identification rules. They were first announced in a release on December 1, 1994. Draft legislation to implement the measures was made available for consultation in the package of technical amendments released on April 26, 1995 and in a release dated December 14, 1995.

Disability Benefits - Top-ups

These proposed measures were first announced in a release on October 4, 1994. They ensure that there will be no change in the income tax treatment to recipients of disability benefits where the insurance company paying the benefits becomes insolvent and employers take responsibility for continuing the current level of payments.

Securities Held by Financial Institutions

The proposed legislation includes amendments affecting the tax treatment of securities held by financial institutions. The amendments, which were first announced in a Release dated June 1, 1995, would implement a number of modifications, most of which are relieving in nature, to the *Income Tax Act* provisions originally introduced following the 1994 budget.

Foreign Property Limits for Deferred Income Plans

These proposed measures were first announced in a release on July 20, 1995 and in revised form in a release on December 13, 1995. They address uncertainties with respect to the existing rules on investments in foreign property by deferred income plans and seek to ensure that shares and indebtedness issued by Canadian companies will not be "foreign property" only if the issuer has a substantial presence in Canada.

Adventures in the Nature of Trade

These proposed amendments implement the measures announced by the Minister of Finance on December 20, 1995 requiring that, for income tax purposes, inventory held as an adventure or concern in the nature of trade must be valued at its historical cost, rather than at the lower of cost or fair market value. Generally, this means that accrued losses on such property may be recognized only on disposition. These amendments also include anti-avoidance rules deferring the recognition of a loss where such property is transferred to a non-arm's length person, in a manner similar to the stop-loss rules referred to above.

Divisive Reorganizations

These proposed amendments provide that the avoidance rule in subsection 55(2) of the *Income Tax Act* will not apply to a dividend received by a corporation on a share acquired by it as consideration for the transfer of property to a related corporation under subsection 85(1) of the Act where the property is subsequently sold to an unrelated person for fair market value proceeds. The amendments also provide changes to the computation of what is commonly referred to as "safe income". Dividends paid out of safe income are not subject to subsection 55(2).

Vertical Amalgamations

This proposed amendment provides that the new corporation formed on the amalgamation of a parent corporation and a subsidiary corporation may increase its cost of certain capital property acquired by it from the subsidiary on the amalgamation. This increase is the amount that would have been available if the subsidiary had been wound-up into the parent and subsection 88(1) of the *Income Tax Act* had applied to the winding-up.

Winding-up of a Corporation

These proposed amendments modify the definition of "ineligible property" in subparagraph 88(1)(c)(vi) of the *Income Tax Act* to include any property distributed to the parent corporation on the winding-up of the subsidiary corporation where such property is subsequently acquired by certain persons who were shareholders of the subsidiary before the parent acquired control of it. The cost of ineligible property may not be increased on a winding-up of a subsidiary corporation.

Canadian Film or Video Production Tax Credit Regulations

1. Clause (a)(ii)(A) of the definition "excluded production" in proposed Regulation 1106(1):

"(A) is, except to the extent of an interest in the production held by a prescribed taxable Canadian corporation as a co-producer of the production or by a prescribed person (within the meaning assigned by subsection 1106(7)), the exclusive worldwide copyright owner in the production for all commercial exploitation purposes for the 25-year period that begins at the first time the production had been completed and is commercially exploitable,"

2. Proposed Regulation 1106(7):

"Prescribed Person"

1106.(7) For the purpose of section 125.4 of the Act, "prescribed person" means

- (a) a corporation that holds a television broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission,
- (b) a person to whom paragraph 149(1)(l) of the Act applies where the person has a fund which is used to finance Canadian film or video productions,
- (c) a Canadian government film agency, or
- (d) in respect of a film or video production, a non-resident person who does not carry on a business in Canada where the person's interest in the production is acquired to comply with the certificate requirements of a treaty co-production twinning arrangement."

3. Explanatory Notes:

"excluded production"

Proposed Regulation 1106(1) provides the definition of "excluded production", which is a film or video production that is not considered to be an eligible production for the purposes of the Canadian film or video production tax credit regime. Generally, proposed clause (a)(ii)(A) of that definition provides that a prescribed taxable Canadian corporation's film or video production will be an excluded production if the corporation (or a related prescribed taxable Canadian corporation) is not the exclusive worldwide copyright owner of the production for 5 years. This amendment would lengthen the required ownership period to 25 years. However, an exception from the

exclusive worldwide copyright rule in respect of a production is made for copyright in the production held by a co-producer of the production that is a prescribed taxable Canadian corporation or by a prescribed person (see the commentary to proposed Regulation 1106(7)).

This amendment applies to the 1995 and subsequent taxation years except that the reference to the "25-year period" in that clause shall be read as a "5-year period" in the case of a film or video production for which a Canadian film or video production certificate is obtained before 1997. The change to a 25-year ownership requirement has been made upon recommendation of the Department of Canadian Heritage.

1106(7)

Draft Regulation 1106(7), which defines "prescribed person" for the purposes of the proposed Canadian film or video production tax credit ("CFVPTC"), is relevant for two purposes. First, a prescribed person is not considered to be an "investor" under subsection 125.4(1) of the Income Tax Act. A qualifying corporation will, therefore, not be precluded by subsection 125.4(4) of the Act from claiming a CFVPTC in respect of a film or video production solely because a "prescribed person" has an interest in the production.

Second, the definition "prescribed person" is relevant for the purpose of determining whether a production is an "excluded production" under proposed Regulation 1106(1). Subsection 1106(7) of the Regulations applies to the 1995 and subsequent taxation years.

Notice of Ways and Means Motion to Amend the Income Tax Act and Related Statutes

Tabled in the House of Commons by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

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Canada[®]

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Department of Finance
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Ministère des Finances
Canada

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Notice of Ways and Means Motion to amend the Income Tax Act, the Income Tax Application Rules, the Bankruptcy and Insolvency Act, the Canada Pension Plan, the Children's Special Allowances Act, the Cultural Property Export and Import Act, the Customs Act, the Excise Tax Act, the Old Age Security Act, the Tax Court of Canada Act, the Tax Rebate Discounting Act, the Unemployment Insurance Act, the Western Grain Transition Payments Act and certain Acts related to the Income Tax Act

That it is expedient to amend the Income Tax Act, the Income Tax Application Rules, the Bankruptcy and Insolvency Act, the Canada Pension Plan, the Children's Special Allowances Act, the Cultural Property Export and Import Act, the Customs Act, the Excise Tax Act, the Old Age Security Act, the Tax Court of Canada Act, the Tax Rebate Discounting Act, the Unemployment Insurance Act, the Western Grain Transition Payments Act and certain Acts related to the Income Tax Act as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Income Tax Amendments Act, 1996*.

PART I

**R.S., c. 1 (5th
Supp.); 1994, cc. 7,
8, 13, 21, 28, 29, 38,
41; 1995, cc. 1, 3, 11,
18, 21, 38, 46**

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INCOME TAX ACT

2. (1) Section 6 of the *Income Tax Act* is amended by adding the following after subsection (16):

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Definitions

(17) The definitions in this subsection apply in this subsection and subsection (18).

"disability policy"

« *police d'assurance-
invalidité* »

"disability policy" means a group disability insurance policy that provides for periodic payments to individuals in respect of the loss of remuneration from an office or employment. 5

"employer"

« *employeur* »

"employer" of an individual includes a former employer of the individual. 10

**"top-up disability
payment"**

« *paiement
compensatoire pour
invalidité* »

"top-up disability payment" in respect of an individual means a payment made by an employer of the individual as a consequence of the insolvency of an insurer that was obligated to make payments to the individual under a disability policy where 15

(a) the payment is made to an insurer so that periodic payments made to the individual under the policy will not be reduced because of the insolvency, or will be reduced by a lesser amount, or 20

(b) the following conditions are satisfied: 25

(i) the payment is made to the individual to replace, in whole or in part, periodic payments that would have been made under the policy to the individual but for the insolvency, and 30

(ii) the payment is made pursuant to an arrangement under which the individual is required to reimburse the payment to the extent that the individual subsequently receives an amount from an insurer in respect of the portion of the periodic payments that the payment was intended to replace. 35

For the purposes of paragraphs (a) and (b), an insurance policy that replaces a disability policy is deemed to be the same policy as, and a continuation of, the disability policy that was replaced. 40

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**Group disability
benefits — insolvent
insurer**

(18) Where an employer of an individual makes a top-up disability payment in respect of the individual, 5

(a) the payment is, for the purpose of paragraph (1)(a), deemed not to be a benefit received or enjoyed by the individual; 10

(b) the payment is, for the purpose of paragraph (1)(f), deemed not to be a contribution made by the employer to or under the disability insurance plan of which the disability policy in respect of which the payment is made is or was a part; and 15

(c) where the payment is made to the individual, it is, for the purpose of paragraph (1)(f), deemed to be an amount payable to the individual pursuant to the plan. 20

(2) Subsection (1) applies to payments made after August 10, 1994. 25

3. (1) The portion of paragraph 8(1)(n) of the Act before subparagraph (i) is replaced by the following:

**Salary
reimbursement**

(n) an amount paid by or on behalf of the taxpayer in the year pursuant to an arrangement (other than an arrangement described in subparagraph (b)(ii) of the definition "top-up disability payment" in subsection 6(17)) under which the taxpayer is required to reimburse any amount paid to the taxpayer for a period throughout which the taxpayer did not perform the duties of the office or employment, to the extent that 30

(2) Subsection 8(1) of the Act is amended by adding the following after paragraph (n):

**Reimbursement of
disability payments**

(n.1) where, 35

(i) as a consequence of the receipt of a payment (in this paragraph referred to as the "deferred payment") from an insurer, a payment (in this paragraph referred to as the "reimbursement payment") is made by or on behalf of an individual to an employer or former employer of the individual pursuant to an arrangement described in subparagraph (b)(ii) of the definition "top-up disability payment" in subsection 6(17), and 5

(ii) the reimbursement payment is made 10

(A) in the year, other than within the first 60 days of the year if the deferred payment was received in the immediately preceding taxation year, or

(B) within 60 days after the end of the year, if the deferred payment was received in the year, 15

an amount equal to the lesser of

(iii) the amount included under paragraph 6(1)(f) in respect of the deferred payment in computing the individual's income for any taxation year, and 20

(iv) the amount of the reimbursement payment;

(3) Subsection (1) applies to arrangements entered into after August 10, 1994. 25

(4) Subsection (2) applies to reimbursement payments made after August 10, 1994.

4. (1) Subsections 10(1) and (1.1) of the Act are replaced by the following: 30

Valuation of inventory

10. (1) For the purpose of computing a taxpayer's income for a taxation year from a business that is not an adventure or concern in the nature of trade, property described in an inventory shall be valued at the end of the year at the cost at which the taxpayer acquired the property or its fair market value at the end of the year, whichever is lower, or in a prescribed manner. 35

**Adventures in the
nature of trade**

(1.01) For the purpose of computing a taxpayer's income from a business that is an adventure or concern in the nature of trade, property described in an inventory shall be valued at the cost at which the taxpayer acquired the property. 5

**Certain expenses
included in cost**

(1.1) For the purposes of subsections (1), (1.01) and (10), where land is described in an inventory of a business of a taxpayer, the cost at which the taxpayer acquired the land shall include each amount that is 10

(a) described in paragraph 18(2)(a) or (b) in respect of the land and for which no deduction is permitted to the taxpayer or to another person or partnership that is 15

(i) a person or partnership with whom the taxpayer does not deal at arm's length,

(ii) where the taxpayer is a corporation, a person or partnership who is a specified shareholder of the taxpayer, or 20

(iii) where the taxpayer is a partnership, a person or partnership whose share of any income or loss of the taxpayer is 10% or more; and

(b) not included in or added to the cost to that other person or partnership of any property otherwise than because of paragraph 53(1)(d.3) or subparagraph 53(1)(e)(xi). 25

(2) Subsection 10(2.1) of the Act is replaced by the following:

**Methods of
valuation to be the
same** 30

(2.1) Where property described in an inventory of a taxpayer's business that is not an adventure or concern in the nature of trade is valued at the end of a taxation year in accordance with a method permitted under this section, that method shall, subject to subsection (6), be used in the valuation of property described in the inventory at the end of the following taxation year for the purpose of computing the taxpayer's income from the business unless the taxpayer, with the concurrence of the Minister and on such terms and conditions as are 35

specified by the Minister, adopts another method permitted under this section.

(3) Section 10 of the Act is amended by adding the following after subsection (8):

Transition

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(9) Where, at the end of a taxpayer's last taxation year at the end of which property described in an inventory of a business that is an adventure or concern in the nature of trade was valued under subsection (1), the property was valued at an amount that is less than the cost at which the taxpayer acquired the property, after that time the cost to the taxpayer at which the property was acquired is, subject to subsection (10), deemed to be that amount.

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Acquisition of control

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(10) Notwithstanding subsection (1.01), property described in an inventory of a corporation's business that is an adventure or concern in the nature of trade at the end of the corporation's taxation year that ends immediately before the time at which control of the corporation is acquired by a person or group of persons shall be valued at the cost at which the corporation acquired the property, or its fair market value at the end of the year, whichever is lower, and after that time, the cost at which the corporation acquired the property is, subject to a subsequent application of this subsection, deemed to be that lower amount.

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(4) Subsections (1) to (3) apply

(a) to taxation years that end after December 20, 1995,

(b) in respect of a business that is an adventure or concern in the nature of trade, to taxation years of a taxpayer that end before December 21, 1995, except where

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(i) the taxpayer's filing-due date for the year is after December 20, 1995, or

(ii) the taxpayer has valued the inventory of the business for the purpose of computing income for the year from the business at an amount that is less than the cost at which the taxpayer acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995, and

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(c) in respect of a business that is an adventure or concern in the nature of trade, to fiscal periods of a partnership that end before December 21, 1995, except where

(i) the filing-due dates of all of the members of the partnership for their taxation years that include the end of the fiscal period are after December 20, 1995, or 5

(ii) the partnership has valued the inventory of the business for the purpose of computing income for the fiscal period from the business at an amount that is less than the cost at which the partnership acquired the property, which valuation is reflected in a return of income, notice of objection or notice of appeal filed or served under the Act before December 21, 1995 by any member of the partnership. 10

5. (1) The portion of paragraph 12(1)(x) of the Act before subparagraph (vii) is replaced by the following: 15

**Inducement,
reimbursement, etc.**

(x) any particular amount (other than a prescribed amount) received by the taxpayer in the year, in the course of earning income from a business or property, from 20

(i) a person (in this paragraph referred to as the "payer") who pays the particular amount in the course of earning income from a business or property or in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length, or 25

(ii) a government, municipality or other public authority,

where the particular amount can reasonably be considered to have been received

(iii) as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, or 30

(iv) as a refund, reimbursement, contribution or allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of

(A) an amount included in, or deducted as, the cost of property, or

(B) an outlay or expense,

to the extent that the particular amount

(v) was not otherwise included in computing the taxpayer's income, or deducted in computing, for the purposes of this Act, any balance of undeducted outlays, expenses or other amounts, for the year or a preceding taxation year, 5

(vi) except as provided by subsection 127(11.1), does not reduce, for the purpose of an assessment made or that may be made under this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be, 10

(2) Subsection (1) applies to amounts received after 1990.

6. (1) Subsection 12.2(10) of the Act is replaced by the following:

Riders 15

(10) For the purposes of this Act, a rider added at any time after 1989 to a life insurance policy last acquired before 1990 that provides additional life insurance is deemed to be a separate life insurance policy issued at that time, unless

(a) the policy is an exempt policy last acquired after December 1, 1982 or an annuity contract; or 20

(b) the only additional life insurance provided by the rider is an accidental death benefit.

(2) Subsection (1) applies to riders added after 1989.

7. (1) The portion of subsection 13(4) of the Act after paragraph (b) and before paragraph (c) is replaced by the following: 25

and the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquires a depreciable property of a prescribed class of the taxpayer that is a replacement property for the taxpayer's former property, 30

(2) Paragraph 13(4.1)(a) of the Act is replaced by the following:

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer and used by the taxpayer or a person related to the taxpayer for the same or a similar use as the use to which the taxpayer or a person related to the taxpayer put the former property; 5

(3) The portion of paragraph 13(7)(f) of the Act before subparagraph (i) is replaced by the following:

(f) where a corporation is deemed under paragraph 111(4)(e) to have disposed of and reacquired depreciable property (other than a timber resource property), the capital cost to the corporation of the property at the time of the reacquisition is deemed to be the amount that is equal to the total of 10

(4) Section 13 of the Act is amended by adding the following after subsection (21.1): 15**Loss on certain transfers**

(21.2) Where 20

(a) a corporation, trust or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54) of a depreciable property of a particular prescribed class of the transferor, 25

(b) the lesser of

(i) the capital cost to the transferor of the transferred property, and 30

(ii) that proportion of the undepreciated capital cost to the transferor of all property of the particular class immediately before that time that

(A) the fair market value of the transferred property at that time 35

is of

(B) the fair market value of all property of the particular class immediately before that time

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exceeds the amount that would otherwise be the transferor's proceeds of disposition of the transferred property at the particular time, and

(c) on the 30th day after the particular time, a person or partnership (in this subsection referred to as the "subsequent owner") who is the transferor or a person affiliated with the transferor owns or has a right to acquire the transferred property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation),

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the following rules apply:

(d) sections 85 and 97 do not apply to the disposition,

(e) for the purposes of applying this section and section 20 and any regulations made for the purpose of paragraph 20(1)(a) to the transferor for taxation years that end after the particular time,

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(i) the transferor is deemed to have disposed of the transferred property for proceeds equal to the lesser of the amounts determined under subparagraphs (b)(i) and (ii) with respect to the transferred property,

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

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(iii) the transferor is deemed to own a property that was acquired before the beginning of the taxation year that includes the particular time at a capital cost equal to the amount of the excess described in paragraph (b), and that is property of the particular class, until the time that is immediately before the first time, after the particular time,

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(A) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns or has a right to acquire the transferred property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation),

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(B) at which the transferred property is not used by the transferor or a person affiliated with the transferor for the purpose of earning income and is used for another purpose,

(C) at which the transferred property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor, 5

(D) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or 10

(E) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation, and 15

(iv) the property described in subparagraph (iii) is considered to have become available for use by the transferor at the time at which the transferred property is considered to have become available for use by the subsequent owner, 20

(f) for the purposes of subparagraphs (e)(iii) and (iv), where a partnership otherwise ceases to exist at any time after the particular time, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this paragraph, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in clauses (e)(iii)(A) to (E), and 25

(g) for the purposes of applying this section and section 20 and any regulations made for the purpose of paragraph 20(1)(a) to the subsequent owner, 30

(i) the subsequent owner's capital cost of the transferred property is deemed to be the amount that was the transferor's capital cost of the transferred property, and 35

(ii) the amount by which the transferor's capital cost of the transferred property exceeds its fair market value at the particular time is deemed to have been deducted under paragraph 20(1)(a) by the subsequent owner in respect of property of that class in computing income for taxation years that ended before the particular time. 40

(5) Subsection 13(24) of the Act is replaced by the following:**Acquisition of control**

(24) Where control of a corporation has been acquired at any time by a person or group of persons and, within the 12-month period that ended immediately before that time, the corporation or a partnership of which it was a majority interest partner acquired depreciable property (other than property that was owned by the corporation or partnership or by a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(2), be affiliated with the corporation throughout the period that began immediately before the 12-month period began and that ended at the time the property was acquired by the corporation or partnership) that was not used, or acquired for use, by the corporation or partnership in a business that was carried on by it immediately before the 12-month period began,

(a) for the purposes of A in the definition "undepreciated capital cost" in subsection (21) and of sections 127 and 127.1, the property is, subject to paragraph (b), deemed not to have been acquired by the corporation or partnership before that time and to have been acquired by it immediately after that time; and

(b) where the property was disposed of by it before that time and was not reacquired by it before that time, for the purposes of A in that definition, the property is deemed to have been acquired by the corporation or partnership immediately before the property was disposed of.

(6) Paragraph 13(27)(d) of the Act is replaced by the following:

(d) the time the property

(i) is delivered to the taxpayer, or to a person or partnership (in this paragraph referred to as the "other person") that will use the property for the benefit of the taxpayer, or, where the property is not of a type that is deliverable, is made available to the taxpayer or the other person, and

(ii) is capable, either alone or in combination with other property in the possession at that time of the taxpayer or the other person, of being used by or for the benefit of the taxpayer or the other person to produce a commercially saleable product or to perform a commercially saleable service, including an intermediate product or service that is used or consumed, or to be used or consumed, by the taxpayer or the other person in producing or performing any such product or service,

(7) Subsections (1) and (2) apply to dispositions of former properties occurring after the 1993 taxation year.

(8) Subsection (3) applies after April 26, 1995.

(9) Subject to section 156, subsection (4) applies to dispositions of property that occur after April 26, 1995, except that where

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(a) a property is disposed of after April 26, 1995 and before ANNOUNCEMENT DATE, and

(b) the transferor elects in writing, filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to,

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the portion of subparagraph 13(21.2)(e)(iii) of the Act before clause (A), as enacted by subsection (4), shall be read as follows:

(iii) the transferor is deemed to own a property that was acquired before the beginning of the taxation year that includes the particular time at a capital cost equal to the amount of the excess described in paragraph (b), and that is of a separate prescribed class that is the same class as the particular class, until the time that is immediately before the first time, after the particular time,

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(10) Subsection (5) applies to acquisitions of control that occur after April 26, 1995.

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(11) Subsection (6) applies to property acquired after 1989.

8. (1) The portion of subparagraph 14(1)(a)(v) of the Act after the description of D is repealed.

(2) Section 14 of the Act is amended by adding the following after subsection (1):

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**Deemed taxable
capital gain**

(1.1) For the purposes of section 110.6 and of paragraph 3(b) as it applies for the purposes of that section, an amount included under subparagraph (1)(a)(v) in computing a taxpayer's income for a particular taxation year from a business is deemed to be a taxable capital gain of the taxpayer for that year from the disposition in that year of qualified farm property to the extent of the lesser of

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(a) the amount included under subparagraph (1)(a)(v) in computing the taxpayer's income for the particular year from the business, and

(b) the amount determined by the formula

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$$A - B$$

where

A is 3/4 of the amount determined in respect of the taxpayer for the particular year equal to the amount, if any, by which 10

(i) the total of all amounts each of which is the taxpayer's proceeds from a disposition in the particular year or a preceding taxation year that began after 1987 of an eligible capital property in respect of the business that, at the time of disposition, was a qualified farm property (as defined in subsection 110.6(1)) of the taxpayer 15

exceeds 20

(ii) the total of all amounts each of which is

(A) an eligible capital expenditure of the taxpayer in respect of the business that was made or incurred in respect of a qualified farm property disposed of by the taxpayer in the particular year or a preceding taxation year that began after 1987, or 25

(B) an outlay or expense of the taxpayer that was not deductible in computing the taxpayer's income and was made or incurred for the purpose of making a disposition referred to in subparagraph (i), and 30

B is the total of all amounts each of which is 35

(i) that portion of an amount deemed by subparagraph (1)(a)(v) (as it applied in respect of the business to fiscal periods that began after 1987 and ended before February 23, 1994) to be a taxable capital gain of the taxpayer that can reasonably be attributed to a disposition of a qualified farm property of the taxpayer, or 40

(ii) an amount deemed by this section to be a taxable capital gain of the taxpayer for a taxation year preceding the particular year from the disposition of qualified farm property of the taxpayer. 45

(3) The portion of subsection 14(6) of the Act before paragraph (a) is replaced by the following:

Exchange of property

(6) Where in a taxation year (in this subsection referred to as the "initial year") a taxpayer disposes of an eligible capital property (in this section referred to as the taxpayer's "former property") and the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquires an eligible capital property that is a replacement property for the taxpayer's former property, such amount, not exceeding the amount that would otherwise be included in the amount determined for E in the definition "cumulative eligible capital" in subsection (5) (if the description of E in that definition were read without reference to "3/4 of") in respect of a business, as has been used by the taxpayer before the end of the first taxation year following the initial year to acquire the replacement property

(4) Paragraph 14(7)(a) of the Act is replaced by the following:

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer for the same or a similar use as the use to which the taxpayer put the former property;

(5) Section 14 of the Act is amended by adding the following after subsection (11):

Loss on certain transfers

(12) Where

(a) a corporation, trust or partnership (in this subsection referred to as the "transferor") disposes at any time in a taxation year of a particular eligible capital property in respect of a business of the transferor in respect of which it would, but for this subsection, be permitted a deduction under paragraph 24(1)(a) as a consequence of the disposition, and

(b) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection referred to as the "substituted property") that is, or is identical to, the particular property and, at the end of that period, a person or partnership that

is either the transferor or a person or partnership affiliated with the transferor owns the substituted property,

the transferor is deemed, for the purposes of this section and sections 20 and 24, to continue to own eligible capital property in respect of the business, and not to have ceased to carry on the business, until the time that is immediately before the first time, after the disposition, 5

(c) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns 10

(i) the substituted property, or

(ii) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins, 15

(d) at which the substituted property is not eligible capital property in respect of a business carried on by the transferor or a person affiliated with the transferor, 20

(e) at which the substituted property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor, 25

(f) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(g) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation. 30

Deemed identical property

(13) For the purpose of subsection (12), 35

(a) a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property; and 40

(b) where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this paragraph, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in paragraphs (12)(c) to (g). 45

(6) Subsections (1) and (2) apply to fiscal periods that end after February 22, 1994, otherwise than solely because of an election under subsection 25(1) of the Act.

(7) Subsections (3) and (4) apply to dispositions of former properties occurring after the 1993 taxation year. 5

(8) Subject to section 156, subsection (5) applies to dispositions of property that occur after April 26, 1995.

9. (1) Subsection 15(2) of the Act is replaced by the following:

Shareholder debt

(2) Where a person (other than a corporation resident in Canada) or a partnership (other than a partnership each member of which is a corporation resident in Canada) is 10

(a) a shareholder of a particular corporation,

(b) connected with a shareholder of a particular corporation, or

(c) a member of a partnership, or a beneficiary of a trust, that is a shareholder of a particular corporation 15

and, the person or partnership has in a taxation year received a loan from or has become indebted to the particular corporation, any other corporation related to the particular corporation or a partnership of which the particular corporation or a corporation related to the particular corporation is a member, the amount of the loan or indebtedness is included in computing the income for the year of the person or partnership. 20

(2) Section 15 of the Act is amended by adding the following after subsection (2.1): 25

**Where s. 15(2)
not to apply:
non-resident persons**

(2.2) Subsection (2) does not apply to indebtedness between non-resident persons. 30

**Where s. 15(2) not
to apply: ordinary
lending business**

(2.3) Subsection (2) does not apply to a debt that arose in the ordinary course of the creditor's business or a loan made in the ordinary course of the lender's ordinary business of lending money, where, at the time the indebtedness arose or the loan was made, *bona fide* arrangements were made for repayment of the debt or loan within a reasonable time. 5
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**Where s. 15(2) not
to apply: certain
employees**

(2.4) Subsection (2) does not apply to a loan made or a debt that arose 15

(a) in respect of an individual who is an employee of the lender or creditor but not a specified employee of the lender or creditor, 20

(b) in respect of an individual who is an employee of the lender or creditor or who is the spouse of an employee of the lender or creditor to enable or assist the individual to acquire a dwelling or a share of the capital stock of a cooperative housing corporation acquired for the sole purpose of acquiring the right to inhabit a dwelling owned by the corporation, where the dwelling is for the individual's habitation, 25

(c) where the lender or creditor is a particular corporation, in respect of an employee of the particular corporation or of another corporation that is related to the particular corporation, to enable or assist the employee to acquire from the particular corporation, or from another corporation related to the particular corporation, previously unissued fully paid shares of the capital stock of the particular corporation or the related corporation, as the case maybe, to be held by the employee for the employee's own benefit, or 30
35

(d) in respect of an employee of the lender or creditor to enable or assist the employee to acquire a motor vehicle to be used by the employee in the performance of the duties of the employee's office or employment, 40

where

(e) it was reasonable to conclude that the employee or the employee's spouse received the loan, or became indebted, because of the employee's employment and not because of any person's share-holdings, and

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(f) at the time the loan was made or the debt was incurred, *bona fide* arrangements were made for repayment of the loan or debt within a reasonable time.

**Where s. 15(2) not
to apply: certain
trusts**

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(2.5) Subsection (2) does not apply to a loan made or a debt that arose in respect of a trust, where

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(a) the lender or creditor is a private corporation,

(b) the corporation is the settlor and sole beneficiary of the trust,

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(c) the sole purpose of the trust is to facilitate the purchase and sale of the shares of the corporation, or of another corporation related to the corporation, for an amount equal to their fair market value at the time of the purchase or sale, as the case may be, from or to the employees of the corporation or of the related corporation (other than employees who are specified employees of the corporation or of another corporation related to the corporation) as the case may be, and

25

(d) at the time the loan was made or the debt incurred, *bona fide* arrangements were made for repayment of the loan or debt within a reasonable time.

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**Where s. 15(2) not
to apply: repayment
within one year**

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(2.6) Subsection (2) does not apply to a loan or an indebtedness repaid within one year after the end of the taxation year of the lender or creditor in which the loan was made or the indebtedness arose, where it is established, by subsequent events or otherwise, that the repayment was not part of a series of loans or other transactions and repayments.

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(3) Subsection 15(8) of the Act is repealed.

(4) Subsection 15(9) of the English version of the Act is replaced by the following:

Deemed benefit to shareholder by corporation

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(9) Where an amount in respect of a loan or debt is deemed by section 80.4 to be a benefit received by a person or partnership in a taxation year, the amount is deemed for the purpose of subsection (1) to be a benefit conferred in the year on a shareholder, unless subsection 6(9) or paragraph 12(1)(w) applies to the amount.

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(5) Subsections (1) to (3) apply to loans made and indebtedness arising in the 1990 and subsequent taxation years, except that

(a) in its application to loans made and indebtedness arising before April 26, 1995, subsection 15(2.4) of the Act, as enacted by subsection (2), shall be read without reference to paragraph (e); and

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(b) in its application to loans made and indebtedness arising before Announcement Date, subsection 15(2.5) of the Act, as enacted by subsection (2), shall be read without reference to "(other than employees who are specified employees of the corporation or of another corporation related to the corporation)".

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(6) Subsection (4) applies to taxation years that end after November 1991.

10. (1) The definition "majority interest partner" in subsection 15.1(3) of the Act is repealed.

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(2) Subsection (1) applies after April 26, 1995.

11. (1) The definition "majority interest partner" in subsection 15.2(3) of the Act is repealed.

(2) Subsection (1) applies after April 26, 1995.

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12. (1) The portion of subsection 18(9.1) of the Act before paragraph (a) is replaced by the following:

**Penalties, bonuses
and rate-reduction
payments**

(9.1) Subject to subsection 142.4(10), where at any time a payment, other than a payment that

5

(2) Subsection 18(13) of the Act is replaced by the following:

**Where superficial
loss rules apply to
money lenders**

(13) Subsection (15) applies, subject to subsection 142.6(7), where 10

(a) a taxpayer (in this subsection and subsection (15) referred to as the "transferor") disposes of a particular property;

(b) the disposition is not described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54; 15

(c) the taxpayer is not an insurer;

(d) the ordinary business of the taxpayer includes the lending of money and the particular property was used or held in the ordinary course of that business; 20

(e) the particular property is a share, or a loan, bond, debenture, mortgage, note, agreement for sale or any other indebtedness; 25

(f) the particular property was not a capital property of the transferor;

(g) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection and subsection (15) referred to as the "substituted property") that is, or is identical to, the particular property; and 30

(h) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property. 35

**Where superficial
loss rules apply to
adventurers in trade**

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(14) Subsection (15) applies where

(a) a person (in this subsection and subsection (15) referred to as the "transferor") disposes of a particular property;

(b) the particular property is described in an inventory of a business that is an adventure or concern in the nature of trade;

(c) the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f) or subsection 138(11.3) or 149(10);

(d) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires property (in this subsection and subsection (15) referred to as the "substituted property") that is, or is identical to, the particular property; and

(e) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Superficial loss rules

(15) Where this subsection applies because of subsection (13) or (14) to a disposition of a particular property,

(a) the transferor's loss, if any, from the disposition is deemed to be nil; and

(b) the amount of the transferor's loss, if any, from the disposition (determined without reference to this subsection) is deemed to be a loss of the transferor from a disposition of the particular property at the first time, after the disposition,

(i) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(A) the substituted property, or

(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(ii) at which the substituted property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

(iii) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation, or

(iv) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation, 5

and for the purpose of paragraph (b), where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in subparagraphs (b)(i) to (iv). 10 15

Deemed identical property

(16) For the purposes of subsections (13), (14) and (15), a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property. 20

(3) Subsection (1) applies to taxation years that end after February 22, 1994. 25

(4) Subject to section 156, the amendment to subsection 18(13) of the Act, as enacted by subsection (2), applies to dispositions of property that occur after April 26, 1995, other than a disposition that occurred before July 1995 to which subsection 142.6(7) of the Act 30

(a) does not apply; and

(b) would apply if the disposition had occurred after June 1995.

(5) Subsection 18(14) of the Act, as enacted by subsection (2), applies to dispositions of property that occur after ANNOUNCEMENT DATE, other than a disposition that occurs before 1997 to a person or partnership that was obliged on ANNOUNCEMENT DATE to acquire the property pursuant to the terms of an agreement in writing made on or before that day, and for the purposes of this subsection, a person or partnership shall be considered not to be obliged to acquire property where the person or partnership can be excused from performing the obligation if there is a change to the Act or if there is an adverse assessment under the Act. 35 40

(6) Subsections 18(15) and (16) of the Act, as enacted by subsection (2), apply to dispositions of property that occur after April 26, 1995.

13. (1) The portion of paragraph 20(1)(e) of the Act after subparagraph (ii.2) and before subparagraph (iii) is replaced by the following: 5

(including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount that is paid or payable as or on account of the principal amount of the indebtedness or as or on account of interest) that is the lesser of 10

(2) The portion of subparagraph 20(1)(l)(ii) of the Act before clause (A) is replaced by the following:

(ii) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year or a taxpayer whose ordinary business includes the lending of money, an amount in respect of properties (other than mark-to-market properties, as defined in that subsection) that are doubtful loans or lending assets that were made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money or that were specified debt obligations (as defined in that subsection) of the taxpayer, equal to the total of 15
20

(3) Sub-subclause 20(1)(l)(ii)(B)(II)2 of the Act is replaced by the following: 25

2. the total of all amounts included under subsection 12(3) or paragraph 142.3(1)(a) in computing the taxpayer's income for the year or a preceding taxation year to the extent that those amounts reduced the part of the reserve referred to in sub-subclause 1

(4) Subparagraph 20(1)(p)(ii) of the Act is replaced by the following: 30

(ii) all amounts each of which is that part of the amortized cost to the taxpayer at the end of the year of a loan or lending asset (other than a mark-to-market property, as defined in subsection 142.2(1)) that is established by the taxpayer to have become uncollectible in the year and that, 35

(A) where the taxpayer is an insurer or a taxpayer whose ordinary business includes the lending of money, was made or acquired in the ordinary course of the taxpayer's business of insurance or the lending of money, or

(B) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year, is a specified debt obligation (as defined in that subsection) of the taxpayer;

(5) Subsection (1) applies to expenses incurred after 1987.

(6) Subsections (2) to (4) apply to taxation years that end after February 22, 1994. 5

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

**Application of Part I
to Crown
corporation**

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27. (1) This Part applies to a federal Crown corporation as if

(a) any income or loss from a business carried on by the corporation as agent of Her Majesty, or from a property of Her Majesty administered by the corporation, were an income or loss of the corporation from the business or the property, as the case may be; and 15

(b) any property, obligation or debt of any kind whatever held, administered, entered into or incurred by the corporation as agent of Her Majesty were a property, obligation or debt, as the case may be, of the corporation. 20

(2) Subsection (1) applies

(a) for the purpose of section 181.71 of the Act, as enacted by subsection 120(1), to taxation years that end after June 1989;

(b) for the purposes of section 187.61 of the Act, as enacted by subsection 122(1), and subsection 191.4(3) of the Act, as enacted by subsection 129(1), after 1987; 25

(c) for the purpose of section 190.211 of the Act, as enacted by subsection 126(1), after May 23, 1985; and

(d) for all other purposes, after April 26, 1995.

15. (1) Paragraph 28(1)(d) of the Act is replaced by the following: 30

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business because of subsection 13(1), 14(1), 80(13) or 80.3(3) or (5),

(2) Subsection 28(1) of the Act is amended by striking out the word "and" at the end of subparagraph (e)(i) and by replacing subparagraph (e)(ii) with the following: 5

(ii) in the case of amounts paid, or deemed by this Act to have been paid, for inventory, were in payment of or on account of an amount that would be deductible in computing the income from the business for the year or any other taxation year if that income were not computed in accordance with the cash method, and 10

(iii) in any other case, were in payment of or on account of an amount that would be deductible in computing the income from the business for a preceding taxation year, the year or the following taxation year if that income were not computed in accordance with the cash method, 15

(e.1) all amounts, other than amounts described in section 30, that

(i) would be deductible in computing the income from the business for the year if that income were not computed in accordance with the cash method, 20

(ii) are not deductible in computing the income from the business for any other taxation year, and 25

(iii) were paid in a preceding taxation year in the course of carrying on the business,

(3) Subsection (1) applies to taxation years that end after February 21, 1994. 30

(4) Subsection (2) applies to amounts paid after April 26, 1995, other than amounts paid pursuant to an agreement in writing made by the payer on or before April 26, 1995.

16. (1) The portion of subparagraph 37(1)(a)(iii) of the French version of the Act before clause (A) is replaced by the following: 35

(iii) soit, si le contribuable est une société, sous forme de paiements à une société résidant au Canada et exonérée d'impôt en application de l'alinéa 149(1)j), devant servir à des activités de recherche scientifique et de développement expérimental — recherche fondamentale ou appliquée — exercées au Canada : 40

(2) Subsection 37(10) of the Act is replaced by the following:

Time for election

(10) Any election made under clause (8)(a)(ii)(B) for a taxation year by a taxpayer shall be filed by the taxpayer on the day on which the taxpayer first files a prescribed form referred to in subsection (1) for the year. 5

(3) Subsection (1) applies to taxation years that end after November 1991.

(4) Subsection (2) applies after February 21, 1994 to expenditures incurred at any time. 10

17. (1) Sections 37.1 to 37.3 of the Act are repealed.

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

18. (1) The formula "A - B - C" in the definition "exempt capital gains balance" in subsection 39.1(1) of the Act is replaced by the following: 15

A - B - C - F

(2) The definition "exempt capital gains balance" in subsection 39.1(1) of the Act is amended by striking out the word "and" at the end of the description of B, by adding the word "and" at the end of the description of C and by adding the following after the description of C: 20

F is

(a) if the entity is a trust described in any of paragraphs (g) to (j) of the definition "flow-through entity" in this subsection, the total of all amounts each of which is an amount included before the year in the cost to the individual of a property under subsection 107(2.2) or paragraph 144(7.1)(c) because of the individual's exempt capital gains balance in respect of the entity, and 25 30

(b) in any other case, nil;

(3) Subsections (1) and (2) apply to the 1994 and subsequent taxation years.

19. (1) Paragraph 40(2)(e) of the Act is repealed.

(2) Subparagraph 40(2)(h)(i) of the Act is replaced by the following:

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(i) all amounts added under paragraph 53(1)(f.1) to the cost to a corporation, other than the controlled corporation, of property disposed of to that corporation by the controlled corporation that were added to the cost of the property during the period while the controlled corporation was controlled by the taxpayer and that can reasonably be attributed to losses on the property that accrued during the period while the controlled corporation was controlled by the taxpayer,

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(3) Subsection 40(3.1) of the English version of the Act is replaced by the following:

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Deemed gain for certain partners

(3.1) Where, at the end of a fiscal period of a partnership, a member of the partnership is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member, except where the member's partnership interest was held by the member on February 22, 1994 and is an excluded interest at the end of the fiscal period,

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(a) the amount determined under subsection (3.11) is deemed to be a gain from the disposition, at the end of the fiscal period, of the member's interest in the partnership; and

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(b) for the purpose of section 110.6, the interest is deemed to have been disposed of by the member at that time.

(4) Section 40 of the Act is amended by adding the following after subsection (3.13):

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Specified member of a partnership

(3.131) Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of subsection (3.1) to the member's interest in the partnership, the member is deemed for the purpose of that

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subsection to have been a specified member of the partnership at all times since becoming a member of the partnership.

(5) Paragraph 40(3.14)(b) of the Act is replaced by the following:

(b) the member or a person not dealing at arm's length with the member is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount or to obtain a benefit that would be described in paragraph 96(2.2)(d) if that paragraph were read without reference to subparagraphs (ii) and (vi); **(6) Section 40 of the Act is amended by adding the following after subsection (3.2):**

Where subsection (3.4) applies

(3.3) Subsection (3.4) applies where

(a) a corporation, trust or partnership (in this subsection and subsection (3.4) referred to as the "transferor") disposes of a particular capital property (other than depreciable property of a prescribed class) otherwise than in a disposition described in any of paragraphs (c) to (g) of the definition "superficial loss" in section 54;

(b) during the period that begins 30 days before and ends 30 days after the disposition, the transferor or a person affiliated with the transferor acquires a property (in this subsection and subsection (3.4) referred to as the "substituted property") that is, or is identical to, the particular property; and

(c) at the end of the period, the transferor or a person affiliated with the transferor owns the substituted property.

Loss or certain properties

(3.4) Where this subsection applies because of subsection (3.3) to a disposition of a particular property,

(a) the transferor's loss, if any, from the disposition is deemed to be nil, and

(b) the amount of the transferor's loss, if any, from the disposition (determined without reference to paragraph (2)(g) and this subsection) is deemed to be a loss of the transferor from a disposition of the particular property at the time that is immediately before the first time, after the disposition,

(i) at which a 30-day period begins throughout which neither the transferor nor a person affiliated with the transferor owns

(A) the substituted property, or

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(B) a property that is identical to the substituted property and that was acquired after the day that is 31 days before the period begins,

(ii) at which the property would, if it were owned by the transferor, be deemed by section 128.1 or subsection 149(10) to have been disposed of by the transferor,

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(iii) that is immediately before control of the transferor is acquired by a person or group of persons, where the transferor is a corporation,

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(iv) at which the transferor or a person affiliated with the transferor is deemed by section 50 to have disposed of the property, where the substituted property is a debt or a share of the capital stock of a corporation, or

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(v) at which the winding-up of the transferor begins (other than a winding-up to which subsection 88(1) applies), where the transferor is a corporation,

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and, for the purpose of paragraph (b), where a partnership otherwise ceases to exist at any time after the disposition, the partnership is deemed not to have ceased to exist, and each person who was a member of the partnership immediately before the partnership would, but for this subsection, have ceased to exist is deemed to remain a member of the partnership, until the time that is immediately after the first time described in subparagraphs (b)(i) to (v).

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Deemed identical property

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(3.5) For the purposes of subsections (3.3) and (3.4),

(a) a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property;

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(b) a share of the capital stock of a corporation that is acquired in exchange for another share in a transaction to which section 51, 85.1, 86 or 87 applies is deemed to be a property that is identical to the other share; and

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(c) where subsections (3.3) and (3.4) apply to the disposition by a transferor of a share of the capital stock of a corporation, and after the disposition the corporation is wound up in a winding-up to which subsection 88(1) applies, the parent (within the meaning assigned by subsection 88(1)) is deemed to own the share while the parent is affiliated with the transferor. 5

Loss on shares

(3.6) Where at any time a taxpayer disposes, to a corporation that is affiliated with the taxpayer immediately after the disposition, of a share of a class of the capital stock of the corporation (other than a share that is a distress preferred share as defined in subsection 80(1)), 10

(a) the taxpayer's loss, if any, from the disposition is deemed to be nil; and 15

(b) in computing the adjusted cost base to the taxpayer after that time of a share of a class of the capital stock of the corporation owned by the taxpayer immediately after the disposition, there shall be added that proportion of the amount of the taxpayer's loss from the disposition (determined without reference to paragraph (2)(g) and this subsection) that 20

(i) the fair market value, immediately after the disposition, of the share 25

is of

(ii) the fair market value, immediately after the disposition, of all shares of the capital stock of the corporation owned by the taxpayer. 30

(7) Section 40 of the Act is amended by adding the following after subsection (8):

Additions to taxable Canadian property 35

(9) Where a non-resident person disposes of a taxable Canadian property that the person last acquired before April 27, 1995 and that would not be a taxable Canadian property immediately before the disposition if section 115 were read as it applied to dispositions that 40

occurred on April 26, 1995, the person's gain or loss from the disposition is deemed to be the amount determined by the formula

$$A \times B/C$$

where

A is the amount of the gain or loss determined without reference to this subsection;

B is the number of calendar months in the period that begins with May 1995 and ends with the calendar month that includes the time of the disposition; and

C is the number of calendar months in the period that begins with the calendar month in which the person last acquired the property and ends with the calendar month that includes the time of the disposition.

(8) Subject to section 156, subsections (1), (2), (6) and (7) apply to dispositions of property that occur after April 26, 1995.

(9) Subsection (3) applies after February 21, 1994, except that subsection 40(3.1) of the Act, as enacted by subsection (3), does not apply to a member of a partnership before the end of the partnership's fifth fiscal period that ends after 1994 where the following conditions are met:

(a) the member acquired the partnership interest before 1995;

(b) all or substantially all of the property (other than money) of the partnership is a film production or an interest in one or more partnerships all or substantially all of the property of which is a film production;

(c) the principal photography of the production (or, in the case of a production that is a television series, an episode of the series) began before 1995;

(d) the funds used to produce the film production were raised before 1995 and the principal photography of the production was completed, and the funds were expended, before 1995 (or, in the case of a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act, the principal photography of the production was completed, and the funds were expended, before March 2, 1995); and

(e) one of the following conditions is met:

(i) the producer of the production

(A) had, before February 22, 1994, entered into a written agreement for the pre-production, distribution, broadcasting, financing or acquisition of the production or the acquisition of the screenplay for the production, or

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(B) had entered into a written contract before February 22, 1994 with a screenwriter to write the screenplay for the production,

(ii) the producer of the production received before 1995 a commitment for funding or government assistance (or an advance ruling or active status letter in respect of eligibility for such funding or other government assistance) for the production from a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada, or

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(iii) the production is a continuation of a television series an episode of which satisfies the requirements of this paragraph.

(10) Subsection (4) applies after April 26, 1995.

(11) Subsection (5) applies to fiscal periods that end after November 1994.

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20. (1) The portion of subsection 44(1) of the Act after paragraph (d) and before paragraph (e) is replaced by the following:

acquired a capital property that is a replacement property for the taxpayer's former property and the replacement property has not been disposed of by the taxpayer before the time the taxpayer disposed of the taxpayer's former property, notwithstanding subsection 40(1), if the taxpayer so elects under this subsection in the taxpayer's return of income for the year in which the taxpayer acquired the replacement property,

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(2) Paragraph 44(5)(a) of the Act is replaced by the following:

(a) it is reasonable to conclude that the property was acquired by the taxpayer to replace the former property;

(a.1) it was acquired by the taxpayer and used by the taxpayer or a person related to the taxpayer for the same or a similar use as the use to which the taxpayer or a person related to the taxpayer put the former property;

(3) Subsections (1) and (2) apply to dispositions of former properties that occur after the 1993 taxation year. 5

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

(ii) immediately after that time, ceases to be a small business corporation because a class of its shares is listed on a prescribed stock exchange, and 10

(2) Subsection (1) applies to a corporation that ceases to be a small business corporation after 1995.

(3) An election under subsection 48.1(1) of the Act, as amended by subsection (1), that is made by an individual for the 1995 taxation year is deemed to have been made on or before the individual's balance-due day for that year, where 15

(a) a class of the shares of the capital stock of the corporation in respect of which the election is made was, on January 1, 1996, listed on a stock exchange listed in section 3201 of the *Income Tax Regulations*, 20

(b) the corporation was a small business corporation on December 31, 1995, and

(c) the election is made before the end of the third month after the month in which this Act is assented to. 25

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

Convertible property

51. (1) Where a share of the capital stock of a corporation is acquired by a taxpayer from the corporation in exchange for 30

(2) Subsection (1) applies to exchanges that occur after Announcement Date, other than exchanges that occur before 1997 pursuant to agreements in writing made on or before Announcement Date.

23. (1) Subsection 52(7) of the Act is replaced by the following:

Cost of shares of subsidiary

(7) Notwithstanding any other provision of this Act, where a corporation disposes of property to another corporation in a transaction to which paragraph 219(1)(l) applies, the cost to it of any share of a particular class of the capital stock of the other corporation received by it as consideration for the property is deemed to be the lesser of the cost of the share to the corporation otherwise determined immediately after the disposition and the amount by which the paid-up capital in respect of that class increases because of the issuance of the share.

(2) Subsection (1) applies to taxation years that begin after 1995.

24. (1) Paragraphs 53(1)(f.1) and (f.11) of the Act are replaced by the following:

(f.1) where the taxpayer is a taxable Canadian corporation and the property was disposed of by another taxable Canadian corporation to the taxpayer in circumstances such that

(i) paragraph (f.2) does not apply to increase the adjusted cost base to the other corporation of shares of the capital stock of the taxpayer, and

(ii) the capital loss from the disposition was deemed by paragraph 40(2)(e.1) (or, where the property was acquired by the taxpayer before 1996, by paragraph 40(2)(e) or 85(4)(a) as those paragraphs read in their application to property acquired before April 26, 1995) to be nil,

the amount that would otherwise have been the capital loss from the disposition;

(f.11) where the property was disposed of by a person (other than a non-resident person or a person exempt from tax under this Part on the person's taxable income) or by an eligible Canadian partnership (as defined in subsection 80(1)) to the taxpayer in circumstances such that

(i) paragraph (f.1) does not apply to increase the adjusted cost base to the taxpayer of the property,

(ii) paragraph (f.2) does not apply to increase the adjusted cost base to that person of shares of the capital stock of the taxpayer, and

(iii) the capital loss from the disposition was deemed by paragraph 40(2)(e.1) (or, where the property was acquired by the taxpayer before 1996, by paragraph 85(4)(a) as it read in its application to property acquired before April 26, 1995) to be nil, 5

the amount that would otherwise be the capital loss from the disposition;

(2) Paragraph 53(1)(f.2) of the Act is replaced by the following: 10

(f.2) where the property is a share, any amount required by paragraph 40(3.6)(b) (or, where the property was acquired by the taxpayer before 1996, by paragraph 85(4)(b) as it read in its application to property disposed of before April 26, 1995) to be added in computing the adjusted cost base to the taxpayer of the share; 15

(3) Subsection 53(1) of the Act is amended by striking out the word "and" at the end of paragraph (p), by adding the word "and" at the end of paragraph (q) and by adding the following after paragraph (q):

(r) where the time is before 2005, the property is an interest in, or a share of the capital stock of, a flow-through entity described in any of paragraphs (a) to (f) of the definition "flow-through entity" in subsection 39.1(1) and immediately after that time the taxpayer disposed of all of the taxpayer's interests in, and shares of the capital stock of, the entity, the amount determined by the formula 20

$$A \times B/C$$

where

A is the amount, if any, by which the taxpayer's exempt capital gains balance (as defined in subsection 39.1(1)) in respect of the entity for the taxpayer's taxation year that includes that time exceeds the total of all amounts each of which is 30

(i) the amount by which a capital gain from a disposition before that time is reduced under section 39.1 for the year because of the taxpayer's exempt capital gains balance in respect of the entity, or 35

(ii) 4/3 of an amount by which a taxable capital gain, or the income from a business, arising from a disposition before that time is reduced under section 39.1 for the year because of the taxpayer's exempt capital gains balance in respect of the entity,

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B is the fair market value at that time of the property, and

C is the fair market value at that time of all the taxpayer's interests in, or shares of the capital stock of, the entity.

(4) Clause 53(2)(c)(i)(C) of the Act is replaced by the following:

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(C) subsections 100(4) and 112(3.1) and subsection 112(4.2) as it read in its application to dispositions of property that occurred before April 27, 1995,

(5) Subparagraph 53(2)(c)(i.3) of the Act is replaced by the following:

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(i.3) if at that time the property is not a tax shelter investment as defined by section 143.2 and the taxpayer would be a member, described in subsection 40(3.1), of the partnership if the fiscal period of the partnership that includes that time ended at that time, the unpaid principal amount of any indebtedness of the taxpayer for which recourse is limited, either immediately or in the future and either absolutely or contingently, and that can reasonably be considered to have been used to acquire the property,

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

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**Recomputation of
adjusted cost base
on transfers and
deemed dispositions**

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

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(7) Subsections 53(5) of the Act is replaced by the following:**Recomputation of
adjusted cost base
on other transfer**

(5) Where 5

(a) at any time in a taxation year a person or partnership (in this subsection referred to as the "vendor") disposes of a specified property to another person or partnership (in this subsection referred to as the "transferee"),

(b) immediately before that time, the vendor and the transferee do not deal with each other at arm's length or would not deal with each other at arm's length if paragraph 80(2)(j) applied for the purpose of this subsection, 10

(c) paragraph (b) would apply in respect of the disposition if each right referred to in paragraph 251(5)(b) that is a right of the transferee to acquire the specified property from the vendor or a right of the transferee to acquire other property as part of a transaction or event or series of transactions or events that includes the disposition were not taken into account, and 15

(d) the proceeds of the disposition are not determined under any of the provisions referred to in subsection (4), 20

the following rules apply:

(e) there shall be deducted after that time in computing the adjusted cost base to the transferee of the property the amount, if any, by which 25

(i) the total of all amounts deducted under paragraph (2)(g.1) in computing, immediately before that time, the adjusted cost base to the vendor of the property

exceeds

(ii) the amount that would be the vendor's capital gain for the year from that disposition if this Act were read without reference to subparagraph 40(1)(a)(iii) and subsection 100(2), and 30

(f) the amount determined under paragraph (e) in respect of that disposition shall be added after that time in computing the adjusted cost base to the transferee of the property.

(8) Subject to section 156, subsections (1) and (2) apply to dispositions of property that occur after April 26, 1995.

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(9) Subsection (3) applies to the 1994 and subsequent taxation years.

(10) Subsection (4) applies after April 26, 1995.

(11) Subsection (5) applies to indebtedness of a taxpayer arising after September 26, 1994, other than indebtedness arising pursuant to an agreement in writing entered into by the taxpayer before September 27, 1994.

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(12) Subsections (6) and (7) apply to taxation years that end after February 21, 1994.

25. (1) The definition "superficial loss" in section 54 is replaced by the following:

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"superficial loss"
« *perte*
apparente »

"superficial loss" of a taxpayer means the taxpayer's loss from the disposition of a particular property where

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(a) during the period that begins 30 days before and ends 30 days after the disposition, the taxpayer or a person affiliated with the taxpayer acquires a property (in this definition referred to as the "substituted property") that is, or is identical to, the particular property, and

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(b) at the end of that period, the taxpayer or a person affiliated with the taxpayer owns or had a right to acquire the substituted property,

except where the disposition was

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(c) a disposition deemed by paragraph 33.1(11)(a), subsection 45(1), section 48 as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1, paragraph 132.2(1)(f), subsection 138(11.3) or 142.5(2), paragraph 142.6(1)(b) or subsection 144(4.1) or (4.2) or 149(10) to have been made,

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(d) the expiration of an option,

(e) a disposition to which paragraph 40(2)(e.1) applies,

(f) a disposition by a corporation the control of which was acquired by a person or group of persons within 30 days after the disposition,

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(g) a disposition by a person that, within 30 days after the disposition, became or ceased to be exempt from tax under this Part on its taxable income, or

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(h) a disposition to which paragraph 40(3.4) applies,

and, for the purpose of this definition, a right to acquire a property (other than a right, as security only, derived from a mortgage, agreement for sale or similar obligation) is deemed to be a property that is identical to the property.

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(2) Subject to section 156, subsection (1) applies to dispositions of property that occur after April 26, 1995.

26. (1) Paragraphs (a) and (b) of the definition "permitted redemption" in subsection 55(1) of the Act are replaced by the following:

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(a) a redemption or purchase for cancellation by the distributing corporation, as part of the reorganization in which the distribution was made, of all the shares of its capital stock that were owned, immediately before the distribution, by a transferee corporation in relation to the distributing corporation,

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(b) a redemption or purchase for cancellation by a transferee corporation in relation to the distributing corporation, or by a corporation that, immediately after the redemption or purchase, was a subsidiary wholly-owned corporation of the transferee corporation, as part of the reorganization in which the distribution was made, of all of the shares of the capital stock of the transferee corporation or the subsidiary wholly-owned corporation that were acquired by the distributing corporation in consideration for the transfer of property received by the transferee corporation on the distribution, and

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

**"safe-income
determination time"**

*« moment de
détermination du
revenu protégé »*

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"safe-income determination time" for a transaction or event or a series of transactions or events means the time that is the earlier of

(a) the time that is immediately after the earliest disposition or increase in interest described in any of subparagraphs (3)(a)(i) to (v) that resulted from the transaction, event or series, and

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(b) the time that is immediately before the earliest time that a dividend is paid as part of the transaction, event or series;

(3) The portion of subsection 55(2) of the Act before paragraph (a) is replaced by the following:

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**Deemed proceeds or
capital gain**

(2) Where a corporation resident in Canada has received a taxable dividend in respect of which it is entitled to a deduction under subsection 112(1) or (2) or 138(6) as part of a transaction or event or a series of transactions or events, one of the purposes of which (or, in the case of a dividend under subsection 84(3), one of the results of which) was to effect a significant reduction in the portion of the capital gain that, but for the dividend, would have been realized on a disposition at fair market value of any share of capital stock immediately before the dividend and that could reasonably be considered to be attributable to anything other than income earned or realized by any corporation after 1971 and before the safe-income determination time for the transaction, event or series, notwithstanding any other section of this Act, the amount of the dividend (other than the portion of it, if any, subject to tax under Part IV that is not refunded as a consequence of the payment of a dividend to a corporation where the payment is part of the series)

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(4) The portion of subsection 55(3) of the Act before paragraph (b) is replaced by the following:

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Application

(3) Subsection (2) does not apply to any dividend received by a corporation (in this subsection and subsection (3.01) referred to as the "dividend recipient")

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(a) if, as part of a transaction or event or a series of transactions or events as a part of which the dividend was received, there was not at any particular time

- | | |
|---|----------|
| (i) a disposition of property (other than | 5 |
| (A) money disposed of on the payment of a dividend or on a reduction of the paid-up capital of a share, and | |
| (B) property disposed of for proceeds that are not less than its fair market value) | 10 |
| to a person or partnership who was an unrelated person immediately before the particular time, | |
| (ii) a significant increase (other than as a consequence of a disposition of shares of the capital stock of a corporation for proceeds of disposition that are not less than their fair market value) in the total direct interest in any corporation of one or more persons or partnerships who were unrelated persons immediately before the particular time, | 15
20 |
| (iii) a disposition, to a person or partnership who was an unrelated person immediately before the particular time, of | |
| (A) shares of the capital stock of the corporation that paid the dividend (referred to in this paragraph and subsection (3.01) as the "dividend payer"), or | 25 |
| (B) property more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend payer, | 30 |
| (iv) after the time the dividend was received, a disposition, to a person or partnership who was an unrelated person immediately before the particular time, of | 35 |
| (A) shares of the capital stock of the dividend recipient, or | |
| (B) property more than 10% of the fair market value of which was, at any time during the course of the series, derived from shares of the capital stock of the dividend recipient, and | 40 |
| (v) a significant increase in the total of all direct interests in the dividend payer of one or more persons or partnerships who were unrelated persons immediately before the particular time; or | 45 |

(5) Section 55 of the Act is amended by adding the following after subsection (3):

Interpretation — for s. (3)(a)

- (3.01) For the purposes of paragraph (3)(a), 5
- (a) an unrelated person means a person (other than the dividend recipient) to whom the dividend recipient is not related or a partnership any member of which (other than the dividend recipient) is not related to the dividend recipient; 10
- (b) a corporation that is formed by an amalgamation of 2 or more other corporations is deemed to be the same corporation as, and a continuation of, each of the other corporations; 15
- (c) where there has been a winding-up of a corporation to which subsection 88(1) applies, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary; and
- (d) proceeds of disposition shall be determined without reference to "paragraph 55(2)(a) or" in paragraph (j) of the definition "proceeds of disposition" in section 54. 20

(6) Clauses 55(3.1)(c)(ii)(B) and (C) of the Act are replaced by the following:

- (B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A) or (C), or 25
- (C) to which, at any time during the course of the series, the fair market value of property described in clause (A) was wholly or partly attributable 30

(7) Clauses 55(3.1)(d)(ii)(B) and (C) of the Act are replaced by the following:

- (B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A) or (C), or 35

(C) to which, at any time during the course of the series, the fair market value of property described in clause (A) was wholly or partly attributable

(8) Subsection 55(3.2) of the Act is amended by striking out the word "and" at the end of paragraph (f), by adding the word "and" at the end of paragraph (g) and by adding the following after paragraph (g):

(h) each corporation that is a shareholder and specified shareholder of a distributing corporation at any time during the course of a series of transactions or events, a part of which includes a distribution made by the distributing corporation, is deemed to be a transferee corporation in relation to the distributing corporation.

(9) Paragraph 55(5)(a) of the Act is replaced by the following:

(a) where a dividend referred to in subsection (2) was received by a corporation as part of a transaction or event or a series of transactions or events, the portion of a capital gain attributable to any income expected to be earned or realized by a corporation after the safe-income determination time for the transaction, event or series is deemed to be a portion of a capital gain attributable to anything other than income;

(10) Paragraph 55(5)(c) of the Act is replaced by the following:

(c) the income earned or realized by a corporation for a period throughout which it was a private corporation is deemed to be its income for the period otherwise determined on the assumption that no amounts were deductible by the corporation under section 37.1 of this Act, as that section applies for taxation years ending before 1995, or paragraph 20(1)(gg) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

(11) Subsection (1) applies to dividends received after February 21, 1994.

(12) Subsections (2), (3) and (9) apply to dividends received after ANNOUNCEMENT DATE.

(13) Subsections (4) and (5) apply to dividends received by a corporation after February 21, 1994, except that

(a) in respect of such dividends received before ANNOUNCEMENT DATE, or received under an arrangement substantially advanced, as evidenced in writing, before ANNOUNCEMENT DATE, subparagraphs 55(3)(a)(ii) and (v) of the Act, as enacted by subsection (4), shall, where paragraph (b) does not apply, be read as follows: 5

(ii) a significant increase (other than as a consequence of a disposition of shares of the capital stock of a corporation for proceeds of disposition that are not less than their fair market value) in the interest in any corporation of one or more persons or partnerships who were unrelated persons immediately before the particular time, 10

(v) a significant increase in the interest in the dividend payer of one or more persons or partnerships who were unrelated persons immediately before the particular time; or 15

and

(b) in respect of such dividends, where they are received on shares issued before ANNOUNCEMENT DATE, and the corporation so elects in writing before the end of the fourth month after the month in which this Act is assented to or in its return of income under Part I of the Act for the year in which it received the dividends, the Act shall be read without reference to subsection 55(3.01), as enacted by subsection (5), and paragraph 55(3)(a) of the Act, as enacted by subsection (4), shall be read as follows: 20
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(a) unless the dividend was received as part of a transaction or event or a series of transactions or events that resulted in

(i) a disposition of any property to a person with whom the dividend recipient was dealing at arm's length, or

(ii) a significant increase in the interest in any corporation of any person with whom the dividend recipient was dealing at arm's length; or 30

(14) Where a corporation elects under paragraph (13)(b) in respect of dividends,

(a) subsection 55(4) of the Act shall, in respect of those dividends, be read as follows: 35

(4) Where it can reasonably be considered that the principal purpose of one or more transactions or events was to cause 2 or more persons to be related or to not deal with each other at arm's length, or to cause one corporation to control another corporation, so as to make subsection (2) inapplicable, for the purposes of this section, those persons are deemed not to be related or are deemed to deal with each other at arm's length, or the corporation is deemed not to control the other corporation, as the case may be. 5

(b) paragraph 55(5)(e) of the Act shall, in respect of those dividends, be read as follows: 10

(e) in determining whether 2 or more persons deal with each other at arm's length,

(i) a person is deemed to deal with another person at arm's length and not to be related to the other person if the person is the brother or sister of the other person, and 15

(ii) persons who are otherwise related to each other solely because of a right referred to in paragraph 251(5)(b) are deemed not to be related to each other; and

(15) Subsections (6) and (7) apply to dividends received after April 26, 1995, except that with respect to acquisitions of property that occur before ANNOUNCEMENT DATE or pursuant to a written agreement made before ANNOUNCEMENT DATE, 20

(a) clause 55(3.1)(c)(ii)(B) of the Act, as enacted by subsection (6), shall be read as follows:

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A), or 25

(b) clause 55(3.1)(d)(ii)(B) of the Act, as enacted by subsection (7), shall be read as follows: 30

(B) more than 10% of the fair market value of which was, at any time after the distribution and before the end of the series, attributable to property (other than money and indebtedness that is not convertible into other property) described in clause (A), or 35

(16) Subsection (8) applies to dividends received after ANNOUNCEMENT DATE other than dividends received in the course of a reorganization that was required on ANNOUNCEMENT DATE to be carried out pursuant to a written agreement made before ANNOUNCEMENT DATE + 1, and for the purpose of this subsection, a reorganization is deemed not to be required to be carried out where the parties to that agreement can be relieved of that requirement if there is a change to the Act. 5

(17) Subsection (10) applies to the 1995 and subsequent taxation years. 10

(18) Subsection (14) applies to dividends received after February 21, 1994.

27. (1) Subsection 56(1) of the Act is amended by adding the following after paragraph (q):

Earnings supplement 15

(r) amounts received by the taxpayer in the year as social assistance under a project, sponsored by the government of Canada, under which the only benefits paid are intended to supplement individuals' income from employment;

(2) The portion of paragraph 56(1)(u) of the Act after subparagraph (ii) is replaced by the following: 20

except to the extent that the payment is otherwise required to be included in computing the income for a taxation year of the taxpayer or the taxpayer's spouse;

(3) Subsections (1) and (2) apply to the 1993 and subsequent taxation years. 25

28. (1) The description of E in paragraph 61.3(1)(b) of the Act is replaced by the following:

E is 50% of the amount, if any, by which

(i) the amount that would be the corporation's income for the year if that amount were determined without reference to this section and section 61.4 30

exceeds

(ii) the amount determined under paragraph (a) in respect of the corporation for the year.

(2) The description of E in paragraph 61.3(2)(b) of the Act is replaced by the following:

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E is 50% of the amount, if any, by which

(i) the amount that would be the corporation's taxable income or taxable income earned in Canada for the year if that amount were determined without reference to this section and section 61.4

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exceeds

(ii) the amount determined under paragraph (a) in respect of the corporation for the year.

(3) Subsections (1) and (2) apply to taxation years that end after February 21, 1994.

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29. (1) Paragraph 62(3)(f) of the Act is replaced by the following:

(f) where the old residence is being or has been sold by the taxpayer or the taxpayer's spouse as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any taxes (other than the goods and services tax) imposed on the transfer or registration of title to the new residence,

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(2) Subsection (1) applies to costs incurred after 1990.

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

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

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(2) Subsection (1) applies to the 1993 and subsequent taxation years.

31. (1) Paragraph 66(4)(b) of the Act is amended by repealing the portion after subparagraph (ii) and adding the following to that subparagraph after clause (C):

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determined as if no deductions were allowed under this subsection, subsections (1) and (3), section 65 and subsections 66.1(2) and (3).

(2) The portion of paragraph 66(4)(b) of the French version of the Act after subparagraph (ii) is repealed.

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(3) Paragraph 66(11.4)(b) of the Act is replaced by the following:

(b) within the 12-month period that ended immediately before that time, the corporation or a partnership of which it was a majority interest partner acquired a Canadian resource property or a foreign resource property (other than a property that was owned by the corporation or partnership or a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3), be affiliated with the corporation throughout the period that began immediately before the 12-month period began and ended at the time the property was acquired by the corporation or partnership), and **(4) The portion of subsection 66(12.66) of the Act after paragraph (e) is replaced by the following:**

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the corporation is for the purpose of subsection (12.6) or for the purposes of subsection (12.601) and paragraph (12.602)(b), as the case may be, deemed to have incurred the expenses on the last day of the year.

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(5) The portion of paragraph 66(12.75)(c) of the Act before subparagraph (i) is replaced by the following:

(c) where the penalty is in respect of a renunciation referred to in subsection (12.741), the greater of

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(6) Paragraph (c) of the definition "Canadian exploration and development expenses" in subsection 66(15) of the Act is replaced by the following:

(c) the cost to the taxpayer of any Canadian resource property acquired by the taxpayer after 1971,

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(7) Subsections (1) and (2) apply to taxation years that end after May 6, 1974.

(8) Subsection (3) applies after April 26, 1995.

(9) Subsection (4) applies to expenses incurred after 1992.

(10) Subsection (5) applies to renunciations purported to be made after February 1993.

(11) Subsection (6) applies to taxation years that begin after 1984.

32. (1) Section 66.6 of the Act is replaced by the following: 5

**Acquisition from
tax-exempt**

66.6 Where a corporation acquires, by purchase, amalgamation, merger, winding-up or otherwise, all or substantially all of the Canadian resource properties or foreign resource properties of a person whose taxable income is exempt from tax under this Part, subsection 29(25) of the *Income Tax Application Rules* and subsections 66.7(1) to (5) do not apply to the corporation in respect of the acquisition of the properties. (2) Subsection (1) applies to acquisitions that occur after April 26, 1995, other than an acquisition that occurs before 1996 and that was required by an agreement in writing entered into before April 27, 1995. 10 15

33. (1) Subparagraph 66.7(1)(b)(iii) of the Act is replaced by the following:

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i). 20

(2) Subparagraph 66.7(2)(b)(iv) of the Act is replaced by the following:

(iv) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i), 25

(3) Subparagraph 66.7(3)(b)(iii) of the Act is replaced by the following:

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

(4) Subparagraph 66.7(4)(b)(iii) of the Act is replaced by the following: 30

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i).

(5) Subparagraph 66.7(5)(b)(iii) of the Act is replaced by the following:

(iii) all amounts added because of subsection 80(13) in computing the amount determined under subparagraph (i). 5

(6) Paragraph 66.7(10)(b) of the Act is replaced by the following:

(b) a corporation ceases on or before April 26, 1995 to be exempt from tax under this Part on its taxable income,

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

(c.1) where the corporation did not own a foreign resource property immediately before that time, the corporation is deemed to have owned a foreign resource property immediately before that time,

(8) Subsections (1) to (5) apply to taxation years that end after February 21, 1994. 15

(9) Subsection (6) applies after April 26, 1995.

(10) Subsection (7) applies to taxation years that end after February 17, 1987.

34. (1) Paragraph 69(5)(a) of the Act is replaced by the following: 20

(a) the corporation is deemed, for the purpose of computing its income for the year, to have disposed of the property immediately before the winding-up for proceeds equal to its fair market value at that time;

(2) Subsection 69(5) of the Act is amended by adding the word "and" at the end of paragraph 25

(c) and by replacing paragraphs (d) and (e) with the following:

(d) subsections 13(21.2), 14(12), 18(15) and 40(3.4) and (3.6) do not apply to the winding-up.

(3) Subsections 69(11) to (12.2) of the Act are replaced by the following:

Deemed proceeds of disposition

(11) Where, at any particular time as part of a series of transactions or events, a taxpayer disposes of property for proceeds of disposition that are less than its fair market value and it can reasonably be considered that one of the main purposes of the series is 5

(a) to obtain the benefit of

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under this Act, or 10

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

available to a person (other than a person that would be affiliated with the taxpayer immediately before the series began, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3)) in respect of a subsequent disposition of the property or property substituted for the property, or 15

(b) to obtain the benefit of an exemption available to any person from tax payable under this Act on any income arising on a subsequent disposition of the property or property substituted for the property, 20

notwithstanding any other provision of this Act, where arrangements for the subsequent disposition are made before the day that is 3 years after the particular time, the taxpayer is deemed to have disposed of the property at the particular time for proceeds of disposition equal to its fair market value at that time. 25

Reassessments

(12) Notwithstanding subsections 152(4) to (5), the Minister may at any time make such assessments or reassessments of the tax, interest and penalties payable by the taxpayer as are necessary to give effect to subsection (11). 30

(4) Subsection 69(13) of the Act is replaced by the following:

**Amalgamation or
merger**

(13) Where there is an amalgamation or merger of a corporation with one or more other corporations to form one corporate entity (in this subsection referred to as the "new corporation"), each property of the corporation that becomes property of the new corporation as a result of the amalgamation or merger is deemed, for the purpose of determining whether subsection (11) applies to the amalgamation or merger, to have been disposed of by the corporation immediately before the amalgamation or merger for proceeds equal to

(a) in the case of a Canadian resource property or a foreign resource property, nil; and

(b) in the case of any other property, the cost amount to the corporation of the property immediately before the amalgamation or merger.

(5) Subsection (1) applies to windings-up that begin after 1995.

(6) Subsection (2) applies to windings-up that begin after April 26, 1995, except that in its application to windings-up that began before 1996, paragraph 69(5)(d) of the Act, as enacted by subsection (2), shall be read as follows:

(d) subsections 13(21.2), 14(12), 18(15), 40(3.4) and (3.7) and 85(4) and (5.1) do not apply to the winding-up; and

(e) paragraph 40(2)(e) does not apply in computing the loss, if any, of the shareholder from the disposition of a share of the capital stock of the corporation to the corporation on the winding-up.

(7) Subsection (3) applies to a disposition that is part of a series of transactions or events that begins after April 26, 1995, other than a disposition that occurs before 1996 to a person that was obliged on that day to acquire the property pursuant to the terms of an agreement in writing entered into on or before that date, and for the purpose of this subsection, a person is considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act.

(8) Subsection (4) applies to amalgamations and mergers that occur after April 26, 1995.

35. (1) Paragraph 70(3)(b) of English version of the Act is replaced by the following:

(b) an amount received by one of the beneficiaries or persons on the realization or disposition of the right or thing shall be included in computing the income of the beneficiary or person for the taxation year in which the beneficiary or person received it. 5

(2) Subparagraph (a)(i) of the definition "share of the capital stock of a family farm corporation" in subsection 70(10) of the Act is replaced by the following:

(i) the corporation or a corporation related to it, 10

(3) Subsection (1) applies to taxation years that end after November 1991.

(4) Subsection (2) applies to the 1994 and subsequent taxation years.

36. (1) The portion of the definition "unrecognized loss" in subsection 80(1) of the Act before paragraph (a) is replaced by the following: 15

"unrecognized loss"

« *perte non constatée* » 20

"unrecognized loss" at a particular time, in respect of an obligation issued by a debtor, from the disposition of a property means the amount that would, but for subparagraph 40(2)(g)(ii), be a capital loss from the disposition by the debtor at or before the particular time of a debt or other right to receive an amount, except that where the debtor is a corporation the control of which was acquired before the particular time and after the time of the disposition by a person or group of persons, the unrecognized loss at the particular time in respect of the obligation is deemed to be nil unless 25

(2) Paragraph 80(2)(g) of the Act is replaced by the following: 30

(g) where a corporation issues a share (other than an excluded security) to a person as consideration for the settlement of a debt issued by the corporation and payable to the person, the amount paid in satisfaction of the debt because of the issue of the share is deemed to be equal to the fair market value of the share at the time it was issued; 35

(g.1) where a debt issued by a corporation and payable to a person is settled at any time, the amount, if any, that can reasonably be considered to be the increase, as a consequence of the settlement of the debt, in the fair market value of shares of the capital stock of the corporation owned by the person (other than any shares acquired by the person as consideration for the settlement of the debt) is deemed to be an amount paid at that time in satisfaction of the debt; 5

(3) Paragraph (b) of the description of B in subsection 80(13) of the Act is replaced by the following:

(b) the residual balance at that time in respect of the settlement of the obligation, 10

(4) Subsection 80(14) of the Act is replaced by the following:

Residual balance

(14) For the purpose of subsection (13), the residual balance at any time in a taxation year in respect of the settlement of a particular commercial obligation issued by a debtor is the amount, if any, by which 15

(a) the gross tax attributes of directed persons at that time in respect of the debtor 20

exceeds the total of

(b) the value of A in subsection (13) in respect of the settlement of the particular obligation at that time, 25

(c) all amounts each of which is

(i) the amount, if any, by which the value of A in subsection (13) in respect of a settlement before that time and in the year of a commercial obligation issued by the debtor exceeds the value of C in that subsection in respect of that settlement, 30

(ii) the value of A in subsection (13) in respect of a settlement of a commercial obligation that is deemed by paragraph 80.04(4)(e) to have been issued by a directed person in respect of the debtor because of the filing of an agreement under section 80.04 in respect of a settlement before that time and in the year of a commercial obligation issued by the debtor, or 35

(iii) the amount specified in an agreement (other than an agreement with a directed person in respect of the debtor) filed under section 80.04 in respect of the settlement before that time and in the year of a commercial obligation issued by the debtor, and

5

(d) all amounts each of which is an amount in respect of a settlement at a particular time before that time and in the year of a commercial obligation issued by the debtor equal to the least of

10

(i) the total of all amounts designated under subsection (11) in respect of the settlement,

(ii) the residual balance of the debtor at the particular time, and

15

(iii) the amount, if any, by which the sum of the values of A and B in subsection (13) in respect of the settlement exceeds the value of C in respect of the settlement.

Gross tax attributes

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(14.1) The gross tax attributes of directed persons at any time in respect of a debtor means the total of all amounts each of which is an amount that would be applied under any of subsections (3) to (10) and (12) in respect of a settlement of a separate commercial obligation (in this subsection referred to as a "notional obligation") issued by directed persons at that time in respect of the debtor if the following assumptions were made:

25

(a) a notional obligation was issued immediately before that time by each of those directed persons and was settled at that time;

30

(b) the forgiven amount at that time in respect of each of those notional obligations was equal to the total of all amounts each of which is a forgiven amount at or before that time and in the year in respect of a commercial obligation issued by the debtor;

35

(c) amounts were designated under subsections (5), (7), (8), (9) and (10) by each of those directed persons to the maximum extent permitted in respect of the settlement of each of those notional obligations; and

40

(d) no amounts were designated under subsection (11) by any of those directed persons in respect of the settlement of any of the notional obligations.

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(5) Subsection 80(17) of the Act is repealed.

(6) Subsections (1) to (5) apply to taxation years that end after February 21, 1994.

37. (1) Subsection 80.03(1) of the Act is replaced by the following:

Definitions 5

80.03 (1) In this section, "commercial debt obligation", "commercial obligation", "distress preferred share", "forgiven amount" and "person" have the meanings assigned by subsection 80(1).

(2) Subsections 80.03(4) to (6) of the Act are repealed.

(3) The portion of subsection 80.03(7) of the Act before paragraph (a) is replaced by the following: 10

Alternative treatment

(7) Where at any time in a taxation year a person disposes of a property, for the purposes of subsection (2) and section 80 15

(4) Subparagraph 80.03(7)(b)(ii) of the Act is replaced by the following:

(ii) the lesser of the amount so designated and the amount that would, but for this subsection, be a capital gain determined in respect of the disposition because of subsection (2) shall be treated as if it were the forgiven amount at the time of the settlement in respect of the obligation referred to in subparagraph (i), 20

(5) Subsections (1) to (4) apply to taxation years that end after February 21, 1994.

38. (1) Subsection 80.04(5) of the Act is amended by adding the word "and" at the end of paragraph (b), by striking out the word "and" at the end of paragraph (c) and by repealing paragraph (d). 25

(2) Section 80.04 of the Act is amended by adding the following after subsection 80.04(5):

No benefit conferred 30

(5.1) For the purposes of this Part, where a debtor and an eligible transferee enter into an agreement that is filed under this section, no

benefit shall be considered to have been conferred on the debtor as a consequence of the agreement.

(3) Paragraph 80.04(10)(a) of the Act is replaced by the following:

(a) where the transferee is a corporation, all taxes payable under this Act by it for taxation years that end in the period that begins at that time and ends 4 calendar years after that time; 5

(4) Subsections (1) to (3) apply to taxation years that end after February 21, 1994.

39. (1) Paragraph 82(1)(a) of the Act is amended by striking out the word "and" at the end of subparagraph (i) and by adding the following after subparagraph (i): 10

(i.1) where the taxpayer is a trust, all amounts each of which is all or part of a taxable dividend (other than a taxable dividend described in subparagraph (i)) that was received by the trust in the year on a share of the capital stock of a taxable Canadian corporation and that can reasonably be considered as having been included in computing the income of a beneficiary under the trust who was non-resident at the end of the year, and 15

(2) Clause 82(1)(a)(ii)(A) of the Act is replaced by the following:

(A) the total of all amounts received by the taxpayer in the year from corporations resident in Canada as, on account of, in lieu of payment of or in satisfaction of, taxable dividends, other than an amount included in computing the income of the taxpayer because of subparagraph (i) or (i.1) 20

(3) Subsections (1) and (2) apply to taxation years that end after April 26, 1995. 25

40. (1) Paragraph 84.1(2)(a.2) of the Act is repealed.

(2) Paragraph 84.1(2)(c) of the Act is repealed.

(3) Paragraph 84.1(2)(e) of the Act is repealed.

(4) Section 84.1 of the Act is amended by adding the following after subsection (2): 30

Rules for s.**84.1(2)(a.1)**

(2.01) For the purpose of paragraph (2)(a.1):

(a) where at any time a corporation issues a share of its capital stock to a taxpayer, the taxpayer and the corporation are deemed not to be dealing with each other at arm's length at that time; 5

(b) where a taxpayer is deemed by paragraph 110.6(19)(a) to have reacquired a share, the taxpayer is deemed to have acquired the share at the beginning of February 23, 1994 from a person with whom the taxpayer was not dealing at arm's length; and 10

(c) where a share owned by a particular person, or a share substituted for that share, has by one or more transactions or events between persons not dealing at arm's length become vested in another person, the particular person and the other person are deemed at all times not to be dealing at arm's length with each other whether or not the particular person and the other person coexisted. 15

(5) Section 84.1 of the Act is amended by adding the following after subsection (2.1): 20

Rules for s.**84.1(2)(b)**

(2.2) For the purpose of paragraph (2)(b), 25

(a) in determining whether or not a taxpayer referred to in paragraph (2)(b) was a member of a group of fewer than 6 persons that controlled a corporation at any time, any shares of the capital stock of that corporation owned at that time by 30

(i) the taxpayer's child (as defined in subsection 70(10)), who is under 18 years of age, or the taxpayer's spouse,

(ii) a trust of which the taxpayer, a person described in subparagraph (i) or a corporation described in subparagraph (iii), is a beneficiary, or 35

(iii) a corporation controlled by the taxpayer, by a person described in subparagraph (i) or (ii) or by any combination of those persons 40

are deemed to be owned at that time by taxpayer and not by the person who actually owned the shares at that time; and

(b) a group of persons in respect of a corporation means any 2 or more persons each of whom owns shares of the capital stock of the corporation; 5

(c) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation is considered to be controlled by that group of persons; and 10

(d) a corporation may be controlled by a person or a particular group of persons even though the corporation is also controlled or deemed to be controlled by another person or group of persons.

(6) Subsections (1) and (4), except paragraph 84.1(2.01)(c) of the Act, as enacted by subsection (4), apply to the 1994 and subsequent taxation years. 15

(7) Paragraph 84.1(2.01)(c) of the Act, as enacted by subsection (4), applies in respect of the determination of the adjusted cost base of a share after Announcement Date. 20

41. (1) The portion of subsection 85(2) of the Act before paragraph (b) is replaced by the following:

**Transfer of property
to corporation from
partnership** 25

(2) Where

(a) a partnership has disposed, to a taxable Canadian corporation for consideration that includes shares of the corporation's capital stock, of any partnership property that was

(i) a capital property (other than real property, or an interest in or an option in respect of real property, where the partnership was not a Canadian partnership at the time of the disposition), 30

(ii) a property described in any of paragraphs (1.1)(c) to (f), or

(iii) a property that would be described in paragraph (1.1)(g) or (g.1) if the references in those paragraphs to "taxpayer" were read as "partnership", and 35

(2) Subparagraph 85(4)(b)(ii) of the Act is replaced by the following:

(ii) the taxpayer's proceeds of disposition of the property or, where the property is an eligible capital property, 4/3 of the taxpayer's eligible capital amount resulting from the disposition of the property, and 5

(3) Subsection 85(4) of the Act is repealed.

(4) Subsection 85(5) of the Act is replaced by the following:

Rules on transfers of depreciable property 10

(5) Where subsection (1) or (2) has applied to a disposition at any time of depreciable property to a person (in this subsection referred to as the "transferee") and the capital cost to the transferor of the property exceeds the transferor's proceeds of disposition of the property, for the purposes of sections 13 and 20 and any regulations made for the purpose of paragraph 20(1)(a), 15

(a) the capital cost to the transferee of the property is deemed to be the amount that was its capital cost to the transferor; and

(b) the excess is deemed to have been deducted by the transferee under paragraph 20(1)(a) in respect of the property in computing income for taxation years that ended before that time. 20

(5) Subsection 85(5.1) of the Act is repealed.

(6) Subsection (1) applies to dispositions occurring after Announcement Date.

(7) Subsection (2) applies 25

(a) **in the case of a corporation, to dispositions by it of property that occur after the beginning of its first taxation year that begins after June 1988; and**

(b) **in any other case, to dispositions of property in respect of a business occurring after the beginning of the first fiscal period, that begins after 1987, of the business.** 30

(8) Subject to section 156, subsections (3) to (5) apply to dispositions of property that occur after April 26, 1995.

42. (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (g.2):

Superficial losses

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(g.3) for the purposes of applying subsections 13(21.2), 14(12), 18(15) and 40(3.4) to any property that was disposed of by a predecessor corporation before the amalgamation, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

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**Superficial losses —
capital property**

(g.4) for the purpose of applying paragraph 40(3.5)(c) in respect of any share that was acquired by a predecessor corporation, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

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(2) Paragraph 87(2)(j.91) of the Act is replaced by the following:

**Part I.3 and Part VI
tax**

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(j.91) for the purpose of determining the amount deductible under subsection 181.1(4) or 190.1(3) by the new corporation for any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any predecessor corporation;

25

(3) Paragraph 87(2)(l.21) of the Act is replaced by the following:

(l.21) for the purposes of section 61.3, the definition "unrecognized loss" in subsection 80(1) and subsection 80.01(10), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

30

(4) Paragraph 87(2)(x) of the Act is replaced by the following:

Taxable dividends

(x) for the purposes of subsections 112(3) to (4.22),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) is deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income under section 112 or subsection 138(6), as the case may be, 5

(ii) any dividend (other than a taxable dividend) received on a share by the predecessor corporation is deemed to have been received on the share by the new corporation; and 10

(iii) a share acquired by the new corporation from a predecessor corporation is deemed to have been owned by the new corporation throughout any period of time throughout which it was owned by a predecessor corporation; 15

(5) Paragraph 87(2)(y.1) of the Act is repealed.

(6) Paragraph 87(2)(bb) of the Act is replaced by the following:

Mutual fund and investment corporations 20

(bb) where the new corporation is a mutual fund corporation or an investment corporation, there shall be added to

(i) the amount determined under each of paragraphs (a) and (b) of the definition "capital gains dividend account", and

(ii) the values of A and B in the definition "refundable capital gains tax on hand" 25

in subsection 131(6) in respect of the new corporation at any time the amounts so determined and the values of those factors immediately before the amalgamation in respect of each predecessor corporation that was immediately before the amalgamation a mutual fund corporation or an investment corporation; 30

Flow-through entities

(bb.1) where a predecessor corporation was, immediately before the amalgamation, an investment corporation, a mortgage investment 35

corporation or a mutual fund corporation and the new corporation is an investment corporation, a mortgage investment corporation or a mutual fund corporation, as the case may be, for the purpose of section 39.1 the new corporation is deemed to be the same corporation as, and a continuation of, the predecessor corporation;

5

(7) Paragraph 87(2)(qq) of the Act is replaced by the following:

Continuation of corporation

(qq) for the purpose of computing the new corporation's investment tax credit at the end of any taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation, except that this paragraph does not affect the determination of the fiscal period of any corporation or the tax payable by any predecessor corporation;

10

(8) Paragraph 87(2.1)(b) of the Act is replaced by the following:

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(b) determining the extent to which subsections 111(3) to (5.4) and paragraph 149(10)(c) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be,

(9) Subsection 87(2.11) of the Act is replaced by the following:

20

Vertical amalgamations

(2.11) Where a new corporation is formed by the amalgamation of a particular corporation and one or more of its subsidiary wholly-owned corporations, the new corporation is deemed to be the same corporation as, and a continuation of, the particular corporation for the purposes of applying sections 111 and 126, subsections 127(5) to (12.3) and 181.1(4) to (7), Part IV and subsections 190.1(3) to (6) in respect of the particular corporation.

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(10) Subsection 87(9) of the Act is amended by adding the following after paragraph (a.4):

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(a.5) for the purpose of applying subsection (10) in respect of the merger, any share issued by the parent on the merger is deemed to have been issued by the new corporation;

(11) Section 87 of the Act is amended by adding the following after subsection (9):

Share deemed listed

- (10) Where 5
- (a) the new corporation formed as a result of an amalgamation is a public corporation,
- (b) the new corporation issues a share (in this subsection referred to as the "new share") of its capital stock in exchange for a share (in this subsection referred to as the "old share") of the capital stock of a predecessor corporation, 10
- (c) immediately before the amalgamation, the old share was listed on a prescribed stock exchange, and 15
- (d) the new share is redeemed, acquired or cancelled by the new corporation within 60 days after the amalgamation,

the new share is deemed, for the purposes of subsections 115(1) and 116(6) and the definition "qualified investment" in subsections 146(1) and 146.3(1) and section 204, to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled. 20

Vertical amalgamations 25

- (11) Where at any time there is an amalgamation of a corporation (in this subsection referred to as the "parent") and one or more other corporations (each of which in this subsection is referred to as the "subsidiary") each of which is a subsidiary wholly-owned corporation of the parent, 30
- (a) the shares of the subsidiary are deemed to have been disposed of by the parent immediately before the amalgamation for proceeds equal to the proceeds that would be determined under paragraph 88(1)(b) if subsections 88(1) and (1.7) applied, with any modifications that the circumstances require, to the amalgamation; and 35
- (b) the cost to the new corporation of each capital property of the subsidiary acquired on the amalgamation is deemed to be the amount that would have been the cost to the parent of the property if the property had been distributed at that time to the parent on a winding-up of the subsidiary to which subsections 88(1) and (1.7) applied. 40

(12) Subsections (1) and (2) apply to amalgamations that occur, and windings-up that begin, after April 26, 1995.

(13) Subsection (3) applies to taxation years that end after February 21, 1994.

(14) Subsection (4) applies to the 1994 and subsequent taxation years, except that in its application to dispositions of shares that occur before April 27, 1995, paragraph 87(2)(x) of the Act, as enacted by subsection (4), shall be read as follows: 5

(x) for the purposes of subsections 112(3) to (4.3),

(i) any taxable dividend received on a share that was deductible from the predecessor corporation's income for a taxation year under section 112 or subsection 138(6) is deemed to be a taxable dividend received on the share by the new corporation that was deductible from the new corporation's income under section 112 or 138(6), as the case may be, 10
15

(ii) any capital dividend or life insurance capital dividend received on a share by the predecessor corporation is deemed to be a capital dividend or life insurance capital dividend, as the case may be, received on the share by the new corporation, and

(iii) a share acquired by the new corporation from a predecessor corporation is deemed to have been owned by the new corporation throughout any period of time throughout which it was owned by a predecessor corporation; 20

(15) Subsection (5) applies to taxes payable for taxation years that begin after 1986. 25

(16) The amendment to paragraph 87(2)(bb) of the Act, as enacted by subsection (6), applies to amalgamations that occur after 1991, except that for amalgamations that occurred after 1991 and before February 23, 1994, subparagraph 87(2)(bb)(i) of the Act, as enacted by that subsection, shall be read as follows: 30

(i) the amount determined under each of paragraphs (a) to (g) of the definition "capital gains dividend account", and

(17) Paragraph 87(2)(bb.1) of the Act, as enacted by subsection (6), applies to amalgamations that occur after 1993.

(18) Subsections (7) and (9) apply to amalgamations that occur after April 26, 1995.

(19) Subsection (8) applies to a corporation that becomes or ceases to be exempt from tax under Part I of the Act after April 26, 1995.

(20) Subsection (10) and subsection 87(10) of the Act, as enacted by subsection (11), apply to amalgamations that occur after April 26, 1995 except that, in its application to amalgamations that occurred before July 1996, paragraph 87(10)(a) of the Act, as enacted by subsection (11), shall be read as follows:

(a) a new corporation is formed as a result of an amalgamation,

(21) Subsection 87(11) of the Act, as enacted by subsection (11), applies to amalgamations that occur after 1994, except where the amalgamation occurred before Announcement Date and the new corporation so elects in writing filed in the return of income under Part I of the Act for the parent's taxation year that ended immediately before the amalgamation or within 90 days after any assessment or reassessment of tax payable for the year.

43. (1) The portion of subparagraph 88(1)(c)(vi) of the Act before subclause (B)(I) is replaced by the following:

(vi) property distributed to the parent on the winding-up where as part of the series of transactions or events that includes the winding-up,

(A) the parent acquired control of the subsidiary, and

(B) any property distributed to the parent on the winding-up or any other property acquired by any person in substitution therefor is acquired by

(2) Sub-subclause 88(1)(c)(vi)(B)(III)2 of the Act is replaced by the following:

2. of which a particular person would be, at any time during the course of the series and after control of the subsidiary was last acquired by the parent, a specified shareholder if all the shares then owned by persons (other than specified persons) referred to in subclause (II) and acquired by those persons as part of the series were owned at that time by the particular person;

(3) Paragraph 88(1)(c.2) of the Act is amended by striking out the word "and" at the end of subparagraph (i), by adding the word "and" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) in determining whether a person is at any time a specified shareholder of a corporation, the reference in the definition "specified shareholder" in subsection 248(1) to "or of any other corporation that is related to the corporation" shall be read as "or of any other corporation that is related to the corporation and that has a direct or indirect interest in any issued shares of the capital stock of the corporation".

(4) Subsection 88(1) of the Act is amended by adding the following after paragraph (c.2):

(c.3) for the purpose of clause (c)(vi)(B), property acquired by any person in substitution for particular property or properties distributed to the parent on the winding-up includes

(i) property the fair market value of which is wholly or partly attributable to the particular property or properties, other than shares of the capital stock of the parent that were issued by the parent as consideration for the acquisition of the shares of the capital stock of the subsidiary by the parent, and

(ii) property the fair market value of which is determinable primarily by reference to the fair market value of, or to any proceeds from a disposition of, the particular property or properties

but does not include money;

(c.4) for the purpose of subparagraph (c)(iii), a leasehold interest in a depreciable property and an option to acquire a depreciable property are depreciable properties;

(5) The portion of paragraph 88(1)(d) of the Act after subparagraph (iii) is repealed.

(6) Paragraph 88(1)(d.1) of the Act is replaced by the following:

(d.1) subsection 84(2) and section 21 of the *Income Tax Application Rules* do not apply to the winding-up of the subsidiary, and subsections 13(21.2) and 14(12) do not apply to the winding-up of the subsidiary with respect to property acquired by the parent on the winding-up;

(7) Paragraph 88(1)(d.2) of the Act is replaced by the following:

(d.2) in determining, for the purposes of this paragraph and paragraphs (c) and (d), the time at which a person or group of persons (in this paragraph and paragraph (d.3) referred to as the "acquirer") last acquired control of the subsidiary, where control of the subsidiary was acquired from another person or group of persons (in this paragraph referred to as the "vendor") with whom the acquirer was not (otherwise than solely because of a right referred to in paragraph 251(5)(b)) dealing at arm's length, the acquirer is deemed to have last acquired control of the subsidiary at the earlier of

(i) the time at which the vendor last acquired control (within the meaning that would be assigned by subsection 186(2) if the reference in that subsection to "another corporation" were read as "a person" and the references in that subsection to "the other corporation" were read as "the person") of the subsidiary, and

(ii) the time at which the vendor was deemed for the purpose of this paragraph to have last acquired control of the subsidiary;

(d.3) for the purposes of paragraphs (c), (d) and (d.2), where at any time control of a corporation is last acquired by an acquirer because of an acquisition of shares of the capital stock of the corporation as a consequence of the death of an individual, the acquirer is deemed to have last acquired control of the corporation immediately after the death from a person who dealt at arm's length with the acquirer;

(8) The portion of paragraph 88(1)(e.2) of the Act before subparagraph (i) is replaced by the following:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (z.1), (z.2), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

(9) Subparagraphs 88(1)(e.2)(xiv) and (xv) of the Act are repealed.**(10) Section 88 of the Act is amended by adding the following after subsection (1.6):****Interpretation**

(1.7) For the purposes of paragraphs (1)(c) and (d), where a parent of a subsidiary did not deal at arm's length with another person (other than a corporation the control of which was acquired by the parent from a person with whom the parent dealt at arm's length) at any time before the winding-up of the subsidiary, the parent and the other person are

deemed not to have dealt with each other at arm's length at all times whether or not the parent and the other person coexisted.

(11) Subsection (1) and paragraph 88(1)(c.4) of the Act, as enacted by subsection (4), apply to windings-up that begin after Announcement Date.

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(12) Subsections (2) and (3) apply to windings-up that begin after November 1994.

(13) Paragraph 88(1)(c.3) of the Act, as enacted by subsection (4), applies to windings-up that begin after February 21, 1994, except that in its application to windings-up that began before Announcement Date + 1, paragraph 88(1)(c.3) of the Act, as enacted by subsection (4), shall be read as follows:

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(c.3) for the purpose of clause (c)(vi)(B), property acquired by any person in substitution for particular property or properties

(i) includes property the fair market value of which is determinable primarily by reference to the fair market value of the particular property or properties or by reference to any proceeds from a disposition of the particular property or properties, but

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(ii) does not include property that is money received as consideration for a disposition of the particular property;

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(14) Subsections (5) and (10) apply to windings-up that begin after February 21, 1994.

(15) Subsection (6) applies to windings-up that begin after April 26, 1995, except that in its application to windings-up that begin before 1996, the reference in paragraph 88(1)(d.1) of the Act, as enacted by subsection (6), to "subsections 13(21.2) and 14(12)" shall be read as a reference to "subsections 13(21.2), 14(12) and 85(5.1)".

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(16) Subsection (7) applies to windings-up that begin after December 20, 1991.

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(17) Subsections (8) and (9) apply to windings-up that begin after June 1995.

44. (1) Paragraph (d) of the definition "société canadienne", in subsection 89(1) of the French version of the Act, is replaced by the following:

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d) d'autre part, chacune des sociétés était une société canadienne immédiatement avant le moment quelconque.

(2) Subsection (1) applies after June 14, 1994.

45. (1) The portion of subsection 93(4) of the Act before paragraph (a) is replaced by the following:

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**Loss on disposition
of shares of foreign
affiliate**

(4) Where a taxpayer resident in Canada or a foreign affiliate of the taxpayer (in this subsection referred to as the "vendor") has acquired shares of a foreign affiliate of the taxpayer (in this subsection referred to as the "acquired affiliate") on the disposition of shares of any other foreign affiliate of the taxpayer (other than a disposition to which subsection 40(3.4) applies),

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(2) Subject to section 156, subsection (1) applies to dispositions of property that occur after April 26, 1995.

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46. (1) The description of A in the definition "designated cost" in subsection 94.1(2) of the Act is replaced by the following:

A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraphs 53(1)(m) and (q), subparagraph 53(2)(c)(i.3), paragraphs 53(2)(g) and (g.1) and section 143.2),

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(2) The description of D in the definition "designated cost" in subsection 94.1(2) of the Act is replaced by the following:

D is

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(a) where the taxpayer has held or has had the interest in the property since the end of 1984, the amount, if any, by which the fair market value of the property at the end of 1984 exceeds the cost amount to the taxpayer of the property at the end of 1984, or

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(b) in any other case, the total of

(i) the amount, if any, by which the fair market value of the property at the particular time the taxpayer acquired the property exceeds the cost amount to the taxpayer of the property at the particular time, and

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(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount that would have been included in respect of the property because of this section in computing the taxpayer's income for a taxation year that began before Announcement Date if the cost to the taxpayer of the property were equal to the fair market value of the property at the particular time

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exceeds

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(B) the total of all amounts each of which is an amount that was included in respect of the property because of this section in computing the taxpayer's income for a taxation year that began before Announcement Date,

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(3) Subsection (1) applies after September 26, 1994, except that the description of A in the definition "designated cost" in subsection 94.1(2) of the Act, as enacted by subsection (1), as it applies to taxation years that end on or before April 26, 1995 shall be read as follows:

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A is the cost amount to the taxpayer of the property at that time (determined without reference to paragraph 53(1)(m), subparagraph 53(2)(c)(i.3) and section 143.2),

(4) Subsection (2) applies to taxation years that begin after Announcement Date.

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47. (1) Paragraph (a) of the definition "bien exclu" in subsection 95(1) of the French version of the Act, is replaced by the following:

a) soit qu'elle utilise ou détient principalement en vue de tirer un revenu provenant d'une entreprise exploitée activement;

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(2) The description of C in the definition "foreign accrual property income" in subsection 95(1) of the Act is amended by striking out the word "and" at the end of paragraph (a) and by adding the following after paragraph (b):

(c) the words "other than a controlled foreign affiliate of the taxpayer or a prescribed non-resident entity" in paragraph 94.1(1)(a) were replaced by the words "other than a prescribed non-resident entity or a controlled foreign affiliate of a person resident in Canada of whom the taxpayer is a controlled foreign affiliate", and

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(d) the words "other than a capital gain" in paragraph 94.1(1)(g) were replaced by the words "other than any income that would not be included in the taxpayer's foreign accrual property income for the year if the value of C in the definition "foreign accrual property income" in subsection 95(1) were nil and other than a capital gain", 5

(3) The definition "lending of money" in subsection 95(1) of the Act is amended by adding the following after paragraph (d):

and for the purpose of this definition, the definition "lending asset" in subsection 248(1) shall be read without the words "but does not include a prescribed security"; 10

(4) Subsection 95(1) of the Act is amended by adding the following in alphabetical order:

"trust company"
« *société de fiducie* » 15

"trust company" includes a corporation that is resident in Canada and that is a "loan company" as defined in subsection 2(1) of the *Canadian Payments Association Act*.

(5) Subparagraph 95(2)(g.1)(ii) of the Act is replaced by the following: 20

(ii) without reference to subsections 80(3) to (12), (15) and 80.01(5) to (11) and sections 80.02 to 80.04;

(6) Subsection (2) applies to taxation years that end after November 1991, except that paragraph (d) of the description of C in the definition "foreign accrual property income" in subsection 95(1) of the Act, as enacted by subsection (2), does not apply to taxation years that began before Announcement Date. 25

(7) Subsections (3) and (4) apply to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there was a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, subsections (3) and (4) apply to taxation years of the foreign affiliate that end after 1994 unless 30

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or 35

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time at which that taxation year would have begun if the change had not occurred.

(8) Subsection (5) applies to taxation years that end after February 21, 1994.

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48. (1) Paragraph 96(2.2)(c) of the Act is replaced by the following:

(c) all amounts each of which is an amount owing at that time to the partnership, or to a person or partnership not dealing at arm's length with the partnership, by the taxpayer or by a person or partnership not dealing at arm's length with the taxpayer, other than any amount deducted under subparagraph 53(2)(c)(i.3) in computing the adjusted cost base, or under section 143.2 in computing the cost, to the taxpayer of the taxpayer's partnership interest at that time, and

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(2) The portion of paragraph 96(2.2)(d) of the Act before subparagraph (i) is replaced by the following:

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(d) any amount or benefit that the taxpayer or a person not dealing at arm's length with the taxpayer is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain, whether by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, loan or any other form of indebtedness, or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain because the taxpayer is a member of the partnership or holds or disposes of an interest in the partnership, except to the extent that the amount or benefit is included in the determination of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer, or the entitlement arises

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(3) Subparagraphs 96(2.2)(d)(iv) and (v) of the Act are repealed.

(4) The portion of subsection 96(2.2) of the Act after paragraph (d) is replaced by the following:

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and, for the purposes of this subsection,

(e) where the amount or benefit to which the taxpayer or the person is entitled at any time is provided by way of an agreement or other arrangement under which the taxpayer or the person has a right, either immediately or in the future and either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire other property in exchange for all or any part of the partnership interest, for greater certainty the amount or benefit to which the taxpayer or the person is entitled under the agreement or arrangement is considered to be not less than the fair market value of that other property at that time, and

(f) where the amount or benefit to which the taxpayer or the person is entitled at any time is provided by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer or the person, for greater certainty the amount or benefit to which the taxpayer or the person is entitled under the guarantee or indemnity at any particular time is considered to be not less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

(5) Subsection 96(2.4) of the Act is replaced by the following:

Limited Partner

(2.4) For the purposes of this section and sections 111 and 127, a taxpayer who is a member of a partnership at a particular time is a limited partner of that partnership at that time if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and if, at that time or within 3 years after that time,

(a) by operation of any law governing the partnership arrangement, the liability of the member as a member of the partnership is limited;

(b) the member or a person not dealing at arm's length with the member is entitled, either immediately or in the future and either absolutely or contingently, to receive an amount or to obtain a benefit that would be described in paragraph (2.2)(d) if that paragraph were read without reference to subparagraphs (ii) and (vi);

(c) one of the reasons for the existence of the member who owns the interest

(i) can reasonably be considered to be to limit the liability of any person with respect to that interest, and

(ii) cannot reasonably be considered to be to permit any person who has an interest in the member to carry on that person's business (other than an investment business) in the most effective manner; or 5

(d) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement can reasonably be considered to be to attempt to avoid the application of this subsection to the member. 10

(6) The portion of subsection 96(3) of the Act before paragraph (a) is replaced by the following:

**Agreement or
election of
partnership
members** 15

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsection 97(2) that, but for this subsection, would be a valid agreement, designation or election, 20 25

(7) Subsections (1) and (2) apply after November 1994.

(8) Subsection (3) applies to partnership interests acquired by a taxpayer after April 26, 1995, other than where

(a) the interest in the partnership is acquired by the taxpayer pursuant to the terms of an agreement in writing entered into by the taxpayer before April 27, 1995, or the interest was acquired by the taxpayer 30

(i) before 1996 where

(A) all or substantially all of the property of the partnership is

(I) a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act, or

(II) an interest in one or more partnerships all or substantially all of the property of which is a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act, 5

(B) the principal photography of the production began before 1996, or, in the case of a production that is a television series, the principal photography of one episode of the series began before 1996, and 10

(C) the principal photography of the production was completed before March 1996,

(ii) before 1996 where it can reasonably be considered that the funds raised by the partnership through the issue of the interest were used by the partnership to acquire before 1996 property included in Class 24, 27 or 34 in Schedule II to the *Income Tax Regulations* and the property was 15

(A) acquired pursuant to an agreement in writing entered into by the partnership before April 27, 1995, or 20

(B) under construction by or on behalf of the partnership on April 26, 1995,

(iii) before July 1995 pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or 25 30

(iv) before July 1995 pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

- (A) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,
- (B) the memorandum was distributed before April 27, 1995,
- (C) solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995, 5
- (D) the sale of the securities was substantially in accordance with the memorandum, and
- (E) the funds were spent before 1996 in accordance with the memorandum; and 10
- (b) the following conditions are met:
- (i) in the case of an interest
- (A) acquired by the taxpayer pursuant to the terms of an agreement in writing entered into by the taxpayer before April 27, 1995, or 15
- (B) to which subparagraph (a)(iii) or (iv) applies
- that is a tax shelter for which section 237.1 of the Act requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and 20
- (ii) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest may be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.
- (9) Subsection (4) applies to partnership interests acquired by a taxpayer after April 26, 1995, except that it does not apply where 25
- (a) the interest was acquired by the taxpayer
- (i) pursuant to the terms of an agreement in writing entered into by the taxpayer before April 27, 1995,
- (ii) before July 1995 pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required 30

by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

(iii) before July 1995 pursuant to the terms of an offering memorandum distributed as part of an offering of securities where 5

(A) the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering,

(B) the memorandum was distributed before April 27, 1995, 10

(C) solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995,

(D) the sale of the securities was substantially in accordance with the memorandum, and 15

(E) the funds were spent before 1996 in accordance with the memorandum; and

(b) the following conditions are met:

(i) in the case of an interest that is a tax shelter for which section 237.1 of the Act requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and 20

(ii) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act. 25

(10) Subsection (5) applies to fiscal periods that end after November 1994.

(11) Subsection (6) applies to fiscal periods that end after December 2, 1992, except that with respect to fiscal periods that ended after that day and before February 22, 1994, the portion of subsection 96(3) of the Act enacted by subsection (6) shall be read as follows: 30

(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 97(2) that, but for this subsection, would be a valid election, 5

49. (1) The portion of subsection 97(2) of the Act before paragraph (a) is replaced by the following: 10

**Rules where election
by partners**

(2) Notwithstanding any other provision of this Act, other than subsection 13(21.2), where a taxpayer at any time disposes of any property that is a capital property, Canadian resource property, foreign resource property, eligible capital property or inventory of the taxpayer to a partnership that immediately after that time is a Canadian partnership of which the taxpayer is a member, if the taxpayer and all the other members of the partnership jointly so elect in prescribed form within the time referred to in subsection 96(4), 15 20

(2) Subsections 97(3) and (3.1) of the Act are repealed.

(3) Subject to section 156, subsections (1) and (2) apply to any dispositions of property that occur after April 26, 1995.

50. (1) Paragraph 98.1(1)(a) of the Act is replaced by the following: 25

(a) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time at which the taxpayer ceased to be a member of the partnership are satisfied in full, that interest (in this section referred to as a "residual interest") is, subject to sections 70, 110.6 and 128.1 but notwithstanding any other section of this Act, deemed not to have been disposed of by the taxpayer and to continue to be an interest in the partnership; 30 35

(2) Subsection (1) applies to the 1994 and subsequent taxation years.

51. (1) Subsection 100(4) of the Act is replaced by the following:

Loss re interest in partnership

(4) Notwithstanding paragraph 39(1)(b), the capital loss of a taxpayer from the disposition at any time of an interest in a partnership is deemed to be the amount of the loss otherwise determined minus the total of all amounts each of which is the amount by which the taxpayer's share of the partnership's loss, in respect of a share of the capital stock of a corporation that was property of a particular partnership at that time, would have been reduced under subsection 112(3.1) if the fiscal period of every partnership that includes that time had ended immediately before that time and the particular partnership had disposed of the share immediately before the end of that fiscal period for proceeds equal to its fair market value at that time. 5 10

(2) Subsection (1) applies to dispositions that occur after April 26, 1995. 15

52. (1) Subparagraph 104(4)(a)(i.1) of the Act is replaced by the following:

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(b) or (d) or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust, or 20

(2) Subsection 104(6) of the Act is amended by striking out the word "and" at the end of paragraph (a.1) and by adding the following after paragraph (a.1): 25

(a.2) where the taxable income of the trust for the year is subject to tax under this Part because of paragraph 146(4)(c) or subsection 146.3(3.1), such part of the amount that, but for this subsection, would be the income of the trust for the year as was paid in the year to a beneficiary; and 30

(3) Section 104 of the Act is amended by adding the following after subsection (14):

Late, amended or revoked election

(14.01) A trust and a preferred beneficiary under the trust may jointly make an election, or amend or revoke an election made, under subsection (14) where the election, amendment or revocation 35

(a) is made solely because of an election or revocation to which subsection 110.6(25), (26) or (27) applies; and

(b) is filed in prescribed manner with the Minister when the election or revocation referred to in paragraph (a) is filed.

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**Late, amended or
revoked election**

(14.02) Where a trust and a preferred beneficiary under the trust have made an election or amended or revoked an election in accordance with subsection (14.01),

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(a) the election or the amended election, as the case may be, is deemed to have been made within the time prescribed for making an election under subsection (14); and

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(b) the election that was revoked is deemed, otherwise than for the purposes of this subsection and subsection (14.01), never to have been made.

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(4) Subsection 104(20) of the Act is replaced by the following:

**Designation in
respect of non-
taxable dividends**

(20) The portion of the total of all amounts, each of which is the amount of a dividend (other than a taxable dividend) paid on a share of the capital stock of a corporation resident in Canada to a trust during a taxation year of the trust throughout which the trust was resident in Canada, that can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of an amount that became payable in the year to a particular beneficiary under the trust shall be designated by the trust in respect of the particular beneficiary in the return of the trust's income for the year for the purposes of subclause 53(2)(h)(i.1)(B)(II), paragraphs 107(1)(c) and (d) and subsections 112(3.1), (3.2), (3.31), (3.32) and (4.2).

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(5) Section 104 of the Act is amended by adding the following after subsection (21):

**Late, amended or
revoked designation**

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(21.01) A trust that has filed its return of income for its taxation year that includes February 22, 1994 may subsequently designate an amount

under subsection (21), or amend or revoke a designation made under that subsection where the designation, amendment or revocation

(a) is made solely because of an increase or decrease in the net taxable capital gains of the trust for the year that results from an election or revocation to which subsection 110.6(25), (26) or (27) applies; and 5

(b) is filed with the Minister, with an amended return of income for the year, when the election or revocation referred to in paragraph (a) is filed with the Minister. 10

**Late, amended or
revoked designation**

(21.02) A designation, amendment or revocation under subsection (21.01) that affects an amount determined in respect of a beneficiary under subsection (21.2) may be made only where the trust 15

(a) designates an amount, or amends or revokes a designation made, under subsection (21.2) in respect of the beneficiary; and 20

(b) files the designation, amendment or revocation referred to in paragraph (a) with the Minister when required by paragraph (21.01)(b). 25

**Late, amended or
revoked designation**

(21.03) Where a trust designates an amount, or amends or revokes a designation, under subsection (21) or (21.2) in accordance with subsection (21.01), 30

(a) the designation or amended designation, as the case may be, is deemed to have been made in the trust's return of income for the trust's taxation year that includes February 22, 1994; and 35

(b) the designation that was revoked is deemed, other than for the purposes of this subsection and subsections (21.01) and (21.02), never to have been made. 40

(6) Subsection (1) applies to acquisitions and dispositions that occur after 1992.

(7) Subsection (2) applies to the 1996 and subsequent taxation years.

(8) Subsections (3) and (5) apply to taxation years that include February 22, 1994.

(9) Subsection (4) applies after April 26, 1995. 5

53. (1) The portion of subsection 106(2) of the Act before paragraph (a) is replaced by the following:

**Disposition by
taxpayer of income
interest** 10

(2) Where in a taxation year a taxpayer disposes of an income interest in a trust (otherwise than in a qualifying exchange as defined in subsection 132.2(2)),

(2) Subsection 106(3) of the Act is replaced by the following:

**Proceeds of
disposition of income
interest** 15

(3) For greater certainty, where at any time any property of a trust has been distributed by the trust to a taxpayer who was a beneficiary under the trust in satisfaction of all or any part of the taxpayer's income interest in the trust (otherwise than in a qualifying exchange as defined in subsection 132.2(2)), the trust is deemed to have disposed of the property for proceeds of disposition equal to the fair market value of the property at that time. 20

(3) Subsections (1) and (2) apply after June 1994. 25

54. (1) Subsection 107(1) of the Act is amended by striking out the word "and" at the end of paragraph (b) and by replacing paragraph (c) with the following:

(c) the taxpayer's capital loss from the disposition is deemed to be the amount, if any, by which the amount of the taxpayer's loss otherwise determined exceeds the amount, if any, by which 30

(i) the total of all amounts each of which was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and 35

- (A) where the taxpayer is a corporation,
- (I) was a taxable dividend designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or 5
- (II) was an amount designated under subsection 104(20) by the trust in respect of the taxpayer, 10
- (B) where the taxpayer is another trust, was an amount designated under subsection 104(19) or (20) by the trust in respect of the taxpayer, and 15
- (C) where the taxpayer is not a corporation, trust or partnership, was an amount designated under subsection 104(20) by the trust in respect of the taxpayer
- exceeds 20
- (ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the taxpayer's capital loss otherwise determined from a previous disposition of an interest in the trust, and 25
- (d) where the taxpayer is a partnership and a person (other than a partnership) is a member of the partnership, the amount of the person's share of any loss of the partnership from the disposition is deemed to be the amount, if any, by which the person's loss otherwise determined exceeds the amount, if any, by which 30
- (i) the total of all amounts each of which is a dividend that was received or would, but for subsection 104(19), have been received by the trust on a share of the capital stock of a corporation before the disposition (and, where the trust is a unit trust, after 1987) and 35
- (A) where the person is a corporation,
- (I) was a taxable dividend that was designated under subsection 104(19) by the trust in respect of the taxpayer, to the extent of the amount of the dividend that was deductible under section 112 or subsection 115(1) or 138(6) in computing the person's taxable income or taxable income earned in Canada for any taxation year, or 40

(II) was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person,

(B) where the person is an individual other than a trust, was a dividend designated under subsection 104(20) by the trust in respect of the taxpayer and was an amount received by the person, and 5

(C) where the person is another trust, was a dividend designated under subsection 104(19) or (20) by the trust in respect of the taxpayer and was an amount received by the person (or that would have been received by the person if this Act were read without reference to subsection 104(19)). 10

exceeds 15

(ii) the portion of the total determined under subparagraph (i) that can reasonably be considered to have resulted in a reduction, under this paragraph, of the person's capital loss otherwise determined from a previous disposition of an interest in the trust, 20

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

**Cost of capital
interest in a trust**

(1.1) For the purpose of subsection (1) and notwithstanding paragraph 69(1)(c), the cost to a taxpayer of a capital interest in a trust, other than an interest acquired by the taxpayer from a person who was the beneficiary in respect of the interest immediately before its acquisition by the taxpayer or an interest issued to the taxpayer for consideration paid by the taxpayer that is equal to the fair market value of the interest at the time of issuance, is deemed to be 25 30

(a) where the taxpayer elects under subsection 110.6(19) in respect of the interest and the trust does not elect under that subsection in respect of any property of the trust, the taxpayer's cost of the interest determined under paragraph 110.6(19)(a); and 35

(b) in any other case, nil.

(3) The portion of paragraph 107(2)(b) of the Act before subparagraph (i) is replaced by the following:

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

(4) The portion of subsection 107(2.1) of the Act before paragraph (a) is replaced by the following: 5

Other distributions

(2.1) Where at any time any property of a trust is distributed by the trust to a beneficiary under the trust in satisfaction of all or any part of the beneficiary's capital interest in the trust or in satisfaction of a right described in subsection 52(6), and subsection (2) does not apply in respect of the distribution, notwithstanding any other provision of this Act other than section 132.2, 10

(5) Section 107 of the Act is amended by adding the following after subsection (2.1): 15

Flow-through entity

(2.2) Where at any time before 2005, a beneficiary under a trust described in paragraph (h), (i) or (j) of the definition "flow-through entity" in subsection 39.1(1) received a distribution of property from the trust in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes that time an election in respect of the property in prescribed form, there shall be included in the cost to the beneficiary of a particular property (other than money) received by the beneficiary as part of the distribution of property the least of 20 25

(a) the amount, if any, by which the beneficiary's exempt capital gains balance (as defined in subsection 39.1(1)) in respect of the trust for the beneficiary's taxation year that includes that time exceeds the total of all amounts each of which is 30

(i) an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust, 35

(ii) 4/3 of an amount by which a taxable capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust, or

(iii) an amount included in the cost to the beneficiary of another property received by the beneficiary at or before that time in the year because of this subsection;

(b) the amount by which the fair market value of the particular property at that time exceeds the adjusted cost base to the trust of the particular property immediately before that time; and 5

(c) the amount designated in respect of the particular property in the election. 10

(6) Paragraph 107(6)(b) of the Act is replaced by the following:

(b) neither the vendor nor a person that would, if section 251.1 were read without reference to the definition "controlled" in subsection 251.1(3), be affiliated with the vendor had a capital interest in the trust. 15

(7) Subsection (1) applies to dispositions that occur after April 26, 1995.

(8) Subsection (2) applies to the 1994 and subsequent taxation years.

(9) Subsections (3) and (5) apply to the 1994 and subsequent taxation years, and a prescribed form filed under subsection 107(2.2) of the Act, as enacted by subsection (5), before the end of the sixth month after the month in which this Act is assented to is deemed to be filed on time. 20

(10) Subsection (4) applies after June 1994. 25

(11) Subsection (6) applies after April 26, 1995.

55. (1) The definition "excluded property" in subsection 108(1) of the Act is replaced by the following:

"excluded property"
« *bien exclu* » 30

"excluded property" means a share of the capital stock of a non-resident-owned investment corporation that is not taxable Canadian property;

(2) Paragraph (e.1) of the definition "trust" in subsection 108(1) of the Act is replaced by the following:

(e.1) a cemetery care trust or a trust governed by an eligible funeral arrangement,

(3) Clauses 108(2)(b)(ii)(A) and (B) of the Act are replaced by the following:

(A) the investing of its funds in property (other than real property or an interest in real property), 5

(B) the acquiring, holding, maintaining, improving, leasing or managing of any real property, or interest in real property, that is capital property of the trust, or

(4) Subparagraph 108(2)(b)(iii) of the Act is replaced by the following: 10

(iii) at least 80% of its property consisted of any combination of shares, bonds, mortgages, marketable securities, cash, real property (or interests in real property) situated in Canada or rights to or interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada, 15

(5) Subsection 108(2) of the Act is amended by striking out the word "or" at the end of paragraph (a) and by replacing the portion after subparagraph (b)(v) with the following: 20

and, where the trust would not be a unit trust at the particular time if subparagraph (iii) were read without reference to the words "real property (or interests in real property) situated in Canada", the units of the trust are listed at any time in the year or in the following taxation year on a prescribed stock exchange in Canada, or 25

(c) the fair market value of the property of the trust at the end of 1993 was primarily attributable to real property (or an interest in real property), the trust was a unit trust throughout any calendar year that ended before 1994 and the fair market value of the property of the trust at the particular time is primarily attributable to property described in paragraph (a) or (b) of the definition "qualified investment" in section 204, real property (or an interest in real property) or any combination of those properties. 30

(6) Subsection (1) applies after April 26, 1995. 35

(7) Subsection (2) applies to the 1993 and subsequent taxation years.

(8) Subsections (3) to (5) apply to the 1994 and subsequent taxation years.

56. (1) Paragraph 110.6(2.1)(d) of the Act is replaced by the following: 5

(d) the amount that would be determined in respect of the individual for the year under paragraph 3(b) (other than an amount included in determining the amount in respect of the individual under paragraph (2)(d)) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were qualified small business corporation shares disposed of by the individual after June 17, 1987. 10

(2) Paragraph 110.6(14)(f) of the Act is amended by striking out the word "or" at the end of subparagraph (i) and the word "and" at the end of subparagraph (ii), by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii): 15

(iii) as payment of a stock dividend; and

(3) The portion of subsection 110.6(27) of the Act before paragraph (a) is replaced by the following: 20

Amended election

(27) Subject to subsection (28), an election under subsection (19) in respect of a property or a business is deemed to be amended and the election, as amended, is deemed for the purpose of this section (other than subsection (29)) to have been filed on the election filing date if 25

(4) Subsection 110.6(28) of the Act is replaced by the following:

Election that cannot be revoked or amended

(28) An election under subsection (19) cannot be revoked or amended where the amount designated in the election exceeds 11/10 of 30

(a) if the election is in respect of a property other than an interest in a partnership, the fair market value of the property at the end of February 22, 1994;

(b) if the election is in respect of an interest in a partnership, the greater of \$1 and the fair market value of the property at the end of February 22, 1994; and

(c) if the election is in respect of a business, the greater of \$1 and the fair market value at the end of February 22, 1994 of all the eligible capital property owned at that time by the elector in respect of the business.

(5) Subsection (1) applies to the 1996 and subsequent taxation years.

(6) Subsection (2) applies to dispositions of shares that occur after June 17, 1987.

(7) Subsections (3) and (4) apply to the 1994 and subsequent taxation years.

57. (1) Subsections 112(3) to (4.3) of the Act are replaced by the following:

Loss on share that is capital property

(3) Subject to subsections (5.5) and (5.6), the amount of any loss of a taxpayer (other than a trust) from the disposition of a share that is capital property of the taxpayer (other than a share that is property of a partnership) is deemed to be the amount of the loss determined without reference to this subsection minus,

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and

(ii) the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share; and

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend. 5

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

(3.01) A dividend shall not be included in the total determined under subparagraph (3)(a)(i) or paragraph (3)(b) where the taxpayer establishes that 10

(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and 15

(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition. 20

**Loss on share held
by partnership**

(3.1) Subject to subsections (5.5) and (5.6), where a taxpayer (other than a partnership or a mutual fund trust) is a member of a partnership, the taxpayer's share of any loss of the partnership from the disposition of a share that is held by a particular partnership as capital property is deemed to be that share of the loss determined without reference to this subsection minus, 25 30

(a) where the taxpayer is an individual, the lesser of

(i) the total of all amounts each of which is a dividend received by the taxpayer on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and 35

(ii) that share of the loss determined without reference to this subsection minus all taxable dividends received by the taxpayer on the share; 40

(b) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is 45

(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year,

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(ii) a dividend in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, or

(iii) a life insurance capital dividend; and

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(c) where the taxpayer is a trust, the total of all amounts each of which is

(i) a taxable dividend, or

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(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust.

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

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(3.11) A dividend shall not be included in the total determined under subparagraph (3.1)(a)(i) or paragraph (3.1)(b) or (c) where the taxpayer establishes that

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(a) it was received when the particular partnership, the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

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(b) it was received on a share that the particular partnership held throughout the 365-day period that ended immediately before the disposition.

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**Loss on share held
by trust**

(3.2) Subject to subsections (5.5) and (5.6), the amount of any loss of a trust (other than a mutual fund trust) from the disposition of a share of the capital stock of a corporation that is capital property of the trust is deemed to be the amount of the loss determined without reference to this subsection minus the total of

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- (a) the amount, if any, by which the lesser of
- (i) the total of all amounts each of which is a dividend received by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and 5
 - (ii) the loss determined without reference to this subsection minus the total of all amounts each of which is the amount of a taxable dividend 10
 - (A) received by the trust on the share,
 - (B) received on the share and designated by the trust in respect of a beneficiary who is an individual (other than a trust), or 15
 - (C) received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that 20
 - (I) it owned the share throughout the 365-day period that ended immediately before the disposition, and
 - (II) the dividend was received while the trust, the beneficiary and persons not dealing 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 corporation from which the dividend was received 25
- exceeds 30
- (iii) where the trust is an individual's estate, the share was acquired as a consequence of the individual's death and the disposition occurs during the trust's first taxation year, 1/4 of the lesser of 35
 - (A) the loss determined without reference to this subsection, and 40
 - (B) the individual's capital gain from the disposition of the share immediately before the individual's death; and
- (b) the total of all amounts each of which is

(i) a taxable dividend, or

(ii) a life insurance capital dividend

received on the share and designated under subsection 104(19) or (20) by the trust in respect of a beneficiary that was a corporation, partnership or trust. 5

**Loss on share held
by trust — special
cases** 10

(3.3) Notwithstanding subsection (3.2), where a trust has at any time acquired a share of the capital stock of a corporation because of subsection 104(4), the amount of any loss of the trust from a disposition after that time is deemed to be the amount of the loss determined without reference to subsection (3.2) and this subsection minus the total of 15

(a) the amount, if any, by which the lesser of 20

(i) the total of all amounts each of which is a dividend received after that time by the trust on the share in respect of which an election was made under subsection 83(2) where subsection 83(2.1) does not deem the dividend to be a taxable dividend, and 25

(ii) the loss determined without reference to subsection (3.2) and this subsection minus the total of all amounts each of which is the amount of a taxable dividend 30

(A) received by the trust on the share after that time,

(B) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary who is an individual (other than a trust), or 35

(C) received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or another trust where the trust establishes that 40

(I) it owned the share throughout the 365-day period that ended immediately before the disposition, and

(II) the dividend was received when the trust, the beneficiary and persons not dealing 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 corporation from which the dividend was received	5
exceeds	
(iii) 1/4 of the lesser of	10
(A) the loss from the disposition, determined without reference to subsection (3.2) and this subsection, and	
(B) the trust's capital gain from the disposition immediately before that time of the share because of subsection 104(4); and	15
(b) the total of all amounts each of which is a taxable dividend received on the share after that time and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust.	20
Loss on share held by trust — excluded dividends	25
(3.31) No dividend received by a trust shall be included under subparagraph (3.2)(a)(i) or (b)(ii) or (3.3)(a)(i) where the trust establishes that the dividend	
(a) was received,	30
(i) in any case where the dividend was designated under subsection 104(19) or (20) by the trust, when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, or	35
(ii) in any other case, when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, and	40
(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.	45

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

(3.32) No taxable dividend received on the share and designated under subsection 104(19) by the trust in respect of a beneficiary that was a corporation, partnership or trust shall be included under paragraph (3.2)(b) or (3.3)(b) where the trust establishes that the dividend

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(a) was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received, and

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(b) was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

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**Loss on share that is
not capital property**

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(4) Subject to subsections (5.5) and (5.6), the amount of any loss of a taxpayer (other than a trust) from the disposition of a share of the capital stock of a corporation that is property of the taxpayer (other than capital property) is deemed to be the amount of the loss determined without reference to this subsection minus,

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(a) where the taxpayer is an individual and the corporation is resident in Canada, the total of all dividends received by the individual on the share;

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(b) where the taxpayer is a partnership, the total of all dividends received by the partnership on the share; and

(c) where the taxpayer is a corporation, the total of all amounts received by the taxpayer on the share each of which is

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(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the taxpayer's taxable income or taxable income earned in Canada for any taxation year, or

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(ii) a dividend (other than a taxable dividend).

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

(4.01) A dividend shall not be included in the total determined under paragraph (4)(a), (b) or (c) where the taxpayer establishes that

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(a) it was received when the taxpayer and persons with whom the taxpayer was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

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(b) it was received on a share that the taxpayer owned throughout the 365-day period that ended immediately before the disposition.

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**Fair market value of
shares held as
inventory**

(4.1) For the purpose of section 10, the fair market value at any time of a share of the capital stock of a corporation is deemed to be equal to the fair market value of the share at that time, plus

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(a) where the shareholder is a corporation, the total of all amounts received by the shareholder on the share before that time each of which is

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(i) a taxable dividend, to the extent of the amount of the dividend that was deductible under this section, section 113 or subsection 115(1) or 138(6) in computing the shareholder's taxable income or taxable income earned in Canada for any taxation year, or

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(ii) a dividend (other than a taxable dividend);

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(b) where the shareholder is a partnership, the total of all amounts each of which is a dividend received by the shareholder on the share before that time; and

(c) where the shareholder is an individual and the corporation is resident in Canada, the total of all amounts each of which is a dividend received by the shareholder on the share before that time (or, where the shareholder is a trust, that would have been so received if this Act were read without reference to subsection 104(19)).

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

(4.11) A dividend shall not be included in the total determined under paragraph (4.1)(a), (b) or (c) where the shareholder establishes that

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(a) it was received when the shareholder and persons with whom the shareholder was not dealing at arm's length did not hold in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

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(b) it was received on a share that the shareholder held throughout the 365-day period that ended at the time referred to in subsection (4.1).

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**Loss on share held
by trust**

(4.2) Subject to subsections (5.5) and (5.6), the amount of any loss of a trust from the disposition of a share that is property (other than capital property) of the trust is deemed to be the amount of the loss determined without reference to this subsection minus

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(a) the total of all amounts each of which is a dividend received by the trust on the share, to the extent that the amount was not designated under subsection 104(20) in respect of a beneficiary of the trust; and

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(b) the total of all amounts each of which is a dividend received on the share that was designated under subsection 104(19) or (20) by the trust in respect of a beneficiary of the trust.

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

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(4.21) A dividend shall not be included in the total determined under paragraph (4.2)(a) where the taxpayer establishes that

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(a) it was received when the trust and persons with whom the trust was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

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

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(4.22) A dividend shall not be included in the total determined under paragraph (4.2)(b) where the taxpayer establishes that

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(a) it was received when the trust, the beneficiary and persons with whom the beneficiary was not dealing at arm's length did not own in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; and

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(b) it was received on a share that the trust owned throughout the 365-day period that ended immediately before the disposition.

(2) Paragraph 112(5.1)(b) of the Act is replaced by the following:

(b) the taxpayer did not hold the share throughout the 365-day period that ended immediately before the disposition; and

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(3) Subparagraph (b)(iv) of the description of B in subsection 112(5.2) of the Act is replaced by the following:

(iv) a dividend (other than a taxable dividend) received by the taxpayer on the share,

(4) Paragraph (b) of the description of C in subsection 112(5.2) of the Act is replaced by the following:

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(b) where the taxpayer is a corporation or trust, a loss of the taxpayer on a deemed disposition of the share before that time was reduced because of subsection (3), (3.2), (4) or (4.2), or

(5) Section 112 of the Act is amended by adding the following after subsection (5.2):

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**s. 5(2) — excluded
dividends**

(5.21) A dividend shall not be included in the total determined under paragraph (b) of the description of B in subsection (5.2) unless

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(a) the dividend was received when the taxpayer and persons with whom the taxpayer did not deal at arm's length held in total more than 5% of the issued shares of any class of the capital stock of the corporation from which the dividend was received; or

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(b) the share was not held by the taxpayer throughout the 365-day period that ended immediately before the disposition.

(6) The portion of subsection 112(5.5) of the Act before paragraph (a) is replaced by the following:

Stop-loss rules not applicable

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(5.5) Subsections (3) to (4) and (4.2) do not apply to the disposition of a share by a taxpayer in a taxation year that begins after October 1994 where

(7) The portion of subsection 112(5.6) of the Act before paragraph (a) is replaced by the following:

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Stop-loss rules restricted

(5.6) In determining whether any of subsections (3) to (4) and (4.2) apply to reduce a loss of a taxpayer from the disposition of a share, this Act shall be read without reference to paragraphs (3.01)(b) and (3.11)(b), subclauses (3.2)(a)(ii)(C)(I) and (3.3)(a)(ii)(C)(I), paragraphs (3.31)(b), (3.32)(b), (4.01)(b), (4.21)(b) and (4.22)(b) where

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(8) Paragraph 112(6)(a) of the Act is replaced by the following:

(a) "dividend" and "taxable dividend" do not include a capital gains dividend (within the meaning assigned by subsection 131(1)) or any dividend received by a taxpayer on which the taxpayer was required to pay tax under Part VII of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on March 31, 1977;

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(9) Subsection 112(7) of the Act is replaced by the following:

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Rules where shares exchanged

(7) Where a share (in this subsection referred to as the "new share") has been acquired in exchange for another share (in this subsection referred to as the "old share") in a transaction to which section 51, 86 or 87 applies, for the purposes of the application of any of

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subsections (3) to (3.32) in respect of a disposition of the new share, the new share is deemed to be the same share as the old share, except that

(a) any dividend received on the old share is deemed for those purposes to have been received on the new share only to the extent of the proportion of the dividend that 5

(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of 10

(ii) the shareholder's adjusted cost base of all new shares immediately after the exchange acquired in exchange for the old share; and

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(b) the amount, if any, by which a loss from the disposition of the new share is reduced because of the application of this subsection shall not exceed the proportion of the shareholder's adjusted cost base of the old share immediately before the exchange that

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(i) the shareholder's adjusted cost base of the new share immediately after the exchange

is of 25

(ii) the shareholder's adjusted cost base of all new shares, immediately after the exchange, acquired in exchange for the old share.

(10) Subsections 112(3) to (3.32) of the Act, as enacted by subsection (1), apply to dispositions that occur after April 26, 1995, other than a disposition of a share of the capital stock of a particular corporation owned by a taxpayer on April 26, 1995 30

(a) that occurs pursuant to an agreement in writing made before April 27, 1995;

(b) that is made to the particular corporation pursuant to an agreement in writing made before 1997, where 35

(i) a corporation was, on April 26, 1995, a beneficiary of a life insurance policy that insured the life of the taxpayer, the taxpayer's spouse or, where the taxpayer is a trust described in paragraph 104(4)(a) or (a.1) of the Act in respect of a spouse, the spouse, and 40

(ii) it was reasonable to conclude on April 26, 1995 that the proceeds of the life insurance policy were intended to be used directly or indirectly to fund, in whole or in part, the redemption, acquisition or cancellation of the share;

(c) where the taxpayer dies after April 25, 1995, that is made by the taxpayer's estate before 1997; 5

(d) where the taxpayer is an estate the first taxation year of which ended after April 25, 1995, that is made by the estate before 1997; or

(e) where the taxpayer is a trust described in paragraph 104(4)(a) or (a.1) of the Act in respect of a spouse, that is made by the trust after the spouse's death and before 1997. 10

(11) For the purpose of subsection (10), a share acquired in exchange for another share in a transaction to which section 51, 86 or 87 of the Act applies is deemed to be the same share as the other share. 15

(12) Subsections 112(4), (4.01) and (4.2) to (4.22) of the Act, as enacted by subsection (1), and subsections (2) to (7) and (9) apply to dispositions that occur after April 26, 1995.

(13) Subsections 112(4.1) and (4.11) of the Act, as enacted by subsection (1), apply to taxation years that end after April 26, 1995. 20

(14) Subsection (8) applies after April 26, 1995.

58. (1) Paragraph 115(1)(b) of the Act is replaced by the following:

(b) the only taxable capital gains and allowable capital losses referred to in paragraph 3(b) were taxable capital gains and allowable capital losses from dispositions at any time in the year of property or an interest therein (in this Act referred to as "taxable Canadian property") that was 25

(i) real property situated in Canada, 30

(ii) a capital property used by the non-resident person in carrying on a business in Canada, other than

- (A) property used in carrying on an insurance business, and
- (B) ships and aircraft used principally in international traffic and personal property pertaining to their operation if the country in which the non-resident person is resident grants substantially similar relief for the year to persons resident in Canada, 5
- (iii) where the non-resident person is an insurer, any capital property that is property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business in Canada, 10
- (iv) a share of the capital stock of a corporation resident in Canada (other than a mutual fund corporation) that is not listed on a prescribed stock exchange,
- (v) a share of the capital stock of a non-resident corporation that is not listed on a prescribed stock exchange where, at any particular time during the 12-month period that ends at that time, 15
- (A) the fair market value of all of the properties of the corporation each of which was
- (I) a taxable Canadian property, 20
- (II) a Canadian resource property,
- (III) a timber resource property, 25
- (IV) an income interest in a trust resident in Canada, or
- (V) an interest in or option in respect of a property described in any of subclauses (II) to (IV), whether or not the property exists, 30
- was more than 50% of the fair market value of all of its properties, and
- (B) more than 50% of the fair market value of the share is derived directly or indirectly from one or any combination of 35
- (I) real property situated in Canada,

(II) Canadian resource properties, and

(III) timber resource properties,

(vi) a share otherwise described in subparagraph (iv) or (v) that is listed on a prescribed stock exchange, or a share of the capital stock of a mutual fund corporation, if, at any time during the 5-year period that ends at that time, the non-resident person, persons with whom the non-resident person did not deal at arm's length, or the non-resident person together with all such persons owned 25% or more of the issued shares of any class of the capital stock of the corporation that issued the share,

(vii) an interest in a partnership where, at any particular time during the 12-month period that ends at that time, the fair market value of all of the properties of the partnership each of which was

(A) a taxable Canadian property,

(B) a Canadian resource property,

(C) a timber resource property,

(D) an income interest in a trust resident in Canada, or

(E) an interest in or option in respect of a property described in clauses (B) to (D), whether or not that property exists

was more than 50% of the fair market value of all of its properties,

(viii) a capital interest in a trust (other than a unit trust) resident in Canada,

(ix) a unit of a unit trust (other than a mutual fund trust) resident in Canada,

(x) a unit of a mutual fund trust if, at any particular time during the 5-year period that ends at that time, not less than 25% of the issued units of the trust belonged to the non-resident person, to persons with whom the non-resident person did not deal at arm's length, or to the non-resident person and persons with whom the non-resident person did not deal at arm's length,

(xi) an interest in a non-resident trust where, at any particular time during the 12-month period that ends at that time,

(A) the fair market value of all of the properties of the trust each of which was 5

(I) a taxable Canadian property,

(II) a Canadian resource property,

10

(III) a timber resource property,

(IV) an income interest in a trust resident in Canada, or

(V) an interest in or option in respect of a property described in subclauses (II) to (IV), whether or not the property exists 15

was more than 50% of the fair market value of all of its properties, and 20

(B) more than 50% of the fair market value of the interest is derived directly or indirectly from one or any combination of

(I) real property situated in Canada,

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(II) Canadian resource properties, and

(III) timber resource properties,

(xii) a property deemed by any provision of this Act to be taxable Canadian property, or 30

(xiii) an interest in or option in respect of a taxable Canadian property, whether or not that property exists,

but does not include a share of the capital stock of a non-resident-owned investment corporation if, on the first day of the year, the corporation owns neither taxable Canadian property nor a Canadian resource property, a timber resource property nor an income interest in a trust resident in Canada, and 35

(2) Subsection 115(3) of the Act is repealed.

(3) Subsections (1) and (2) apply after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

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(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

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59. (1) The portion of subsection 116(1) of the Act before paragraph (a) is replaced by the following:

Disposition by non-resident person of certain property

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116. (1) Where a non-resident person proposes to dispose of any property that would, if the non-resident person disposed of it, be taxable Canadian property of the person (other than property described in subsection (5.2) and excluded property) the non-resident person may, at any time before the disposition, send to the Minister a notice setting out

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(2) The portion of subsection 116(3) of the Act before paragraph (a) is replaced by the following:

Notice to Minister

(3) Every non-resident person who in a taxation year disposes of any taxable Canadian property of that person (other than property described in subsection (5.2) and excluded property) shall, not later than 10 days after the disposition, send to the Minister, by registered mail, a notice setting out

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(3) The portion of subsection 116(5.2) of the Act before paragraph (a) is replaced by the following:

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Certificates for dispositions

(5.2) Where a non-resident person has, in respect of a disposition or proposed disposition to a taxpayer in a taxation year of property (other than excluded property) that is a life insurance policy in Canada, a Canadian resource property, a property (other than capital property) that

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is real property situated in Canada, a timber resource property, depreciable property that is or would, if the non-resident person disposed of it, be a taxable Canadian property of the non-resident person or any interest in, or option in respect of, a property to which this subsection applies (whether or not that property exists),

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(4) Paragraph 116(6)(b) of the Act is replaced by the following:

(b) a share of a class of the capital stock of a corporation that is listed on a prescribed stock exchange, or an interest in the share;

(5) Subsections (1) and (2) apply after April 26, 1995.

(6) Subsection (3) applies to dispositions that occur after 1996.

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(7) Subsection (4) applies after April 26, 1995, except in respect of the disposition of a property before 1996

(a) to a person who was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day (and, for the purpose of this paragraph, a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act); or

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(b) pursuant to a prospectus or similar document filed with the relevant securities authority before April 27, 1995.

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60. (1) The description of B in subsection 118(2) of the Act is replaced by the following:

B is 15% of the amount, if any, by which the individual's income for the year would exceed \$25,921 if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income.

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(2) Subsection (1) applies to the 1994 and subsequent taxation years, except that, notwithstanding section 117.1 of the Act, the value of B in subsection 118(2) of the Act shall, for the 1994 taxation year, be determined as the lesser of \$1,741 and 7.5% of the amount, if any, by which the individual's income for the year would exceed \$25,921 if no amount were included in respect of a gain from a disposition of property to which section 79 of the Act applies in computing that income.

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61. (1) The portion of subsection 118.4(2) of the Act before paragraph (a) is replaced by the following:

**References to
"medical
practitioners", etc.**

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(2) For the purposes of sections 63, 118.2 and 118.3, a reference to a medical doctor, medical practitioner, dentist, pharmacist, nurse or optometrist is a reference to a person authorized to practice as such,

(2) Subsection (1) applies to taxation years that end after November 1991.

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62. (1) Paragraph 118.5(1)(a) of the Act is amended by striking out the word "or" at the end of subparagraph (iii.1), by adding the word "or" at the end of subparagraph (iv) and by adding the following after subparagraph (iv):

(v) are paid on the individual's behalf, or are fees in respect of which the individual is or was entitled to receive a reimbursement, under a program of Her Majesty in right of Canada designed to assist athletes, where the payment or reimbursement is not included in computing the individual's income;

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(2) Subsection (1) applies to the 1994 and subsequent taxation years.

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63. (1) The Act is amended by adding the following after section 118.94:

**Credits in year of
bankruptcy**

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118.95 Notwithstanding sections 118 to 118.9, for the purpose of computing an individual's tax payable under this Part for a taxation year ending in a calendar year in which the individual becomes bankrupt, the individual shall be allowed only

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(a) such of the deductions as the individual is entitled to under subsection 118(3) and sections 118.1, 118.2, 118.5, 118.6 and 118.7 as can reasonably be considered wholly applicable to the taxation year, and

(b) such part of the deductions as the individual is entitled to under sections 118 (other than subsection 118(3)), 118.3, 118.8 and 118.9 as can reasonably be considered applicable to the taxation year,

except that the total of the amounts so deductible for all taxation years of the individual in the calendar year under any of those provisions shall not exceed the amount that would have been deductible under that provision in respect of the calendar year if the individual had not become bankrupt. 5

(2) Subsection (1) applies to bankruptcies that occur after April 26, 1995. 10

64. (1) Paragraph 120.2(4)(a) of the Act is replaced by the following:

(a) a return of income of an individual filed under subsection 70(2), paragraph 104(23)(d) or 128(2)(f) or subsection 150(4); or 15

(2) Subsection (1) applies to taxation years that begin after April 26, 1995.

65. Subparagraph 122.2(1)(b)(i) of the Act, as it reads in its application to the 1992 taxation year, is replaced by the following:

(i) the total of all amounts each of which would be the income for the year of the individual or a supporting person of an eligible child of the individual for the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income 20

66. (1) The definition "adjusted income" in subsection 122.5(1) of the Act is replaced by the following: 25

"adjusted income"
« *revenu rajusté* »

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of 30

(a) the individual, or

(b) the individual's qualified relation for the year

if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income;

(2) The portion of the definition "eligible individual" in subsection 122.5(1) of the Act before paragraph (a) is replaced by the following:

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"eligible individual"
 « *particulier*
admissible »

"eligible individual" for a taxation year means an individual (other than a trust) who, at the end of December 31 of that year, is resident in Canada and is

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(3) Section 122.5 of the Act is amended by adding the following after subsection (6):

Effect of bankruptcy

(7) For the purpose of this section, where in a taxation year an individual becomes bankrupt,

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(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

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(b) the amount determined for the year under clause (3)(e)(ii)(B) shall include the amount determined for the purpose of paragraph (c) of the description of B in subsection 118(1) for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

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(4) Subsection (1) applies to the 1992 and subsequent taxation years.

(5) Subsection (2) applies after April 26, 1995.

(6) Subsection (3) applies to bankruptcies that occur after April 26, 1995.

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67. (1) The definition "adjusted income" in subsection 122.6 of the Act is replaced by the following:

"adjusted income"
 « *revenu modifié* »

"adjusted income" of an individual for a taxation year means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse at the end of the year if no amount were included in respect of a gain from a disposition of property to which section 79 applies in computing that income; 5

(2) Paragraphs (g) and (h) of the definition "eligible individual" in section 122.6 of the Act are replaced by the following: 10

(g) the presumption referred to in paragraph (f) does not apply in prescribed circumstances, and

(h) prescribed factors shall be considered in determining what constitutes care and upbringing;

(3) Subsection (1) applies in determining the adjusted income of an individual for the 1992 and subsequent taxation years. 15

(4) Subsection (2) applies after August 27, 1995.

68. (1) Section 122.61 of the Act is amended by adding the following after subsection (3):

Effect of bankruptcy 20

(3.1) For the purposes of this subdivision, where in a taxation year an individual becomes bankrupt,

(a) the individual's earned income for the year shall include the individual's earned income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; 25

(b) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and 30

(c) the total of all amounts deducted under section 63 in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy. 35

(2) Subsection (1) applies to bankruptcies that occur after April 26, 1995.

69. (1) Subsections 122.62(1) and (2) of the Act are replaced by the following:

Eligible individuals

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122.62 (1) For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister a notice in prescribed form containing prescribed information.

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Extension for notices

(2) The Minister may at any time extend the time for filing a notice under subsection (1).

(2) Subsections 122.62(4) to (9) of the Act are replaced by the following:

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Person ceasing to be an eligible individual

(4) Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall notify the Minister of that fact before the end of the first month following the particular month.

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Death of cohabiting spouse

(5) Where

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(a) before the end of a particular month the cohabiting spouse of an eligible individual in respect of a qualified dependant dies, and

(b) the individual so elects, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister,

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for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (6) or (7),

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(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

**Separation from
cohabiting spouse** 5

(6) Where

(a) before the end of a particular month an eligible individual in respect of a qualified dependant begins to live separate and apart from the individual's cohabiting spouse, because of a breakdown of their marriage, for a period of at least 90 days that includes a day in the particular month, and 10

(b) the individual so elects, before the end of the eleventh month following the particular month, in a form that is acceptable to the Minister, 15

for the purpose of determining the amount deemed under subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the individual's liability under this Part for the base taxation year in relation to the particular month, subject to any subsequent election under subsection (5) or (7), 20

(c) the individual's adjusted income for the year is deemed to be equal to the individual's income for the year, and

(d) the individual's adjusted earned income for the year is deemed to be equal to the individual's earned income for the year.

**Person becoming a
cohabiting spouse** 25

(7) Where

(a) at any particular time before the end of a particular month a taxpayer has become the cohabiting spouse of an eligible individual, and 30

(b) the taxpayer and the eligible individual jointly so elect in prescribed form filed with the Minister before the end of the eleventh month following the particular month,

for the purpose of determining the amount deemed by subsection 122.61(1) to be an overpayment arising in any month after the particular month on account of the eligible individual's liability under this Part for the year, the taxpayer is deemed to have been the eligible individual's cohabiting spouse throughout the period that began immediately before the end of the base taxation year in relation to the particular month and ended at the particular time. 5

(3) Subsections (1) and (2) apply after August 27, 1995.

70. (1) Subsection 122.63(1) of the Act is replaced by the following: 10

Agreement

122.63 (1) The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under paragraph (a) in the description of A in subsection 122.61(1) with respect to persons resident in the province shall, for the purpose of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement. 15

(2) Subsection (1) applies after August 27, 1995.

71. (1) Subsection 122.64(2) of the Act is replaced by the following: 20

Communication of information

(2) Notwithstanding subsection 241(1), an official (as defined in subsection 241(10)) may provide information obtained under subsection 122.62(1), (4), (5), (6) or (7) or the *Family Allowances Act* 25

(a) to an official of the government of a province, solely for the purposes of the administration or enforcement of a prescribed law of the province; or

(b) to an official of the Department of National Health and Welfare for the purposes of the administration of the *Family Allowances Act*, the *Canada Pension Plan* or the *Old Age Security Act*. 30

(2) Subsection 122.64(5) of the Act is repealed.

(3) Subsections (1) and (2) apply after August 27, 1995.

72. (1) The portion of subsection 125(1) of the Act before paragraph (a) is replaced by the following:

Small business deduction 5

125. (1) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the year, a Canadian-controlled private corporation, an amount equal to 16% of the least of

(2) The definition "Canadian-controlled private corporation" in subsection 125(7) of the Act is replaced by the following: 10

"Canadian-controlled private corporation"
« société privée sous contrôle canadien » 15

"Canadian-controlled private corporation" means a private corporation that is a Canadian corporation other than a corporation

(a) controlled, directly or indirectly in any manner whatever, by one or more non-resident persons, by one or more public corporations (other than a prescribed venture capital corporation), or by any combination thereof, 20

(b) that would, if each share of the capital stock of a corporation that is owned by a non-resident person or a public corporation (other than a prescribed venture capital corporation) were owned by a particular person, be controlled by the particular person, or 25

(c) a class of the shares of the capital stock of which is listed on a prescribed stock exchange;

(3) The definition "specified investment business" in subsection 125(7) of the Act is replaced by the following: 30

"specified
investment business"

« *entreprise de
placement
déterminée* »

5

"specified investment business" carried on by a corporation in a taxation year means a business (other than a business carried on by a credit union or a business of leasing property other than real property) the principal purpose of which is to derive income from property (including interest, dividends, rents and royalties), but, except where the corporation was a prescribed labour-sponsored venture capital corporation at any time in the year, does not include a business carried on by the corporation in the year where

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(a) the corporation employs in the business throughout the year more than five full-time employees, or

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(b) any other corporation associated with the corporation provides, in the course of carrying on an active business, managerial, administrative, financial, maintenance or other similar services to the corporation in the year and the corporation could reasonably be expected to require more than five full-time employees if those services had not been provided;

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(4) Subsection (1) applies to taxation years that end after June, 1988, except that there shall be added to the amount otherwise determined under subsection 125(1) of the Act, as amended by subsection (1), in respect of a corporation's taxation year that began before July 1988 and ended after June 1988, that proportion of 5% of the least of the amounts determined under paragraphs 125(1)(a) to (c) of the Act in respect of the corporation for the year that the number of days in the year that are before July 1988 is of the number of days in the year.

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(5) Subsection (2) applies after 1995.

(6) Subsection (3) applies to the 1995 and subsequent taxation years.

73. (1) Paragraph 127.1(1)(a) of the Act is replaced by the following:

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(a) with the taxpayer's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(f) or subsection 150(4)) for a taxation year, or

(2) The portion of subsection 127.1(1) of the Act after paragraph (b) and before paragraph (c) is replaced by the following:

a prescribed form containing prescribed information, the taxpayer is deemed to have paid, where the taxpayer is an individual, on the individual's balance-due day for the year and, where the taxpayer is a corporation, on the day referred to in paragraph 157(1)(b) on or before which the remainder of the taxes payable under this Part for the year by the taxpayer would be required to be paid if such a remainder were payable, an amount on account of the taxpayer's tax payable under this Part for the year equal to the lesser of

(3) Subsection (1) applies to taxation years that begin after April 26, 1995.

(4) Subsection (2) applies to taxation years that end after February 22, 1994.

74. (1) The description of B in paragraph 127.41(1)(a) of the Act is replaced by the following:

B is the amount, if any, by which the total of all amounts in respect of the trust that were included (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing the taxpayer's income for the particular year exceeds the total of all amounts in respect of the trust that were deducted (otherwise than because of being a member of a partnership) because of the application of subsection 107.3(1) in computing that income, and

(2) Subsection (1) applies to taxation years that end after February 22, 1994.

75. (1) The portion of section 127.5 of the Act before paragraph (a) is replaced by the following:

Obligation to pay minimum tax

127.5 Notwithstanding any other provision of this Act, but subject to section 127.55, where the amount that, but for sections 120 and 120.1, would be determined under Division E to be the tax payable by an individual for a taxation year is less than the amount determined under subparagraph (a)(i) in respect of the individual, the tax payable under this Part for the year by the individual is the amount, if any, by which

(2) Subsection (1) applies to the 1992 and subsequent taxation years.

76. (1) Paragraphs 127.52(1)(b) and (c) of the Act are replaced by the following:

(b) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a rental or leasing property (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible and the amount, if any, by which

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f),

exceeds

(ii) the total of all amounts each of which is the individual's loss for the year from the renting or leasing of a rental or leasing property owned by the individual or by a partnership (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a film property (other than an amount included in the individual's share of a loss referred to in paragraph (c.1)) were the lesser of the total of all amounts otherwise so deductible by the individual for the year and the amount, if any, by which

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a film property owned by the individual or by a partnership, computed without reference to paragraphs 20(1)(a) and (c) to (f),

exceeds

(ii) the total of all amounts each of which is the individual's loss for the year from the renting or leasing of a film property owned by the individual or by a partnership (other than amounts included in the individual's share of a loss referred to in paragraph (c.1)), computed without reference to paragraphs 20(1)(a) and (c) to (f);

(c.1) where, during a partnership's fiscal period that ends in the year, the individual is a limited partner of the partnership or a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or the individual's interest in the partnership is an interest for which an identification number is required to be, or has been, obtained under section 237.1, 5

(i) the individual's share of allowable capital losses of the partnership for the fiscal period were the lesser of 10

(A) the total of all amounts each of which is the individual's share of a taxable capital gain for the fiscal period from the disposition of property (other than property acquired in a transaction to which subsection 97(2) applied), and 15

(B) the individual's share of allowable capital losses for the fiscal period, 15

(ii) the individual's share of each loss from a business of the partnership for the fiscal period were the lesser of 20

(A) the individual's share of the loss, and

(B) the amount, if any, by which 25

(I) the total of all amounts each of which is the individual's share of a taxable capital gain for the fiscal period from the disposition of property used by the partnership in the business (other than property acquired by the partnership in a transaction to which subsection 97(2) applied) 30

exceeds

(II) the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and 35

(iii) the individual's share of losses from property of the partnership for the fiscal period were the lesser of 40

(A) the total of

(I) the individual's share of incomes for the fiscal period from properties of the partnership, and

(II) the amount, if any, by which

1. the total of all amounts each of which is the individual's share of a taxable capital gain for the fiscal period from the disposition of property held by the partnership for the purpose of earning income from property (other than property acquired by the partnership in a transaction to which subsection 97(2) applied) 5

exceeds 10

2. the total of all amounts each of which is the individual's share of an allowable capital loss for the fiscal period, and 15

(B) the individual's share of losses from property of the partnership for the fiscal period;

(c.2) where, during a fiscal period of a partnership that ends in the year, 20

(i) the individual is a limited partner of the partnership, or is a member of the partnership who was a specified member of the partnership at all times since becoming a member of the partnership, or 25

(ii) the partnership owns a rental or leasing property or a film property and the individual is a member of the partnership,

the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of the individual's acquisition of the partnership interest were the lesser of 30

(iii) the total of all amounts otherwise so deductible, and 35

(iv) the total of all amounts each of which is the individual's share of any income of the partnership for the fiscal period, determined in accordance with subsection 96(1); 40

(c.3) the total of all amounts each of which is an amount deductible in computing the individual's income for the year in respect of a property for which an identification number is required to be, or has been, obtained under section 237.1 (other than an amount to which any of paragraphs (b) to (c.2) applies), were nil; 45

(2) Subsection 127.52(1) of the Act is amended by adding the following after paragraph (e):

(e.1) the total of all amounts each of which is an amount deductible under any of paragraphs 20(1)(c) to (f) in computing the individual's income for the year in respect of a property that is a flow-through share (where the individual is the first person, other than a broker or dealer in securities, to be a registered holder of the share), a Canadian resource property or a foreign resource property were the lesser of the total of the amounts otherwise so determined for the year and the amount, if any, by which

(i) the total of all amounts each of which is an amount described in subparagraph (e)(i) or (ii), determined without reference to paragraphs 20(1)(c) to (f),

exceeds

(ii) the total of all amounts each of which is an amount deductible under section 65, 66, 66.1, 66.2 or 66.4 or under subsection 29(10) or (12) of the *Income Tax Application Rules* in computing the individual's income for the year;

(3) Subsection 127.52(1) of the Act is amended by adding the following after paragraph (h):

(h.1) the formula in paragraph 110.6(21)(a) were read as

$$A - B$$

(4) Clause 127.52(1)(i)(i)(B) of the Act is replaced by the following:

(B) the amounts that would be deductible under those paragraphs for the year if,

(I) paragraphs (b), (c) and (e) of this subsection, as they read in respect of taxation years that began after 1985 and before 1995, applied in computing the individual's non-capital loss, restricted farm loss, farm loss and limited partnership loss for any of those years, and

(II) paragraphs (b) to (c.3), (e) and (e.1) of this subsection applied in computing the individual's non-capital loss, restricted farm loss, farm loss, and limited partnership loss for any taxation year that begins after 1994, and

(5) Clause 127.52(1)(i)(ii)(B) of the Act is replaced by the following:

(B) the total of all amounts that would be deductible under that paragraph for the year if,

(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began before 1995, and 5

(II) paragraphs (c.1) and (d) of this subsection applied in computing the individual's net capital loss for any taxation year that begins after 1994; and 10

(6) Subsection 127.52(2) of the Act is replaced by the following:

Partnerships

(2) For the purposes of subsection (1) and this subsection, any amount deductible under a provision of this Act in computing the income or loss of a partnership for a fiscal period is, to the extent of a member's share of the partnership's income or loss, deemed to be deductible by the member under that provision in computing the member's income for the taxation year in which the fiscal period ends. 15

(7) Section 127.52 of the Act is amended by adding the following after subsection (2): 20

Specified member of a partnership

(2.1) Where it can reasonably be considered that one of the main reasons that a member of a partnership was not a specified member of the partnership at all times since becoming a member of the partnership is to avoid the application of this section to the member's interest in the partnership, the member is deemed for the purpose of this section to have been a specified member of the partnership at all times since becoming a member of the partnership. 25

(8) The definition "residential property" in subsection 127.52(3) of the Act is repealed. 30

(9) Subsection 127.52(3) of the Act is amended by adding the following in alphabetical order:

"limited partner"
« *commandi-taire* »

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and"; 5

"rental or leasing
property
« *bien de location* »

"rental or leasing property" means a property that is a rental property or a leasing property for the purpose of section 1100 of the regulations. 10

(10) Subsections (1), (2), (6), (8) and (9) apply to taxation years of an individual that begin after 1994. 15

(11) Subsection (3) applies to the 1994 and 1995 taxation years.

(12) Subsection (4) applies after December 1, 1994 to any taxation year.

(13) Subsection (5) applies to any taxation year, except that, in determining an individual's adjusted taxable income for taxation years that began before 1995, subclause 127.52(1)(i)(ii)(B)(I) of the Act, as enacted by subsection (5), shall be read as follows: 20

(I) paragraph (d) of this subsection applied in computing the individual's net capital loss for any taxation year that began after 1985 and before 1995, and 25

(14) Subsection (7) applies after April 26, 1995.

77. (1) Section 127.55 of the Act is amended by striking out the word "and" at the end of paragraph (d), by adding the word "and" at the end of paragraph (e) and by adding the following:

(f) a taxation year of a trust throughout which the trust is 30

(i) a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)),

(ii) a mutual fund trust, or 35

(iii) a trust prescribed to be a master trust.

(2) Subsection (1) applies to the 1992 and subsequent taxation years.

78. (1) The portion of paragraph 128(2)(e) of the Act after subparagraph (i) is replaced by the following:

(ii) in computing the individual's taxable income for that taxation year, no deduction were permitted by Division C, other than

(A) an amount under paragraph 110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 to the extent the amount is in respect of an amount included in income under subparagraph (i) for that taxation year, and

(B) an amount under section 111 to the extent the amount was in respect of a loss of the individual for any taxation year ending before the individual was discharged absolutely from bankruptcy, and

(iii) in computing the tax payable under this Part by the individual for that taxation year, no deduction were allowed

(A) under section 118, 118.2, 118.3, 118.5, 118.6, 118.8 or 118.9,

(B) under section 118.1 with respect to a gift made by the individual before the day the individual became bankrupt, and

(C) under subsection 127(5) with respect to an expenditure incurred or property acquired by the individual in any taxation year ending after the individual was discharged absolutely from bankruptcy,

and the trustee is liable to pay any tax so determined for that taxation year;

(2) Paragraph 128(2)(f) of the Act is amended by striking out the word "and" at the end of subparagraph (ii) and by replacing the portion of paragraph (f) after subparagraph (ii) with the following:

(iii) in computing taxable income of the individual for the year, no amount were deductible under paragraph 110(1)(d), (d.1), (d.2) or (d.3) or section 110.6 in respect of an amount included in income under subparagraph (e)(i), and no amount were deductible under section 111, and

(iv) in computing the tax payable under this Part by the individual for the year, no amount were deductible under section 118.1 or 120.2, or subsection 127(5),

and the individual is liable to pay any tax so determined for that taxation year;

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(3) Paragraph 128(2)(g) of the Act is replaced by the following:

(g) notwithstanding subparagraphs (e)(ii) and (iii) and (f)(iii) and (iv), where an individual was discharged absolutely from bankruptcy,

(i) in computing the taxable income of the individual for any taxation year ending after the individual was so discharged, no amount shall be deducted under section 111 in respect of losses for taxation years preceding that in which the individual was so discharged, and

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(ii) in computing the tax payable under this Part by the individual for any taxation year that ends after the individual was so discharged,

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(A) no amount shall be deducted under section 120.2 in respect of an amount for any taxation year preceding that in which the individual was so discharged,

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(B) no amount shall be deducted under section 118.1 in respect of a gift made by the individual in any taxation year preceding that in which the individual was so discharged, and

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(C) no amount shall be deducted under subsection 127(5) in respect of an expenditure incurred or a property acquired by the individual in any taxation year preceding that in which the individual was so discharged;

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(4) Subsection 128(3) of the Act is repealed.

(5) Subsections (1) to (4) apply to bankruptcies that occur after April 26, 1995.

79. (1) Paragraph (c) of the description of C in subsection 128.1(2) of the Act is replaced by the following:

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(c) any amount claimed under paragraph 219(1)(j) by the corporation for its last taxation year that began before the particular time; and

(2) Subsection (1) applies to taxation years that begin after 1995, except that in its application to taxation years that begin in 1996, the reference in paragraph (c) of the description of C in subsection 128.1(2) of the Act, as enacted by subsection (1), to "paragraph 219(1)(j)" shall be read as a reference to "paragraph 219(1)(h) as it read in its application to the 1995 taxation year or paragraph 219(1)(j)". 5

80. (1) Paragraph 129(1)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make the dividend refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a). 10
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(2) Subsection (1) applies after April 27, 1989.

81. (1) The portion of subsection 130(2) of the Act before paragraph (a) is replaced by the following:

Application of ss.
131(1) to (3.2)
and (6) 20

(2) Where a corporation was an investment corporation throughout a taxation year (other than a corporation that was a mutual fund corporation throughout the year), subsections 131(1) to (3.2) and (6) apply in respect of the corporation for the year 25

(2) Subparagraph 130(3)(a)(vii) of the Act is replaced by the following:

(vii) no person would be a specified shareholder of the corporation in the year if the references in the definition "specified shareholder" in subsection 248(1) to "not less than 10%" were read as references to "more than 25%", and 30

(3) Subsection (1) applies to the 1993 and subsequent taxation years.

(4) Subsection (2) applies to taxation years that begin after ANNOUNCEMENT DATE, except that subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2), does not apply with respect to a person and a corporation if 35

(a) the corporation would, but for this section, have been an investment corporation on ANNOUNCEMENT DATE,

(b) the person would have been a specified shareholder of the corporation on ANNOUNCEMENT DATE if the references in the definition "specified shareholder" in subsection 248(1) of the Act to "not less than 10%" were read as references to "more than 25%", and

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(c) the person has not acquired a share of the corporation, or contributed capital to the corporation, after ANNOUNCEMENT DATE, unless

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(i) the share was held continuously by the person or by persons who were related to the person from ANNOUNCEMENT DATE to the time at which the person acquired it, or

(ii) the person acquired the share from the corporation as a stock dividend.

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(5) Where, after ANNOUNCEMENT DATE, a person described in paragraph (4)(b) acquires in the manner described in subparagraph (4)(c)(i) or (ii) a share of a corporation that would, but for this section, have been an investment corporation on ANNOUNCEMENT DATE, subparagraph 130(3)(a)(vii) of the Act, as enacted by subsection (2), shall be read as follows in respect of the person and the corporation:

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(vii) no person would be a specified shareholder of the corporation in the year if the references in the definition "specified shareholder" in subsection 248(1) to "not less than 10%" were read as references to "more than the greatest percentage that is the total percentage of the shares of a class of the capital stock of the corporation held at the end of ANNOUNCEMENT DATE by the taxpayer and other persons with whom the taxpayer did not deal at arm's length", and

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82. (1) Subparagraph 130.1(6)(f)(i) of the Act is replaced by the following:

(i) debts owing to the corporation that were secured, whether by mortgages or in any other manner, on houses (as defined in section 2 of the *National Housing Act*) or on property included within a housing project (as defined in that section), and

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(2) Subsection (1) is deemed to have come into force on June 23, 1993.

83. (1) Paragraph 131(2)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a). 5
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(2) Subsection 131(5) of the Act is replaced by the following:

**Dividend refund to
mutual fund
corporation**

(5) A corporation that was a mutual fund corporation throughout a taxation year 15

(a) is deemed for the purposes of paragraph 87(2)(aa) and section 129 to have been a private corporation throughout the year, except that its refundable dividend tax on hand at the end of the year (within the meaning assigned by subsection 129(3)) shall be determined without reference to paragraph 129(3)(a); and 20

(b) where it was not an investment corporation throughout the year, is deemed for the purposes of Part IV to have been a private corporation throughout the year, except that in applying subsection 186(1) to the corporation in respect of the year, that subsection shall be read without reference to paragraph 186(1)(b). 25

(3) Subparagraphs 131(8)(b)(i) and (ii) of the Act are replaced by the following:

(i) the investing of its funds in property (other than real property or an interest in real property), 30

(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the corporation, or

(4) Subsection (1) applies after April 27, 1989.

(5) Subsections (2) and (3) apply to the 1994 and subsequent taxation years.

84. (1) Paragraph 132(1)(b) of the Act is replaced by the following:

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(b) shall, with all due dispatch, make that capital gains refund after mailing the notice of assessment if an application for it has been made in writing by the trust within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the trust for the year if that subsection were read without reference to paragraph 152(4)(a).

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(2) Subparagraphs 132(6)(b)(i) and (ii) of the Act are replaced by the following:

(i) the investing of its funds in property (other than real property or an interest in real property),

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(ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust, or

(3) The portion of subsection 132(6) of the Act after paragraph (c) is repealed.

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(4) Section 132 of the Act is amended by adding the following after subsection (6):

Election to be mutual fund

(6.1) Where a trust becomes a mutual fund trust at any particular time before the 91st day after the end of the calendar year in which its first taxation year began, and the trust so elects in its return of income under this Part for that first year, the trust is deemed to have been a mutual fund trust from the beginning of that first year until the particular time.

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(5) Subsection (1) applies after April 27, 1989.

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(6) Subsections (2) to (4) applies to the 1994 and subsequent taxation years.

85. (1) The portion of paragraph 132.2(1)(h) of the Act before subparagraph (i) is replaced by the following:

(h) except as provided in paragraph (p), the transferor's cost of any particular property received by the transferor from the transferee as consideration for the disposition of the property is deemed to be 5

(2) Paragraphs 132.2(1)(o) and (p) of the Act are replaced by the following:

(o) where the transferor is a mutual fund corporation,

(i) for the purposes of subsection 131(4), the transferor is deemed in respect of any share disposed of in accordance with paragraph (j) to be a mutual fund corporation at the time of that disposition, and 10

(ii) for the purposes of Part I.3, the transferor's taxation year that, but for this paragraph, would have included the transfer time is deemed to have ended immediately before the transfer time (except that, for greater certainty, nothing in this paragraph shall affect the computation of any amount determined under this Part); 15

(p) for the purpose of determining the funds' capital gains redemptions, as defined in subsection 131(6) or 132(4), their taxation years that, but for this paragraph would have included the transfer time are deemed to have ended immediately before the transfer time; and 20

(q) except as provided in subparagraph (o)(i), the transferor is, notwithstanding subsections 131(8) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time. 25

(3) Paragraph (b) of the definition "qualifying exchange" in subsection 132.2(2) of the Act is replaced by the following:

(b) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of the transferee, and 30

(4) Subsections (1) to (3) apply after June, 1994.

86. (1) Paragraph 133(6)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make that allowable refund after mailing the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a). 5

(2) Subsection (1) applies after April 27, 1989.

87. (1) Subsection 136(1) of the Act is replaced by the following: 10

**Cooperative not
private corporation**

136. (1) Notwithstanding any other provision of this Act, a cooperative corporation that would, but for this section, be a private corporation is deemed not to be a private corporation except for the purposes of sections 15.1, 125, 125.1, 127, 127.1, 152 and 157, the definition "mark-to-market property" in subsection 142.2(1) and the definition "small business corporation" in subsection 248(1) as it applies for the purpose of paragraph 39(1)(c). 15

(2) Subsection (1) applies to taxation years that end after February 22, 1994. 20

88. (1) Section 141.1 of the Act is replaced by the following:

**Deemed not to be a
private corporation**

141.1 Notwithstanding any other provision of this Act, an insurance corporation (other than a life insurance corporation) that would, but for this section, be a private corporation is deemed not to be a private corporation for the purposes of subsection 55(5), the definition "capital dividend account" in subsection 89(1) and sections 123.2 and 129. 25

(2) Subsection (1) applies to taxation years that end after June 1995. 30

89. (1) The portion of the definition "specified debt obligation" in subsection 142.2(1) of the Act after paragraph (b) is replaced by the following:

other than an interest in

(c) an income bond, an income debenture, a small business development bond, a small business bond or a prescribed property, or

(d) an instrument issued by or made with a person to whom the taxpayer is related or with whom the taxpayer does not otherwise deal at arm's length, or in which the taxpayer has a significant interest.

(2) Subsection (1) applies to taxation years that end after February 22, 1994.

90. (1) The portion of subsection 142.3(1) of the Act before paragraph (a) is replaced by the following:

Amounts to be included and deducted

142.3 (1) Subject to subsection (3), where a taxpayer that is, in a taxation year, a financial institution holds a specified debt obligation at any time in the year,

(2) Paragraph 142.3(1)(c) of the Act is replaced by the following:

(c) except as provided by this section, paragraphs 12(1)(d) and (i) and 20(1)(l) and (p) and section 142.4, no amount shall be included or deducted in respect of payments under the obligation (other than fees and similar amounts) in computing the income of the taxpayer for the year.

(3) Subsection 142.3(2) of the Act is replaced by the following:

Failure to report accrued amounts

(2) Subject to subsection (3), where

(a) a taxpayer holds a specified debt obligation at any time in a particular taxation year in which the taxpayer is a financial institution, and

(b) all or part of an amount required by paragraph (1)(a) or subsection 12(3) to be included in respect of the obligation in computing the taxpayer's income for a preceding taxation year was not so included,

that part of the amount shall be included in computing the taxpayer's income for the particular year, to the extent that it was not included in computing the taxpayer's income for a preceding taxation year.

Exception for certain obligations

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(3) Subsections (1) and (2) do not apply for a taxation year in respect of a taxpayer's specified debt obligation that is

- (a) a mark-to-market property for the year; or
- (b) an indexed debt obligation, other than a prescribed obligation.

(4) Subsections (1) to (3) apply to taxation years that end after February 22, 1994, except that the subsections do not apply to debt obligations disposed of before February 23, 1994.

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91. (1) Paragraph (b) of the definition "tax basis" in subsection 142.4(1) of the Act is replaced by the following:

(b) an amount included under subsection 12(3) or 16(2) or (3), paragraph 142.3(1)(a) or subsection 142.3(2) in respect of the obligation in computing the taxpayer's income for a taxation year beginning before that time,

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(2) Paragraph (j) of the definition "tax basis" in subsection 142.4(1) of the Act is replaced by the following:

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(j) the amount of a payment received by the taxpayer under the obligation at or before that time, other than

- (i) a fee or similar payment, or
- (ii) proceeds of disposition of the obligation,

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(3) Paragraph 142.4(3)(a) of the Act is replaced by the following:

(a) except as provided by paragraph 79.1(7)(d) or this section, no amount shall be included or deducted in respect of the disposition in computing the taxpayer's income; and

(4) Subsections 142.4(4) and (5) of the Act are replaced by the following:

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**Inclusions and
deductions re
disposition**

(4) Subject to subsection (5), where after 1994 a taxpayer disposes of a specified debt obligation in a taxation year, 5

(a) where the transition amount in respect of the disposition of the obligation is positive, it shall be included in computing the income of the taxpayer for the year;

(b) where the transition amount in respect of the disposition of the obligation is negative, the absolute value of the transition amount shall be deducted in computing the income of the taxpayer for the year; 10

(c) where the taxpayer has a gain from the disposition of the obligation,

(i) the current amount of the gain shall be included in computing the income of the taxpayer for the year, and 15

(ii) there shall be included in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the gain; and 20

(d) where the taxpayer has a loss from the disposition of the obligation,

(i) the current amount of the loss shall be deducted in computing the taxpayer's income for the year, and

(ii) there shall be deducted in computing the taxpayer's income for taxation years that end on or after the day of disposition the amount allocated, in accordance with prescribed rules, to the year in respect of the residual portion of the loss. 25

**Gain or loss not
amortized**

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(5) Where, after February 22, 1994, a taxpayer disposes of a specified debt obligation in a taxation year, and

- (a) the obligation is
- (i) an indexed debt obligation (other than a prescribed obligation), or
 - (ii) a debt obligation prescribed in respect of the taxpayer,
- (b) the disposition occurred 5
- (i) before 1995,
 - (ii) after 1994 in connection with the transfer of all or part of a business of the taxpayer to a person or partnership, or
 - (iii) because of paragraph 142.6(1)(c), or
- (c) in the case of a taxpayer other than a life insurance corporation, 10
- (i) the disposition occurred before 1996, and
 - (ii) the taxpayer elects in writing, filed with the Minister before July 1997, to have this paragraph apply, 15

the following rules apply:

- (d) subsection (4) does not apply to the disposition,
- (e) there shall be included in computing the taxpayer's income for the year the amount, if any, by which the taxpayer's proceeds of disposition exceed the tax basis of the obligation to the taxpayer immediately before the disposition, and 20
- (f) there shall be deducted in computing the taxpayer's income for the year the amount, if any, by which the tax basis of the obligation to the taxpayer immediately before the disposition exceeds the taxpayer's proceeds of disposition. 25

(5) Paragraph 142.4(6)(b) of the Act is replaced by the following:

- (b) where the amount determined under paragraph (c) in respect of the disposition of a specified debt obligation by a taxpayer is negative, the absolute value of that amount is the taxpayer's loss from the disposition of the obligation; and 30

(6) The description of C in subsection 142.4(6) of the Act is replaced by the following:

C is the taxpayer's transition amount in respect of the disposition.

(7) Subsections 142.4(7) to (9) of the Act are replaced by the following:

5

Current amount

(7) For the purposes of subsections (4) and (8), the current amount of a taxpayer's gain or loss from the disposition of a specified debt obligation is

(a) where the taxpayer has a gain from the disposition of the obligation, the part, if any, of the gain that is reasonably attributable to a material increase in the probability, or perceived probability, that the debtor will make all payments as required by the obligation; and 10

(b) where the taxpayer has a loss from the disposition of the obligation, the amount that the taxpayer claims not exceeding the part, if any, of the loss that is reasonably attributable to a default by the debtor or a material decrease in the probability, or perceived probability, that the debtor will make all payments as required by the obligation. 15

Residual portion of gain or loss

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(8) For the purpose of subsection (4), the residual portion of a taxpayer's gain or loss from the disposition of a specified debt obligation is the amount, if any, by which the gain or loss exceeds the current amount of the gain or loss.

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Disposition of part of obligation

(9) Where a taxpayer disposes of part of a specified debt obligation, section 142.3 and this section apply as if the part disposed of and the part retained were separate specified debt obligations.

30

Penalties and bonuses

(10) Notwithstanding subsection 18(9.1), where a taxpayer that holds a specified debt obligation receives a penalty or bonus because of the repayment before maturity of all or part of the principal amount of the

35

debt obligation, the payment is deemed to be received by the taxpayer as proceeds of disposition of the specified debt obligation.

**Payments received
on or after
disposition** 5

(11) For the purposes of this section, where a taxpayer receives a payment (other than proceeds of disposition) under a specified debt obligation on or after the disposition of the obligation, the payment is deemed to have been received by the taxpayer immediately before the disposition. 10

(8) Subsections (1) to (7) apply to taxation years that end after February 22, 1994.

92. (1) Subsections 142.5(5) to (7) of the Act are replaced by the following: 15

**Transition —
inclusion re
non-capital amounts**

(5) Where an amount is deducted under subsection (4) in computing a taxpayer's income, there shall be included, in computing the taxpayer's income for each taxation year that begins before 1999 and ends after October 30, 1994, the total of all amounts prescribed for the year. 20

**Transition —
deduction re net
capital gains** 25

(6) Such amount as a taxpayer elects, not exceeding a prescribed amount in respect of capital properties disposed of by the taxpayer because of subsection (2), is deemed to be an allowable capital loss of the taxpayer for its taxation year that includes October 31, 1994 from the disposition of property (or, where the taxpayer is non-resident throughout the year, from the disposition of taxable Canadian property). 30

**Transition —
inclusion re net
capital gains** 35

(7) A taxpayer that elects an amount under subsection (6) is deemed, for each taxation year that begins before 1999 and ends after October 30, 1994, to have a taxable capital gain for the year from the disposition of property (or, where the taxpayer is non-resident 40

throughout the year, from the disposition of taxable Canadian property) equal to the total of all amounts prescribed for the year.

(2) Subsection (1) applies to taxation years that end after October 30, 1994.

93. (1) Section 142.6 of the Act is amended by adding the following after subsection (7): 5

**Accrued capital
gains and losses
election**

(8) Where a taxpayer that is a financial institution in its first taxation year that ends after February 22, 1994 so elects by notifying the Minister in writing before July 1997 or within 90 days after the day on which a notice of assessment of tax payable under this Part for the year or notification that no tax is payable under this Part for the year is mailed to the taxpayer, 10
15

(a) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994, 20

(ii) that was a mark-to-market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time, 25

(iii) that had a fair market value at that time greater than its adjusted cost base to the taxpayer at that time, and

(iv) that is designated by the taxpayer in the election 30

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the lesser of 35

(v) the fair market value of the property at that time, and

(vi) the greater of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property; and 40

(b) each property of the taxpayer

(i) that was a capital property (other than a depreciable property) of the taxpayer at the end of the taxpayer's last taxation year that ended before February 23, 1994, 5

(ii) that was not a mark to market property for, or a specified debt obligation in, the taxpayer's first taxation year that begins after that time, 10

(iii) that had an adjusted cost base to the taxpayer at that time greater than its fair market value at that time, and

(iv) that is designated by the taxpayer in the election 15

is deemed to have been disposed of by the taxpayer at that time for proceeds of disposition equal to, and to have been reacquired by the taxpayer immediately after that time at a cost equal to, the greater of

(iv) the fair market value of the property at that time, and 20

(v) the lesser of the adjusted cost base to the taxpayer of the property immediately before that time and the amount designated by the taxpayer in the election in respect of the property. 25

**Accrued capital
gains election limit**

(9) Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(a)(iii), the election is deemed not to have been made where 30

(a) the amount that would be the taxpayer's taxable capital gains from dispositions of property for the taxpayer's last taxation year that ended before February 23, 1994 if this subsection and subsection (10) did not apply 35

exceeds the total of

(b) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if this subsection and subsection (10) did not apply, 40

(c) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if there were sufficient taxable capital gains for the year from dispositions of property, and 45

(d) the amount, if any, by which

(i) the amount that would be the taxpayer's taxable capital gains for the taxpayer's last taxation year that ends before February 23, 1994 from dispositions of property if no election were made under subsection (8) 5

exceeds the total of

(ii) the amount that would be the taxpayer's allowable capital losses for the year from dispositions of property if no election were made under subsection (8), and 10

(iii) the maximum amount that would have been deductible in computing the taxpayer's taxable income for the year in respect of the taxpayer's net capital losses for preceding taxation years if no election were made under subsection (8). 15

**Accrued capital
losses election limit**

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(10) Where a taxpayer has made an election under subsection (8) in which a property was designated under subparagraph (8)(b)(iv), the election is deemed not to have been made where

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(a) the total determined under paragraphs (9)(b) and (c) in respect of the taxpayer exceeds the amount determined under paragraph (9)(a) in respect of the taxpayer, or

(b) the total of all amounts each of which would, if this subsection did not apply, be the taxpayer's allowable capital loss for the taxpayer's last taxation year that ended before February 23, 1994 from the disposition of a property deemed to have been disposed of under paragraph (8)(b) exceeds the total of all amounts each of which is the taxpayer's taxable capital gain for the year from the disposition of a property deemed to have been disposed of under paragraph (8)(a). 30
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(2) Subsection (1) applies to the 1993 and subsequent taxation years.

94. (1) The Act is amended by adding the following after section 143.1: 40

Cost of Tax Shelter Investments

Definitions

143.2 (1) The definitions in this subsection apply in this section. 5

"expenditure"

« *dépense* »

"expenditure" means an outlay or expense or the cost or capital cost of a property. 10

"limited partner"

« *commandi-taire* »

"limited partner" has the meaning that would be assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and". 15

"limited-recourse amount"

« *montant à recours limité* »

"limited-recourse amount" means the unpaid principal amount of any indebtedness for which recourse is limited, either immediately or in the future and either absolutely or contingently. 20

"taxpayer"

« *contribuable* »

"taxpayer" includes a partnership. 25

"tax shelter investment"

« *abri fiscal déterminé* »

"tax shelter investment" means 30

(a) a property that is a tax shelter for the purpose of subsection 237.1(1), or 35

(b) a taxpayer's interest in a partnership where

(i) an interest in the taxpayer

(A) is a tax shelter investment, and 5

(B) the taxpayer's partnership interest would be a tax shelter investment if

(I) this Act were read without reference to this paragraph and to the words "having regard to statements or representations made or proposed to be made in connection with the property" in the definition "tax shelter" in section 237.1, 10

(II) the references in that definition to "represented" were read as "that can reasonably be expected", and 15

(III) the reference in that definition to "is represented" were read as "can reasonably be expected", 20

(ii) another interest in the partnership is a tax shelter investment, or

(iii) the taxpayer's interest in the partnership entitles the taxpayer, directly or indirectly, to a share of the income or loss of a particular partnership where 25

(A) another taxpayer holding a partnership interest is entitled, directly or indirectly, to a share of the income or loss of the particular partnership, and 30

(B) that other taxpayer's partnership interest is a tax shelter investment. 35

At-risk adjustment

(2) For the purpose of this section, an at-risk adjustment in respect of an expenditure of a particular taxpayer, other than the cost of a partnership interest to which subsection 96(2.2) applies, means any amount or benefit that the particular taxpayer, or another taxpayer not dealing at arm's length with the particular taxpayer, is entitled, either immediately or in the future and either absolutely or contingently, to receive or to obtain, whether by way of reimbursement, compensation, revenue guarantee, proceeds of disposition, loan or any other form of indebtedness, or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the particular taxpayer may sustain in respect of the 40 45

expenditure, or where the expenditure is the cost or capital cost of a property, any loss from the holding or disposition of the property.

**Amount or benefit
not included**

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(3) For the purpose of subsection (2), an at-risk adjustment in respect of a taxpayer's expenditure does not include an amount or benefit

(a) to the extent it is included in determining the value of J in the definition "cumulative Canadian exploration expense" in subsection 66.1(6), of M in the definition "cumulative Canadian development expense" in subsection 66.2(5) or of I in the definition "cumulative Canadian oil and gas property expense" in subsection 66.4(5) in respect of the taxpayer; or

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(b) the entitlement to which arises

(i) because of a contract of insurance with an insurance corporation dealing at arm's length with the taxpayer (and where the expenditure is the cost of an interest in a partnership, with each member of the partnership) under which the taxpayer is insured against any claim arising as a result of a liability incurred in the ordinary course of carrying on the business of the taxpayer or the partnership,

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(ii) as a consequence of the death of the taxpayer,

(iii) in respect of an amount not included in the expenditure, determined without reference to subparagraph (6)(b)(ii), or

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(iv) because of an excluded obligation (as defined in subsection 6202.1(5) of the *Income Tax Regulations*) in relation to a share issued to the taxpayer or, where the expenditure is the cost of an interest in a partnership, to the partnership.

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Amount or benefit

(4) For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of an agreement or other arrangement under which the taxpayer has a right, either immediately or in the future and either absolutely or contingently (otherwise than as a consequence of the death of the taxpayer), to acquire property, for greater certainty the amount or benefit to which the taxpayer is entitled under the agreement or arrangement is considered to be not less than the fair market value of the property at that time.

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Amount or benefit

(5) For the purposes of subsections (2) and (3), where the amount or benefit to which a taxpayer is entitled at any time is provided by way of a guarantee, security or similar indemnity or covenant in respect of any loan or other obligation of the taxpayer, for greater certainty the amount or benefit to which the taxpayer is entitled under the guarantee or indemnity at any particular time is considered to be not less than the total of the unpaid amount of the loan or obligation at that time and all other amounts outstanding in respect of the loan or obligation at that time.

Amount of Expenditure

(6) Notwithstanding any other provision of this Act, the amount of any expenditure that is, or is the cost or capital cost of, a taxpayer's tax shelter investment, and the amount of any expenditure of a taxpayer an interest in which is a tax shelter investment, shall be reduced to the amount, if any, by which

(a) the amount of the taxpayer's expenditure otherwise determined, exceeds

(b) the total of

(i) the limited-recourse amounts of

(A) the taxpayer, and

(B) all taxpayers not dealing at arm's length with the taxpayer

that can reasonably be considered to relate to the expenditure,

(ii) the taxpayer's at-risk adjustment in respect of the expenditure, and

(iii) each amount, determined under this paragraph in respect of each taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the expenditure.

Repayment of indebtedness

(7) For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount unless

(a) *bona fide* arrangements, evidenced in writing, were made, at the time the indebtedness arose, for repayment by the debtor of the indebtedness and all interest on the indebtedness within a reasonable period not exceeding 10 years; and

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(b) interest is payable at least annually, at a rate equal to or greater than the lesser of

(i) the prescribed rate of interest in effect at the time the indebtedness arose, and

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(ii) the prescribed rate of interest applicable from time to time during the term of the indebtedness,

and is paid in respect of the indebtedness by the debtor no later than 60 days after the end of each taxation year of the debtor that ends in the period.

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Limited-recourse amount

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(8) For the purpose of this section, the unpaid principal of an indebtedness is deemed to be a limited-recourse amount of a taxpayer where the taxpayer is a partnership and recourse against any member of the partnership in respect of the indebtedness is limited, either immediately or in the future and either absolutely or contingently.

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Timing

(9) Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness that was, before that time, the unpaid principal amount of a loan or any other form of indebtedness to which subsection (2) applies (in this subsection referred to as the "former amount or benefit") relating to an expenditure of the taxpayer,

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(a) the former amount or benefit is considered to have been an amount or benefit under subsection (2) in respect of the taxpayer at all times before that time, and

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(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the payment of, the repaid amount.

Timing

(10) Where at any time a taxpayer has paid an amount (in this subsection referred to as the "repaid amount") on account of the principal amount of an indebtedness which was, before that time, an unpaid principal amount that was a limited-recourse amount (in this subsection referred to as the "former limited-recourse indebtedness") relating to an expenditure of the taxpayer, 5

(a) the former limited-recourse indebtedness is considered to have been a limited-recourse amount at all times before that time, and 10

(b) the expenditure is, subject to subsection (6), deemed to have been made or incurred at that time to the extent of, and by the amount of, the repaid amount. 15

Short-term debt

(11) Where a taxpayer pays all of the principal of an indebtedness no later than 60 days after that indebtedness arose and the indebtedness would otherwise be considered to be a limited-recourse amount solely because of the application of subsection (7) or (8), that subsection does not apply to the indebtedness unless 20

(a) any portion of the repayment is made with a limited-recourse amount; or 25

(b) the repayment can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 60 days after the indebtedness arose. 30

Series of loans or repayments

(12) For the purpose of paragraph (7)(a), a debtor is considered not to have made arrangements to repay an indebtedness within 10 years where the debtor's arrangement to repay can reasonably be considered to be part of a series of loans or other indebtedness and repayments that ends more than 10 years after it begins. 35

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Information located outside Canada

(13) For the purpose of this section, where it can reasonably be considered that information relating to indebtedness that relates to a taxpayer's expenditure is available outside Canada and the Minister is not satisfied that the unpaid principal of the indebtedness is not a limited-recourse amount, the unpaid principal of the indebtedness 45

relating to the taxpayer's expenditure is deemed to be a limited-recourse amount relating to the expenditure unless

(a) the information is provided to the Minister; or

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(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

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**Information located
outside Canada**

(14) For the purpose of this section, where it can reasonably be considered that information relating to whether a taxpayer is not dealing at arm's length with another taxpayer is available outside Canada and the Minister is not satisfied that the taxpayer is dealing at arm's length with the other taxpayer, the taxpayer and the other taxpayer are deemed not to be dealing with each other at arm's length unless

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(a) the information is provided to the Minister; or

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(b) the information is located in a country with which the Government of Canada has entered into a tax convention or agreement that has the force of law in Canada and includes a provision under which the Minister can obtain the information.

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Assessments

(15) Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to this section.

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(2) Subsection (1) applies to property acquired and to outlays and expenses made or incurred by a taxpayer after November 1994, except that

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(a) it does not apply where

(i) the property was acquired, or the outlay or expense was made or incurred, before 1995 pursuant to an agreement in writing made by the taxpayer before December 1994, or

(ii) the property is

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(A) a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act where

(I) the principal photography of the production began before 1995, or, in the case of a production that is a television series, one episode of the series began before 1995, and 5

(II) the principal photography of the production was completed before March 2, 1995, or

(B) an interest in a partnership (all or substantially all of the property of which is a film production referred to in clause (A)) acquired before 1995 by a taxpayer that is a partnership 10

and the following conditions are met:

(iii) in the case of an interest that is a tax shelter for which section 237.1 of the Act requires an identification number to be obtained, an identification number was obtained before December 1994, and 15

(iv) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act; 20

(b) it does not apply to revenue guarantees prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act that were granted before 1996;

(c) subparagraph 143.2(6)(b)(ii) of the Act, as enacted by subsection (1), does not apply 25

(i) to property acquired, or outlays or expenses made or incurred by a taxpayer before April 27, 1995, or

(ii) to property acquired, or outlays or expenses made or incurred by a taxpayer before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 where the following conditions are met: 30

(A) in the case of a property that is a tax shelter for which section 237.1 of the Act requires an identification number, an identification number was obtained before April 27, 1995, and 35

(B) there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act;

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(d) subparagraph 143.2(7)(a) of the Act, as enacted by subsection (1), shall be read without reference to "not exceeding 10 years" where

(i) the indebtedness arises

(A) pursuant to the terms of an agreement in writing made by the taxpayer before April 27, 1995,

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(B) before 1996, in respect of the acquisition of a film production prescribed for the purpose of subparagraph 96(2.2)(d)(ii) of the Act or an interest in a partnership all or substantially all of the property of which is either a film production prescribed for the purpose of that subparagraph or an interest in one or more partnerships all or substantially all of the property of which is such a film production, where

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(I) the principal photography of the production began before 1996, or, in the case of a production that is a television series, the principal photography of one episode of the series began before 1996, and

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(II) the principal photography of the production was completed before March 1996, or

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(C) before July 1995

(I) pursuant to the terms of a document that is a prospectus, preliminary prospectus or registration statement filed before April 27, 1995 with a public authority in Canada pursuant to and in accordance with the securities legislation of Canada or of any province and, where required by law, accepted for filing by the public authority, and the funds so raised were expended before 1996 on expenditures contemplated by the document, or

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(II) pursuant to the terms of an offering memorandum distributed as part of an offering of securities where

1. the memorandum contained a complete or substantially complete description of the securities contemplated in the offering as well as the terms and conditions of the offering, 5

2. the memorandum was distributed before April 27, 1995,

3. solicitations in respect of the sale of the securities contemplated by the memorandum were made before April 27, 1995, 10

4. the sale of the securities was substantially in accordance with the memorandum, and

5. the funds were expended before 1996 in accordance with the memorandum; and 15

(ii) the following conditions are met:

(A) in the case of an interest to which clause (i)(A) or (C) applies that is a tax shelter for which section 237.1 of the Act requires an identification number to be obtained, an identification number was obtained before April 27, 1995, and 20

(B) there is no agreement or other arrangement under which the taxpayer's obligations with respect to the interest can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act; and 25

(e) subsection 143.2(8) of the Act, as enacted by subsection (1), does not apply to a taxpayer in respect of an indebtedness

(i) where the indebtedness

(A) arose, and 30

(B) is related to property acquired, or outlays or expenses made or incurred by the taxpayer

before April 27, 1995, nor

(ii) where the indebtedness

(A) arose, and

(B) is related to property acquired, or outlays or expenses made or incurred by the taxpayer,

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before 1996 pursuant to a particular agreement in writing made by the taxpayer before April 27, 1995 and there is no agreement or other arrangement under which the taxpayer's obligations under the particular agreement can be changed, reduced or waived if there is a change to the Act or if there is an adverse assessment under the Act.

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95. (1) Subparagraph 144(1)(a)(iii) of the English version of the Act is replaced by the following:

(iii) any combination of the amounts described in subparagraphs (i) and (ii)

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(2) Subsection 144(1) of the Act is replaced by the following:

Definitions

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

"employees profit sharing plan"

20

« régime de participation des employés aux bénéfices »

"employees profit sharing plan" at a particular time means an arrangement

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(a) under which payments computed by reference to

(i) an employer's profits from the employer's business,

(ii) the profits from the business of a corporation with which the employer does not deal at arm's length, or

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(iii) any combination of the amounts described in subparagraphs (i) and (ii)

are required to be made by the employer to a trustee under the arrangement for the benefit of employees of the employer or of a corporation with which the employer does not deal at arm's length, and 5

(b) in respect of which the trustee has, since the later of the beginning of the arrangement and the end of 1949, allocated, either contingently or absolutely, to those employees

(i) in each year that ended at or before the particular time, all amounts received in the year by the trustee from the employer or from a corporation with which the employer does not deal at arm's length, 10

(ii) in each year that ended at or before the particular time, all profits for the year from the property of the trust (determined without regard to any capital gain made by the trust or capital loss sustained by it at any time after 1955), 15

(iii) in each year that ended after 1971 and at or before the particular time, all capital gains and capital losses of the trust for the year, 20

(iv) in each year that ended after 1971, before 1993 and at or before the particular time, 100/15 of the total of all amounts each of which is deemed by subsection (9) to be paid on account of tax under this Part in respect of an employee because the employee ceased to be a beneficiary under the plan in the year, and 25

(v) in each year that ended after 1991 and at or before the particular time, the total of all amounts each of which is an amount that may be deducted under subsection (9) in computing the employee's income because the employee ceased to be a beneficiary under the plan in the year. 30

**"unused portion of a
beneficiary's exempt
capital gains
balance"**

*« fraction inutilisée
du solde des gains en
capital exonérés »*

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"unused portion of a beneficiary's exempt capital gains balance" in respect of a trust governed by an employees profit sharing plan, at any particular time in a taxation year of the beneficiary, means

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(a) where the year ends before 2005, the amount, if any, by which the beneficiary's exempt capital gains balance (in this paragraph having the same meaning as in subsection 39.1(1)) in respect of the trust for the year exceeds the total of all amounts each of which is an amount by which a capital gain is reduced under section 39.1 in the year because of the beneficiary's exempt capital gains balance in respect of the trust, or

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(b) where the year ends after 2004, the amount, if any, by which

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(i) the amount, if any, that would, if the definition "exempt capital gains balance" in subsection 39.1(1) were read without reference to "that ends before 2005", be the beneficiary's exempt capital gains balance in respect of the trust for the year

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exceeds

(ii) where there has been a disposition of an interest or a part of an interest of the beneficiary in the trust after the beneficiary's 2004 taxation year (other than a disposition that is a part of a transaction described in paragraph (7.1)(c) in which property is received in satisfaction of all or a portion of the beneficiary's interests in the trust), the total of all amounts each of which is an amount by which the adjusted cost base of an interest or a part of an interest disposed of by the beneficiary (other than an interest or a part of an interest that is all or a portion of the beneficiary's interests referred to in paragraph (7.1)(c)) was increased because of paragraph 53(1)(p), and

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(iii) in any other case, nil.

(3) The portion of paragraph 144(7.1)(b) of the Act after subparagraph (iii) and before subparagraph (iv) is replaced by the following:

is, subject to paragraph (c), deemed to be

(4) Subsection 144(7.1) of the Act is amended by striking out the word "and" at the end of paragraph (a), by adding the word "and" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) where a particular property received is all or a portion of property received in satisfaction of all or a portion of the beneficiary's interests in the trust and the beneficiary files with the Minister on or before the beneficiary's filing-due date for the taxation year that includes the particular time an election in respect of the particular property in prescribed form, there shall be included in the cost to the beneficiary of the particular property determined under paragraph (b) the least of:

(i) the amount, if any, by which the unused portion of the beneficiary's exempt capital gains balance in respect of the trust at the particular time exceeds the total of all amounts each of which is an amount included because of this paragraph in the cost to the beneficiary of another property received by the beneficiary at or before the particular time in the year,

(ii) the amount, if any, by which the fair market value of the particular property at the particular time exceeds the amount deemed by subparagraph (b)(iv) to be the cost to the beneficiary of the particular property, and

(iii) the amount designated in the election in respect of the particular property.

(5) Subsection (1) applies to the 1992 and 1993 taxation years.

(6) Subsections (2) to (4) apply to the 1994 and subsequent taxation years, and a prescribed form filed under paragraph 144(7.1)(c) of the Act, as enacted by subsection (4), before the end of the sixth month after the month in which this Act is assented to is deemed to be filed on time.

96. (1) Paragraph (a) of the definition "annuitant" in subsection 146(1) of the English version of the Act is replaced by the following:

(a) until such time after maturity of the plan as an individual's spouse becomes entitled, as a consequence of the individual's death, to receive benefits to be paid out of or under the plan, the individual referred to in paragraph (a) or (b) of the definition "retirement savings plan" in this subsection for whom, under a retirement savings plan, a retirement income is to be provided, and 5

(2) The definition "benefit" in subsection 146(1) of the Act is amended by striking out the word "and" at the end of paragraph (b), by adding the word "and" at the end of paragraph (c) and by adding the following after paragraph (c): 10

(c.1) a tax-paid amount described in paragraph (b) of the definition "tax-paid amount" that relates to interest or another amount included in computing income otherwise than because of this section

(3) The definition "earned income" in subsection 146(1) of the Act is amended by striking out the word "or" at the end of paragraph (f), by adding the word "or" at the end of paragraph (g) and by adding the following after paragraph (g): 15

(h) the portion of an amount included under subparagraph (a)(ii) or (c)(ii) in determining the taxpayer's earned income for the year because of subparagraph 14(1)(a)(v) 20

(4) The description of B in the definition "RRSP deduction limit" in subsection 146(1) of the Act is replaced by the following:

B is the amount, if any, by which

(a) the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the immediately preceding taxation year 25

exceeds the total of all amounts each of which is

(b) the taxpayer's pension adjustment for the immediately preceding taxation year in respect of an employer, or 30

(c) a prescribed amount in respect of the taxpayer for the year, and

(5) Paragraphs (a) and (b) of the definition "refund of premiums" in subsection 146(1) are replaced by the following:

(a) any amount paid to a spouse of the annuitant out of or under a registered retirement savings plan of the annuitant (other than any part of that amount that is a tax-paid amount in respect of the plan), where the annuitant died before the maturity of the plan and that amount was paid as a consequence of the death, or

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(b) if the annuitant had no spouse at the time of the annuitant's death, any amount paid out of or under a registered retirement savings plan of the annuitant (other than any part of that amount that is a tax-paid amount in respect of the plan) after the death to a child or grandchild (in this definition referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support,

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(6) The description of B in subparagraph (b)(i) of the definition "unused RRSP deduction room" in subsection 146(1) of the Act is replaced by the following:

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B is the amount, if any, by which

(A) the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the immediately preceding taxation year

exceeds the total of all amounts each of which is

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(B) the taxpayer's pension adjustment for the immediately preceding taxation year in respect of an employer, or

(C) a prescribed amount in respect of the taxpayer for the year,

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(7) Subsection 146(1) of the Act is amended by adding the following in alphabetical order:

"tax-paid amount"

« *montant libéré*

d'impôt »

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"tax-paid amount" paid to a person in respect of a registered retirement saving plan means

(a) an amount paid to the person in respect of the amount that would, if this Act were read without reference to subsection 104(6), be income of a trust governed by the plan for a taxation year for which the trust was subject to tax because of paragraph (4)(c), or

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(b) where

(i) the plan is a deposit with a depository referred to in subparagraph (b)(iii) of the definition "retirement savings plan", and

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(ii) an amount is received at any time out of or under the plan by the person,

the portion of the amount that can reasonably be considered to relate to interest or another amount in respect of the deposit that was required to be included in computing the income of any person (other than the annuitant) otherwise than because of this section;

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(8) The description of A in subsection 146(8.9) of the Act is replaced by the following:

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A is the total of

(a) all refunds of premiums in respect of the plan,

(b) all tax-paid amounts in respect of the plan paid to individuals who, otherwise than because of subsection (8.1), received refunds of premiums in respect of the plan, and

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(c) all amounts each of which is a tax-paid amount in respect of the plan paid to the legal representative of the annuitant under the plan, to the extent that the legal representative would have been entitled to designate that tax-paid amount under subsection (8.1) if tax-paid amounts were not excluded in determining refunds of premiums;

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(9) Subsection (1) applies to taxation years that end after November 1991.

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(10) Subsections (2), (5), (7) and (8) apply to deaths occurring after 1992.

(11) Subsection (3) applies to the 1995 and subsequent taxation years.

(12) Subsections (4) and (6) apply after 1988.

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97. (1) Paragraph 146.3(2)(a) of the English version of the Act is replaced by the following:

(a) the fund provides that the carrier shall make only those payments described in paragraphs (d) and (e), the definition "retirement income fund" in subsection (1) and paragraph (14)(b);

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(2) Subsection 146.3(5) of the Act is amended by striking out the word "or" at the end of paragraph (a), by adding the word "or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) an amount that relates to interest, or to another amount included in computing income otherwise than because of this section, and that would, if the fund were a registered retirement savings plan, be a tax-paid amount (within the meaning assigned by paragraph (b) of the definition "tax-paid amount" in subsection 146(1)).

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(3) The description of A in subsection 146.3(6.2) of the Act is replaced by the following:

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A is the total of

(a) all designated benefits of individuals in respect of the fund,

(b) all amounts that would, if the fund were a registered retirement savings plan, be tax-paid amounts (in this subsection having the meaning assigned by subsection 146(1)) in respect of the fund received by individuals who received, otherwise than because of subsection (6.1), designated benefits in respect of the fund, and

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(c) the total of all amounts each of which is an amount that would, if the fund were a registered retirement savings plan, be a tax-paid amount in respect of the fund received by the legal representative of the last annuitant under the fund, to the extent that the legal representative would have been entitled to designate that tax-paid amount under paragraph (a) of the definition "designated benefit" in subsection (1) if tax-paid amounts were not excluded in determining refunds of premiums (as defined in subsection 146(1));

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(4) Subsection (1) applies to taxation years that end after November 1991.

(5) Subsections (2) and (3) apply to deaths that occur after 1992.

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98. (1) Subparagraph 147(19)(b)(ii) of the Act is replaced by the following:

(ii) who is entitled to the amount as a consequence of the death of an employee or former employee referred to in subparagraph (i) and who was, at the date of the employee's death, a spouse of the employee, 5

(2) Subsection (1) applies after 1992.

99. (1) Paragraph 147.2(2)(b) of the Act is replaced by the following:

(b) the recommendation is approved by the Minister in writing, 10

(2) Clause (B) of the description of Z in subparagraph 147.2(4)(b)(iii) of the Act is replaced by the following:

(B) where the preceding year was before 1987, under subparagraph 8(1)(m)(ii) (as it read in its application to that preceding year) in respect of additional voluntary contributions made in respect of a year that satisfies the conditions in the description of Y, and 15

(3) Section 147.2 of the Act is amended by adding the following after subsection (5):

Deductible contributions when taxpayer dies 20

(6) Where a taxpayer dies in a taxation year, for the purpose of computing the taxpayer's income for the year and the immediately preceding taxation year, 25

(a) paragraph (4)(b) shall be read without reference to subparagraph (ii) and as if the reference to "the least of" were a reference to "the lesser of", and 30

(b) paragraph (4)(c) shall be read without reference to subparagraph (ii) and the words "the lesser of".

(4) Subsection (1) applies after March 1996.

(5) Subsection (2) applies to the 1991 and subsequent taxation years.

(6) Subsection (3) applies to taxpayers who die after 1992.

100. (1) The definitions "eligible funeral arrangement", "funeral services" and "qualifying person" in subsection 148.1(1) of the Act are replaced by the following: 5

"eligible funeral arrangement"
« *arrangement de services funéraires* » 10

"eligible funeral arrangement" at a particular time means an arrangement established and maintained by a qualifying person solely for the purpose of funding funeral or cemetery services with respect to one or more individuals and of which there is one or more custodians each of whom was resident in Canada at the time the arrangement was established, where 15

(a) each contribution made before the particular time under the arrangement was made for the purpose of funding funeral or cemetery services to be provided by the qualifying person with respect to an individual, and 20

(b) for each such individual, the total of all relevant contributions made before the particular time in respect of the individual does not exceed

(i) \$15,000, where the arrangement solely covers funeral services with respect to the individual, 25

(ii) \$20,000, where the arrangement solely covers cemetery services with respect to the individual, and

(iii) \$35,000, in any other case, 30

and, for the purpose of this definition, any payment (other than the portion of the payment to be applied as a contribution to a cemetery care trust) that is made in consideration for the immediate acquisition of a right to burial in or on property that is set apart or used as a place for the burial of human remains or of any interest in a building or structure for the permanent placement of human remains, shall be considered to have been made pursuant to a separate arrangement that is not an eligible funeral arrangement; 35

"funeral services"
«services funéraires»

"funeral services" with respect to an individual means property and services (other than cemetery services with respect to the individual) that relate directly to funeral arrangements in Canada in consequence of the death of the individual; 5

"qualifying person"
«personne
admissible»

"qualifying person" means a person licensed or otherwise authorized under the laws of a province to provide funeral or cemetery services with respect to individuals; 10

(2) Paragraph (b) of the definition "custodian" in subsection 148.1(1) of the Act is replaced by the following:

(b) in any other case, a qualifying person who receives a contribution under the arrangement as a deposit for the provision by the person of funeral or cemetery services; 15

(3) Paragraphs (a) and (b) of the definition "relevant contribution" in subsection 148.1(1) of the Act are replaced by the following: 20

(a) a contribution under the particular arrangement (other than a contribution made by way of a transfer from an eligible funeral arrangement) for the purpose of funding funeral or cemetery services with respect to the individual, or

(b) such portion of a contribution to another arrangement that was an eligible funeral arrangement (other than any such contribution made by way of a transfer from any eligible funeral arrangement) as can reasonably be considered to have subsequently been used to make a contribution under the particular arrangement by way of a transfer from an eligible funeral arrangement for the purpose of funding funeral or cemetery services with respect to the individual. 25
30

(4) Subsection 148.1(1) of the Act is amended by adding the following in alphabetical order:

"cemetery care trust" « <i>fiducie pour l'entretien d'un cimetière</i> »	5
"cemetery care trust" means a trust established pursuant to an Act of a province for the care and maintenance of a cemetery;	
"cemetery services" « <i>services de cimetière</i> »	10
"cemetery services" with respect to an individual means property (including interment vaults, markers, flowers, liners, urns, shrubs and wreaths) and services that relate directly to cemetery arrangements in Canada in consequence of the death of the individual including, for greater certainty, property and services to be funded out of a cemetery care trust;	15
"funeral or cemetery services" « <i>services de funérailles ou de cimetière</i> »	20
"funeral or cemetery services" with respect to an individual means funeral services with respect to the individual, cemetery services with respect to the individual or any combination of such services;	25
(5) Paragraphs 148.1(2)(b) and (c) of the Act are replaced by the following:	30
(b) subject to paragraph (c) and subsection (3), no amount shall be	
(i) included in computing a person's income solely because of the provision by another person of funeral <u>or cemetery</u> services under an eligible funeral arrangement, or	
(ii) included in computing a person's income because of the disposition of an interest under an eligible funeral arrangement or an interest in a trust governed by an eligible funeral arrangement; and	35

(c) subparagraph (b)(ii) shall not affect the consequences under this Act of the disposition of any right under an eligible funeral arrangement to payment for the provision of funeral or cemetery services.

(6) Subsection 148.1(3) of the Act is replaced by the following: 5

**Income inclusion on
return of funds**

(3) Where at any particular time in a taxation year a particular amount is distributed (otherwise than as payment for the provision of funeral or cemetery services with respect to an individual) to a taxpayer from an arrangement that was, at the time it was established, an eligible funeral arrangement and the particular amount is paid from the balance in respect of the individual under the arrangement, there shall be added in computing the taxpayer's income for the year from property the lesser of the particular amount and the amount determined by the formula 10 15

$$A + B - C$$

where

A is the balance in respect of the individual under the arrangement immediately before the particular time (determined without regard to the value of property in a cemetery care trust); 20

B is the total of all payments made from the arrangement before the particular time for the provision of funeral or cemetery services with respect to the individual (other than cemetery services funded by property in a cemetery care trust); and

C is the total of all relevant contributions made before the particular time in respect of the individual under the particular arrangement (other than contributions in respect of the individual that were in a cemetery care trust). 25

(7) Subsections (1) to (6) apply to the 1993 and subsequent taxation years. 30

101. (1) Paragraph 149(1)(o.1) of the Act is replaced by the following:

Pension corporations

(o.1) a corporation

(i) incorporated and operated throughout the period either

(A) solely for the administration of a registered pension plan, or

(B) for the administration of a registered pension plan and for no other purpose other than acting as trustee of, or administering, a trust governed by a retirement compensation arrangement, where the terms of the arrangement provide for benefits only in respect of individuals who are provided with benefits under the registered pension plan, and 5

(ii) accepted by the Minister as a funding medium for the purpose of the registration of the pension plan; 10

(2) Subsection 149(1) of the Act is amended by added by the following after paragraph (s.1):

Cemetery care trust

(s.2) a cemetery care trust; 15

(3) Paragraph 149(10)(a) of the Act is replaced by the following:

(a) the taxation year of the corporation that would otherwise have included that time is deemed to have ended immediately before that time, a new taxation year of the corporation is deemed to have begun at that time, and, for the purpose of determining the taxpayer's fiscal period after that time, the taxpayer is deemed not to have established a fiscal period before that time; 20

(4) Paragraphs 149(10)(b) to (d) of the Act are replaced by the following:

(b) the corporation is deemed to have disposed, at the time (in this subsection referred to as the "disposition time") that is immediately before the time that is immediately before that time, of each property that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value; 25 30

(c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 111 and 126, subsections 127(5) to (12.3), and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

(d) where, immediately before the disposition time, the corporation's cumulative eligible capital in respect of a business exceeds the total of

(i) 3/4 of the fair market value of the eligible capital property in respect of the business, and 5

(ii) the amount otherwise deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time, 10

the excess shall be deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time.

(5) Subsection 149(11) of the Act is repealed. 15

(6) Subsection (1) applies to the 1994 and subsequent taxation years.

(7) Subsection (2) applies to the 1993 and subsequent taxation years.

(8) Subsections (3) and (4) apply to a corporation that becomes or ceases to be exempt from tax on its taxable income under Part I of the Act after April 26, 1995. 20

102. (1) The formula in the definition "disbursement quota" in subsection 149.1(1) of the Act is replaced by the following:

$$\underline{A} + A.1 + B + C \times 0.045 [D - (E + F)] / 365 + G \quad 25$$

(2) The portion of the description of A in the definition "disbursement quota" in subsection 149.1(1) of the Act before paragraph (a) is replaced by the following:

A is 80% of the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than 30

(3) Subsections (1) and (2) apply to taxation years that end after November 1991, except that for such taxation years that begin before 1993, the formula in the definition "disbursement quota" in subsection 149.1(1) of the Act, as enacted by subsection (1), shall be read as: 35

$$A + B + C \times 0.045 [D - (E + F)] / 365 + G$$

103. (1) Subsection 152(1.2) of the Act is replaced by the following:

Provisions applicable

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with such modifications as the circumstances require, to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 or 126.1 to be an overpayment on account of a taxpayer's liability under this Part, except that

(a) subsections (1) and (2) do not apply to determinations made under subsections (1.1) and (1.11);

(b) an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer; and

(c) subsection 164(4.1) does not apply to a determination made under subsection (1.4).

(2) Section 152 of the Act is amended by adding the following after subsection (1.3):

Determination in respect of a partnership

(1.4) The Minister may, within 3 years after the day that is the later of

(a) the day on or before which a member of a partnership is, or but for subsection 220(2.1) would be, required under section 229 of the *Income Tax Regulations* to make an information return for a fiscal period of the partnership, and

(b) the day the return is filed,

determine any income or loss of the partnership for the fiscal period and any deduction or other amount, or any other matter, in respect of the partnership for the fiscal period that is relevant in determining the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to

have been paid or to have been an overpayment by, any member of the partnership for any taxation year under this Part.

**Notice of
determination**

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(1.5) Where a determination is made under subsection (1.4) in respect of a partnership for a fiscal period, the Minister shall send a notice of the determination to the partnership and to each person who was a member of the partnership during the fiscal period.

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**Absence of
notification**

(1.6) No determination made under subsection (1.4) in respect of a partnership for a fiscal period is invalid solely because one or more persons who were members of the partnership during the period did not receive a notice of the determination.

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**Binding effect of
determination**

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(1.7) Where the Minister makes a determination under subsection (1.4) or a redetermination in respect of a partnership,

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(a) subject to the rights of objection and appeal of the member of the partnership referred to in subsection 165(1.15) in respect of the determination or redetermination, the determination or redetermination is binding on the Minister and each member of the partnership for the purposes of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, the members for any taxation year under this Part; and

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(b) notwithstanding subsections (4), (4.01), (4.1) and (5), the Minister may, before the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the determination or redetermination, assess the tax, interest, penalties or other amounts payable and determine an amount deemed to have been paid or to have been an overpayment under this Part in respect of any member of the partnership and any other taxpayer for any taxation year as are necessary to give effect to the determination or redetermination or a decision of the Tax Court of Canada, the Federal Court of Canada or the Supreme Court of Canada.

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Time to assess

(1.8) Where, as a result of representations made to the Minister that a person was a member of a partnership in respect of a fiscal period, a determination is made under subsection (1.4) for the period and the Minister, the Tax Court of Canada, the Federal Court or the Supreme Court of Canada concludes at a subsequent time that the partnership did not exist for the period or that, throughout the period, the person was not a member of the partnership, the Minister may, notwithstanding subsections (4), (4.1) and (5), within one year after that subsequent time, assess the tax, interest, penalties or other amounts payable, or determine an amount deemed to have been paid or to have been an overpayment under this Part, by any taxpayer for any taxation year, but only to the extent that the assessment or determination can reasonably be regarded

(a) as relating to any matter that was relevant in the making of the determination made under subsection (1.4);

(b) as resulting from the conclusion that the partnership did not exist for the period; or

(c) as resulting from the conclusion that the person was, throughout the period, not a member of the partnership.

(3) Subsection 152(3.1) of the Act is replaced by the following:**Definition of "normal reassessment period"**

(3.1) For the purposes of subsections (4), (4.01), (4.2), (4.3) and (5), the normal reassessment period for a taxpayer in respect of a taxation year is

(a) where at the end of the year the taxpayer is a mutual fund trust or a corporation other than a Canadian-controlled private corporation, the period that ends 4 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of a notification that no tax is payable by the taxpayer for the year; and

(b) in any other case, the period that ends 3 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of a notification that no tax is payable by the taxpayer for the year.

(4) Subsection 152(4) of the Act is replaced by the following:**Assessment and
reassessment**

(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the normal reassessment period for the taxpayer in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year; or

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and

(i) is required pursuant to subsection (6) or would be so required if the taxpayer had claimed an amount by filing the prescribed form referred to in that subsection on or before the day referred to therein,

(ii) is made as a consequence of the assessment or reassessment pursuant to this paragraph or subsection (6) of tax payable by another taxpayer,

(iii) is made as a consequence of a transaction involving the taxpayer and a non-resident person with whom the taxpayer was not dealing at arm's length, or

(iv) is made as a consequence of a payment or reimbursement of any income or profits tax to or by the government of a country other than Canada or a government of a state, province or other political subdivision of any such country.

**Assessment to which
paragraph 152(4)(a)
or (b) applies**

(4.01) Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a) or (b) applies in respect of a taxpayer for a taxation year may be made after the normal reassessment period for the taxpayer in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to, 5
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(a) where paragraph (4)(a) applies to the assessment, reassessment or additional assessment,

(i) any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, or 15
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(ii) a matter specified in a waiver filed with the Minister in respect of the year; and

(b) where paragraph (4)(b) applies to the assessment, reassessment or additional assessment, 25

(i) the assessment, reassessment or additional assessment to which subparagraph (4)(b)(i) applies,

(ii) the assessment or reassessment referred to in subparagraph (4)(b)(ii), 30

(iii) the transaction referred to in subparagraph (4)(b)(iii), or

(iv) the payment or reimbursement referred to in subparagraph (4)(b)(iv). 35

(5) Subsection 152(5) of the Act is replaced by the following:

**Limitation on
assessments**

(5) There shall not be included in computing the income of a taxpayer for a taxation year, for the purpose of an assessment, reassessment or additional assessment made under this Part after the taxpayer's normal reassessment period in respect of the year, any amount that was not included in computing the taxpayer's income for the purpose of an 40

assessment, reassessment or additional assessment made under this Part before the end of the period.

(6) Subsection 152(6) of the Act is amended by striking out the word "or" at the end of paragraph (f) and by adding the following after that paragraph:

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(g) a deduction under subsection 147.2(4) because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year, or

(7) Subsections (1) and (2) apply in respect of determinations made after the day on which this Act is assented to.

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(8) Subsections (3), (4) and (5) apply after April 27, 1989.

(9) Subsection (6) applies to taxpayers who die after 1992.

104. (1) Subsection 153(1) of the Act is amended by striking out the word "or" at the end of paragraph (q), by adding the word "or" at the end of paragraph (r) and by adding the following after paragraph (r):

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(s) an amount described in paragraph 56(1)(r)

(2) Subsection (1) applies to payments made after 1992.

105. (1) The portion of the definition "net tax owing" in subsection 156.1(1) of the Act after paragraph (b) is replaced by the following:

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and for the purposes of this definition, income taxes payable for a taxation year by an individual are determined after deducting all tax credits to which the individual is entitled for the year relating to those taxes (other than tax credits that become payable to the individual after the individual's balance-due day for the year and prescribed tax credits) and before taking into consideration the consequences of the deduction or exclusion of amounts referred to in paragraph 161(7)(a).

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(2) Subsection (1) applies to amounts that become payable after December 1995.

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106. (1) Paragraph 157(2)(c) of the Act is replaced by the following:

(c) its taxable income, before taking into consideration the consequences of the deduction or exclusion of amounts referred to in paragraph 161(7)(a), was not more than \$10,000, and

(2) Paragraph 157(2.1)(a) of the Act is replaced by the following:

(a) the total of the taxes payable under this Part and Parts I.3, VI and VI.1 by a corporation for a taxation year (before taking into consideration the consequences of the deduction or exclusion of amounts referred to in paragraph 161(7)(a)), or

(3) Paragraph 157(3)(e) of the Act is replaced by the following:

(e) 1/12 of the total of the amounts each of which is deemed by subsection 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year.

(4) Subsections (1) and (2) apply to amounts that become payable after December 1995.

(5) Subsection (3) applies to taxation years that end after February 22, 1994.

107. (1) Section 160 of the Act is amended by adding the following after subsection (1):

Joint liability where s. 69(11) applies 20

(1.1) Where a particular person or partnership is deemed by subsection 69(11) to have disposed of a property at any time, the person referred to in that subsection to whom a benefit described in that subsection was available in respect of a subsequent disposition of the property or property substituted for the property is jointly and severally liable with each other taxpayer to pay a part of the other taxpayer's liabilities under this Act in respect of each taxation year equal to the amount determined by the formula

$$A - B$$

where

A is the total of amounts payable under this Act by the other taxpayer in respect of the year, and

B is the amount that would, if the particular person or partnership were not deemed by subsection 69(11) to have disposed of the property, be determined for A in respect of the other taxpayer in respect of the year,

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but nothing under this subsection is deemed to limit the liability of the other taxpayer under any other provision of this Act.

(2) Subsections 160(2) and (3) of the Act are replaced by the following:

Assessment

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(2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division apply, with such modifications as the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

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Discharge of liability

(3) Where a particular taxpayer has become jointly and severally liable with another taxpayer under this section in respect of part or all of a liability under this Act of the other taxpayer,

(a) a payment by the particular taxpayer on account of that taxpayer's liability shall to the extent of the payment discharge the joint liability; but

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(b) a payment by the other taxpayer on account of that taxpayer's liability discharges the particular taxpayer's liability only to the extent that the payment operates to reduce that other taxpayer's liability to an amount less than the amount in respect of which the particular taxpayer is, by this section, made jointly and severally liable.

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(3) Subsection (1) applies in respect of dispositions that are deemed by subsection 69(11) of the Act to occur after April 26, 1995.

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108. (1) The portion of paragraph 161(7)(a) of the Act before subparagraph (i) is replaced by the following:

(a) the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is deemed to be the amount that it would be if the consequences of the deduction or exclusion of the following amounts were not taken into consideration:

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(2) Paragraph 161(7)(a) of the Act is amended by adding the following after subparagraph (viii):

(viii.1) any amount deducted under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in the subsequent taxation year, 5

(3) Paragraph 161(7)(a) of the English version of the Act is amended by replacing the word "or" at the end of subparagraph (ix) with the word "and", by adding the word "and" at the end of subparagraph (x) and by repealing the portion following subparagraph (x). 10

(4) The portion of paragraph 161(7)(b) of the Act before subparagraph (i) is replaced by the following:

(b) the amount by which the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is reduced as a consequence of the deduction or exclusion of amounts described in paragraph (a) is deemed to have been paid on account of the taxpayer's tax payable under this Part for the year on the day that is the latest of 15

(5) Subsection 161(11) of the Act is amended by striking out the word "and" at the end of paragraph (b) and by adding the following after that paragraph: 20

(b.1) in the case of a penalty under subsection 237.1(7.4), from the day on which the taxpayer became liable to the penalty to the day of payment; and

(6) Section 161 of the Act is amended by adding the following after subsection (11): 25

Partnership liable to interest

(12) Where a partnership is liable to a penalty under subsection 237.1(7.4), sections 152, 158 to 160.1, this section and sections 164 to 167 and Division J apply, with such modifications as the circumstances require, with respect to interest on the penalty as if the partnership were a corporation. 30

(7) Subsections (1), (3) and (4) apply to amounts that become payable after December 1995. 35

(8) Subsection (2) applies to taxpayers who die after 1992.

(9) Subsections (5) and (6) apply after December 1, 1994.

109. (1) Subsection 162(9) of the Act is repealed.

(2) Subsection (1) applies after December 1, 1994.

110. (1) The portion of subsection 163(2) of the Act before paragraph (a) is replaced by the following: 5

False statements or omissions

(2) Every person 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, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of \$100 and 50% of the total of 10 15

(2) Subsection 163(4) of the Act is amended by striking out the word "and" at the end of paragraph (b) and by adding the following after paragraph (b):

(b.1) any amount that may be deducted under subsection 147.2(4) in computing the person's income for the year because of the application of subsection 147.2(6) as a result of the person's death in the subsequent taxation year; and 20

(3) Subsection (1) applies after ANNOUNCEMENT DATE.

(4) Subsection (2) applies to taxpayers who die after 1992.

111. (1) Subparagraph 164(1)(a)(i) of the Act is replaced by the following: 25

(i) before mailing the notice of assessment for the year, where the taxpayer is a qualifying corporation (as defined in subsection 127.1(2)) and claims in its return of income under this Part for the year to have paid an amount on account of its tax payable under this Part for the year by reason of subsection 127.1(1) in respect of its refundable investment tax credit (as defined in subsection 127.1(2)), refund without application therefor, all or any part of any amount claimed in the return as an overpayment for the year, not exceeding the amount by which the total determined under paragraph (f) of the definition "refundable investment tax credit" 30 35

in subsection 127.1(2) in respect of the taxpayer for the year exceeds the total determined under paragraph (g) of that definition in respect of the taxpayer for the year, and

(2) Paragraph 164(1)(b) of the Act is replaced by the following:

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(ii) after mailing the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(a). 5 10

(3) Subsection 164(2.1) of the Act is replaced by the following:

**Application
respecting refunds
under section 122.5**

(2.1) Where an amount deemed under section 122.5 to be paid by an individual during a month specified for a taxation year is applied under subsection (2) to a liability of the individual and the individual's return of income for the year is filed on or before the individual's balance-due day for the year, the amount is deemed to have been so applied on the day on which the amount would have been refunded if the individual were not liable to make a payment to Her Majesty in right of Canada. 15 20

(4) Subsection 164(5) of the Act is amended by adding the following after paragraph (h):

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in a subsequent taxation year, 25

(5) Subsection 164(5.1) of the Act is amended by adding the following after paragraph (h):

(h.01) the deduction of an amount under subsection 147.2(4) in computing the taxpayer's income for the year because of the application of subsection 147.2(6) as a result of the taxpayer's death in a subsequent taxation year, 30

(6) Paragraph 164(6)(c) of the Act is replaced by the following:

(c) such parts of one or more capital losses of the estate from the disposition of properties in the year (the total of which is not to exceed the excess referred to in paragraph (a)) as the legal representative so elects, in prescribed manner and within a prescribed time, are deemed (except for the purpose of subsection 112(3) and this paragraph) to be capital losses of the deceased taxpayer from the disposition of the properties by the taxpayer in the taxpayer's last taxation year and not to be capital losses of the estate from the disposition of those properties, 5

(7) Subsection (1) applies to taxation years that end after December 2, 1992. 10

(8) Subsection (2) applies after April 27, 1989.

(9) Subsections (4) and (5) apply to taxpayers who die after 1992.

(10) Subsection (6) applies to deaths that occur after 1993.

Transitional provision 15

112. Where

(a) the first taxation year of an estate of an individual ends after April 26, 1995 and before 1997,

(b) the estate has a capital loss from the disposition after the year and before 1997 of a share of the capital stock of a corporation that was owned by the individual or the estate on April 26, 1995 and acquired by the estate as a consequence of the individual's death, and 20

(c) the individual's legal representative so elects in writing filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to, 25

the following rules apply:

(d) the disposition is deemed to have occurred in the first taxation year of the estate, 30

(e) an election under paragraph 164(6)(c) of the Act for the year is deemed to have been filed on time if it is filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to, and

(f) an amended return of income under Part I of the Act for the individual's last taxation year is deemed for the purposes of paragraph 164(6)(e) of the Act to have been filed on time if it is filed with the Minister of National Revenue within 6 months after the month in which this Act is assented to.

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113. (1) The portion of subsection 165(1.1) of the Act before paragraph (b) is replaced by the following:

**Limitation of right
to object to
assessments or
determinations**

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(1.1) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6) or 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

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(2) The portion of subsection 165(1.1) of the Act after paragraph (c) is replaced by the following:

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the taxpayer may object to the assessment or determination within 90 days after the day of mailing of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded

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(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

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and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

(3) Section 165 of the Act is amended by adding the following after subsection (1.14):

Partnership

(1.15) Notwithstanding subsection (1), where the Minister makes a determination under subsection 152(1.4) in respect of a fiscal period of a partnership, an objection in respect of the determination may be made only by one member of the partnership, and that member must be either 5

(a) designated for that purpose in the information return made under section 229 of the *Income Tax Regulations* for the fiscal period; or 10

(b) otherwise expressly authorized by the partnership to so act.

(4) Subsections 165(3.1) and (3.2) of the Act are repealed.

(5) Subsection 165(5) of the Act is replaced by the following:

Validity of reassessment 15

(5) The limitations imposed under subsections 152(4) and (4.01) do not apply to a reassessment made under subsection (3).

(6) Subsections (1) to (3) apply in respect of determinations made after the day on which this Act is assented to. 20

(7) Subsection (4) applies after August 27, 1995.

(8) Subsection (5) applies after April 27, 1989.

114. (1) The portion of subsection 169(2) of the Act before paragraph (b) is replaced by the following:

Limitation of right to appeal from assessments or determinations 25

(2) Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer 30

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6) or 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

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(2) The portion of subsection 169(2) of the Act after paragraph (c) is replaced by the following:

the taxpayer may appeal to the Tax Court of Canada within the time limit specified in subsection (1), but only to the extent that the reasons for the appeal can reasonably be regarded

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(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter specified in paragraph 152(1.8)(a), (b) or (c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination

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and that was not conclusively determined by the Court, and this subsection shall not be read or construed as limiting the right of the taxpayer to appeal from an assessment or a determination issued or made before that time.

(3) Subsections (1) and (2) apply in respect of determinations made after the day on which this Act is assented to.

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115. (1) Paragraphs 181.1(7)(a) and (b) of the Act are replaced by the following:

(a) the corporation's unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that

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(i) the amount, if any, by which

(A) the total of all amounts each of which is

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(I) its income under Part I for the particular year from a business that was carried on by the corporation throughout the subsequent year for profit or with a reasonable expectation of profit, or

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services 5

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A) 10

is of the greater of

(ii) the amount determined under subparagraph (i), and 15

(iii) the corporation's taxable income for the particular year; and

(b) the corporation's unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation for a taxation year that ended before that time (in this paragraph referred to as the "preceding year") to the extent of that proportion of the corporation's Canadian surtax payable for the particular year that 20

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or 25

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, the corporation's income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services 30

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing the corporation's taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A) 5

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year. 10

(2) Subsection (1) applies to acquisitions of control that occur after April 26, 1995.

116. (1) Subsection 181.2(3) of the Act is amended by adding the following after paragraph (b):

(b.1) the amount of its deferred unrealized foreign exchange gains at the end of the year, 15

(2) Paragraph 181.2(3)(g) of the Act is replaced by the following:

(g) where the corporation was a member of a partnership at the end of the year, that proportion of the amount, if any, by which

(i) the total of all amounts (other than amounts owing to the member or to other corporations that are members of the partnership) that would be determined under this paragraph and paragraphs (b) to (d) and (f) in respect of the partnership at the end of its last fiscal period ending in the year (if paragraphs (b) to (d) and (f) applied to partnerships in the same way that they apply to corporations) 20
25

exceeds

(ii) the amount of the partnership's deferred unrealized foreign exchange losses at the end of that period 30

that the member's share of the partnership's income or loss for that period is of the partnership's income or loss for that period

(3) Subsection 181.2(3) of the Act is amended by striking out the word "and" at the end of paragraph (i), by adding the word "and" at the end of paragraph (j) and by adding the following after paragraph (j):

(k) the amount of its deferred unrealized foreign exchange losses at the end of the year. 5

(4) Subsections (1) to (3) apply to the 1995 and subsequent taxation years.

117. (1) Subparagraph 181.3(3)(d)(i) of the Act is replaced by the following: 10

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) the corporation's surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under this Part or Part VI for the year 15

exceeds the total of all amounts each of which is

(II) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and 20

(III) an amount on which the corporation was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and 25 30

(B) the corporation's attributed surplus for the year,

(2) Subsection (1) applies to the 1994 and subsequent taxation years.

118. (1) Subparagraph 181.4(d)(i) of the Act is replaced by the following: 35

(i) is a ship or aircraft operated by the corporation in international traffic or is personal property used in its business of transporting passengers or goods by ship or aircraft in international traffic, and

(2) Subsection (1) applies to the 1995 and subsequent taxation years.

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119. (1) The portion of subsection 181.5(6) of the Act after paragraph (b) is replaced by the following:

is, for the purposes of this section and subsection 181.3(4), deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations is, for the purposes of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

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(2) Subsection (1) applies after April 26, 1995.

120. (1) The Act is amended by adding the following after section 181.7:

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**Provisions
applicable — Crown
corporations**

181.71 Section 27 applies to this Part with any modifications that the circumstances require.

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(2) Subsection (1) applies to taxation years that end after June 1989.

121. (1) Paragraph 186.1(b) of the Act is replaced by the following:

(b) that was, throughout the year,

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(i) a bank,

(ii) a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,

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- (iii) an insurance corporation,
- (iv) a prescribed labour-sponsored venture capital corporation,
- (v) a prescribed investment contract corporation, or
- (vi) a non-resident-owned investment corporation.

(2) Subsection (1) applies after February 22, 1994. 5

122. (1) The Act is amended by adding the following after section 187.6:

**Provisions
applicable — Crown
corporations** 10

187.61 Section 27 applies to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies after 1987.

123. (1) Paragraphs 190.1(6)(a) and (b) of the Act are replaced by the following: 15

(a) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ended before that time is deductible by the corporation for a taxation year that ends after that time (in this paragraph referred to as the "subsequent year") to the extent of that proportion of the corporation's tax payable under Part I for the particular year that 20

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation for profit or with a reasonable expectation of profit throughout the subsequent year, or 25

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services 30

exceeds

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A) 5

is of the greater of

(ii) the amount determined under subparagraph (i), and

(iii) the corporation's taxable income for the particular year; and 10

(b) the corporation's unused Part I tax credit and unused surtax credit for a particular taxation year that ends after that time is deductible by the corporation for a taxation year (in this paragraph referred to as the "preceding year") that ended before that time to the extent of that proportion of the corporation's tax payable under Part I for the particular year that 15

(i) the amount, if any, by which

(A) the total of all amounts each of which is

(I) its income under Part I for the particular year from a business that was carried on by the corporation in the preceding year and throughout the particular year for profit or with a reasonable expectation of profit, or 20

(II) where properties were sold, leased, rented or developed or services were rendered in the course of carrying on that business before that time, its income under Part I for the particular year from any other business all or substantially all of the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services 25

exceeds 30

(B) the total of all amounts each of which is an amount deducted under paragraph 111(1)(a) or (d) in computing its taxable income for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of any business referred to in clause (A) 35

is of the greater of

- (ii) the amount determined under subparagraph (i), and
- (iii) the corporation's taxable income for the particular year.

(2) Subsection (1) applies to acquisitions of control that occur after April 26, 1995. 5

124. (1) Subparagraph 190.13(c)(i) of the Act is replaced by the following:

(i) the amount that is the greater of

(A) the amount, if any, by which

(I) its surplus funds derived from operations (as defined in subsection 138(12)) as of the end of the year, computed as if no tax were payable under Part I.3 or this Part for the year 10

exceeds the total of all amounts each of which is 15

(II) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under Part XIV for a preceding taxation year, except the portion, if any, of the amount on which tax was payable, or would have been payable, because of subparagraph 219(4)(a)(i.1), and 20

(III) an amount on which it was required to pay, or would but for subsection 219(5.2) have been required to pay, tax under subsection 219(5.1) for the year because of the transfer of an insurance business to which subsection 138(11.5) or (11.92) has applied, and 25

(B) its attributed surplus for the year,

(2) Subsection (1) applies to the 1994 and subsequent taxation years. 30

125. (1) The portion of subsection 190.15(6) of the Act after paragraph (b) is replaced by the following:

are, for the purposes of this section and section 190.14, deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be considered that one of the main purposes for the acquisition of the right was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purpose of determining whether a corporation is related to any other corporation, the corporations are, for the purpose of this section, deemed to be in the same position in relation to each other as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time.

(2) Subsection (1) applies after April 26, 1995.

126. (1) The Act is amended by adding the following after section 190.21:

**Provisions
applicable — Crown
corporations**

190.211 Section 27 applies to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies after May 23, 1985.

127. (1) Where an amount in respect of deferred realized gains or losses of a life insurance corporation resident in Canada is added or deducted, as the case may be, in computing its taxable capital employed in Canada or capital under Part VI of the Act for a taxation year that ends after February 25, 1992 and begins before 1996, there shall be deducted, or added where negative, in computing the corporation's taxable capital employed in Canada under Part VI of the Act for the year, the absolute value of the amount determined by the formula

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

where

A is the corporation's taxable capital employed in Canada for the year under Part VI of the Act (determined without reference to this section);

B is the amount that would be the value of A if no amount were added or deducted in computing the corporation's taxable capital employed in Canada or capital for the year under Part VI of the Act in respect of its deferred realized gains or losses, as the case may be;

C is the number of days in the year that are after February 25, 1992 and before 1996; and

D is the number of days in the year.

128. (1) The portion of subsection 191.3(1) of the Act before paragraph (a) and paragraphs 191.3(1)(a) and (b) of the Act are replaced by the following: 5

**Agreement
respecting liability
for tax**

191.3 (1) Where a corporation (in this section referred to as the "transferor corporation") and a taxable Canadian corporation (in this section referred to as the "transferee corporation") that was related (otherwise than because of a right referred to in paragraph 251(5)(b) or because of the control of any corporation by Her Majesty in right of Canada or a province) to the transferor corporation 10 15

(a) throughout a particular taxation year of the transferor corporation (or, where the transferee corporation came into existence in that year, throughout the part of that year in which the transferee corporation was in existence), and

(b) throughout the last taxation year of the transferee corporation ending at or before the end of the particular taxation year (or, where the transferor corporation came into existence in that last taxation year of the transferee corporation, throughout that part of that last year in which the transferor corporation was in existence) 20

(2) Subsection (1) applies to taxation years of the transferor corporation that begin after 1994, except that the amendment to the portion of subsection 191.3(1) of the Act before paragraph (a), as enacted by subsection (1), applies only to taxation years of the transferor corporation that end after April 26, 1995. 25

(3) Where an agreement under subsection 191.3(2) of the Act can be made between a transferor corporation and a transferee corporation solely because of the amendment to paragraph 191.3(1)(a) or (b) of the Act, as enacted by subsection (1), the agreement is deemed to have been filed on time if it is filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to. 30 35

129. (1) Section 191.4 of the Act is amended by adding the following after subsection (2):

**Provisions
applicable — Crown
corporations**

5

(3) Section 27 applies to this Part with any modifications that the circumstances require.

(2) Subsection (1) applies after 1987.

130. (1) The definition "specified active business" in section 204.8 of the Act is replaced by the following:

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"specified active
business"
« *entreprise
déterminée exploitée
activement* »

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"specified active business", at any time, means an active business that is carried on in Canada where

(a) at least 50% of the full-time employees employed at that time in respect of the business are employed in Canada, and

(b) at least 50% of the salaries and wages paid to employees employed at that time in respect of the business are reasonably attributable to services rendered in Canada by the employees;

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(2) Subsection (1) applies after 1988.

131. (1) The portion of subsection 204.82(2) of the English version of the Act before paragraph (a) is replaced by the following:

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Liability for tax

(2) Where, at any time in a month in a particular taxation year of a corporation that was registered under this Part that began after the end of the corporation's last taxation year referred to in paragraph 204.81(6)(g), 60% of the least of

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(2) Subsection 204.82(2) of the Act is amended by striking out the word "and" at the end of paragraph (a) and by adding the following after paragraph (a):

(a.1) the amount of the shareholders' equity in the corporation determined at the end of the second taxation year before the particular taxation year, without taking into account any unrealized gains or losses in respect of eligible investments of the corporation, and

(3) Subsections (1) and (2) apply to taxation years that end after 1994 and before March, 1997. 5

132. (1) Paragraphs (d.1) and (e) of the definition "foreign property" in subsection 206(1) of the Act are replaced by the following:

(d.1) except as provided by subsection (1.1), any share (other than an excluded share) of the capital stock of, or any debt obligation issued by, a corporation (other than an investment corporation, mutual fund corporation or registered investment) that is a Canadian corporation, where shares of the corporation can reasonably be considered to derive their value, directly or indirectly, primarily from foreign property, 10
15

(e) except as prescribed, any share of the capital stock of a mutual fund corporation or investment corporation that is not a registered investment, other than a share of the capital stock of an investment corporation that was last acquired before October 14, 1971, 20

(2) Paragraph (g) of the definition "foreign property" in subsection 206(1) of the Act is amended by striking out the word "or" at the end of subparagraph (iv) and by adding the following after subparagraph (iv): 25

(iv.1) the European Bank for Reconstruction and Development, or

(3) Subsection 206(1) of the Act is amended by adding the following definitions in alphabetical order:

"affiliate"
« société affiliée » 30

"affiliate" of a corporation (in this definition referred to as the "parent corporation") at any time is any other corporation where, at that time,

(a) the parent corporation controls the other corporation,

(b) the parent corporation or a corporation controlled by the parent corporation owns

(i) shares of the capital stock of the other corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of that other corporation, and 5

(ii) shares of the capital stock of the other corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of that other corporation, or 10

(c) the other corporation is controlled by a particular corporation and the parent corporation or a corporation controlled by the parent corporation owns 15

(i) shares of the capital stock of the particular corporation that would give the parent corporation or the corporation controlled by the parent corporation 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the particular corporation, and 20

(ii) shares of the capital stock of the particular corporation having a fair market value of 25% or more of the fair market value of all the issued shares of the capital stock of the particular corporation; 25

"carrying value" 30
« *valeur comptable* »

"carrying value" of a property of a corporation or partnership at any time means

(a) where a balance sheet of the corporation or the partnership as of that time was presented to the shareholders of the corporation or the members of the partnership and the balance sheet was prepared using generally accepted accounting principles and was not prepared using the equity or consolidation method of accounting, the amount in respect of the property reflected in the balance sheet, and 35 40

(b) in any other case, the amount that would have been reflected in a balance sheet of the corporation or the partnership as of that time if the balance sheet had been prepared in accordance with generally acceptable accounting principles and neither the equity nor consolidation method of accounting were used; 45

"designated value"« *valeur désignée* »

"designated value" of a property at any time means the greater of

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(a) the fair market value at that time of the property, and

(b) the carrying value at that time of the property;

"excluded share"

10

« *action exclue* »

"excluded share" means

(a) a share that is of a class of shares listed on a prescribed stock exchange in Canada, where no share of that class has been issued after December 4, 1985 (otherwise than pursuant to an agreement in writing entered into before 5:00 p.m. Eastern Standard Time on December 4, 1985),

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20

(b) a share last acquired after 1995 that is of a class of shares listed on a prescribed stock exchange in Canada, where

(i) no share of that class has been issued after July 20, 1995 (otherwise than pursuant to an agreement in writing made before July 21, 1995), and

25

(ii) the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)", and

30

(c) a share last acquired after 1995 as a consequence of the exercise of a right acquired before 1996 where the share would not be foreign property if the expression "primarily from foreign property" in paragraph (d.1) of the definition "foreign property" in this subsection were read as "primarily from portfolio investments in property that is foreign property" and that paragraph were read without reference to "(other than an excluded share)";

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**"investment
activity"**

« *activité*

d'investissement »

"investment activity" of a particular corporation means any business carried on by the corporation, or any holding of property by the corporation otherwise than as part of a business carried on by the corporation, the principal purpose of which is to derive income from, or to derive profits from the disposition of,	5
(a) shares (other than shares of the capital stock of another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),	10
(b) interests in trusts,	15
(c) indebtedness (other than indebtedness owing by another corporation in which the particular corporation has a significant interest, where the primary activity of the other corporation is not an investment activity),	20
(d) annuities,	25
(e) commodities or commodities futures purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange (except commodities manufactured, produced, grown, extracted or processed by the corporation),	30
(f) currencies (other than currencies in the form of numismatic coins),	35
(g) interests in funds or entities other than corporations, partnerships and trusts,	40
(h) interests or options in respect of property described in any of paragraphs (a) to (g), or	
(i) any combination of properties described in any of paragraphs (a) to (h);	

"qualified property" « <i>bien admissible</i> »	
"qualified property" of a corporation means a property (other than a debt obligation or share issued by an affiliate of the corporation or by any corporation related to the corporation) owned by the corporation and used by it or an affiliate of the corporation in a specified active business carried on by it or the affiliate;	5
"significant interest" « <i>participation notable</i> »	10
"significant interest" has the meaning that would be assigned by section 142.2 if that section were read without reference to paragraphs 142.2(3)(b) and (c);	15
"specified active business" « <i>entreprise déterminée exploitée activement</i> »	20
"specified active business" carried on by a corporation, at any time, means a particular business that is carried on by the corporation in Canada where	25
(a) the corporation employs in the particular business at that time more than 5 full-time employees and at least	30
(i) 50% of the full-time employees employed by the corporation at that time in the particular business are employed in Canada, and	
(ii) 50% of the salaries and wages paid to employees employed at that time in the particular business are reasonably attributable to services rendered in Canada by the employees, or	35
(b) one or more other corporations associated with the corporation provide, in the course of carrying on one or more other active businesses, managerial, administrative, financial, maintenance or other similar services to the corporation in respect of the particular business and	40

(i) the corporation could reasonably be expected to require more than 5 full-time employees at that time in respect of the particular business if those services had not been provided,

(ii) at least 50% of the full-time employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are employed in Canada, and 5

(iii) at least 50% of the salaries and wages paid to employees employed at that time by the corporation in the particular business and by the other corporations in the other active businesses are reasonably attributable to services rendered in Canada by the employees, 10

but does not include a business carried on by the corporation the principal purpose of which is to derive income from, or from the disposition of, shares and debt obligations the value of which can reasonably be considered to derive, directly or indirectly, primarily from foreign property; 15
20

"specified proportion"
« proportion déterminée » 25

"specified proportion" of a member of a partnership for a fiscal period of the partnership means the proportion that the member's share of the total income or loss of the partnership for the partnership's fiscal period is of the partnership's total income or loss for that period and, for the purpose of this definition, where that income or loss for a period is nil, that proportion shall be computed as if the partnership had income for that period in the amount of \$1,000,000. 30

(4) Section 206 of the Act is amended by adding the following after subsection (1): 35

Exception where substantial Canadian presence

(1.1) Property described in paragraph (d.1) of the definition "foreign property" in subsection (1) does not, at a particular time, include property of a taxpayer that is a share or debt obligation that was issued by a corporation that, at the particular time, is a Canadian corporation where 40

(a) either at any time in any of the last 15 months beginning before the time (in this subsection referred to as the "acquisition time") at which the property was last acquired before the particular time by the taxpayer or at any time in the calendar year that includes the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or an affiliate of the corporation exceeded \$50,000,000; 5

(b) the particular time is not later than the end of the 15th month ending after the acquisition time and, at any time in any of the last 15 months beginning before the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property; 10 15

(c) the particular time is after the acquisition time and, at any time in any of the first 15 months beginning after the acquisition time, the total of all amounts each of which is the designated value of a qualified property of the corporation or another corporation controlled by the corporation exceeded 50% of the lesser of the fair market value of all of the corporation's property and the carrying value of all of the corporation's property; 20 25

(d) the particular time is after 1995 and at the particular time,

(i) either

(A) the corporation is required under the laws by or under which it was incorporated or continued to maintain an office in Canada, or 30

(B) where the corporation was not required under the laws by or under which it was incorporated or continued to maintain an office, the maintenance of an office in Canada is required under the constitutional documents of the corporation, 35

(ii) the corporation maintains an office in Canada, and

(iii) one of the following clauses applies: 40

(A) the corporation employs more than 5 individuals in Canada full time (other than individuals employed in connection with an investment activity of the corporation or a business carried on by the corporation through a partnership of which the corporation is not a majority interest partner), 45

(B) another corporation that is controlled by the corporation employs more than 5 individuals in Canada full time (other than individuals employed in connection with an investment activity of the corporation or a business carried on by the corporation through a partnership of which that other corporation is not a majority interest partner), 5

(C) the total amount incurred by the corporation for the services (other than services relating to an investment activity) of employees and other individuals rendered in Canada in any calendar year that ends in any of the last 15 months that end before the particular time exceeds \$250,000, or 10

(D) the total amount incurred by another corporation that is controlled by the corporation for the services (other than services relating to an investment activity) of employees and other individuals rendered in Canada in any calendar year that ends in any of the last 15 months that end before the particular time exceeds \$250,000; or 15

(e) the particular time is after 1995, and at the particular time, all or substantially all of the property of the corporation is not foreign property. 20

Partnerships 25

(1.2) For the purposes of paragraphs (1.1)(a) to (c) and this subsection,

(a) a member of a partnership 30

(i) is deemed not to own any interest in the partnership at any time, and

(ii) is deemed to own the member's specified proportion for the partnership's first fiscal period that ends at or after that time of each property that would, if the assumption in paragraph 96(1)(c) were made, be owned by the partnership at that time; and 35

(b) the carrying value at that time of that specified proportion of a partnership's property is deemed to be that specified proportion of the carrying value at that time to the partnership of that property. 40

Interpretation

(1.3) For the purpose of paragraph (1.1)(d), 45

(a) an employee of a corporation is deemed to be employed in Canada where the corporation's permanent establishment to which the employee principally reports is situated in Canada; and

(b) services are deemed to be rendered in Canada to a corporation where the permanent establishment for which the services are rendered is situated in Canada. 5

Rights in respect of foreign property 10

(1.4) For the purpose of determining whether a property owned by a taxpayer is foreign property at any time because of paragraph (f) or (h) of the definition "foreign property" in subsection (1), it shall be assumed that each other property not owned at that time by the taxpayer was acquired immediately before that time by the taxpayer. 15

Identical property

(1.5) Notwithstanding paragraphs (d.1), (f) and (h) of the definition "foreign property" in subsection (1), a property shall not be considered to be foreign property at a particular time of a taxpayer because of any of those paragraphs where 20

(a) the property is 25

(i) a share or debt obligation issued by a Canadian corporation, or

(ii) an interest in, a right to, a property that is convertible into or a property that is exchangeable for, a share or debt obligation issued by a Canadian corporation; and 30

(b) the property, or the share or obligation referred to in subparagraph (a)(ii), is identical to another property that is owned at the particular time by the taxpayer and that is not foreign property at the particular time of the taxpayer. 35

(5) Section 206 of the Act is amended by adding the following after subsection (2):

Registered investments 40

(2.01) Notwithstanding subsection (2), the tax payable under this section by a registered investment in respect of a month is equal to the lesser of

(a) the tax that would, but for this subsection, be payable by the registered investment in respect of the month, and

(b) the greater of

(i) 20% of the amount determined under paragraph (a), and

(ii) the amount determined by the formula

$$\$5,000 + (A \times B/C)$$

where

A is equal to the amount determined under paragraph (a),

B is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual fund trust, prescribed trust or prescribed partnership, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time by a taxpayer described in any of paragraphs 205(a) to (f) or by a mutual fund corporation, investment corporation, mutual fund trust, prescribed trust or prescribed partnership; and

C is equal to

(A) where the registered investment is a trust, the total of all amounts each of which is the fair market value at the end of the month of an interest in the registered investment that is held at that time, and

(B) where the registered investment is a corporation, the total of all amounts each of which is the fair market value at the end of the month of a share of the capital stock of the registered investment that is held at that time.

(6) Subsection 206(3) of the Act is repealed.

(7) Paragraph (d.1) of the definition "foreign property" in subsection 206(1) of the Act, as enacted by subsection (1), and the definitions "affiliate", "carrying value", "designated value", "excluded share", "qualified property", "specified active business" and "specified proportion" in subsection 206(1) of the Act, as enacted by subsection (3), apply to shares and indebtedness acquired after December 4, 1985 (otherwise than pursuant to an agreement in writing made before 5:00 p.m. Eastern Standard Time on December 4, 1985) except that, with respect to shares and indebtedness last acquired before 1996, the expression "primarily from foreign property" in that paragraph shall be read as "primarily from portfolio investments in property that is foreign property".

(8) Paragraph (e) of the definition "foreign property" in subsection 206(1) of the Act, as enacted by subsection (1), and subsection (6) apply to months that end after June 1995.

(9) Subsection (2) applies to months after March 1991.

(10) The definitions "investment activity" and "significant interest" in subsection 206(1) of the Act, as enacted by subsection (3), apply after 1995.

(11) Subsection (4) applies after December 4, 1985.

(12) Subsection (5) applies to months that end after 1992.

133. (1) Section 206.1 of the Act is replaced by the following:

Tax in respect of acquisition of shares 25

206.1 Where at any time a taxpayer to which this Part applies enters into an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the total of all amounts each of which is the amount, if any, by which

(a) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement

exceeds

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(b) the amount, if any, of the dividend that is received by the taxpayer.

(2) Subsection (1) applies to agreements entered into after 1992, except that in its application to agreements entered into after 1992 and before April 26, 1995, section 206.1 of the Act, as enacted by subsection (1), shall be read as follows:

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206.1 Where at any time a taxpayer to which this Part applies enters into an agreement (otherwise than as a consequence of the acquisition or writing by it of an option listed on a prescribed stock exchange) to acquire a share of the capital stock of a corporation (otherwise than from the corporation) at a price that may differ from the fair market value of the share at the time the share may be acquired, the taxpayer shall, in respect of each month during which the taxpayer is a party to the agreement, pay a tax under this Part equal to the lesser of

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(a) the total of all amounts each of which is the amount, if any, by which

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(i) the amount of a dividend paid on the share at a time in the month at which the taxpayer is a party to the agreement

exceeds

(ii) the amount, if any, of the dividend that is received by the taxpayer; and

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(b) 1% of the fair market value of the share at the time the agreement is entered into.

134. (1) The portion of the description of A in subsection 211.1(3) of the Act before paragraph (a) of the description is replaced by the following:

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A is, subject to subsection (4), the total of all amounts, each of which is in respect of a liability, benefit, risk or guarantee under a life insurance policy that was at any time in the year a taxable life insurance policy of the insurer, determined by multiplying the net interest rate in respect of the liability, benefit, risk or guarantee for the year by $\frac{1}{2}$ of the total of

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(2) The portion of the description of D in subsection 211.1(3) of the Act before paragraph (a) of the description is replaced by the following:

D is, subject to subsection (4), the amount determined by multiplying the percentage determined in the description of A in the definition "net interest rate" in subsection 211(1) in respect of the year by ½ of the total of 5

(3) Section 211.1 of the Act is amended by adding the following after subsection (3):

Short taxation year 10

(4) Where a taxation year of a life insurer is less than 51 weeks, the values of A and D in subsection (3) for the year are that proportion of those values otherwise so determined that the number of days in the year (other than February 29) is of 365.

(4) Subsections (1) to (3) apply to the 1992 and subsequent taxation years. 15

135. (1) Section 211.3 of the Act is replaced by the following:

Instalments

211.3 (1) Every life insurer shall, in respect of each of its taxation years, pay to the Receiver General on or before the last day of each month in the year, an amount equal to 1/12 of the lesser of 20

(a) the amount estimated by the insurer to be the annualized tax payable under this Part by it for the year; and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year. 25

Annualized tax payable

(2) For the purposes of subsections (1) and 211.5(2), the annualized tax payable under this Part by a life insurer for a taxation year is the amount determined by the formula 30

$$(365 \setminus A) \times B$$
 35

where

A is

(a) if the year is less than 357 days, the number of days in the year (other than February 29), and 5

(b) otherwise, 365; and

B is the tax payable under this Part by the insurer for the year. 10

(2) Subsection (1) applies to taxation years that begin after 1995.

136. (1) Section 211.5 of the Act is renumbered as subsection 211.5(1) and is amended by adding the following:

Interest on instalments

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(2) For the purposes of subsection 161(2) and section 163.1 as they apply to this Part, a life insurer is, in respect of a taxation year, deemed to have been liable to pay, on or before the last day of each month in the year, an instalment equal to 1/12 of the lesser of

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(a) the annualized tax payable under this Part by the insurer for the year; and

(b) the annualized tax payable under this Part by the insurer for the immediately preceding taxation year. 25

(2) Subsection (1) applies to taxation years that begin after 1995.

137. (1) Subsection 212(9) of the Act is replaced by the following:

Exemptions

(9) Where

(a) a dividend or interest is received by a trust from a non-resident-owned investment corporation, 30

(b) an amount (in this subsection referred to as the "royalty payment") is received by a trust as, on account of, in lieu of payment of or in satisfaction of, a royalty on or in respect of a copyright in respect of the production or reproduction of any literary, dramatic, musical or artistic work, or 35

(c) interest is received by a mutual fund trust maintained primarily for the benefit of non-resident persons

and a particular amount is paid or credited to a non-resident person as income of or from the trust and can reasonably be regarded as having been derived from the dividend, interest or royalty payment, as the case may be, no tax is payable because of paragraph (1)(c) as a consequence of the payment or crediting of the particular amount if no tax would have been payable under this Part in respect of the dividend, interest or royalty payment, as the case may be, if it had been paid directly to the non-resident person instead of to the trust.

(2) Subsection (1) applies to amounts paid or credited after April 1995 to non-resident persons.

138. (1) Subsection 216(4) of the Act is replaced by the following:

Optional method of payment

(4) Where a non-resident person or, in the case of a partnership, each non-resident person who is a member of the partnership files with the Minister an undertaking in prescribed form to file within 6 months after the end of a taxation year a return of income under Part I for the year as permitted by this section, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the non-resident person or the partnership, an amount to the Receiver General in payment of tax on rent on real property or on a timber royalty may elect under this section not to remit under that subsection, and if that election is made, the elector shall,

(a) when any amount is available out of the rent or royalty received for remittance to the non-resident person or the partnership, as the case may be, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the non-resident person or the partnership on account of the tax under this Part; and

(b) if the non-resident person or, in the case of a partnership, a non-resident person who is a member of the partnership

(i) does not file a return for the year in accordance with the undertaking, or

(ii) does not pay under this section the tax the non-resident person or member is liable to pay for the year within the time provided for payment,

pay to the Receiver General, on account of the non-resident person's or the partnership's tax under this Part, on the expiration of the time for filing or payment, as the case may be, the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty minus the amounts that the elector has remitted in the year under paragraph (a) in respect of the rent or royalty.

(2) Subsection (1) applies to amounts paid or credited after November 1991.

139. (1) The heading "Additional Tax on Corporations (Other than Canadian Corporations) Carrying on Business in Canada" before section 219 of the Act and subsection 219(1) of the Act are replaced by the following:

ADDITIONAL TAX ON NON-RESIDENT CORPORATIONS

Additional tax

219. (1) Every corporation that is non-resident in a taxation year shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which the total of

(a) the corporation's taxable income earned in Canada for the year (in this subsection referred to as the corporation's "base amount"),

(b) the amount deducted because of section 112 and paragraph 115(1)(d.1) in computing the corporation's base amount,

(c) the amount deducted under paragraph 20(1)(v.1) in computing the corporation's base amount, other than any portion of the amount so deducted that was deductible because of the membership of the corporation in a partnership,

(d) 1/3 of the amount, if any, by which the total of all amounts each of which is a taxable capital gain of the corporation for the year from a disposition of a taxable Canadian property exceeds the total of all amounts each of which is

(i) an allowable capital loss of the corporation for the year from a disposition of a taxable Canadian property, or

(ii) an amount deductible because of paragraphs 111(1)(b) and 115(1)(e) in computing the corporation's base amount, 5

(e) the total of all amounts each of which

(i) is an amount in respect of a grant or credit that can reasonably be considered to have been received by the corporation in the year as a reimbursement or repayment of, or as indemnification or compensation for, an amount deducted because of 10

(A) paragraph (j), as it read in its application to the 1995 taxation year, in computing the amount determined under this subsection for a preceding taxation year that began before 1996, or 15

(B) paragraph (k), in computing the amount determined under this subsection for the year or for a preceding taxation year that began after 1995, and 20

(ii) was not included in computing the corporation's base amount for any taxation year,

(f) where, at any time in the year, the corporation has made one or more dispositions described in paragraph (l) of qualified property, the total of all amounts each of which is an amount in respect of one of those dispositions equal to the amount, if any, by which the fair market value of the qualified property at the time of the disposition exceeds the corporation's proceeds of disposition of the property, and 25 30

(g) the amount, if any, claimed for the immediately preceding taxation year under paragraph (j) by the corporation,

exceeds the total of

(h) that proportion of the total of

(i) the total of the taxes payable under Parts I, I.3 and VI for the year by the corporation, determined without reference to subsection (1.1), and 35

(ii) the total of the income taxes payable to the government of a province for the year by the corporation, determined without reference to subsection (1.1), 40

that the corporation's base amount is of the amount that would, if this Act were read without reference to subsection (1.1), be the corporation's base amount,

(i) the total of all amounts each of which is the amount of interest or a penalty paid by the corporation in the year 5

(i) under this Act, or

(ii) on or in respect of an income tax payable by it to the government of a province under a law of the province relating to income tax,

to the extent that the interest or penalty was not deductible in computing its base amount for any taxation year, 10

(j) where the corporation was carrying on business in Canada at the end of the year, the amount claimed by the corporation for the year, not exceeding the amount prescribed to be its allowance for the year in respect of its investment in property in Canada, 15

(k) the portion of the total of all amounts, each of which is an amount by which the corporation's base amount is increased because of paragraph 12(1)(o) or 18(1)(l.1) or (m) or subsection 69(6) or (7), that is not deductible under paragraph (h) or (j), and

(l) where the corporation has at any time in the year disposed of property (in this paragraph and paragraph (f) referred to as "qualified property") used by it immediately before that time for the purpose of gaining or producing income from a business carried on by it in Canada to a Canadian corporation (in this paragraph referred to as the "purchaser corporation") that was, immediately after the disposition, a qualified related corporation of the corporation for consideration that includes a share of the capital stock of the purchaser corporation, the total of all amounts each of which is an amount in respect of a disposition in the year of a qualified property equal to the amount, if any, by which 20 25 30

(i) the fair market value of the qualified property at the time of the disposition

exceeds the total of

(ii) the amount, if any, by which the paid-up capital in respect of the issued and outstanding shares of the capital stock of the purchaser corporation increased because of the disposition, and 35

(iii) the fair market value, at the time of receipt, of the consideration (other than shares) given by the purchaser corporation for the qualified property.

Excluded gains

(1.1) For the purposes of subsection (1), paragraph 115(1)(b) shall be read without reference to subparagraphs (i) and (iii) to (xiii). 5

(2) Subsection 219(8) of the Act is replaced by the following:

**Meaning of
"qualified related
corporation"**

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(8) For the purposes of this Part, a corporation is a "qualified related corporation" of a particular corporation if it is resident in Canada and all of the issued and outstanding shares (other than directors' qualifying shares) of its capital stock (having full voting rights under all circumstances) are owned by

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(a) the particular corporation,

(b) a subsidiary wholly-owned corporation of the particular corporation,

(c) a corporation of which the particular corporation is a subsidiary wholly-owned corporation,

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(d) a subsidiary wholly-owned corporation of a corporation of which the particular corporation is also a subsidiary wholly-owned corporation, or

(e) any combination of corporations each of which is a corporation described in paragraph (a), (b), (c) or (d),

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and, for the purpose of this subsection, a subsidiary wholly-owned corporation of a particular corporation includes any subsidiary wholly-owned corporation of a corporation that is a subsidiary wholly-owned corporation of the particular corporation.

(3) Subsections (1) and (2) apply to taxation years that begin after 1995, except that in its application to taxation years that begin in 1996, the reference in paragraph 219(1)(g) of the Act, as enacted by subsection (1), to "paragraph (j)" shall be read as a reference to "paragraph (h) as it read in its application to the 1995 taxation year or paragraph (j)".

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140. (1) Section 219.1 of the Act is replaced by the following:

**Corporate
emigration**

219.1 Where a taxation year of a corporation is deemed by paragraph 128.1(4)(a) to have ended at any time, the corporation shall, on or before its filing-due date for the year, pay a tax under this Part for the year equal to 25% of the amount, if any, by which

(a) the total proceeds of disposition deemed under paragraph 128.1(4)(b) to have been received by the corporation immediately before that time

exceeds the total of

(b) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation immediately before that time,

(c) all amounts (other than amounts payable by the corporation in respect of dividends and amounts payable under this section) each of which is a debt owing by the corporation, or an obligation of the corporation to pay an amount, that is outstanding at that time, and

(d) where a tax was payable by the corporation under subsection 219(1) or this section for a preceding taxation year that began before 1996 and after the corporation last became resident in Canada, 4 times the total of all amounts that would, but for sections 219.2 and 219.3 and any agreement or convention between the Government of Canada and the government of any other country that has the force of law in Canada, have been so payable.

(2) Subsection (1) applies to the 1996 and subsequent taxation years.

141. (1) Section 220 of the Act is amended by adding the following after subsection (2):

Delegation

(2.01) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Act.

(2) Subsection 220(3.4) of the Act is replaced by the following:

Assessments

(3.4) Notwithstanding subsections 152(4), (4.01), (4.1) and (5), such assessment of the tax, interest and penalties payable by each taxpayer in respect of any taxation year that began before the day an application is made under subsection (3.2) to the Minister shall be made as is necessary to take into account the election, the amended election or the revocation, as the case may be, referred to in subsection (3.3). 5

(3) Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under paragraph 221(1)(f) of the Act before the day on which this Act is assented to continues to be delegated to that officer or that class of officers until an authorization by the Minister made under subsection 220(2.01) of the Act, as enacted by subsection (1), changes the delegation of that power or duty. 10 15

(4) Subsection (2) applies to elections in respect of the 1985 and subsequent taxation years.

142. (1) Paragraph 221(1)(f) of the Act is repealed.

(2) Section 221 of the Act is amended by adding the following after subsection (3): 20

Incorporation by reference

(4) A regulation made under this Act may incorporate by reference material as amended from time to time.

(3) Subsection (2) applies to any regulation, regardless of whether it is made before or after this Act is assented to. 25

143. (1) The Act is amended by adding the following after section 222:

Court costs

222.1 Where an amount is payable by a person to Her Majesty because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, subsections 220(4) and (4.2) and sections 223, 224 to 225 and 226 apply to the amount as if the amount were a debt owing by the person to Her Majesty on account of tax payable by the person under this Act. 30 35

(2) Subsection (1) applies to amounts that are payable after this Act is assented to, including amounts that became payable before this Act is assented to.

144. The portion of subsection 225.1(1) of the Act before paragraph (a) is replaced by the following:

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**Collection
restrictions**

225.1 (1) Where a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, for the purpose of collecting the amount,

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145. (1) Subsection 227(4) of the Act is replaced by the following:

**Trust for moneys
deducted**

(4) Every person who deducts or withholds an amount under this Act is deemed to hold the amount so deducted or withheld in trust, separate and apart from the person's own property, for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

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Extension of trust

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(4.1) Notwithstanding the *Bankruptcy and Insolvency Act*, where at any time an amount deemed by subsection (4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person equal in value to the amount so deemed to be held in trust is deemed

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(a) to be held, from the time the amount was deducted or withheld by the person, in trust, separate and apart from the person's own property, for Her Majesty and for payment to Her Majesty; and

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(b) to form no part of the estate of the person from the time the amount was so deducted or withheld, whether the amount or property has in fact been kept separate and apart from the person's own property or estate.

(2) Subsection 227(10) of the Act is replaced by the following:

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Assessment

(10) The Minister may at any time assess any amount payable under

(a) subsection (8), (8.1), (8.2), (8.3) or (8.4) or 224(4) or (4.1) or section 227.1 or 235 by a person,

(b) subsection 237.1(7.4) by a person or partnership,

(c) subsection (10.2) by a person as a consequence of a failure of a non-resident person to deduct or withhold any amount, and

(d) Part XIII by a person resident in Canada,

and, where the Minister sends a notice of assessment to that person or partnership, Divisions I and J of Part I apply with any modifications that the circumstances require.

(3) Subsection (1) is deemed to have come into force on June 15, 1994.

(4) Subsection (2) applies after December 1, 1994.

145.1 Section 230 of the Act is amended by adding the following after subsection (4):

Electronic records

(4.1) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (4).

Exemptions

(4.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (4.1).

145.2 The definition "documents" in section 231 is replaced by the following:

"document"
« *document* »

"document" includes money, a security and a record;

145.3 (1) Subsection 231.5(1) of the Act is replaced by the following:

Copies

231.5 (1) Where any document is seized, inspected, audited, examined or provided under any of sections 231.1 to 231.4, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any officer of the Department of National Revenue may make, or cause to be made, one or more copies thereof, or in the case of an electronic document make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made pursuant to this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

(2) Subsection (1) applies to copies and print-outs made after this Act is assented to.

146. The portion of subsection 232(3.1) of the Act before paragraph (a) is replaced by the following:

Examination of certain documents where privilege claimed

(3.1) Where, pursuant to section 231.1, an officer is about to inspect or examine a document in the possession of a lawyer or where, pursuant to section 231.2, the Minister has required provision of a document by a lawyer, and the lawyer claims that a named client or former client of the lawyer has a solicitor-client privilege in respect of the document, no officer shall inspect or examine the document and the lawyer shall

147. (1) The definition "tax shelter" is subsection 237.1(1) of the Act is replaced by the following:

"tax shelter"
« *abri*
fiscal »

"tax shelter" means any property (including, for greater certainty, any right to income) in respect of which it can reasonably be considered, having regard to statements or representations made or proposed to be made in connection with the property, that, if a person were to acquire an interest in the property, at the end of a particular taxation

year that ends within 4 years after the day on which the interest is acquired,

(a) the total of all amounts each of which is

(i) an amount, or a loss in the case of a partnership interest, represented to be deductible in computing income in respect of the interest in the property (including, where the property is a right to income, an amount or loss in respect of that right that is represented to be deductible) and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, or 5
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(ii) any other amount represented to be deductible in computing income or taxable income in respect of the interest in the property and expected to be incurred by or allocated to the person for the particular year or any preceding taxation year, other than any amount included in computing a loss described in subparagraph (i), 15

would equal or exceed

(b) the amount, if any, by which

(i) the cost to the person of the interest in the property at the end of the particular year 20

would exceed

(ii) the total of all amounts each of which is the amount of any prescribed benefit that is expected to be received or enjoyed, directly or indirectly, in respect of the interest in the property by the person or another person with whom the person does not deal at arm's length, 25

but does not include property that is a flow-through share or a prescribed property.

(2) Paragraphs (a) and (b) of the definition "promoter" in subsection 237.1(1) of the Act are replaced by the following: 30

(a) sells or issues, or promotes the sale, issuance or acquisition of, the tax shelter,

(b) acts as an agent or adviser in respect of the sale or issuance, or the promotion of the sale, issuance or acquisition, of the tax shelter, or

(c) accepts, whether as a principal or agent, consideration in respect of the tax shelter,

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(3) Subsection 237.1(1) of the Act is amended by adding the following in alphabetical order:

"person"
« *personne* »

"person" includes a partnership;

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(4) Subsections 237.1(4) to (7) of the Act are replaced by the following:

Sales prohibited

(4) No person shall, whether as a principal or an agent, sell or issue, or accept consideration in respect of, a tax shelter before the Minister has issued an identification number for the tax shelter.

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Providing tax shelter number

(5) Every promoter in respect of a tax shelter shall

(a) make reasonable efforts to ensure that all persons who acquire or otherwise invest in the tax shelter are provided with the identification number issued by the Minister for the tax shelter;

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(b) prominently display on the upper right-hand corner of any statement of earnings prepared by or on behalf of the promoter in respect of the tax shelter the identification number issued for the tax shelter; and

25

(c) on every written statement made after 1995 by the promoter that refers either directly or indirectly and either expressly or impliedly to the issuance by the Department of National Revenue of an identification number for the tax shelter, as well as on the copies of the portion of the information return to be forwarded pursuant to subsection (7.3), prominently display

30

(i) where the statement or return is wholly or partly in English, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter."

5

10

(ii) where the statement or return is wholly or partly in French, the following:

"Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

15

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(iii) where the statement includes neither English nor French, the following:

"The identification number issued for this tax shelter shall be included in any income tax return filed by the investor. Issuance of the identification number is for administrative purposes only and does not in any way confirm the entitlement of an investor to claim any tax benefits associated with the tax shelter."

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Le numéro d'inscription attribué à cet abri fiscal doit figurer dans toute déclaration d'impôt sur le revenu produite par l'investisseur. L'attribution de ce numéro n'est qu'une formalité administrative et ne confirme aucunement le droit de l'investisseur aux avantages fiscaux découlant de cet abri fiscal."

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Deductions and claims disallowed

(6) No amount may be deducted or claimed by a person in respect of a tax shelter unless the person files with the Minister a prescribed form containing prescribed information, including the identification number for the tax shelter.

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**Deductions and
claims disallowed**

(6.1) An amount may not be deducted or claimed by any person for any taxation year in respect of a tax shelter of the person where any person is liable to a penalty under subsection (7.4) or 162(9) in respect of the tax shelter or interest on the penalty and 5

(a) the penalty or interest has not been paid; or

(b) the penalty and interest have been paid, but an amount on account of the penalty or interest has been repaid under subsection 164(1.1) or applied under subsection 164(2). 10

Assessments

(6.2) Notwithstanding subsections 152(4) to (5), such assessments, determinations and redeterminations may be made as are necessary to give effect to subsection (6.1). 15

Information return

(7) Every promoter in respect of a tax shelter who accepts consideration in respect of the tax shelter or who acts as a principal or agent in respect of the tax shelter in a calendar year shall, in prescribed form and manner, file an information return for the year containing 20

(a) the name, address and Social Insurance Number of each person who so acquires or otherwise invests in the tax shelter in the year, 25

(b) the amount paid by each of those persons in respect of the tax shelter, and

(c) such other information as is required by the prescribed form

unless an information return in respect of the tax shelter has previously been filed. 30

**Time for filing
return**

(7.1) An information return required under subsection (7) to be filed in respect of the acquisition of an interest in a tax shelter in a calendar year shall be filed with the Minister on or before the last day of February of the following calendar year. 35

**Time for filing —
special case**

(7.2) Subject to subsection (7.1), where a person is required under subsection (7) to file an information return in respect of a business or activity and the person discontinues that business or activity, the return shall be filed within 30 days after the day of the discontinuance. 5

**Copies to be
provided** 10

(7.3) Every person required to make a return under subsection (7) shall, on or before the day on or before which the return is required to be filed with the Minister, forward to each person to whom the return relates 2 copies of the portion of the return relating to that person. 15

Penalty

(7.4) Every person who files false or misleading information with the Minister in respect of an application under subsection (2) or, whether as a principal or as an agent, sells, issues or accepts consideration in respect of a tax shelter before the Minister has issued an identification number for the tax shelter is liable to a penalty equal to the greater of 20

(a) \$500; and 25

(b) 25% of the total of all amounts each of which is the consideration received or receivable from a person in respect of the tax shelter before the correct information is filed with the Minister or the identification number is issued, as the case may be. 30

(5) Subsections (1) and (3) apply after November 1994.

(6) Subsections (2) and (4) apply after December 1, 1994.

148. (1) Section 239 of the Act is amended by adding the following after subsection (1):

**Offences re refunds
and credits** 35

(1.1) Every person who obtains or claims a refund or credit under this Act to which the person or any other person is not entitled or obtains or claims a refund or credit under this Act in an amount that is greater than the amount to which the person or other person is entitled 40

- (a) by making, or participating in, assenting to or acquiescing in the making of, a false or deceptive statement in a return, certificate, statement or answer filed or made under this Act or a regulation,
- (b) by destroying, altering, mutilating, hiding or otherwise disposing of a record or book of account of the person or other person, 5
- (c) by making, or assenting to or acquiescing in the making of, a false or deceptive entry in a record or book of account of the person or other person, 10
- (d) by omitting, or assenting to or acquiescing in an omission to enter a material particular in a record or book of account of the person or other person, 15
- (e) wilfully in any manner, or
- (f) by conspiring with any person to commit any offence under this subsection, 20
- is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to
- (g) a fine of not less than 50% and not more than 200% of the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled, or 25
- (h) both the fine described in paragraph (g) and imprisonment for a term not exceeding 2 years. 30

(2) Subsection 239(2) of the Act is replaced by the following:

Prosecution on indictment

(2) Every person who is charged with an offence described in subsection (1) or (1.1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to 35

(a) a fine of not less than 100% and not more than 200% of

(i) where the offence is described in subsection (1), the amount of the tax that was sought to be evaded, and 40

(ii) where the offence is described in subsection (1.1), the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled; and

(b) imprisonment for a term not exceeding 5 years.

5

(3) Subsection 239(3) of the Act is replaced by the following:

Penalty on conviction

(3) Where a person is convicted under this section, the person is not liable to pay a penalty imposed under section 162 or 163 for the same contravention unless the penalty was assessed before the information or complaint giving rise to the conviction was laid or made.

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149. (1) Subsection 244(9) of the Act is replaced by the following:

Proof of documents

(9) An affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a taxpayer, is evidence of the nature and contents of the document.

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(2). Subsections 244(13) to (15) of the Act are replaced by the following:

Proof of documents

25

(13) Every document purporting to have been executed under, or in the course of the administration or enforcement of, this Act over the name in writing of the Minister, the Deputy Minister of National Revenue or an officer authorized to exercise powers or perform duties of the Minister under this Act is deemed to have been signed, made and issued by the Minister, the Deputy Minister or the officer unless it has been called in question by the Minister or by a person acting for the Minister or Her Majesty.

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Mailing date

(14) For the purposes of this Act, where any notice or notification described in subsection 149.1(6.3), 152(3.1), 165(3) or 166.1(5) or any notice of assessment or determination is mailed, it shall be presumed to be mailed on the date of that notice or notification.

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**Date when
assessment made**

(15) Where any notice of assessment or determination has been sent by the Minister as required by this Act, the assessment or determination is deemed to have been made on the day of mailing of the notice of the assessment or determination.

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150. (1) Paragraph (d.1) of the definition "term preferred share" in subsection 248(1) of the Act is replaced by the following:

(d.1) that is listed on a prescribed stock exchange in Canada and was issued before April 22, 1980 by

15

(i) a corporation referred to in any of paragraphs (a) to (d) of the definition "specified financial institution" in this subsection,

(ii) a corporation whose principal business is the lending of money or the purchasing of debt obligations or a combination thereof, or

20

(iii) an issuing corporation associated with a corporation described in subparagraph (i) or (ii),

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

25

"cemetery care
trust"

« *fiducie pour
l'entretien d'un
cimetière* »

30

"cemetery care trust" has the meaning assigned by subsection 148.1(1);

"flow-through
share"

« *action accréditive* »

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"flow-through share" has the meaning assigned by subsection 66(15);

<p>"majority interest partner" <i>« associé détenant une participation majoritaire »</i></p>	5
<p>"majority interest partner" of a particular partnership at any time means a person or partnership (in this definition referred to as the "taxpayer")</p> <p>(a) whose share of the particular partnership's income from all sources for the last fiscal period of the particular partnership that ended before that time (or, if the particular partnership's first fiscal period includes that time, for that period) would have exceeded 1/2 of the particular partnership's income from all sources for that period if the taxpayer had held throughout that period each interest in the partnership that the taxpayer or a person affiliated with the taxpayer held at that time, or</p> <p>(b) whose share, if any, together with the shares of every person with whom the taxpayer is affiliated, of the total amount that would be paid to all members of the particular partnership (otherwise than as a share of any income of the partnership) if it were wound up at that time exceeds 1/2 of that amount;</p>	10 15 20 25
<p>"record" « registre »</p>	
<p>"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form;</p>	30
<p>"scientific research and experimental development" <i>« activités de recherche scientifique et de développement expérimental »</i></p>	35 40
<p>"scientific research and experimental development" means systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is</p>	45

(a) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view,

(b) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view, or 5

(c) experimental development, namely, work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes, including incremental improvements thereto, 10

and, in applying this definition to a taxpayer, includes

(d) work undertaken by or on behalf of the taxpayer with respect to engineering, design, operations research, mathematical analysis, computer programming, data collection, testing or psychological research, where the work is commensurate with the needs, and directly in support, of work described in paragraph (a), (b), or (c) that is undertaken in Canada by or on behalf of the taxpayer, 15 20

but does not include work with respect to

(e) market research or sales promotion, 25

(f) quality control or routine testing of materials, devices, products or processes,

(g) research in the social sciences or the humanities, 30

(h) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas,

(i) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process, 35

(j) style changes, or

(k) routine data collection; 40

(3) Subsection (1) applies after February 22, 1994.

(4) The definition "cemetery care trust" in subsection 248(1) of the Act, as enacted by subsection (2), applies after 1992.

(5) The definition "flow-through share" in subsection 248(1) of the Act, as enacted by subsection (2), applies after November 1994.

(6) The definition "majority interest partner" in subsection 248(1) of the Act, as enacted by subsection (2), applies after April 26, 1995. 5

(7) The definition "scientific research and experimental development" in subsection 248(1) of the Act, as enacted by subsection (2), applies to work performed by a taxpayer after February 27, 1995 except that, for the purposes of paragraphs 149(1)(j) and (8)(b) of the Act, that definition does not apply to work performed pursuant to an agreement in writing made by the taxpayer before February 28, 1995. 10

151. (1) Paragraphs 250(6)(a) and (b) of the Act are replaced by the following: 15

(a) the corporation

(i) has as its principal business in the year the operation of ships that are used primarily in transporting passengers or goods in international traffic (determined on the assumption that the corporation is non-resident and that, except where paragraph (c) of the definition "international traffic" in subsection 248(1) applies, any port or other place on the Great Lakes or St. Lawrence River is in Canada), or 20

(ii) holds throughout the year shares of one or more other corporations, each of which 25

(A) is a subsidiary wholly-owned corporation of the corporation as defined by subsection 87(1.4), and

(B) is deemed by this subsection to be resident in a country other than Canada throughout the year, 30

and at no time in the year is the total of the cost amounts to the corporation of all those shares less than 50% of the total of the cost amounts to it of all its property; 35

(b) all or substantially all of the corporation's gross revenue for the year consists of

(i) gross revenue from the operation of ships in transporting passengers or goods in that international traffic,

(ii) dividends from one or more other corporations each of which

(A) is a subsidiary wholly-owned corporation of the corporation, as defined by subsection 87(1.4), and 5

(B) is deemed by this subsection to be resident in a country other than Canada throughout each of its taxation years that began after February 1991 and before the last time at which it paid any of those dividends, or 10

(iii) a combination of amounts described in subparagraph (i) or (ii); and

(2) Subsection (1) applies to the 1995 and subsequent taxation years. 15

152. (1) The portion of paragraph 251(5)(b) of the Act before subparagraph (i) is replaced by the following:

(b) where at any time a person has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, 20

(2) Paragraph 251(5)(b) of the Act is amended by striking out the word "or" at the end of subparagraph (i) and the word "and" at the end of subparagraph (ii) and by adding the following after subparagraph (ii): 25

(iii) to, or to acquire or control, voting rights in respect of shares of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the person could exercise the voting rights at that time, or 30

(iv) to cause the reduction of voting rights in respect of shares, owned by other shareholders, of the capital stock of a corporation, the person is, except where the right is not exercisable at that time because its exercise is contingent on the death, bankruptcy or permanent disability of an individual, deemed to have the same position in relation to the control of the corporation as if the voting rights were so reduced at that time; and 40

(3) Subsection (2) applies after April 26, 1995.

153. (1) The Act is amended by adding the following after section 251:

**Definition of
"affiliated persons"**

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251.1 (1) For the purposes of this Act, "affiliated persons", or persons affiliated with each other, are

(a) an individual and a spouse of the individual;

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(b) a corporation and

(i) a person by whom the corporation is controlled,

(ii) each member of an affiliated group of persons by which the corporation is controlled, and

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(iii) a spouse of a person described in subparagraph (i) or (ii);

(c) two corporations, if

20

(i) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,

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(ii) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or

(iii) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;

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(d) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group,

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(e) a partnership and a majority interest partner of the partnership; and

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(f) two partnerships, if

(i) the same person is a majority-interest partner of both partnerships,

5

(ii) a majority-interest partner of one partnership is affiliated with each member of a majority-interest group of partners of the other partnership, or

(iii) each member of a majority-interest group of partners of each partnership is affiliated with at least one member of a majority-interest group of partners of the other partnership.

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**Affiliation where
amalgamation
or merger**

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(2) Where at any time two or more corporations (in this subsection referred to as the "predecessors") amalgamate or merge to form a new corporation, the new corporation and any predecessor are deemed to have been affiliated with each other where they would have been affiliated with each other immediately before that time if

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(a) the new corporation had existed immediately before that time; and

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(b) the persons who were the shareholders of the new corporation immediately after that time had been the shareholders of the new corporation immediately before that time.

Definitions

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(3) The definitions in this subsection apply in this section.

**"affiliated group of
persons"**

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« *groupe de
personnes affiliées* »

"affiliated group of persons" means a group of persons each member of which is affiliated with every other member.

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"controlled"
« *contrôlé* »

"controlled" means controlled, directly or indirectly in any manner whatever.

45

"majority-interest
group of partners"
« *groupe d'associés
détenant une
participation
majoritaire* » 5

"majority-interest group of partners" of a partnership means a group of
persons each of whom has an interest in the partnership such that 10

(a) if one person held the interests of all members of the group,
that person would be a majority interest partner of the
partnership, and

(b) if any member of the group were not a member, the test 15
described in paragraph (a) would not be met.

Interpretation

(4) For the purposes of this section, 20

(a) persons are affiliated with themselves; and

(b) a person includes a partnership.

(2) Subsection (1) applies after April 26, 1995. 25

**154. (1) Subparagraph 252(4)(a)(ii) of the Act is replaced by
the following:**

(ii) would be a parent of a child of whom the taxpayer would
be a parent, if this Act were read without reference to
paragraph (1)(e) and subparagraph (2)(a)(iii) 30

(2) Subsection (1) applies after 1992.

**155. (1) The portion of subsection 256(6) of the English version of
the Act after paragraph (b) is replaced by the following:**

the controlled corporation is deemed not to have been controlled by the
controller at the particular time. 35

**(2) The portion of subsection 256(7) of the Act before paragraph
(a) is replaced by the following:**

Acquiring control

(7) For the purposes of subsections 10(10), 13(21.2) and (24), 14(12) and 18(15), section 37, subsection 40(3.4), the definition "superficial loss" in section 54, section 55, subsections 66(11), (11.4) and (11.5), 66.5(3) and 66.7(10) and (11), section 80, paragraph 80.04(4)(h), subsections 85(1.2) and 88(1.1) and (1.2), sections 111 and 127, subsection 249(4) and this subsection, 5

(3) Subparagraph 256(7)(a)(ii) of the Act is replaced by the following:

(ii) the redemption or cancellation at any particular time of, or a change at any particular time in the rights, privileges, restrictions or conditions attaching to, shares of the particular corporation or of a corporation controlling the particular corporation, where each person and each member of each group of persons that controls the particular corporation immediately after the particular time was related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the corporation 10 15

(A) immediately before the particular time, or

(B) immediately before the death of a person, where the shares were held immediately before the particular time by an estate that acquired the shares because of the person's death; and 20

(4) Subsection 256(7) of the Act is amended by striking out the word "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(b) where at any time two or more corporations (each of which is referred to in this paragraph as a "predecessor corporation") have amalgamated to form one corporate entity (in this paragraph referred to as the "new corporation"), 25

(i) control of a corporation is deemed not to have been acquired by any person or group of persons solely because of the amalgamation unless it is deemed by subparagraph (ii) or (iii) to have been so acquired, 30

(ii) a person or group of persons that controls the new corporation immediately after the amalgamation and did not control a predecessor corporation immediately before the amalgamation is deemed to have acquired control immediately before the amalgamation of the predecessor corporation and of each corporation it controlled immediately before the amalgamation (unless the person or group of persons would not have acquired 35 40

control of the predecessor corporation if the person or group of persons had acquired all the shares of the predecessor corporation immediately before the amalgamation), and

(iii) control of a predecessor corporation and of each corporation it controlled immediately before the amalgamation is deemed to have been acquired immediately before the amalgamation by a person or group of persons 5

(A) unless the predecessor corporation was related (otherwise than because of a right referred to in paragraph 251(5)(b)) immediately before the amalgamation to each other predecessor corporation, 10

(B) unless, if one person had immediately after the amalgamation acquired all the shares of the new corporation's capital stock that the shareholders of the predecessor corporation, or of another predecessor corporation that controlled the predecessor corporation, acquired on the amalgamation in consideration for their shares of the predecessor corporation or of the other predecessor corporation, as the case may be, the person would have acquired control of the new corporation as a result of the acquisition of those shares, or 15
20

(C) unless this subparagraph would, but for this clause, deem control of each predecessor corporation to have been acquired on the amalgamation where the amalgamation is an amalgamation of 25

(I) two corporations, or 30

(II) two corporations (in this subclause referred to as the "parents") and one or more other corporations (each of which is in this subclause referred to as a "subsidiary") that would, if all the shares of each subsidiary's capital stock that were held immediately before the amalgamation by the parents had been held by one person, have been controlled by that person; 35

(c) where two or more persons (in this paragraph referred to as the "transferors") dispose of shares of the capital stock of a particular corporation in exchange for shares of the capital stock of another corporation (in this paragraph referred to as the "acquiring corporation"), control of the acquiring corporation and of each corporation controlled by it immediately before the exchange is deemed to have been acquired at the time of the exchange by a person or group of persons unless 40
45

(i) the particular corporation and the acquiring corporation were related (otherwise than because of a right referred to in paragraph 251(5)(b)) to each other immediately before the exchange, or

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(ii) if all the shares of the acquiring corporation's capital stock that were acquired by the transferors on the exchange were acquired at the time of the exchange by one person, the person would not control the acquiring corporation;

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(d) where at any time shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that includes shares of the acquiring corporation's capital stock and, immediately after that time, the acquiring corporation and the particular corporation are controlled by a person or group of persons who

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(i) controlled the particular corporation immediately before that time, and

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(ii) did not, as part of the series of transactions or events that includes the disposition, cease to control the acquiring corporation,

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition; and

25

(e) where at any time all the shares of the capital stock of a particular corporation are disposed of to another corporation (in this paragraph referred to as the "acquiring corporation") for consideration that consists solely of shares of the acquiring corporation's capital stock and, immediately after that time,

30

(i) the acquiring corporation is not controlled by any person or group of persons, and

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(ii) the fair market value of the shares of the capital stock of the particular corporation is not less than 95% of the fair market value of all the assets of the acquiring corporation,

40

control of the particular corporation and of each corporation controlled by it immediately before that time is deemed not to have been acquired by the acquiring corporation solely because of the disposition.

45

(5) Subsection 256(8) of the Act is replaced by the following:**Deemed exercise of right**

(8) Where at any time a taxpayer acquires a right referred to in paragraph 251(5)(b) with respect to shares and it can reasonably be concluded that one of the main purposes of the acquisition is to avoid 5

(a) any limitation on the deductibility of any non-capital loss, net capital loss, farm loss, expense or other amount referred to in subsection 66(11), 66.5(3) or 66.7(10) or (11),

(b) the application of subsections 10(10) or 13(24), paragraph 37(1)(h) or subsection 55(2), 66(11.4) or (11.5), 111(4), (5.1), (5.2) or (5.3), 181.1(7) or 190.1(6), 10

(c) the application of paragraph (j) or (k) of the definition "investment tax credit" in subsection 127(9), or

(d) the application of section 251.1, 15

in determining whether control of a corporation has been acquired for the purposes of subsections 10(10) and 13(24), section 37, subsections 55(2), 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), sections 111 and 127 and subsections 181.1(7), 190.1(6) and 249(4), and in determining for the purpose of section 251.1 whether a corporation is controlled by any person or group of persons, the taxpayer is deemed to be in the same position in relation to the control of the corporation as if the right were immediate and absolute and as if the taxpayer had exercised the right at that time. 20

Corporations without share capital 25

(8.1) For the purposes of subsections (7) and (8),

(a) a corporation incorporated without share capital is deemed to have a capital stock of a single class; 30

(b) each member, policyholder and other participant in the corporation is deemed to be a shareholder of the corporation; and

(c) the membership, policy or other interest in the corporation of each of those participants is deemed to be the number of shares of the corporation's capital stock that the Minister considers reasonable in the circumstances, having regard to the total number of participants in the corporation and the nature of their participation. 35

(6) Subsection (1) applies to taxation years that begin after 1988.

(7) Subsections (2) and (5) apply after April 26, 1995.

(8) Subsection (3) applies to the 1994 and subsequent taxation years.

(9) The amendment to paragraph 256(7)(b) of the Act, as enacted by subsection (4), applies 5

(a) to mergers that occur after April 26, 1995, other than a merger that occurs pursuant to a written agreement made before that day where the corporate entity formed by the merger so elects before the end of the sixth month following the month in which this Act is assented to; and 10

(b) to a merger that occurred after 1992 and before April 26, 1995 where the corporate entity formed by the merger so elects before the end of the sixth month following the month in which this Act is assented to. 15

(10) Paragraph 256(7)(c) of the Act, as enacted by subsection (4), applies to exchanges that occur after April 26, 1995, other than an exchange that occurs pursuant to a written agreement made before that day.

(11) Paragraphs 256(7)(d) and (e) of the Act, as enacted by subsection (4), apply after April 26, 1995, except that, with respect to acquisitions of shares that occur before Announcement Date or pursuant to a written agreement made before Announcement Date, subparagraph 256(7)(e)(ii) of the Act, as enacted by subsection (4), shall be read as follows: 20 25

(ii) all or substantially all of the fair market value of the shares of the acquiring corporation's capital stock is attributable to the shares acquired by it at that time,

Exception to coming-into-force 30

156. (1) Subsections 7(4), 8(5), the amendment to subsection 18(13) of the Act, as enacted by subsection 12(2), subsection 19(1), (2), (6) and (7), 24(1) and (2), 25(1), 41(3) to (5), 45(1) and 49(1) and (2) do not apply to the disposition of property by a person or partnership (in this subsection and subsection (2) referred to as the "transferor") that occurs before 1996 35

(a) to a person that was obliged on April 26, 1995 to acquire the property pursuant to the terms of an agreement in writing made on or before that day, or

(b) in a transaction, or as part of a series of transactions, the arrangements for which, evidenced in writing, were substantially advanced before April 27, 1995, other than a transaction or series of a main purpose of which can reasonably be considered to have been to enable an unrelated person to obtain the benefit of 5

(i) any deduction in computing income, taxable income, taxable income earned in Canada or tax payable under the Act, or 10

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

Election

(2) Notwithstanding subsection (1), the amendment to subsection 18(13) of the Act, as enacted by subsection 12(2), and the other subsections of the Act referred to in subsection (1) apply to a disposition in respect of which the transferor has filed with the Minister of National Revenue before the end of the third month after the month in which this Act is assented to an election in writing to have those subsections apply. 15 20

Interpretation

(3) For the purpose subsection (1),

(a) a person shall be considered not to be obliged to acquire property where the person can be excused from the obligation if there is a change to the Act or if there is an adverse assessment under the Act; 25

(b) an "unrelated person" means any person that was not, or a partnership any member of which was not, related (otherwise than because of paragraph 251(5)(b) of the Act) to the transferor at the time of the disposition; and 30

(c) a person is deemed to be related to a partnership of which that person is a majority interest partner.

PART II

R.S., c. 2 (5th
Supp.); 1994, cc. 7,
21; 1995, cc. 3, 21

INCOME TAX APPLICATION RULES

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157. (1) The portion of paragraph 20(1)(c) of the *Income Tax Application Rules* before subparagraph (ii) is replaced by the following:

(c) where the disposition occurred because of an election under subsection 110.6(19) of the amended Act,

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(i) for the purposes of that Act (other than paragraphs 8(1)(j) and (p) and sections 13 and 20 of that Act), the taxpayer is deemed to have reacquired the property at a capital cost equal to

(A) where the amount designated in respect of the property in the election did not exceed 110% of the fair market value of the property at the end of February 22, 1994, the taxpayer's proceeds of disposition determined under paragraph (a) in respect of the disposition of the property that immediately preceded the reacquisition minus the amount, if any, by which the amount designated in respect of the property in the election exceeded that fair market value, and

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(B) in any other case, the amount otherwise determined under subsection 110.6(19) of that Act to be the cost to the taxpayer of the property immediately after the reacquisition referred to in that subsection minus the amount by which the fair market value of the property on valuation day exceeded the capital cost of the property at the time it was last acquired before 1972, and

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(2) Subsection (1) applies to the 1994 and subsequent taxation years.

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158. (1) Clause 26(5)(c)(ii)(A) of the Act is replaced by the following:

(A) a capital loss or an amount that would, but for paragraph 40(2)(e) and subsection 85(4) of the amended Act as that Act read in its application to property disposed of on or before April 26, 1995 and paragraphs 40(2)(e.1) and (e.2) and subsection 40(3.3) of the amended Act, be a capital loss from the disposition to a corporation after 1971 of the property by

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a person who owned the property before it became vested in the subsequent owner, or

(2) Section 26 of the Act is amended by adding the following after subsection (29):

Additions to taxable Canadian property 5

(30) Subsections (1.1) to (29) do not apply to a disposition by a non-resident person of a taxable Canadian property that would not be a taxable Canadian property immediately before the disposition if section 115 of the amended Act were read as it applied to dispositions that occurred on April 26, 1995. 10

(3) Subsections (1) and (2) apply to dispositions that occur after April 26, 1995.

PART III

R.S., c. B-3; 1992, c. 27; 1993, c. 28; 1995, c. 1 15

BANKRUPTCY AND INSOLVENCY ACT

1992, c. 27, s. 33

159. (1) The portion of subsection 67(3) of the *Bankruptcy and Insolvency Act* before subparagraph (a)(ii) is replaced by the following: 20

Exceptions

(3) Subsection (2) does not apply in respect of subsections 227(4) and (4.1) of the *Income Tax Act*, subsections 23(3) and (4) of the *Canada Pension Plan* or subsections 57(2) and (3) of the *Unemployment Insurance Act*, or in respect of provincial legislation where 25

(a) either

(i) the provincial legislation imposes a tax similar in nature to the tax imposed by the *Income Tax Act*, and the provision of the provincial legislation that creates the deemed trust is substantially similar to subsections 227(4) and (4.1) of the *Income Tax Act*, or 30

(2) Subsection (1) is deemed to have come into force on June 15, 1994.

PART IV

R.S., c. C-8; R.S., cc.
6, 41 (1st Supp.), cc. 5, 13, 27, 30 (2nd Supp.), cc. 18, 38 (3rd Supp.), cc. 1, 46, 51 (4th Supp.); 1990, c. 8; 1991, cc. 14, 44, 49; 1992, cc. 1, 2, 27, 48; 1993, cc. 24, 27, 28; 1994, cc. 13, 21; 1995, c. 33

CANADA PENSION PLAN 15

160. (1) Section 5 of the *Canada Pension Plan* is renumbered as subsection 5(1) and is amended by adding the following:

Delegation

(2) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Part. 20

(2) Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under subsection 40(2) of the Act before the day on which this Act is assented to continues to be delegated to that officer or that class of officers until an authorization by the Minister made under subsection 5(2) of the Act, as enacted by subsection (1), changes the delegation of that power or duty. 25

1994, c. 21, s. 123

161. (1) Subsection 23(3) of the Act is replaced by the following:

Where amount deducted not remitted 30

(3) Where an employer has deducted an amount from the remuneration of an employee as or on account of any contribution required to be made by the employee but has not remitted the amount to the Receiver General, the employer is deemed to hold the amount so deducted in trust, separate and apart from the employer's own property. 35

for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4) Notwithstanding the *Bankruptcy and Insolvency Act*, where at any time an amount deemed by subsection (3) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer equal in value to the amount so deemed to be held in trust is deemed 5

(a) to be held, from the time the amount was deducted by the employer, in trust, separate and apart from the employer's own property, for Her Majesty and for payment to Her Majesty; and 10

(b) to form no part of the estate of the employer from the time the amount was so deducted, whether the amount or property has in fact been kept separate and apart from the employer's own property or estate. 15

(2) Subsection (1) is deemed to have come into force on June 15, 1994.

161.1 Section 24 of the Act is amended by adding the following after subsection (2): 20

Electronic records

(2.1) Every employer required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (2). 25

Exemption

(2.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt an employer or a class of employers from the requirement in subsection (2.1). 30

161.2 (1) Subsection 25(12) of the Act is replaced by the following:

Copies as evidence

(12) Where any document is inspected, audited, examined or provided under this section, the person by whom it is inspected, audited or examined or to whom it is provided or any officer of the Department of National Revenue may make, or cause to be made, one or more copies thereof, or in the case of an electronic document make or cause to be 35

made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made pursuant to this subsection is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way. 5

(2) Subsection (1) applies to copies and print-outs made after this Act is assented to.

R.S., c. 51 (4th Supp.), s. 9 10

162. (1) Subsection 28(1) of the Act is replaced by the following:

**Appeal to Tax Court
of Canada**

28. (1) An employee or employer affected by a determination by or a decision on an appeal to the Minister under section 27, or the representative of either of them, may, within ninety days after the determination or decision is communicated to that employee or employer, or within such longer time as the Tax Court of Canada on application made to it within those ninety days may allow, appeal from the determination or decision to that Court in accordance with the provisions of the *Tax Court of Canada Act*. 15 20

R.S., c. 51 (4th Supp.), s. 9

(2) Subsection 28(2) of the Act is replaced by the following:

Decision 25

(2) On an appeal under this section, the Tax Court of Canada may reverse, affirm or vary the determination, may vacate, confirm or vary the assessment, or may refer the matter back to the Minister for reconsideration and reassessment and shall then

(a) notify in writing the parties to the appeal of its decision; and 30

(b) give reasons for its decision but, except where the Court deems it advisable in a particular case to give reasons in writing, the reasons given by it need not be in writing.

(3) Subsection (1) comes into force on a day to be fixed by order of the Governor in Council.

163. Subsection 40(2) of the Act is repealed.

1992, c. 48, s. 28(1)

164. Subsection 104(4.1) of the Act is replaced by the following: 5

Communication of information

(4.1) Any information obtained by an officer, clerk or employee in the Department of National Health and Welfare pursuant to this Act or any regulation may be made available to any officer, clerk or employee in that Department for the purposes of the administration of the *Family Allowances Act* or the *Old Age Security Act*. 10

PART V

1992, c. 48; 1995, c. 33 15

CHILDREN'S SPECIAL ALLOWANCES ACT

165. (1) The definition "Minister" in section 2 of the *Children's Special Allowances Act* is replaced by the following:

"Minister"
« *ministre* » 20

"Minister" means the Minister of National Revenue;

(2) Subsection (1) applies after August 27, 1995.

1995, c. 33, s. 47

166. (1) Subsection 10(2) of the Act is replaced by the following:

Release of information 25

(2) Any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations or the carrying out of an agreement entered into under section 11 may be communicated to any person where it can reasonably be regarded as necessary for the purposes of the administration or enforcement of this Act or the *Income Tax Act*. 30

(2) Subsection (1) applies after August 27, 1995.

167. (1) Section 11 of the Act is replaced by the following:

**Agreements with
provinces for
exchange of
information**

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11. The Minister may enter into an agreement with the government of any province for the purpose of obtaining information in connection with the administration or enforcement of this Act or the regulations and of furnishing to that government, under prescribed conditions, any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations, if the Minister is satisfied that the information to be furnished to that government under the agreement is to be used for the purpose of the administration of a social program, income assistance program or health insurance program in the province.

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(2) Subsection (1) applies after August 27, 1995.

PART VI

**R.S., c. C-51; R.S.,
c. 1 (2nd Supp.);
1991, c. 49; 1994, c.
13; 1995, c. 38**

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CULTURAL PROPERTY EXPORT AND IMPORT ACT

168. (1) Paragraph 39(a) of the *Cultural Property Export and Import Act* is replaced by the following:

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(a) prescribing the information, documentation and undertakings to be furnished by applicants for permits and certificates under this Act, the procedures to be followed in applying for and in issuing those permits and certificates, the terms and conditions applicable to them and the duration of the permits;

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PART VIII

R.S., c. E-15; R.S., c.
 15 (1st Supp.), cc. 1,
 7, 42 (2nd Supp.),
 cc. 18, 28, 41, 42
 (3rd Supp.), cc. 12,
 47 (4th Supp.); 1988,
 c. 65; 1989, c. 22;
 1990, c. 45; 1991, c.
 42; 1992, cc. 1, 27,
 28, 29; 1993, cc. 25,
 27, 28, 38; 1994, cc.
 9, 13, 21, 29, 41;
 1995, c.5, 36, 41, 46

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EXCISE TAX ACT

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171.1 Section 2 of the *Excise Tax Act* is amended by adding the following in alphabetical order:

"document"
 « *document* »

"document" includes money, a security and a record; 20

"record" « *registre* »

"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form; 25

171.2 Subsection 20.2(2) of the Act is replaced by the following:

**Records and books
 of account** 30

(2) Each licensed air carrier that is required to make a return of the amounts described in paragraph 20(1)(b) shall keep records and books of account in such form and containing such information as will enable the amount of tax or other sums that have been paid to or collected by the carrier or the carrier's agent to be determined and, for the purposes of this subsection, subsections 98(2.01), (2.1), (3) and 100(2) apply, with such modifications as the circumstances require, as if the records and books of account were required to be kept by the carrier pursuant to subsection 98(1). 35 40

172. (1) The Act is amended by adding the following after section 38:

Exception — first split-run edition

38.1 Section 36 does not impose a tax on an edition of an issue of a periodical that is the first split-run edition of the periodical if the responsible person in respect of the edition is 5

- (a) the distributor of the periodical; 10
- (b) the person who printed the edition or part of it; or
- (c) the wholesaler of the periodical.

(2) Subsection (1) is deemed to have come into force on March 7, 1996. 15

172.1 Section 98 of the Act is amended by adding the following after subsection (2):

Electronic records

(2.01) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period set out in subsection (2). 20

Exemption

(2.02) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (2.01). 25

172.2(1) Subsection 100(1.1) of the Act is replaced by the following:

Copies 30

(1.1) Where any record or other document is inspected or provided under sections 98 and 99, the person by whom it is inspected, or to whom it is provided or any officer of the Department may make, or cause to be made, one or more copies thereof, or in the case of an electronic document make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made under this section is evidence of the nature and content of the original document and has the 35

same probative force as the original document would have if it were proven in the ordinary way.

(2) Subsection (1) applies to copies and print-outs made after this Act is assented to.

172.3 Subsection 105(5) of the Act is replaced by the following: 5

Proof of documents

(5) An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out

(a) that the officer has charge of the appropriate records, and

(b) that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, 10

is evidence of the nature and contents of the document.

172.4 The definition of "record" in subsection 123(1) of the Act is replaced by the following: 15

"record" « *registre* »

"record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form; 20

172.5 Section 286 of the Act is amended by adding the following after subsection (3):

Electronic records 25

(3.1) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period set out in subsection (3).

Exemptions 30

(3.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (3.1).

172.6 Subsection 291(1) of the Act is replaced by the following:

Copies

291. (1) Where any document is seized, inspected, examined or provided under any of sections 276 and 288 to 290, the person by whom it is seized, inspected or examined or to whom it is provided or any officer of the Department may make, or cause to be made, one or more copies thereof, or in the case of an electronic document make or cause to be made a print-out of the electronic document, and any document purporting to be certified by the Minister or an authorized person to be a copy of the document, or to be a print-out of an electronic document, made under this section is evidence of the nature and content of the original document and has the same probative force as the original document would have if it were proven in the ordinary way.

(2) Subsection (1) applies to copies and print-outs made after this Act is assented to.

172.7 Subsection 335(5) of the Act is replaced by the following:

Proof of documents

(5) An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document annexed to the affidavit is a document or true copy of a document, or a print-out of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

PART IX

R.S., c. O-9; R.S., c.34 (1st Supp.), cc. 1, 51 (4th Supp.); 1990, c. 39; 1991, c. 44; 1992, cc. 24, 48; 1995, c. 33

OLD AGE SECURITY ACT

1992, c. 48, s. 29(1); 1995, c. 33, s. 20

173. Paragraph 33(2)(c) of the *Old Age Security Act* is replaced by the following:

Filing date

(2.1) The date of filing of an originating document in the Registry of the Court is deemed to be the day on which the document is received by the Registry.

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Electronic filing

(2.2) Where an originating document is filed in accordance with paragraph (2)(c), the party who instituted the proceeding or that party's counsel shall forthwith send the original and two copies of the document to the Registry of the Court.

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**Service of
originating
document**

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(3) Where the original and two copies of the originating document have been received by the Registry of the Court and the filing fee has been paid as required by this section, an officer of the Registry of the Court shall, after verifying the accuracy of the copies, forthwith, on behalf of the party who instituted the proceeding, serve the originating document on Her Majesty in right of Canada by transmitting the copies to the office of the Deputy Attorney General of Canada.

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(2) Subsection (1) comes into force on a day or days to be fixed by order of the Governor in Council.

**R.S., c. 51 (4th
Supp.), s. 5**

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175. (1) Subsection 18.15(3) of the Act is replaced by the following:

**How appeal
instituted**

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(3) An appeal referred to in section 18 shall be instituted by

(a) filing the original of the written appeal referred to in subsection (1); and

(b) paying \$100 as a filing fee.

Procedure for filing

(3.1) The written appeal referred to in subsection (1) shall be filed

(a) by depositing the original of the written appeal in the Registry of the Court; 5

(b) by mailing the original of the written appeal to the Registry of the Court; or

(c) by using any other means, including electronic means, in the form and manner provided for in the rules of Court. 10

Filing date

(3.2) The date of filing of a written appeal in the Registry is deemed to be the day on which the written appeal is received by the Registry. 15

Electronic filing

(3.3) Where a written appeal is filed in accordance with paragraph (3.1)(c), the party who instituted the proceeding or that party's counsel or agent shall forthwith send the original of the written appeal to the Registry of the Court. 20

Powers of Court re filing fee

(3.4) The Court may, on application made by an individual in the written appeal referred to in subsection (1), waive the payment of the filing fee where the Court is satisfied that its payment would cause severe financial hardship to the individual. 25 30

Consideration re filing fee

(3.5) The Court shall decide whether to grant an application made under subsection (3.4) solely on the basis of the information contained in the written appeal referred to in subsection (1). 35

(2) Paragraph 18.15(3)(b) and subsections 18.15(3.4) and (3.5) of the Act, as enacted by subsection (1), apply to appeals instituted after the fourth month after the month in which this Act is assented to. 40

(3) Subsections 18.15(3.1) to (3.3) of the Act, as enacted by subsection (1), come into force on a day or days to be fixed by order of the Governor in Council.

R.S., c. 51 (4th Supp.), s. 5

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176. Subsection 18.26(1) of the Act is replaced by the following:

Filing fee and costs

18.26 (1) Where an appeal referred to in section 18 is allowed, the Court

(a) shall reimburse to the appellant the filing fee paid by the appellant under paragraph 18.15(3)(b); and 10

(b) where the judgment reduces the aggregate of all amounts in issue or the amount of interest in issue, or increases the amount of loss in issue, as the case may be, by more than one-half, may award costs to the appellant in accordance with the rules of Court. 15

1990, c. 45, s. 59

177. (1) Section 18.27 of the Act is amended by striking out the word "and" at the end of paragraph (b), by adding the word "and" at the end of paragraph (c) and by adding the following after paragraph (c): 20

(d) varying the amount of \$100 referred to in paragraph 18.15(3)(b).

1995, c. 18, s. 99

178. (1) The portion of subsection 18.29(1) of the Act before paragraph (a) is replaced by the following:

Other applications

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18.29 (1) The provisions of section 18.14, subsections 18.15(1) and (2), paragraph 18.15(3)(a), subsection 18.15(4), paragraph 18.18(1)(a), section 18.19, subsection 18.22(3) and sections 18.23 and 18.24 apply, with such modifications as the circumstances require, in respect of appeals arising under 30

(2) The portion of subsection 18.29(1) of the Act before paragraph (a), as amended by subsection (1), is replaced by the following:

Other application

18.29 (1) The provision of section 18.14, subsections 18.15(1) and (2), paragraph 18.15(3)(a), subsection 18.15(3.1), (3.3) and (4), paragraph 18.8(1)(a), section 18.19, subsections 18.22(3) and sections 18.23 and 18.24 apply, with such modifications as the circumstances require, in respect of appeals arising under

1995, c. 38, s. 7 10

(3) Subsection 18.29(3) of the Act is replaced by the following:

Extensions of time

(3) Subsection 18.15(3.2) and the provisions referred to in subsection (1) also apply, with such modifications as the circumstances require, in respect of applications for extensions of time under section 166.2 or 167 of the *Income Tax Act* or section 304 or 305 of the *Excise Tax Act*.

(4) Subsections (2) and (3) come into force on a day or days to be fixed by order of the Governor in Council.

1990, c. 45, s. 61

179. (1) Section 18.3001 of the Act is replaced by the following: 20

**Application —
*Excise Tax Act***

18.3001 Subject to section 18.3002, where a person has so elected in the notice of appeal for an appeal under Part IX of the *Excise Tax Act* or at such later time as may be provided in the rules of Court, this section and sections 18.3003 to 18.302 apply, with such modifications as the circumstances require, in respect of the appeal.

(2) Subsection (1) is deemed to have come into force on June 10, 1993.

1990, c. 45, s. 61 30

180. (1) Subsection 18.3002(1) of the Act is replaced by the following:

**General procedure
to apply**

18.3002 (1) Where the Attorney General of Canada so requests, the Court shall order that sections 17.1, 17.2 and 17.4 to 17.8 apply in respect of an appeal in respect of which sections 18.3003 and 18.3007 to 18.302 would otherwise apply. 5

(2) Subsection (1) is deemed to have come into force on June 10, 1993.

1990, c. 45, s. 61

181. Subsection 18.3009(1) of the Act is replaced by the following: 10

Filing fee and costs

18.3009 (1) Where an appeal referred to in section 18.3001 is allowed, the Court

(a) shall reimburse to the person who brought the appeal the filing fee paid under paragraph 18.15(3)(b) by that person; and 15

(b) where the judgment reduces the amount of tax, net tax, rebate, interest and penalties in issue in the appeal by more than one-half, may award costs, in accordance with the rules of Court, to the person who brought the appeal where

(i) the amount in dispute was equal to or less than \$7,000, and 20

(ii) the aggregate of supplies for the prior fiscal year of that person was equal to or less than \$1,000,000.

PART XI

R.S., c. T-3; R.S., c. 53 (1st Supp.); 1992, c. 1; 1993, cc. 24, 27; 1995, cc. 1, 17 25

TAX REBATE DISCOUNTING ACT

1995, c. 17, s. 66

182. (1) The definition "Minister" in subsection 2(1) of the Tax Rebate Discounting Act is replaced by the following: 30

"Minister"
« *ministre* »

"Minister" means the Minister of National Revenue;

1995, c. 17, s. 66

(2) The definition "prescribed" in subsection 2(1) of the English version of the Act is replaced by the following: 5

"prescribed"
*Version anglaise
seulement*

"prescribed" means 10

(a) in the case of a form, the information to be given on a form or the manner of filing a form, authorized by the Minister, and

(b) in any other case, prescribed by regulation;

1995, c. 27, s. 227

183. Subparagraph 4(1)(b)(i) of the Act is replaced by the following: 15

(i) a statement in prescribed form describing the discounting transaction, and

R.S., c. 53 (1st Supp.), s. 2 20

184. Paragraph 5(b) of the French version of the Act is replaced by the following:

b) un avis du montant du remboursement d'impôt réel qu'il a reçu et auquel le client aurait par ailleurs eu droit; l'avis doit être présenté en la forme autorisée par le ministre et contenir les renseignements qu'il requiert. 25

PART XII

R.S., c. U-1; R.S., cc. 26, 27 (1st Supp.), cc. 5, 43 (2nd Supp.), cc. 14, 36, 38 (3rd Supp.), cc. 1, 4, 46, 51, 53 (4th Supp.); 1990, cc. 8, 40; 1991, cc. 49, 51; 1992, cc. 1, 27; 1993, cc. 1, 13, 24, 27, 34; 1994, cc. 13, 18, 21; 1995, c. 7

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UNEMPLOYMENT INSURANCE ACT

1994, c. 21, s. 130

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185. (1) Subsection 57(2) of the *Unemployment Insurance Act* is replaced by the following:

Amounts deducted and not remitted

(2) Where an employer has deducted an amount from the remuneration of an insured person as or on account of any employee's premium required to be paid by the insured person but has not remitted the amount to the Receiver General, the employer is deemed to hold the amount so deducted in trust, separate and apart from the employer's own property, for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

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Extension of trust

(3) Notwithstanding the *Bankruptcy and Insolvency Act*, where at any time an amount deemed by subsection (2) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer equal in value to the amount so deemed to be held in trust is deemed

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(a) to be held, from the time the amount was deducted by the employer, in trust, separate and apart from the employer's own property, for Her Majesty and for payment to Her Majesty; and

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(b) to form no part of the estate of the employer from the time the amount was so deducted, whether the amount or property has in fact been kept separate and apart from the employer's own property or estate.

(2) Subsection (1) is deemed to have come into force on June 15, 1994. 5

185.1 Section 58 of the Act is amended by adding the following after subsection (3):

Electronic records

(3.1) Every employer required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (3). 10

Exemption

(3.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt an employer or a class of employers from the requirement in subsection (3.1). 15

1994, c. 13, s. 7(1)(k)

186. (1) Section 64 of the Act is amended by adding the following after subsection (1): 20

Delegation

(1.1) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Part.

(2) Any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under subsection 75(2) of the Act before the day on which this Act is assented to continues to be delegated to that officer or that class of officers until an authorization by the Minister made under subsection 64(1.1) of the Act, as enacted by subsection (1), changes the delegation of that power or duty. 25
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R.S., c. 51 (4th
Supp.), s. 23

187. (1) Section 70 of the Act is replaced by the following:

**Appeal to the Tax
Court of Canada**

70. (1) The Commission or a person affected by a determination by, or a decision on an appeal to, the Minister under section 61 may, within ninety days after the determination or decision is communicated to the Commission or person, or within such longer time as the Tax Court of Canada on application made to it within those ninety days may allow, appeal from the determination or decision to that Court in accordance with the provisions of the *Tax Court of Canada Act*. 5

Decision 10

(2) On an appeal under this section, the Tax Court of Canada may reverse, affirm or vary the determination, may vacate, confirm or vary the assessment or may refer the matter back to the Minister for reconsideration and reassessment, and shall thereupon

(a) notify in writing the parties to the appeal of its decision; and 15

(b) give reasons for its decision but, except where the Court deems it advisable in a particular case to give reasons in writing, the reasons given by it need not be in writing.

(2) Subsection 70(1) of the Act, as enacted by subsection (1), comes into force on a day to be fixed by order of the Governor in Council. 20

188. Subsection 75(2) of the Act is repealed.

PART XIII

S.C. 1995, c. 17,
Sch. II 25

WESTERN GRAIN TRANSITION PAYMENTS ACT

189. (1) Paragraphs 4(4)(b) and (c) of the *Western Grain Transition Payments Act* are replaced by the following:

(b) a transition payment received in respect of farmland that was, immediately before its disposition by the applicant, capital property of the applicant shall, where the farmland is disposed of before the payment is received, be considered to be an amount required by subsection 53(2) of that Act to be deducted in computing the adjusted cost base of the farmland to the applicant immediately before the disposition; 30
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(c) a transition payment to which neither paragraph (a) nor (b) applies, received by the applicant, shall be considered to be assistance received in the course of earning income from a business or property in respect of the cost of the property or in respect of an outlay or an expense; and

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(d) where, pursuant to an equitable arrangement referred to in paragraph 6(c), a portion of a transition payment received by an applicant is paid to a person or partnership that is leasing farmland from the applicant, that portion paid to the person or partnership is required to be included in computing the income of the person or partnership from a business for the taxation year of the person or partnership in which it is received and the amount so paid is deemed not to be a transition payment received by the applicant for the purposes of paragraphs (a) to (c).

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(2) Subsection (1) applies in respect of payments made after June 22, 1995.

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PART XIV

S.C. 1988, c. 55

AN ACT TO AMEND THE INCOME TAX ACT, THE CANADA PENSION PLAN, THE UNEMPLOYMENT INSURANCE ACT, 1971, THE FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS AND FEDERAL POST-SECONDARY EDUCATION AND HEALTH CONTRIBUTIONS ACT, 1977 AND CERTAIN RELATED ACTS

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190. (1) Subsections 102(1) and (5) of *An Act to amend the Income Tax Act, the Canada Pension Plan, the Unemployment Insurance Act, 1971, the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977 and certain related Acts*, being chapter 55 of the Statutes of Canada, 1988, are repealed.

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(2) Subsection (1) is deemed to have come into force on September 13, 1988.

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PART XV

S.C. 1995, c. 21

AN ACT TO AMEND THE INCOME TAX ACT, THE INCOME TAX APPLICATION RULES AND RELATED ACTS

191. (1) Subsection 46(8) of *An Act to amend the Income Tax Act, the Income Tax Application Rules and related Acts*, being chapter 21 of the Statutes of Canada, 1995 is replaced by the following: 5

"(8) Subsections (1) to (6) apply to taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, subsections (1) to (6) apply to taxation years of the foreign affiliate that end after 1994, unless 10

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or 15

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time at which that taxation year would have begun if the change had not occurred. 20

(9) Subsection (7) applies to rights acquired and shares acquired or disposed of in taxation years of foreign affiliates of taxpayers that begin after 1994 except that, where there has been a change in the taxation year of a foreign affiliate of a taxpayer in 1994 and after February 22, 1994, subsection (7) applies to rights acquired and shares acquired or disposed of in taxation years of the foreign affiliate that end after 1994, unless 25

(a) the foreign affiliate had requested the change in writing before February 22, 1994 from the income taxation authority of the country in which the foreign affiliate was resident and subject to income taxation; or 30

(b) the foreign affiliate's first taxation year that began after 1994 began at a time in 1995 that is earlier than the time at which that taxation year would have begun if the change had not occurred."

(2) Subsection (1) is deemed to have come into force on June 22, 1995.

PART XVI

CONDITIONAL AMENDMENTS

192. (1) If Bill C-12, introduced in the second session of the 35th Parliament and entitled *An Act respecting employment insurance in Canada*, is assented to, then 5

(a) applicable after June 29, 1996, subsection 86(2) of that Act is replaced by the following:

Amounts deducted and not remitted 10

(2) Where an employer has deducted an amount from the remuneration of an insured person as or on account of any employee's premium required to be paid by the insured person but has not remitted the amount to the Receiver General, the employer is deemed to hold the amount so deducted in trust, separate and apart from the employer's own property, for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act. 15

Extension of trust

(2.1) Notwithstanding the *Bankruptcy and Insolvency Act*, where at any time an amount deemed by subsection (2) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer equal in value to the amount so deemed to be held in trust is deemed 25

(a) to be held, from the time the amount was deducted by the employer, in trust, separate and apart from the employer's own property, for Her Majesty and for payment to Her Majesty; and

(b) to form no part of the estate of the employer from the time the amount was so deducted, whether the amount or property has in fact been kept separate and apart from the employer's own property or estate. 30

(b) applicable after the later of June 29, 1996, and the day on which this Act is assented to, section 87 of that Act is amended by adding the following after subsection (3): 35

Electronic records

(3.1) Every employer required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (3).

Exemption

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(3.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt an employer or a class of employers from the requirement in subsection (3.1).

(c) subsection 103(1) of that Act is replaced by the following:

**Appeal to the Tax
Court of Canada**

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103. (1) The Commission or a person affected by a decision on an appeal to the Minister under section 91 or 92 may appeal from the decision to the Tax Court of Canada in accordance with the provisions of the *Tax Court of Canada Act* within 90 days after the decision is communicated to the Commission or the person, or within such longer time as the Court may allow on application made to it within those 90 days.

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(d) applicable after the later of June 29, 1996 and the day before the day on which this Act is assented to, subsection 103(3) of that Act is amended by striking out the word "and" at the end of paragraph (b) and by replacing paragraph (c) with the following:

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(c) shall notify in writing the parties to the appeal of its decision; and

(d) give reasons for its decision but, except where the Court deems it advisable in a particular case to give reasons in writing, the reasons given by it need not be in writing.

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(e) applicable after the later of June 29, 1996 and the day before the day on which this Act is assented to, section 108 of that Act is amended by adding the following after subsection (1):

Delegation

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(1.1) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister under this Part.

(f) any power or duty of the Minister of National Revenue delegated to an officer or a class of officers by a regulation made under subsection 75(2) of the *Unemployment Insurance Act* before June 30, 1996 continues to be delegated to that officer or that class of officers until an authorization by the Minister made under subsection 108(1.1) of the *Employment Insurance Act*, as enacted by paragraph (e), changes the delegation of that power or duty; 5

(g) notwithstanding the repeal of the *Unemployment Insurance Act* by the *Employment Insurance Act* effective on June 30, 1996, in applying section 57 of the *Unemployment Insurance Act* after June 15, 1994 and before June 30, 1996, subsection (2) of that section is deemed to be replaced by the following: 10

**Amounts deducted
and not remitted** 15

(2) Where an employer has deducted an amount from the remuneration of an insured person as or on account of any employee's premium required to be paid by the insured person but has not remitted the amount to the Receiver General, the employer is deemed to hold the amount so deducted in trust, separate and apart from the employer's own property, for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act. 20

Extension of trust

(3) Notwithstanding the *Bankruptcy and Insolvency Act*, where at any time an amount deemed by subsection (2) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer equal in value to the amount so deemed to be held in trust is deemed 25

(a) to be held, from the time the amount was deducted by the employer, in trust, separate and apart from the employer's own property, for Her Majesty and for payment to her Majesty; and 30

(b) to form no part of the estate of the employer from the time the amount was so deducted, whether the amount or property has in fact been kept separate and apart from the employer's own property or estate. 35

(h) applicable after June 29, 1996, that portion of subsection 67(3) of the *Bankruptcy and Insolvency Act* before paragraph (a) is replaced by the following:

Exceptions

(3) Subsection (2) does not apply in respect of subsections 227(4) and (4.1) of the *Income Tax Act*, subsections 23(3) and (4) of the *Canada Pension Plan* or subsections 86(2) and (2.1) of the *Employment Insurance Act*, or in respect of provincial legislation where

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(i) on the later of June 30, 1996 and the day this Act is assented to, subsection 159(2) of this Act is replaced by the following:

"(2) The amendment to the portion of subsection 67(3) of the Act before paragraph (a), as enacted by subsection (1), is deemed to have come into force on June 15, 1994 and applies after June 14, 1994 and before June 30, 1996.

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(3) The amendment to paragraph 67(3)(a) of the Act, as enacted by subsection (1), is deemed to have come into force on June 15, 1994."

(2) If this Act is assented to after June 29, 1996 and Bill C-12, introduced in the second session of the 35th Parliament and entitled *An Act respecting employment insurance in Canada*, is assented to, then this Act shall be read without reference to sections 186 and 187.

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(3) Paragraph (1)(c) comes into force on a day to be fixed by order of the Governor in Council.

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193. (1) If Bill C-36, introduced in the second session of the 35th Parliament and entitled *An Act to amend the Income Tax Act, the Excise Act, the Excise Tax Act, the Office of the Superintendent of Financial Institutions Act, the Old Age Security Act and the Canada Shipping Act* (in this section referred to as "that Act") is assented to,

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(a) paragraph 37(13)(b) of the *Income Tax Act*, as enacted by subsection 9(10) of that Act, is replaced by the following:

(b) the work would be scientific research and experimental development if it were performed by the person or partnership,

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(b) paragraph 88(1)(e.2) of the *Income Tax Act*, as enacted by subsection 43(8), is replaced by the following:

(e.2) paragraphs 87(2)(c), (d.1), (e.1), (e.3), (g) to (l), (l.3) to (u), (x), (z.1), (z.2), (aa), (cc), (ll), (nn), (pp), (rr), (tt) and (uu), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references therein to

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(c) the portion of subsection 96(3) of the *Income Tax Act* before paragraph (a), as enacted by subsection 17(5) of that Act, is replaced by the following:

**Agreement or
election of
partnership
members**

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(3) Where a taxpayer who was a member of a partnership during a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or an election under or in respect of the application of any of subsections 13(4), (15) and (16) and 14(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04 and subsections 97(2) and 249.1(4) and (6) that, but for this subsection, would be a valid agreement, designation or election,

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(d) Paragraph (f) of the definition "specified percentage" in subsection 127(9) of the *Income Tax Act* is replaced by the following:

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(f) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced

(i) the capital cost to the taxpayer of a property under paragraph (11.1)(b),

(ii) the amount of a qualified expenditure incurred by the taxpayer under paragraph (11.1)(c) or (e) for taxation years that began before 1996, or

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(iii) the prescribed proxy amount of the taxpayer under paragraph (11.1)(f) for taxation years that began before 1996,

the specified percentage that was applicable in respect of the property, the expenditure or the prescribed proxy amount, as the case may be,

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(f.1) in respect of the repayment of government assistance, non-government assistance or a contract payment that reduced a qualified expenditure incurred by the taxpayer under any of subsections (18) to (20), 20%,

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(e) clause 150(1)(d)(ii)(A) of the *Income Tax Act*, as enacted by subsection 38(2) of that Act, is replaced by the following:

(A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)) or tax shelters (as defined in subsection 237.1(1)), or 5

(f) subsection 249.1(5) of the *Income Tax Act*, as enacted by subsection 61(1) of that Act, is replaced by the following:

**Alternative method 10
not applicable to tax
shelter**

(5) Subsection (4) does not apply to a particular fiscal period of a business where, in a preceding fiscal period or throughout the period of time that began at the beginning of the particular period and ended at the end of the calendar year in which the particular period began, the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)) or tax shelters (as defined in subsection 237.1(1)). 15 20

(2) If that Act is assented to,

(a) subsection 16(1) of that Act is repealed;

(b) subsection 16(3) of that Act is replaced by the following:

"(3) Subsection (2) applies to windings-up that begin after June 1995." 25

(c) subsection 17(5) of that Act is repealed;

(d) subsection 17(6) of that Act is replaced by the following:

"(6) Subsections (1) to (3) apply after 1994."

(e) subsection 33(1) of that Act is repealed;

(f) subsection 33(3) of that Act is replaced by the following: 30

"(3) Subsection (2) applies to taxation years that end after June 1995."

(g) subsection 60(2) of that Act is replaced by the following:

"(2) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

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"filing-due date"
 « *date d'échéance de production* »

"filing-due date" for a taxation year of a taxpayer means the day on or before which the taxpayer's return of income under Part I for the year is required to be filed or would be required to be filed if tax under that Part were payable by the taxpayer for the year;

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"professional corporation"
 « *société professionnelle* »

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"professional corporation" means a corporation that carries on the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor;"

(h) subsection 60(7) of that Act is repealed.

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(3) If that Act is assented to before this Act is assented to,

(a) subparagraph 12(1)(x)(vi) of the *Income Tax Act*, as enacted by subsection 5(1), is replaced by the following:

(vi) except as provided by subsection 127(11.1), (11.5) or (11.6), does not reduce, for the purpose of an assessment made or that may be made under this Act, the cost or capital cost of the property or the amount of the outlay or expense, as the case may be,

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(b) the reference in subsection 37(10) of the *Income Tax Act*, as enacted by subsection 16(2), to "subsection (1)" is replaced by a reference to "subsection (11)".

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(4) If that Act is assented to before this Act is assented to,

(a) subsection 106(3) is replaced by the following:

"(3) Paragraph 157(3)(e) of the Act is replaced by the following:

(e) 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year." 5

(b) subsection 106(5) is replaced by the following:

"(5) Subsection (3) applies to taxation years that end after February 22, 1994, except that for taxation years that end before 1995, paragraph 157(3)(e) of the Act, as enacted by subsection (3), shall be read without the reference in it to subsection 125.4(3) of the Act." 10

(5) If that Act is assented to after this Act is assented to, the subsections added to section 227 of the *Income Tax Act* by section 57 of that Act shall be added after subsection (4.1) of that section of the *Income Tax Act* rather than after subsection (4) of that section. 15

(6) If that Act is assented to after this Act is assented to, subsection 41(1) of that Act is replaced by the following:

"41. (1) Paragraph 157(3)(e) of the Act is replaced by the following:

(e) 1/12 of the total of all amounts each of which is an amount deemed by subsection 125.4(3), 127.1(1) or 127.41(3) to have been paid on account of the corporation's tax payable under this Part for the year." 20

(7) Paragraphs (1)(a) and (d) and subsection (3) apply to taxation years that begin after 1995. 25

(8) Paragraph (1)(b) applies to windings-up that begin after June 1995.

(9) Paragraph (1)(c) applies after 1994.

(10) Paragraphs (1)(e) applies to the 1995 and subsequent taxation years. 30

(11) Paragraph (1)(f) applies to fiscal periods that begin after 1994.

(12) Subsections (2), (5) and (6) are deemed to have come into force on the day on which that Act is assented to.