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Explanatory Notes relating to the Income Tax Act, the Excise Act, 2001 and the Excise Tax Act

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Explanatory Notes

Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Income Tax Regulations,* the *Excise Act, 2001*, the *Excise Tax Act*, and the *Budget Implementation Act, 2008* to implement the remaining tax measures for the Budget announced on February 26, 2008 and to implement certain other tax measures. These explanatory notes also describe proposed amendments to the *Income Tax Act* related to additional tax initiatives. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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Minister of Finance

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

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Part 1

Amendments related to Income Tax

Income Tax Act

Clause 2

Income from office or employment

ITA
6

Section 6 of the *Income Tax Act* (the "Act") provides for the inclusion in an employee's income of most employment-related benefits.

ITA
6(1)(*g*)

Paragraph 6(1)(*g*) of the Act requires the inclusion of all amounts received by a taxpayer in the year out of an employee benefit plan (EBP) or from the disposition of such a plan. Pension payments from foreign pension plans, to the extent that they relate to services rendered by a Canadian resident, are taxable under the EBP rules.

Subparagraphs 6(1)(*g*)(i) to (iii) provide certain exclusions from the paragraph 6(1)(*g*) income inclusion. Subparagraph 6(1)(*g*)(ii) provides an exclusion for a return of amounts contributed to an EBP by an employee. Subparagraph 6(1)(*g*)(ii) is amended, consequential on the anticipated ratification of the Fifth Protocol to the Canada-United States Tax Convention, to limit the application of this exclusion to returns of contributions, where the contributions were not deducted in computing taxable income. This will ensure, for example, that certain contributions by a Canadian resident to a foreign pension plan, which are deductible for Canadian income tax purposes because of the Protocol, will be included in income at the time that they are returned to the contributor (or his or her heir).

This amendment applies for taxation years that begin after the calendar year in which the Protocol enters into force.

Clause 3

Stock options

ITA
7

Section 7 of the Act deals with agreements (commonly referred to as stock options) under which employees of a corporation or a mutual fund trust acquire rights to acquire securities of the employer (or a person with whom the employer does not deal at arm's length).

Exchange of options

ITA
7(1.4)(*b*)(iv)

Subsection 7(1.4) of the Act contains provisions that apply when an individual disposes of rights to acquire securities under an employee option agreement in exchange for other such rights under an agreement with a designated person (within the meaning assigned by paragraph 7(1.4)(*b*) of the Act). Provided certain conditions are met, subsection 7(1.4) deems the disposition not to have occurred and deems the new option to be the same as, and a continuation of, the original option.

Paragraph 7(1.4)(*b*) of the Act is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Among these amendments are the new definitions "SIFT wind-up corporation", "SIFT wind-up entity" and "SIFT wind-up entity equity" in subsection 248(1) of the Act.

The amendment to paragraph 7(1.4)(*b*), which adds a new subparagraph (vi), extends the concept of a designated person in that provision to include a SIFT wind-up corporation in respect of a particular SIFT wind-up entity, provided that the particular SIFT wind-up entity was a mutual fund trust (including one that subsection 132(6.2) of the Act deems to continue to be a mutual fund trust) at the time of the disposition of the old rights, those rights were rights to acquire equity in the particular SIFT wind-up entity (i.e., rights to acquire a beneficial interest in the trust described by reference to units) and the disposition of those rights occurred before 2013.

For more detail, readers may refer to the commentary on the definitions "SIFT wind-up corporation", "SIFT wind-up entity" and "SIFT wind-up entity equity" in subsection 248(1) of the Act.

This amendment applies after December 19, 2007.

Clause 4

Income from business or property

ITA
12

Section 12 of the Act provides for the inclusion of various amounts in computing a taxpayer's income from business or property.

Former TFSA

ITA
12(1)(*z.5*)

New paragraph 12(1)(*z.5*) of the Act requires that the income of a taxpayer arising from the application of new subsection 146.2(9) of the Act be included in computing the taxpayer's income from property. That subsection, which applies on the death of the last holder of a trusteed tax-free savings account (TFSA), continues the trust's tax-exempt status until the end of the year following the year of death. It also provides for any income earned on, or appreciation in the value of, the trust's property during the post-death exempt period to be included, to the extent paid out during that period, in the income of the recipient and, otherwise, in the trust's income for its first taxable year. For more details, readers may refer to the commentary on subsection 146.2(9).

This amendment applies to the 2009 and subsequent taxation years.

Definitions

ITA
12(11)

Subsection 12(4) of the Act requires that the accrued interest on an investment contract be included in computing income on an annual basis. A number of arrangements are specifically excluded from these rules under the definition "investment contract" in subsection 12(11) of the Act.

The definition "investment contract" is amended to add tax-free savings accounts (TFSAs) to the list of exclusions. This will ensure that a TFSA that is issued as a deposit will not be subject to the interest accrual rules.

This amendment applies to the 2009 and subsequent taxation years.

Clause 5

Insurer's reserve inclusion

ITA
12.5

New section 12.5 of the Act provides transitional rules for insurers in respect of their insurance businesses (other than life insurance businesses) as a result of changes to accounting rules.

New section 12.5 applies in conjunction with the provisions of new section 20.4 of the Act. Similar changes in respect of insurers' life insurance businesses are proposed in section 138 of the Act. These rules are intended to ensure that any increase or decrease in the reserves of an insurer resulting from these accounting changes will be taken into account in computing income for tax purposes over a five-year period.

Rules are also introduced to treat these five-year transitional amounts appropriately if, during the transitional period, an insurer transfers its assets to another entity. More particularly, the transferee corporation will be treated as a continuation of the transferor for the purposes of the five-year transition amounts. If an insurer ceases to carry on a business, the recognition of the five-year transition period is generally accelerated to the time at which that business ceases to be carried on.

For further details, readers may refer to the commentary to proposed sections 20.4 and 142.51 of the Act and to proposed amendments to section 138 of the Act and Part XIV of the *Income Tax Regulations* (the "Regulations").

Definitions

ITA
12.5(1)

New subsection 12.5(1) of the Act contains definitions that apply for the purposes of new section 12.5. These definitions also apply for the purposes of section 20.4 of the Act.

The definitions in subsection 12.5(1) apply to taxation years that begin after September 2006.

"base year"

The new definition "base year" provides that the base year of an insurer is the insurer's taxation year that immediately precedes its transition year.

"insurance business"

Sections 12.5 and 20.4 apply in respect of an insurance business other than a life insurance business. "Insurance business" for these purposes therefore means an insurance business carried on by the insurer, other than a life insurance business.

“reserve transition amount”

The “reserve transition amount” of an insurer for the insurer’s transition year in respect of an insurance business (other than a life insurance business) carried on by it in Canada in that year is the positive or negative amount determined by the formula A-B.

If the formula gives rise to a positive amount in respect of an insurer’s insurance business, the insurer is required by subsection 12.5(2) of the Act to include the amount in computing its income for its transition year in respect of that business. If, instead, the amount is a negative amount, the insurer is required by subsection 20.4(2) to deduct the amount in computing its income from the insurance business for the transition year.

Element A of the formula is the maximum amount that the insurer would be permitted to claim under paragraph 20(7)(*c*) of the Act (and that would be prescribed by section 1400 of the Regulations for the purpose of that paragraph) as a policy reserve for the base year of the insurer in respect of its insurance policies, if

- the generally accepted accounting principles that applied to the insurer in valuing its assets and liabilities for its transition year had applied to the insurer for its base year, and
- section 1400 of the Regulations were read in respect of the insurer’s base year as it reads in respect of its transition year.

Element B of the formula is the maximum amount that the insurer is permitted to claim under paragraph 20(7)(*c*) of the Act as a policy reserve for its base year.

“transition year”

The new definition “transition year” provides that an insurer’s transition year is its first taxation year that begins after September 2006.

Transition year income inclusion

ITA
12.5(2)

New subsection 12.5(2) of the Act includes in computing an insurer’s income for its transition year from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the positive amount, if any, of the insurer’s reserve transition amount for its transition year in respect of that insurance business.

Subsection 12.5(2) operates in conjunction with new subsection 20.4(3) of the Act. In general terms, if an insurer has included an amount under subsection 12.5(2), subsection 20.4(3) provides for a corresponding deduction – recognized over a 5-year period beginning with years that end after the start of its transition year – in computing the insurer’s income from that business.

For further details, readers may refer to the commentary on subsection 20.4(3) and the new definitions “reserve transition amount” and “transition year” in subsection 12.5(1) of the Act.

New subsection 12.5(2) applies to taxation years that begin after September 2006.

Transition year income deduction reversal

ITA
12.5(3)

New subsection 12.5(3) of the Act requires that an insurer include an amount in income in respect of an insurance business if the insurer has deducted an amount under subsection 20.4(2) of the Act in computing its income for its transition year from that business. The amount to be included by the insurer, for each of its particular taxation years that ends after the start of its transition year, in computing its income from that insurance business, is the amount determined by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection 20.4(2) in computing the insurer's income for the transition year from that insurance business, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

For further details, readers may refer to the commentary to subsection 20.4(2) and the definitions "reserve transition amount" and "transition year" in subsection 12.5(1) of the Act.

New subsection 12.5(3) applies to taxation years that begin after September 2006.

Winding-up

ITA
12.5(4)

New subsection 12.5(4) of the Act is one of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 12.5(4) applies in the circumstances of a wind-up of the insurer corporation into its parent. Specifically, subsection 12.5(4) applies if an insurer has, in a winding-up to which subsection 88(1) of the Act has applied, been wound-up into its parent corporation, and immediately after the winding-up the parent carries on an insurance business. In these circumstances, subsection 12.5(4) sets out a series of continuity rules for applying subsections 12.5(3) and 20.4(3) of the Act in computing the insurer's income and that of the parent for particular taxation years that end on or after the first day (the "start day") on which assets of the insurer were distributed to the parent on the winding-up. These continuity rules ensure that in so applying those provisions:

- the parent is, on and after the start day, deemed to be the same corporation as and a continuation of the insurer in respect of
  - any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the insurer's income from an insurance business for its transition year,
  - any amount included under subsection 12.5(3) or deducted under subsection 20.4(3) in computing the insurer's income from an insurance business for a taxation year of the insurer that begins before the start day, and

- any amount that — in the absence of subsection 12.5(4) and assuming that the insurer carries on an insurance business on each day (that is the start day or a subsequent day) that the parent carries on an insurance business — would be required to be included or deducted, in respect of any of those days, under subsection 12.5(3) or 20.4(3) in computing the insurer's income from an insurance business; and

- the insurer is, in respect of each of its particular taxation years, to determine the value for B in the formulas in subsection 12.5(3) and 20.4(3) without reference to the start day and days after the start day.

New subsection 12.5(4) applies to taxation years that begin after September 2006.

Amalgamations

ITA
12.5(5)

New subsection 12.5(5) of the Act is one of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 12.5(5) applies if there is an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of an insurer with one or more other corporations to form a new corporation, and immediately after the amalgamation the new corporation carries on an insurance business. In these circumstances, subsection 12.5(5) sets out a series of continuity rules for applying subsections 12.5(3) and 20.4(3) of the Act in computing the income of the new corporation for its taxation years that begin on or after the day on which the amalgamation occurred. These continuity rules ensure that in applying those provisions the new corporation is, on and after the day on which the amalgamation occurred, deemed to be the same corporation as and a continuation of the insurer in respect of:

- any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the insurer's income from an insurance business for its transition year;
- any amount included under subsection 12.5(3) or deducted under subsection 20.4(3) in computing the insurer's income from an insurance business for a taxation year of the insurer that begins before the day on which the amalgamation occurred; and
- any amount that — in the absence of subsection 12.5(5) and assuming that the insurer carries on an insurance business on each day (that is the day on which the amalgamation occurred or a subsequent day) that the new corporation carries on an insurance business — would be required to be included or deducted, in respect of any of those days, under subsection 12.5(3) or 20.4(3) in computing the insurer's income from an insurance business.

New subsection 12.5(5) applies to taxation years that begin after September 2006.

Transfer of insurance business

ITA
12.5(6) and (7)

New subsections 12.5(6) and (7) of the Act are part of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Under subsection 12.5(6), subsection 12.5(7) will apply if, at any time,

- an insurer (the “transferor”) transfers, to a related corporation (the “transferee”), property in respect of an insurance business carried on by the transferor in Canada (the “transferred business”) and
- either
  - subsection 138(11.5) or (11.94) of the Act applies to the transfer, or
  - subsection 85(1) of the Act applies to the transfer, the transfer includes all or substantially all of the property and liabilities of the transferred business and, immediately after the transfer, the transferee carries on an insurance business.

If these conditions are met, subsection 12.5(7) applies in respect of the property transfer. The effects of applying the subsection are that:

- the transferee is, at and after that time, deemed to be the same corporation as and a continuation of the transferor in respect of
  - any amount included under subsection 12.5(2) of the Act or deducted under subsection 20.4(2) of the Act in computing the transferor’s income for its transition year that can reasonably be attributed to the transferred business,
  - any amount included under subsection 12.5(3) of the Act or deducted under subsection 20.4(3) of the Act in computing the transferor’s income for a taxation year of the transferor that begins before that time that can reasonably be attributed to the transferred business, and
  - any amount that, in the absence of subsection 12.5(7) — and assuming that the transferor carries on an insurance business on each day (that includes that time or is a subsequent day) that the transferee carries on an insurance business — would be required to be included or deducted, in respect of any of those days, under subsection 12.5(3) or 20.4(3) in computing the transferor’s income that can reasonably be attributed to the transferred business; and
- in determining, in respect of the day that includes that time or any subsequent day, any amount that is required under subsection 12.5(3) or 20.4(3) to be included or deducted in computing the transferor’s income for each particular taxation year from the transferred business, the description of A in the formulas in those subsections is deemed to be nil.

New subsections 12.5(6) and (7) apply to taxation years that begin after September 2006.

Ceasing to carry on business

ITA
12.5(8)

New subsection 12.5(8) of the Act is one of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer’s reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 12.5(8) applies if at a particular time an insurer ceases to carry on all or substantially all of an insurance business (the “discontinued business”), and none of the special continuity rules contained in subsections 12.5(4) to (6) of the Act apply to that cessation. In these circumstances, subsection 12.5(8) requires that the insurer include — in computing its income from the discontinued business for its taxation year that includes the time that is immediately before the particular time — the amount determined by the formula A – B set out in that subsection.

Element A in the formula is the amount deducted under subsection 20.4(2) of the Act in computing the insurer's income from the discontinued business for its transition year. Element B in the formula is the total of all amounts each of which is an amount included under subsection 12.5(3) of the Act in computing the insurer's income from the discontinued business for a taxation year that began before the particular time.

Readers may also refer to the commentary on subsections 12.5(9) and 20.4(4) of the Act.

New subsection 12.5(8) applies to taxation years that begin after September 2006.

Ceasing to exist

ITA
12.5(9)

New subsection 12.5(9) of the Act applies in conjunction with subsections 12.5(8) and 20.4(4) of the Act. Subsection 12.5(9) is one of a series of special rules, contained in subsections 12.5(4) to (9) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

New subsection 12.5(9) of the Act applies in circumstances in which an insurer that carried on an insurance business (other than a life insurance business) ceases to exist at any time, unless the insurer ceased to exist because of a winding-up or amalgamation described in subsection 12.5(4) or (5) of the Act. Subsection 12.5(9) provides that, for the purposes of subsections 12.5(8) and 20.4(4) of the Act, the insurer is deemed to have ceased to carry on the insurance business at the earlier of

- the time at which the insurer actually ceased to carry on the insurance business, and
- the time that is immediately before the end of the last taxation year of the insurer that ended at or before the time at which the insurer ceased to exist.

New subsection 12.5(9) applies to taxation years that begin after September 2006.

Clause 6

Insurer's reserve deduction

ITA
20.4

New section 20.4 of the Act provides transitional rules for insurers in respect of their insurance businesses (other than life insurance businesses) as a result of changes to accounting rules.

New section 20.4 applies in conjunction with new section 12.5 of the Act. Similar changes applicable to insurers in respect of their life insurance businesses are proposed in section 138 of the Act. These rules are intended to ensure that any increase or decrease in the reserves of an insurer resulting from these accounting changes will be taken into account in computing income for tax purposes over a five-year period.

For further details, readers may refer to the commentary to proposed sections 12.5 and 142.51 of the Act and proposed amendments to section 138 of the Act and Part XIV of the Regulations.

Definitions

ITA
20.4(1)

New subsection 20.4(1) of the Act provides that the definitions in subsection 12.5(1) of the Act apply for the purposes of section 20.4. Subsection 12.5(1) defines the expressions “base year”, “insurance business”, “reserve transition amount” and “transition year” used in section 20.4. For more detail, readers may refer to the commentary on those definitions.

New subsection 20.4(1) applies to taxation years that begin after September 2006.

Transition year income deduction

ITA
20.4(2)

New subsection 20.4(2) of the Act provides that there is to be deducted, in computing an insurer’s income for its transition year from an insurance business (other than a life insurance business) carried on by it in Canada in that year, the absolute value of the negative amount, if any, of the insurer’s reserve transition amount for its transition year in respect of that insurance business.

Subsection 20.4(2) of the Act operates in conjunction with new subsection 12.5(3) of the Act. In general terms, if an insurer has deducted an amount under subsection 20.4(2), subsection 12.5(3) requires a corresponding inclusion – recognized over a 5-year period beginning with its transition year – in computing the insurer’s income from that business.

For further details, readers may refer to the commentary on section 12.5.

New subsection 20.4(2) applies to taxation years that begin after September 2006.

Transition year income inclusion reversal

ITA
20.4(3)

New subsection 20.4(3) of the Act requires that an insurer deduct an amount in computing its income in respect of an insurance business if the insurer has included an amount under subsection 12.5(2) of the Act in computing its income for its transition year from that business. The amount to be deducted by the insurer, for each of its particular taxation years that ends after the start of the transition year, in computing the insurer’s income from that insurance business, is the amount determined by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 12.5(2) in computing the insurer’s income for its transition year from that insurance business, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

For further details, readers may refer to the commentary to subsection 12.5(2) and the definitions “reserve transition amount” and “transition year” in subsection 12.5(1) of the Act.

New subsection 20.4(3) applies to taxation years that begin after September 2006.

Ceasing to carry on business

ITA
20.4(4)

New subsection 20.4(4) of the Act is one of a series of special rules, contained in subsections 12.5(4) to (9) and 20.4(4) of the Act, that provide for the appropriate treatment of an insurer's reserve transition amounts in circumstances in which the insurer or its business, as the case may be, has been transferred, reorganized or ended.

New subsection 20.4(4) of the Act applies if at a particular time an insurer ceases to carry on all or substantially all of an insurance business (the "discontinued business"), and none of the special continuity rules contained in subsections 12.5(4) to (6) apply to that cessation. In these circumstances, subsection 20.4(4) requires that the insurer deduct — in computing its income from the discontinued business for its taxation year that includes the time that is immediately before the particular time — the amount determined by the formula A – B set out in that subsection.

Element A of the formula is the amount included under subsection 12.5(2) of the Act in computing the insurer's income from the discontinued business for its transition year.

Element B of the formula is the total of all amounts each of which is an amount deducted under subsection 20.4(3) of the Act in computing the insurer's income from the discontinued business for a taxation year that began before the particular time.

In general terms, the positive amount, if any, resulting from the formula represents an acceleration of the recognition of any outstanding amounts that the insurer would otherwise have been required — had the business not ceased — to deduct by operation of subsection 20.4(3) in computing its income in respect of the discontinued business.

See also the commentary on subsections 12.5(8) and (9).

New subsection 20.4(4) applies to taxation years that begin after September 2006.

Clause 7

Capital gains

ITA
39

Section 39 of the Act sets out a number of provisions relating to the taxation of capital gains.

Meaning of capital gain and capital loss

ITA
39(1)(*a*)(ii.2)

Paragraph 39(1)(*a*) of the Act describes a taxpayer's capital gain for a taxation year from the disposition of property. Under this paragraph, gains from dispositions of specified properties are to be excluded in determining a capital gain from the disposition of the property.

Subparagraph 39(1)(*a*)(ii.2) provides an exclusion for specified debt obligations if subsection 142.4(4) or (5) of the Act applies to the disposition, and for mark-to-market properties if subsection 142.5(1) of the Act applies to the disposition. (The expressions "specified debt obligation" and "mark-to-market property" are defined in subsection 142.2(1) of the Act.) These exclusions are required in case the gain that is determined under subdivision c of the Act exceeds the profit or gain determined for the purpose of the new rules for financial institutions.

Subparagraph 39(1)(*a*)(ii.2) is amended to clarify that it applies to a property if the disposition (described in the opening words of paragraph 39(1)(*a*)) is a disposition to which any of subsection 142.4(4) or (5) or 142.5(1) applies.

This amendment applies to taxation years that begin after September 2006.

Clause 8

Calculation of gain or loss

ITA
40

Section 40 of the Act provides rules for determining a taxpayer's gain or loss from the disposition of a property.

Deemed identical property

ITA
40(3.5)(*b*.1)

Subsections 40(3.3) and (3.4) set out rules under which losses on certain dispositions of non-depreciable capital property are deferred. In some cases, the application of these rules is contingent upon whether one property is identical to the disposed of non-depreciable capital property.

New paragraph 40(3.5)(*b*.1) of the Act deems, for the purposes of subsections 40(3.3) and (3.4), certain shares acquired before 2013 to be identical to equity in a SIFT wind-up entity. Specifically, a share of the capital stock of a SIFT wind-up corporation in respect of a SIFT wind-up entity is deemed to be a property that is identical to equity in the SIFT wind-up entity.

For further detail, readers may refer to the notes under the definitions "SIFT wind-up corporation", "SIFT wind-up entity" and "SIFT wind-up entity equity" in subsection 248(1) of the Act.

This amendment applies to dispositions on or after Announcement Date.

Gains and losses – foreign currency debts

ITA
40(10) and (11)

Section 40 is amended by adding new subsections (10) and (11) consequential on the introduction of new subsection 111(12) of the Act. New subsection 111(12) extends the general treatment of accrued capital gains and losses on an acquisition of control of a corporation to apply also to a corporation's accrued capital gains and capital losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency.

For more information regarding the definition "foreign currency debt", please refer to the notes to subsection 111(8) of the Act below.

New subsection 40(10) provides the conditions for new subsection (11) to apply. Specifically, subsection (10) provides that subsection (11) applies in computing at any particular time a corporation's gain or loss (in these notes and in subsections 40(10) and (11) referred to as the "new gain" or "new loss") from a fluctuation in the value of the currency of a foreign currency debt of the corporation (other than, for greater certainty, a gain or a capital loss that arises because of the application of new subsection 111(12)), if the corporation has previously realized a capital loss or gain in respect of the foreign currency debt because of subsection 111(12). The portion of the foreign currency debt that gives rise to the new gain or new loss is referred to in subsections 40(10) and 40 (11) as the "relevant part".

New subsection 40(11) provides a mechanism for the computation of the gain or loss on a foreign currency debt that takes into account the impact of gains and losses already recognized in respect of a foreign currency debt because of new subsection 111(12). This is necessary because, unlike gains and losses in respect of property, gains and losses from a fluctuation in the value of the currency of a foreign currency debt of the corporation are not referable to a cost base that may be adjusted to account for previously recognized gains and losses.

The formula in subsection 40(11) provides that the new gain is the positive amount, or the new loss is the negative amount, equal to:

$$A + B - C$$

A is, in effect, the new gain or new loss as it would be calculated if subsection 111(12) had never applied in relation to the foreign currency debt.

B is the total of any portions of capital losses previously realized by the corporation, in respect of the foreign currency debt and because of subsection 111(12), that are reasonably attributable to the relevant part of the foreign currency debt or to a forgiven amount (within the meaning assigned by subsection 80(1) of the Act) in respect of the foreign currency debt.

C is the total of any portions of gains previously realized by the corporation at any time before the particular time, in respect of the foreign currency debt and because of subsection 111(12), that are reasonably attributable to the relevant part of the foreign currency debt or to a forgiven amount.

Example 1[1]

T1: Canco borrows F$1 million. The exchange rate at T1 is F$1 = C$1.20.

T2: Canco undergoes an acquisition of control. The exchange rate at T2 is F$1 = C$1.15. Applying new subsection 111(12), Canco realizes a capital gain due to the fluctuation of the value of the foreign currency relative to the Canadian dollar, of $50,000 in respect of that debt.

T3: Canco repays F$400,000 to its creditor. The exchange rate at T3 is F$1 = C$1.

The new gain or loss at T3 is determined by the formula:

$$A + B - C$$

A is $80,000 (the amount of the new gain that would have been realized on the repayment of the F$400,000 if subsection 111(12) did not apply)

B is nil (there is no previous capital loss in this case)

C is $20,000 (the amount of the gain already recognized in respect of the F$400,000 at T2)

Therefore the new gain or loss under subsection 40(11) is:

$80,000 + 0 – $20,000 = $60,000

The result is a positive number, resulting in a gain of $60,000.

[1] References in this and subsequent examples to currency are to Canadian dollars except where otherwise indicated. F$ means foreign currency units. T1, T2 and T3 are three separate times that occur in sequence (with T1 occurring first).

Example 2

Same facts as situation 1, except that at T3, the exchange rate is F$1 = C$1.25.

The new gain or loss at T3 is:

$$A + B - C$$

A is –$20,000 (the amount of the new loss in respect of the F$400,000 repayment, calculated without reference to subsection 111(12), multiplied by (–1)).

B is nil

C is $20,000 (the amount of the gain already recognized in respect of the F$400,000 at T2)

Therefore the new gain or loss under subsection 40(11) is:

–$20,000 + 0 – $20,000 = –$40,000

Canco will recognize a $40,000 loss on the repayment. This larger loss reflects Canco's previously recognized gain in relation to the foreign currency debt.

New subsections 40(10) and (11) apply after 2005.

Clause 9

Definitions

ITA
54

Section 54 of the Act defines several terms for the purposes of subdivision c—Taxable Capital Gains.

"superficial loss"

The definition "superficial loss" in section 54 excludes losses on dispositions listed in paragraphs (*c*) to (*h*) of the definition from being superficial losses. As a consequence of amendments to section 142.6 of the Act, the reference in paragraph (*c*) of the definition to paragraph 142.6(1)(*b*) is replaced by a reference to section 142.6.

This amendment applies to taxation years that begin after September 2006.

Clause 10

Other income inclusions

ITA
56

Section 56 of the Act describes certain amounts that are required to be included in computing the income of a taxpayer.

ITA
56(1)(*d*)

Paragraph 56(1)(*d*) of the Act requires certain amounts received in respect of annuity payments to be included in the income of a taxpayer for a taxation year. Paragraph 56(1)(*d*) is amended by adding new subparagraph (iii), consequential on the introduction of the tax-free savings account (TFSA). New subparagraph 56(1)(*d*)(iii) provides that amounts received out of or under an annuity contract issued or effected as a TFSA are excluded from the application of the paragraph 56(1)(*d*) income inclusion.

This amendment applies to the 2009 and subsequent taxation years.

Financial Assistance

ITA
56(1)(*r*)

Paragraph 56(1)(*r*) of the Act requires that certain amounts, received as earnings supplements under government sponsored projects, or as financial assistance under programs established by the Canada Employment Insurance Commission, or under certain similar programs, are to be included in computing the recipient's income.

Income replacement benefits are from time to time paid under government programs, usually in response to an unforeseen event or as bridging benefits payable until another program is implemented. These income replacement benefits are generally paid to individuals who are not eligible for employment insurance (EI) benefits. However, the benefits paid are generally calculated by reference to the amount that the individual would receive under the *Employment Insurance Act* if they were eligible for benefits under that Act.

New subparagraph 56(1)(*r*)(iv) is added, for the 2003 and subsequent taxation years, to clarify that income replacement benefits received under government assistance programs that are similar to income replacement payments provided under the *Employment Insurance Act* are to be included in computing the recipient's income.

Certain provisions of the *Wage Earner Protection Program Act* (WEPP) came into force effective July 2008. The WEPP provides a level of compensation for lost employee wages due to employer bankruptcy or insolvency. Amounts received under the WEPP place employees in a similar position to the one they would have been in, had they been fully compensated by their employer.

New subparagraph 56(1)(*r*)(v) is added, for the 2008 and subsequent taxation years, to clarify that amounts received under the WEPP are to be included in computing the recipient's income.

Clause 11

RRIF and variable benefit minimum amount rules – re-contributions

ITA
60.021

New section 60.021 of the Act provides rules related to the 25% reduction, for 2008, in the minimum withdrawal amounts required under registered retirement income funds (RRIFs) and variable benefit money purchase registered pension plans (RPPs), as provided for in new subsection 146.3(1.1) of the Act and paragraph 8506(7)(*b*) of the Income Tax Regulations. The variable benefit rules allow money purchase benefits under an RPP to be provided in the same manner as is permitted under a RRIF, as an alternative to the acquisition of an annuity.

In particular, new section 60.021 provides a deduction for certain 2008 RRIF withdrawals and variable benefit payments that are re-contributed.

ITA
60.021(1)

New subsection 60.021(1) of the Act specifies a special reading of clause 60(*l*)(v)(B.2) of the Act for 2008. Paragraph 60(*l*) allows an individual to claim a deduction for qualifying payments to a registered retirement savings plan (RRSP), RRIF or RPP, to offset certain income inclusions, up to the limit set out in subparagraph 60(*l*)(*v*). Existing clause 60(*l*)(v)(B.2) includes for this purpose certain amounts received from a RRIF. Although payments to a RRIF by the annuitant are not generally permitted, subparagraph 146.3(2)(*f*)(iii) of the Act allows such payments to the extent that they are described in subparagraph 60(*l*)(v).

New subsection 60.021(1) provides that, for 2008, clause 60(*l*)(v)(B.2) is to be read as allowing the individual's eligible RRIF withdrawal amounts and eligible variable benefit withdrawal amounts for the year within the meaning assigned by new subsections 60.021(2) and (3) to be included in the amount determined under that clause. For further detail, readers may refer to the commentary on new subsections 60.021(2) and (3) below.

If the legislation implementing these new measures receives Royal Assent after January 30, 2009, re-contributions made after March 1, 2009 and on or before the day that is 30 days after the legislation implementing these measures receives Royal Assent will be deemed to have been made on March 1, 2009. In effect, this means that re-contributions made pursuant to these new rules will be permitted until the later of March 1, 2009 and 30 days after the legislation implementing these measures receives Royal Assent.

ITA
60.021(2)

New subsection 60.021(2) of the Act describes a taxpayer's eligible RRIF withdrawal amount for a taxation year in respect of a RRIF under which the taxpayer is the annuitant at the beginning of the taxation year. This provision is relevant for the 2008 taxation year.

In most cases, the taxpayer's eligible RRIF withdrawal amount is determined, under paragraph 60.021(2)(*a*), by the formula

$$A - B$$

Variable A is the lesser of two amounts. The first amount is the total of all amounts received in 2008 out of or under the RRIF (other than as a transfer) and included, because of subsection 146.3(5), in computing the taxpayer's income. The second amount is the minimum amount for the RRIF for 2008, determined without reference to the 25% reduction provided for in new subsection 146.3(1.1).

Variable B is the minimum amount under the RRIF for 2008, determined after taking into account the 25% reduction provided for in new subsection 146.3(1.1).

New paragraph 60.021(2)(*b*) will, however, apply instead of paragraph (*a*) for taxpayers who turned 70 years of age in 2007. New paragraph 60.021(2)(*b*) relates to the change in the RRIF conversion age from 69 years to 71 years introduced in Budget 2007. For taxpayers who turned 70 years of age in 2007, this provision ensures that the effect of the Budget 2007 measures, which reduced the minimum amount for 2008 to nil for such taxpayers and allowed for the re-contribution of excess withdrawals, are preserved.

ITA
60.021(3)

New subsection 60.021(3) of the Act describes a taxpayer's eligible variable benefit withdrawal amount in respect of an account of the taxpayer under a money purchase provision of an RPP. This provision is relevant for the 2008 taxation year.

The taxpayer's eligible variable benefit withdrawal amount is determined by the formula

A - B - C

Variable A is the lesser of two amounts. The first amount is, in general terms, the total of all variable benefit payments received in 2008 from the account and included, because of paragraph 56(1)(*a*), in computing the taxpayer's income. The second amount is the minimum amount for the account for 2008, determined without reference to the 25% reduction provided for new paragraph 8506(7)(*b*) of the Income Tax Regulations (the Regulations).

Variable B is the minimum amount for the account for 2008, determined after taking into account the 25% reduction provided for in new paragraph 8506(7)(*b*) of the Regulations.

Variable C is the portion of the taxpayer's excess variable benefit payments under the money purchase provision that have already been re-contributed and designated for this purpose under new subsection 8506(10) of the Regulations. Variable C in effect prevents the taxpayer from re-contributing an excess variable benefit payment to an RRSP or RRIF to the extent that the taxpayer has already re-contributed the amount to the money purchase account.

ITA
60.021(4)

New subsection 60.021(4) of the Act provides that certain expressions used in new section 60.021 have the meanings assigned elsewhere in the Act and Regulations.

- The expression "money purchase provision" is defined in subsection 147.1(1) of the Act. It means terms of a pension plan under which an account is maintained for a plan member and the only benefits payable in respect of the member are those that can be provided by the amount in the member's account.
- The expression "retirement benefits" is defined in subsection 8500(1) of the Regulations as pension plan benefits that are payable to an individual on a periodic basis. Section 8506 of the Regulations describes the retirement benefits that may be provided under a money purchase provision of a registered pension plan (RPP).
- The expression "minimum amount" for a member's account under a money purchase provision for a year is defined in subsection 8506(5) of the Regulations. Generally, it is the balance in the member's account at the beginning of the year multiplied by an age-based factor set out in the Regulations. The minimum amount determined under subsection 8506(5) is subject to subsection 8506(7). Therefore, with the amendment to subsection 8506(7) (adding paragraph (*b*)), the minimum amount determined in accordance with subsection 8506(5) for 2008 will be 75% of the amount that would otherwise be the minimum amount for the year.

These amendments apply on Royal Assent.

Clause 12

Moving expenses

ITA
62(1)(*c*)

Section 62 of the Act provides a deduction for the qualifying moving expenses of an individual who moves to a new location in Canada to take up employment, start a business, or pursue higher education.

Subsection 62(1) sets out the circumstances under which moving expenses may be deducted in computing a taxpayer's income. Subparagraph 62(1)(*c*)(i) provides that the total of all moving expenses cannot exceed the total of all amounts included in computing the taxpayer's income for the taxation year from the taxpayer's employment at a new work location or from carrying on a business at the new work location.

Subparagraph 62(1)(*c*)(i) is amended to ensure that any amounts received under the *Wage Earner Protection Program Act* (WEPP) in respect of the taxpayer's employment at a new work location are taken into account when computing the deduction for moving expenses. For further information regarding WEPP, refer to the notes for paragraph 56(1)(*r*) of the Act.

This amendment applies to the 2008 and subsequent taxation years.

Clause 13

Deemed settlement on SIFT winding-up

ITA
80.01(5.1)

New subsection 80.01(5.1) of the Act is one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Among these amendments are the new definitions "SIFT trust wind-up event" and "SIFT wind-up entity" in subsection 248(1) of the Act.

New subsection 80.01(5.1) of the Act applies where a debt owed by one trust ("the subsidiary trust") to its beneficiary – another trust that is a SIFT wind-up entity – is settled as a consequence of a distribution that is a SIFT trust wind-up event. If the settlement is without payment, or for a payment that is less than the principal amount of the debt, then the rules in paragraphs 80.01(5.1)(*a*) to (*c*) apply in respect of the settlement.

Under paragraphs 80.01(5.1)(*a*) and (*b*), if the settlement payment is less than the adjusted cost base ("ACB") to the SIFT wind-up entity of the settled debt and the SIFT wind-up entity so elects, the amount paid in satisfaction of the principal amount of the debt obligation is deemed to be the amount of that ACB plus any amounts added in computing the SIFT wind-up entity's income in respect of the portion of the indebtedness representing unpaid interest, to the extent that the SIFT wind-up entity has not deducted any amounts as bad debts in respect of that unpaid interest.

Paragraph 80.01(5.1)(*c*) provides a timing rule that applies for purposes of the debt forgiveness rules in section 80 of the Act. Under that paragraph, the settlement is treated for those purposes as having occurred immediately before the time that is immediately before the time of the distribution. This rule ensures that there is an appropriate reduction under section 80 in the cost amount of distributed property.

This subsection applies after July 14, 2008.

Clause 14

Rollover

ITA
85.1

Section 85.1 of the Act generally allows shareholders to exchange, on a tax-deferred basis, shares of a taxable Canadian corporation for shares of a Canadian purchaser corporation with which they deal at arm's length.

SIFT unit for share exchange

ITA
85.1(7) and (8)

New subsection 85.1(7) of the Act is one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Among these amendments are the new definitions “SIFT trust wind-up event”, “SIFT wind-up entity” and “SIFT wind-up entity equity” in subsection 248(1) of the Act.

Subsection 85.1(7) sets out the conditions that must be met in order for the rules in subsection 85.1(8) of the Act to apply to a taxpayer’s disposition of equity (referred to in this commentary as the “particular unit”) in a SIFT wind-up entity to a corporation in exchange for a share of the corporation. Subsection 85.1(7) requires that

- the disposition occur before 2013;
- neither subsection 85(1) nor subsection 85(2) apply to the disposition;
- the corporation be a taxable Canadian corporation and that the disposition occur during a specified 60-day period (“the exchange period”) at the end of which the corporation owns all of the equity in the SIFT wind-up entity. For this purpose, “SIFT wind-up entity equity” generally means, in respect of a SIFT wind-up entity, a capital interest in a trust or a membership interest as a limited partner in a partnership. For more detail, readers may refer to the commentary on that definition;
- the taxpayer receive, as consideration, nothing other than shares (“exchange shares”) of the capital stock of the corporation; and
- all of the exchange shares issued to holders of equity in the SIFT wind-up entity be of a single class.

New subsection 85.1(8) of the Act provides a number of the tax consequences to the taxpayer from a disposition described in subsection 85.1(7). Specifically,

- the taxpayer is provided with a tax-deferred exchange of the particular unit for the exchange share; and
- if the particular unit was taxable Canadian property of the taxpayer, the exchange share is deemed to be taxable Canadian property of the taxpayer;
- if the exchange share’s fair market value exceeds that of the particular unit, the taxpayer must include in its income that excess as a shareholder benefit under section 15 of the Act; and
- if the particular unit’s fair market value exceeds the exchange share’s fair market value, and it is reasonable to regard any part of the excess as a benefit that the taxpayer desired to have conferred on a person, or partnership, with whom the taxpayer does not deal at arm’s length, the taxpayer must include in its income that excess as a shareholder benefit under section 15.

(Note that in the case of a deemed shareholder benefit in favour of a non-resident taxpayer, paragraph 214(3)(*a*) of the Act treats the amount of the benefit, for the purposes of applying Part XIII, as a dividend paid by a corporation resident in Canada.)

New subsection 85.1(8) also deems the cost to the corporation of the particular unit to be the lesser of its fair market value and the amount determined by element B of the formula in paragraph 85.1(8)(*f*). That element B, described in greater detail below, is generally the portion of the trust’s outstanding capital that is attributable to the particular unit.

Finally, subsection 85.1(8) provides for a deduction, after the particular disposition, from the paid-up capital in respect of each class of shares of the capital stock of the corporation. This deduction is determined by the formula (A-B) x C/A. The elements of that formula are as follows:

- A is the increase in the paid-up capital in respect of each class of the capital stock of the corporation (determined before applying the formula in paragraph 85.1(8)(*e*)) resulting from the particular disposition.
- B is generally the portion of the outstanding capital of the SIFT wind-up entity that is attributable to the particular unit. More specifically, if the SIFT wind-up entity is a trust, B will be the difference between the consideration received by the trust on the issuance of the particular unit and any amounts that have ever become payable (other than as income or capital gains) in respect of the particular unit to a holder of the particular unit. Where the SIFT wind-up entity is a partnership, B will be the difference between
  - the total of amounts that have been added in computing the adjusted cost base (ACB) to any taxpayer of the particular unit on or before the particular disposition because of subparagraphs 53(1)(*e*)(iv) or (x) of the Act or that would have been so added under subparagraph 53(1)(*e*)(i) if that subparagraph had been applied as though subsection 96(1) of the Act were read without reference to paragraph 96(1)(*d*) and the partnership deducted all amounts otherwise deductible because of that paragraph, and
  - the total of amounts that have been deducted in computing the ACB to any taxpayer of the particular unit on or before the particular disposition because of subparagraphs 53(2)(*c*)(iv) or (v) of the Act or that would have been so deducted under subparagraph 53(2)(*c*)(i) if that subparagraph had been applied as though subsection 96(1) of the Act were read without reference to paragraph 96(1)(*d*) and the partnership deducted all amounts otherwise deductible because of that paragraph.

If the conditions of subsection 85.1(7) are met in respect of a disposition, subsection 85.1(8) will apply to the disposition provided that the disposition occurs on or after July 14, 2008 and before 2013. In addition, if a disposition occurs after December 19, 2007 and before July 14, 2008 and the corporation validly elects (either alone, or if the taxpayer has filed an election under subsection 85(1) or (2) of the Act in respect of the disposition, together with the taxpayer), then subsections 85.1(8) will apply in respect of that disposition (provided that the conditions in subsection 85.1(7) are met).

Clause 15

Amalgamations

ITA
87

Section 87 of the Act provides rules that apply where there has been an amalgamation of two or more taxable Canadian corporations to form a new corporation. The new corporation is generally treated as a continuation of its predecessor for the purposes of the Act.

Financial institution rules

ITA
87(2)(*g.2*)

Paragraph 87(2)(*g.2*) of the Act provides that, for the purposes of a number of the rules for financial institutions in sections 142.4 to 142.6 of the Act, the new corporation formed on an amalgamation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Paragraph 87(2)(*g.2*) is amended to include a reference to new subsection 142.51(11) of the Act. This change is proposed as a result of the introduction of new section 142.51 of the Act.

For further detail, readers may refer to the commentary to new section 142.51.

This amendment applies to taxation years that begin after September 2006.

Amalgamations involving a SIFT wind-up corporation

ITA
87(2)(*s.1*)

New paragraph 87(2)(*s.1*) of the Act provides that on an amalgamation (within the meaning of subsection 87(1) of the Act) of a SIFT wind-up corporation and one or more other corporations, the corporation formed on the amalgamation is deemed to be a SIFT wind-up corporation.

Because of paragraph 88(1)(*e.2*) of the Act, if a SIFT wind-up corporation is the subject of a winding-up into its parent in circumstances to which subsection 88(1) of the Act applies, the parent will also be deemed to be a SIFT wind-up corporation.

This amendment applies after December 19, 2007.

Amalgamation of insurers

ITA
87(2.2)

Subsection 87(2.2) of the Act deals with the amalgamation of two or more corporations one or more of which is an insurer. Where this occurs, the resulting corporation is treated as a continuation of each of the predecessor insurance corporations for the purposes of section 138 and certain other provisions of the Act relating to insurers that are listed in subsection 87(2.2).

This subsection is amended to add references to new subsections 12.5(8) and 20.4(4) of the Act. This change is proposed as a result of the introduction of new sections 12.5 and 20.4.

For further details, readers may refer to the commentary to new sections 12.5 and 20.4.

This amendment applies to taxation years that begin after September 2006.

Clause 16

Windings-up

ITA
88

Section 88 of the Act deals with the tax consequences arising from the winding-up of a corporation.

Insurance corporation

ITA
88(1)(*g*)

Subsection 88(1) of the Act deals with the winding-up of a corporation that is a subsidiary into its parent. Subparagraph 88(1)(*g*)(i) treats the parent corporation as a continuation of a subsidiary that is an insurance corporation for the purposes of certain provisions relating to insurers listed in subparagraph 88(1)(*g*)(i). This subparagraph is amended to add references to proposed new subsections 12.5(8) and 20.4(4) of the Act. This change is proposed as a result of the introduction of new sections 12.5 and 20.4.

For further details, readers may refer to the commentary to new sections 12.5 and 20.4.

This amendment applies to taxation years that begin after September 2006.

Clause 17

Application of section 88 on SIFT trust wind-up event

ITA
88.1

New section 88.1 of the Act is one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Section 88.1 provides for the tax consequences on a trust's distribution that is a SIFT trust wind-up event (as defined in subsection 248(1)). The section allows certain trusts (i.e., a SIFT wind-up entity and its wholly-owned subsidiary trusts) to access the wind-up rules in subsections 88 (1) to (1.7) (and section 87 and subsection 256(7) as they apply for those purposes) in respect of such a distribution.

Conditions and effects

ITA
88.1(1) and (2)

New subsection 88.1(1) of the Act sets out the conditions that must be met in order for the rules in subsection 88.1(2) of the Act to apply to a trust's distribution of property to a taxpayer.

Subsection 88.1(1) requires that the distribution be a "SIFT trust wind-up event", as defined in subsection 248(1) of the Act. Only certain trusts qualify as distributing trusts for this purpose. The distributing trust must be a "SIFT wind-up entity" that has only a taxable Canadian corporation as its beneficiary, or a trust the only beneficiary of which is such a SIFT wind-up entity. As a result, subsection 88.1(2) will apply only to a distribution by a "subsidiary" trust made at a time at which its "parent" trust is a SIFT wind-up entity wholly-owned, in turn, by a taxable Canadian corporation (i.e. a SIFT wind-up corporation, in respect of the parent trust). Where the SIFT wind-up entity trust's immediate subsidiary trust has, in turn, its own subsidiary trust, the SIFT wind-up entity trust's subsidiary trust must first be wound-up, such that the "lower" tier trust takes the place as the SIFT wind-up entity trust's immediate subsidiary trust.

Subsection 88.1(1) also imposes timing requirements on distributions by the SIFT wind-up entity trust in order for subsection 88.1(2) to apply to the distribution. A distribution by the SIFT wind-up entity trust must be made no more than 60 days after the earlier of its first SIFT trust wind-up event distribution and the first SIFT trust wind-up event distribution to it by a subsidiary trust.

Finally, paragraph 88.1(1)(*d*) provides an ordering rule with respect to the interaction of subsection 88.1(2) and subsection 107(3.1) of the Act. Where the property distributed is shares of a taxable Canadian corporation, that paragraph provides that subsection 88.1(2) will apply only if:

- the trust did not acquire the shares on a distribution to which subsection 107(3.1) applies, and
- the trust elects that section 88.1 apply to the distribution.

New subsection 88.1(2) allows the rules in subsections 88(1) to (1.7) to apply to a trust's distribution, subject to certain modifications. The modifications treat the trust as a taxable Canadian corporation that is not a private corporation, the distribution by the trust as the winding up of the corporation, and the taxpayer's interest as a beneficiary of the trust as shares of the corporation. In addition:

- paragraph 88(1)(*b*) does not apply to determine the taxpayer's proceeds of disposition of its interest as a beneficiary – these proceeds are instead deemed to be equal to the adjusted cost base to the taxpayer of the interest immediately before the distribution (this rule, however, does not displace the application of subparagraph 88(1)(*b*)(ii) as it otherwise applies, for example for purposes of paragraph 88(1)(*d*));

- each trust, a majority interest beneficiary (within the meaning assigned by section 251.1) of which is another trust deemed to be a corporation, is itself treated as a corporation; and
- except for the purposes of subsection 88(1.1) and (1.2), the taxpayer is treated as having last acquired control of the subsidiary and of each corporation (including a trust deemed to be a corporation) controlled by the subsidiary at the time at which the taxpayer last became a majority interest beneficiary (within the meaning assigned by section 251.1) under the trust;

In applying the provisions in subsections 88(1) to (1.7) for these purposes, section 87 and paragraphs 256(7)(*a*) to (*e*) of the Act are also made to apply. In respect of all of these provisions, other modifications are to be made as the circumstances require. For example, in applying paragraphs 256(7)(*a*) to (*e*) of the Act for the purposes of subsections 88(1.1) and (1.2) in respect of the winding up of a trust, a provision requiring that corporations be related is intended, if the circumstances require, to be read as though the reference to a corporation included the trust.

Section 88.1 applies after July 14, 2008 except that the 60 day timing requirement in subsection 88.1(1) does not apply to distributions that occur no more than 60 days after Royal Assent.

Clause 18

Definitions – corporations

ITA
89(1)

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

"adjusted taxable income"

The new definition "adjusted taxable income" of a corporation is relevant for the determination of the corporation's "general rate income pool" (GRIP). This new definition in effect replaces that portion of the existing definition of GRIP represented by (D-E-F).

"Adjusted taxable income" of a corporation for a taxation year is the amount determined by the formula:

$$A-B-C$$

A is the corporation's taxable income for the taxation year, unless the corporation is a deposit insurance corporation (DIC), in which case the A amount is nil. (The taxable income of most DICs is already taxed at a preferential rate under subsection 137.1(9).)

B is, in general terms, the taxable income in respect of which the corporation has benefited from the small business deduction under 125(1).

If the corporation is a Canadian-controlled private corporation, the amount C is the lesser of the corporation's aggregate investment income for the particular taxation year and its taxable income for the taxation year. In any other case, the amount C is nil.

This amendment applies to the 2006 and subsequent taxation years.

"general rate factor"

The new definition "general rate factor" is relevant for the determination of a corporation's "general rate income pool" (GRIP). The general rate factor of a corporation for a taxation year is the total of

(*a*) 0.68 for any portion of the taxation year that falls before 2010,

(*b*) 0.69 for any portion of the taxation year that falls in 2010,

(*c*) 0.70 for any portion of the taxation year that falls in 2011, and

(*d*) 0.72 for any portion of the taxation year that falls after 2011.

This amendment applies to the 2006 and subsequent taxation years.

"general rate income pool"

The "general rate income pool" (GRIP), the definition of which is one of those included in subsection 89(1) of the Act , is relevant for determining the extent to which a Canadian-controlled private corporation or a deposit insurance corporation (DIC) can pay eligible dividends in any given taxation year. Generally, a corporation's GRIP is calculated based on the corporation's taxable income subject to tax at the general corporate tax rate. The formula contained in this definition contains a factor of 0.68, which is intended to approximate the after-tax earnings of the corporation, assuming a notional combined federal-provincial general corporate rate of 32%.

There are two main changes to the definition. Instead of a fixed 0.68 factor, there is now defined a "general rate factor", determined specifically for each corporation and each taxation year, in subsection 89(1). The definition is also amended to clarify that the calculation of that part of the formula in variable A of the definition represented by "0.68(D-E-F)" cannot yield a negative result.

With these changes, the other variables contained in the GRIP formula have been renumbered and revised accordingly.

In addition, existing variable B is rewritten as a formula. This improves clarity without effecting any substantive change.

The amendments to the definition "general rate income pool" in subsection 89(1) apply to the 2006 and subsequent taxation years.

"paid-up capital"

The definition "paid-up capital" is contained in subsection 89(1) of the Act. Paragraph (*b*) of the definition defines "paid-up capital" in respect of a class of shares of the capital stock of a corporation. Subparagraph (*b*)(iii) of the definition provides that, after March 31, 1977, paid-up capital is to be calculated without reference to any provisions of the Act other than those listed in the subparagraph.

The definition "paid-up capital" is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The amendment adds references to new subsection 85.1(8) of the Act.

This amendment applies after December 19, 2007.

Clause 19

Foreign affiliates

ITA
95

Section 95 of the Act defines a number of terms and provides rules relating to the taxation of resident shareholders of foreign affiliates.

Definitions

ITA
95(1)

Subsection 95(1) defines a number of terms, for the purposes of sections 90 to 93 and 95 of the Act, that are used in connection with the rules dealing with the taxation of resident shareholders of foreign affiliates.

The definitions "antecedent corporation", "calculating currency", "designated acquired corporation", "specified person or partnership" and "specified predecessor corporation" are added to subsection 95(1).

For detail about those new definitions, readers may refer to the commentary for new paragraphs 95(2)(*f*) to (*f.15*).

Application – foreign affiliates

ITA
95(2)

Subsection 95(2) of the Act provides rules for determining the income of a foreign affiliate of a taxpayer resident in Canada from a particular source.

ITA
95(2)(*f*) to (*f.15*)

Current paragraph 95(2)(*f*) of the Act sets out rules for computing a taxable capital gain and an allowable capital loss of a foreign affiliate of a taxpayer resident in Canada from a disposition of property. The rules in paragraph 95(2)(*f*) address the computation of a gain or loss from a disposition of property whether the disposition is made by the foreign affiliate itself or by a partnership of which the foreign affiliate is a member. Those rules, which consist of a "main rule", a "reading rule", "currency rules" and a "carve-out rule", are relevant for the purposes of computing the foreign affiliate's tax surpluses and deficits in respect of the taxpayer and computing the foreign affiliate's foreign accrual property income (FAPI) or loss (FAPL) in respect of the taxpayer.

- The main rule provides that the taxable capital gain or allowable capital loss of a foreign affiliate of a taxpayer from a disposition of property is to be computed in respect of the taxpayer in accordance with Part I of the Act as though the foreign affiliate were resident in Canada.
- The reading rule provides that, in reading Part I of the Act to make that computation, Part I is to be read without reference to section 26 of the *Income Tax Application Rules*.
- The currency rules provide that the computation of such a gain or loss is to be in the currency determined by subparagraph 95(2)(*f*)(i) or (ii), as the case may be. As part of the currency rules, subparagraph 95(2)(*f*)(ii) includes a rule with respect to the reading of subsection 39(2) of the Act.
- The carve-out rule provides that, in computing any such gain or loss from the disposition of property that was owned by the foreign affiliate at the last time the foreign affiliate became a foreign affiliate of the taxpayer, there is not to be included such portion of the gain or loss as can reasonably be considered to have accrued during the carve-out period, i.e., the period that the foreign affiliate was not a foreign affiliate of the taxpayer or of a person specified in any of current subparagraphs 95(2)(*f*)(iv) to (vii).

The main rule, reading rule, currency rules and carve-out rule in current paragraph 95(2)(*f*) are replaced by the main, reading, currency and carve-out rules in new paragraphs 95(2)(*f*) to (*f.15*). Furthermore, the reference to the persons specified in current subparagraphs 95(2)(*f*)(iii) to (vii) is replaced by a reference to the persons specified in the new definition "specified person or partnership" in subsection 95(1). This definition, on the one hand, specifically excludes "designated acquired corporations", as newly defined in subsection 95(1), but, on the other hand, is expanded upon by the deeming rules in new subsection 95(2.6).

ITA
95(2)(*f*)

New paragraph 95(2)(*f*) sets out the new version of the "main rule". It provides that, except as otherwise provided in subdivision i of Division B of Part I of the Act and except to the extent that the context otherwise requires, a foreign affiliate of a taxpayer is deemed to be at all times resident in Canada for the purposes of determining, in respect of the taxpayer for a taxation year of the foreign affiliate, each amount that is the foreign affiliate's

- capital gain, capital loss, taxable capital gain or allowable capital loss from a disposition of a property, or
- income or loss from a property, from a business other than an active business or from a non-qualifying business.

New paragraph 95(2)(*f*) deals with the computation of a broader range of amounts than under the main rule in current paragraph 95(2)(*f*), which dealt only with the computation of the foreign affiliate's taxable capital gain or allowable capital loss from a disposition of property.

ITA
95(2)(*f.1*)

New paragraph 95(2)(*f.1*) sets out the new version of the "carve-out rule". It provides that, in computing an amount described in new paragraph 95(2)(*f*), in respect of a property or a business, there is not to be included any portion of that amount that can reasonably be considered to have accrued, in respect of the property (including for these purposes any property for which the property was substituted) or the business, while no person or partnership that held the property or carried on the business was a "specified person or partnership" in respect of the taxpayer.

The expression "specified person or partnership" is newly defined in subsection 95(1). The expression "specified predecessor corporation" is also newly defined in subsection 95(1) and is relevant for the definition "specified person or partnership" (as well as for new subsection 95(2.6) of the Act). The expression "designated acquired corporation", also newly defined in subsection 95(1), is also relevant for the definition "specified person or partnership". The expression "antecedent corporation" is newly defined in subsection 95(1) and is relevant for the definitions "designated acquired corporation" and "specified predecessor corporation".

A "specified person or partnership", in respect of a taxpayer, at any time, is the taxpayer or a person (other than a "designated acquired corporation"), or a partnership, that is at that time

(a) a person (other than a partnership) that is resident in Canada and does not, at that time, deal at arm's length with the taxpayer,

(b) a "specified predecessor corporation" of the taxpayer or of a "specified person or partnership" in respect of the taxpayer,

(c) a foreign affiliate of

- the taxpayer,
- a person that is at that time a specified person or partnership in respect of the taxpayer because of (a) or (b), or
- a partnership that is at that time a specified person or partnership in respect of the taxpayer because of (d), or

(d) a partnership a member of which is at that time a specified person or partnership in respect of the taxpayer because of any of (a) to (c).

A "specified predecessor corporation" of a particular corporation is

- an antecedent corporation of the particular corporation,
- a predecessor corporation (within the meaning assigned by subsection 87(1)) in respect of an amalgamation by which the particular corporation was formed, or
- a specified predecessor corporation of a specified predecessor corporation of the particular corporation.

A “designated acquired corporation” of a taxpayer is a particular antecedent corporation of the taxpayer if

- the taxpayer or another antecedent corporation of the taxpayer acquired control of the particular antecedent corporation, and
- the taxpayer or the other antecedent corporation, as the case may be, dealt at arm’s length (otherwise than because of a right referred to in paragraph 251(5)(*b*) of the Act) with the particular antecedent corporation immediately before the acquisition of control or a series of transactions or events that includes the acquisition of control.

An “antecedent corporation” of a particular corporation is

- a predecessor corporation (within the meaning assigned by subsection 87(1)) in respect of an amalgamation to which subsection 87(11) applied and by which the particular corporation was formed,
- a corporation that was wound-up into the particular corporation in a winding-up to which subsection 88(1) applied, or
- an antecedent corporation of an antecedent corporation of the particular corporation.

Example 1

The following example illustrates the operation of the definition “designated acquired corporation” in conjunction with new paragraphs 95(2)(f) and (f.1).

Facts:

1. *Parent and Target are corporations resident in Canada that deal with each other at arm’s length.*
2. *FA1 and FA2 are foreign affiliates of Target. Target owns all of the shares of FA1. FA1 owns all of the shares of FA2.*
3. *Parent forms Acquireco, a corporation resident in Canada. Parent owns all of the shares of Acquireco.*
4. *Acquireco purchases all of the shares of Target on May 1, 2008.*
5. *Target and Acquireco amalgamate on June 1, 2008 (under an amalgamation to which subsection 87(11) applies) to form Amalco.*
6. *At the time of the acquisition of control of Target, FA1 has an accrued capital gain of $1 million on its shares of FA2 which are not excluded property of FA1.*
7. *On June 1, 2010, FA1 disposes of the shares of FA2 and has a capital gain of $2.5 million from that disposition.*

Results:

A. *Target is a specified predecessor corporation of Amalco (the taxpayer). As such, absent the “designated acquired corporation” rule, Target would be a “specified person or partnership” in respect of Amalco. In computing FA1’s capital gain in respect of Amalco in FA1’s taxation year that includes June 1, 2010, FA1 would thus, in accordance with new paragraphs 95(2)(f) to (f.15), be required to recognize the full gain of $2.5 million from the disposition of the FA2 shares, even though $1 million of the $2.5 million gain accrued while Parent and Target were dealing with each other at arm’s length and that same gain was indirectly recognized by Target’s shareholders at the time of their disposition of Target’s shares to Acquireco.*

B. The "designated acquired corporation" rule ensures that the $1 million portion of the gain accrued in Target before the takeover is excluded in computing FA1's capital gain from the disposition of the FA2 shares. However, that portion of the gain that accrued while FA1 was a foreign affiliate of Acquireco (i.e., from May 1, 2008 to June 1, 2008) or Amalco (i.e., after June 1, 2008) will be included in computing FA1's capital gain from the disposition of the FA2 shares as Acquireco and Amalco would each be a specified person or partnership in respect of Amalco and would not be a designated acquired corporation.

C. Similarly, if instead of a gain FA1 had a loss from the disposition of the FA2 shares, any portion of that loss that accrued before the acquisition of control of Target would be excluded in computing FA1's capital loss from the disposition of the FA2 shares.

Note that it is expected that the *Income Tax Regulations* will be amended to provide that the surplus balances of a foreign affiliate of a designated acquired corporation would be reduced in appropriate circumstances, and without regard to whether a "bump" is claimed under paragraph 88(1)(d) of the Act. Such an amendment is expected to be prospective from the date of the announcement of the details thereof.

New subsection 95(2.6) contains a deeming rule for the purposes of paragraphs (*a*) to (*d*) of the definition "specified person or partnership". The subsection provides that, for the purposes of those paragraphs, if a person or partnership (the "taxpayer") is not dealing at arm's length with another person or partnership (the "particular person") at a particular time, a special rule applies. The special rule provides that the taxpayer is treated as having existed and as not having dealt at arm's length with the particular person, nor with each specified predecessor corporation of the particular person, throughout the period that began when the particular person or the specified predecessor corporation, as the case may be, came into existence and that ends at the particular time. This special rule applies regardless of whether the taxpayer actually existed during that period.

Example 2

The following example illustrates the operation of new subsection 95(2.6) in conjunction with new paragraphs 95(2)(f) and (f.1).

Facts:

1. *From 2000 to 2007, Canco 1 (a corporation resident in Canada) owns all of the shares of Canco 2 (a corporation resident in Canada), which in turn owns all of the shares of FA (a non-resident corporation). During that time, property of FA that is not excluded property (within the meaning of subsection 95(1)) accrues a gain of $1,000,000.*
2. *On January 1, 2008, Canco 2 is liquidated into Canco 1, in a winding-up to which subsection 88(1) applies, thereby resulting in the shares of FA that are held by Canco 2 being transferred to Canco 1.*
3. *On June 1, 2008, Canco 1 forms Canco 3 (a corporation resident in Canada) and transfers the shares of FA to Canco 3.*
4. *Immediately after the transfer of FA shares to Canco 3, FA disposes of the non-excluded property and realizes a gain of $1,000,000.*

Results:

Because Canco 3 did not exist while the gain on the non-excluded property accrued in FA, the result (in the absence of subsection 95(2.6)) would be that the gain accrued while the non-excluded property was held by a person (FA) that was not a specified person or partnership in respect of Canco 3 (FA is a

foreign affiliate of Canco 2 but Canco 2 cannot be said to be dealing at non-arm's length with Canco 3). This would cause that gain to be carved-out under paragraph 95(2)(f.1).

However, subsection 95(2.6) causes Canco 3 to be non-arm's length with Canco 1 and thus causes Canco 1 to be a specified person or partnership in respect of Canco 3 back to the year 2000. Since subsection 88(1) of the Act applies on the liquidation of Canco 2 into Canco 1, Canco 2 is an antecedent corporation of Canco 1 and therefore is a specified predecessor corporation of Canco 1. Canco 2 is thus a specified person or partnership in respect of Canco 3 by virtue of paragraph (b) of that definition, and FA is a specified person or partnership in respect of Canco 3 by virtue of subparagraph (c)(ii) of that definition, during the entire gain accrual period. As a result, the $1,000,000 accrued gain on the non-excluded property of FA is considered to have accrued while the person (FA) that held the property was a specified person or partnership in respect of Canco 3 and the carve-out rule in paragraph 95(2)(f.1) would not apply.

Alternatively, since FA is also a foreign affiliate of Canco 1 throughout the gain accrual period and subsection 95(2.6) deems Canco 3 (the taxpayer) to be not dealing at arm's length with Canco 1 (the particular person) in the years 2000 to 2007, the carve-out rule in paragraph 95(2)(f.1) could, without regard to Canco 2, be found not to apply.

ITA
95(2)(*f.11*)

New paragraph 95(2)(*f.11*) incorporates the "reading rule" from current paragraph 95(2)(*f*) and provides reading rules and a deeming rule that are required by the expansion of the general rule in new paragraph 95(2)(*f*) to income or loss from property, from a business other than an active business, and from a non-qualifying business.

The new paragraph provides that, in determining an amount described in new paragraph 95(2)(*f*) for a taxation year of a foreign affiliate of a taxpayer, if the amount is described in subparagraph 95(2)(*f*)(i), the Act is to be read without reference to section 26 of the *Income Tax Application Rules*. If the amount is described in subparagraph 95(2)(*f*)(ii), two consequences follow. First, the Act is to be read without reference to subsections 14(1.01) to (1.03), 17(1) and 18(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership. Second, if the foreign affiliate has, in the taxation year, disposed of a foreign resource property in respect of a country, it is treated as having designated, in accordance with subparagraph 59(1)(*b*)(ii) of the Act, the amount, if any, by which the amount determined under paragraph 59(1)(*a*) in respect of the disposition exceeds the amount determined under subparagraph 59(1)(*b*)(i) in respect of the disposition.

ITA
95(2)(*f.12*) to (*f.15*)

New paragraphs 95(2)(*f.12*) to (*f.15*) set out the new version of the "currency rules".

The new definition "calculating currency" in subsection 95(1) is relevant for those paragraphs. The "calculating currency", for a taxation year of a foreign affiliate of a taxpayer, is either the currency of the country in which the foreign affiliate is resident at the end of the taxation year or any currency that the taxpayer demonstrates to be reasonable in the circumstances. Note that the reference to "any currency" is meant to include Canadian currency.

ITA
95(2)(*f.12*)

New paragraph 95(2)(*f.12*) provides that a foreign affiliate of a taxpayer shall determine each of the following amounts using its calculating currency for a taxation year:

- Subject to paragraph 95(2)(*f.13*), each capital gain, capital loss, taxable capital gain and allowable capital loss from the disposition of a property that was an excluded property;
- Its income or loss from each active business carried on by it in a country; and
- Its income or loss that is included in computing its income or loss from an active business for the taxation year because of paragraph 95(2)(*a*).

ITA
95(2)(*f.13*)

New paragraph 95(2)(*f.13*) applies where the calculating currency of a foreign affiliate of a taxpayer is a currency other than Canadian currency. The paragraph provides that the foreign affiliate shall determine the amount included in computing its foreign accrual property income that is attributable to its capital gain or taxable capital gain, from the disposition of an excluded property, in Canadian currency by converting the amount of the capital gain, or taxable capital gain, otherwise determined under subparagraph 95(2)(*f.12*)(i) using its calculating currency for the taxation year into Canadian currency using the rate of exchange quoted by the Bank of Canada at noon on the day on which the disposition was made.

ITA
95(2)(*f.14*)

New paragraph 95(2)(*f.14*) provides that a foreign affiliate of a taxpayer shall determine using Canadian currency each amount of its income, loss, capital gain, capital loss, taxable capital gain or allowable capital loss for a taxation year, other than an amount to which paragraph 95(2)(*f.12*) or (*f.13*) applies.

ITA
95(2)(*f.15*)

New paragraph 95(2)(*f.15*) is a reading rule for subsection 39(2) of the Act that replaces the reading rule contained in current subparagraph 95(2)(*f*)(ii). Subsection 39(2) sets out rules that apply when a taxpayer realizes a gain or loss because of a fluctuation in currency exchange rates. New paragraph 95(2)(*f.15*) ensures that for the purpose of applying new subparagraph 95(2)(*f.12*)(i), subsection 39(2) reflects the concept of a “calculating currency”.

Coming-into-force

ITA
95(2)(*f*) to (*f.15*) and related provisions

New paragraphs 95(2)(*f*) to (*f.15*) and subsection 95(2.6) of the Act and the definitions “antecedent corporation”, “calculating currency”, “designated acquired corporation”, “specified person or partnership” and “specified predecessor corporation” in subsection 95(1) of the Act apply to taxation years of a foreign affiliate of a taxpayer that begin after October 2, 2007. However, there are three transitional rules.

First, if the taxpayer elects in writing in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the taxpayer’s “election day”, those provisions also apply to taxation years, of the foreign affiliates, that begin before October 2, 2007 and after one of the three following dates, as chosen by the taxpayer in its election:

1. December 31, 1994,

2. December 20, 2002, or
3. February 27, 2004.

Second, for foreign affiliate taxation years that begin before 2009, new subparagraph 95(2)(*f*)(ii) of the Act is to be read without reference to the expression "income from a non-qualifying business". This is because the definition "income from a non-qualifying business" in subsection 95(1) applies only to foreign affiliate taxation years that begin after 2008.

Third, a taxpayer may – by making a valid election – opt to have a transitional version of new subsection 95(2.6) of the Act apply to taxation years of foreign affiliates of the taxpayer that began after October 2, 2007 and before July 14, 2008. That transitional version is a modified version of the rule announced on October 2, 2007. It provides that, for the purposes of paragraphs (*a*) to (*d*) of the definition "specified person or partnership" in subsection 95(1), in determining whether, at a particular time, a person was not, at a time (the "prior time") that is before the particular time and at which that person did not exist, dealing at arm's length with another person, where the person exists at the particular time but did not exist at the prior time,

- the person is deemed to exist at the prior time, and
- if the person is related to another person at the particular time, the person is deemed to have been related to that other person at the prior time.

In this connection, the taxpayer's "election day" means the later of (i) the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which the legislation enacting these amendments receives Royal Assent and (ii) the day that is one year after Royal Assent.

Qualifying interest throughout the year

ITA
95(2.2)

Current subsection 95(2.2) of the Act provides rules for the purposes of subsection 95(2) of the Act (except paragraph 95(2)(*f*)). Those rules are essentially aimed at cases where a taxpayer acquires or ceases to have a qualifying interest in, or becomes or ceases to be related to, a non-resident corporation.

Specifically, in certain circumstances a non-resident corporation that is not a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest throughout a particular taxation year but was such a foreign affiliate at the beginning or the end of the particular year is deemed to be a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest throughout that particular taxation year.

Similarly, for foreign affiliate taxation years that end before 2009, in certain circumstances a non-resident corporation that was not related to a taxpayer and a foreign affiliate of the taxpayer throughout a particular taxation year but was so related at the beginning or the end of the particular year is deemed to related to the taxpayer and the foreign affiliate of the taxpayer throughout that particular taxation year.

These deeming rules are intended to apply only for the purposes of paragraphs 95(2)(*a*) and (*g*) of the Act. Subsection 95(2.2) is amended to confirm this intention. This amendment applies to taxation years of a foreign affiliate of a taxpayer that begin after 1994.

Controlled foreign affiliate throughout the year

ITA
95(2.201)

Section 95 of the Act is amended by adding new subsection 95(2.201). The new subsection provides that, for the purposes of paragraphs 95(2)(*a*) and (*g*) of the Act, a non-resident corporation is deemed to be a controlled foreign affiliate of a taxpayer throughout a taxation year of the non-resident corporation if two conditions are met. First, a person or partnership must acquire or dispose of shares of a corporation and, because of the acquisition or disposition, become or cease to be a controlled foreign affiliate of the taxpayer. Second, at either or both of the beginning and end of the taxation year, the non-resident corporation must be a controlled foreign affiliate of the taxpayer.

New subsection 95(2.201), in providing this result in connection with a controlled foreign affiliate of a taxpayer, is thus similar to current subsection 95(2.2), which provides an interpretive rule in connection with a foreign affiliate of a taxpayer in respect of which the taxpayer has a qualifying interest.

New subsection 95(2.201) is applicable to taxation years of a foreign affiliate of a taxpayer that end after 1999. There are two transitional rules:

1. As the criterion that a non-resident corporation be a controlled foreign affiliate of a taxpayer was introduced into paragraph 95(2)(*g*) effective for taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002 (absent the Global Election mentioned below), the rules in subsection 95(2.201) apply only for the purposes of paragraph 95(2)(*a*) for foreign affiliate taxation years that begin before December 21, 2002.
2. However, if the taxpayer has made a valid election under subsection 26(46) of the *Budget and Economic Statement Implementation Act, 2007*, S.C. 2007, c. 35 (informally known as a Global Election), which invokes an earlier application of various amendments to the Act (including paragraphs 95(2)(*a*) and (*g*)), the amendment to subsection 95(2.201) will apply to taxation years of all foreign affiliates of the taxpayer that begin after 1994.

Rule for the definition "specified person or partnership"

ITA
95(2.6)

Subsection 95(2.6) is added to section 95 of the Act. For details about this new subsection, readers may refer to the commentary for new paragraphs 95(2)(*f*) to (*f.15*).

Clause 20

Capital interests in a trust

Section 107 of the Act provides certain rules relating to the disposition of a capital interest in a trust.

Distribution by personal trust

ITA
107(2)

Subsection 107(2) of the Act applies where a personal trust or a prescribed trust described in section 4800.1 of the Regulations distributes property to a beneficiary and there is a resulting disposition of part or all of the beneficiary's capital interest in the trust.

Subsection 107(2) of the Act is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The subsection is amended so that it does not apply to a distribution that is a SIFT trust wind-up event.

Other distributions

ITA
107(2.1)

Where trust property is distributed by a trust to a beneficiary in satisfaction of the beneficiary's capital interest, the rules in subsection 107(2.1) apply if certain other sections do not apply. Subsection 107(2.1) is amended in conjunction with a series of other amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The amendment ensures that subsection 107(2.1) does not apply to a distribution to which new section 88.1 or new subsection 107(3.1) applies.

Distribution by SIFT wind-up entity

ITA
107(3) and (3.1)

New subsections 107(3) and (3.1) of the Act are part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity.

Subsection 107(3) sets out conditions that must be met for the rules in subsection 107(3.1) to apply. Generally, this subsection allows subsection (3.1) to apply to a distribution that is a “SIFT trust wind-up event” (newly defined in subsection 248(1) of the Act) provided certain requirements are met. Those requirements are that section 88.1 does not apply, that the property distributed is shares of a taxable Canadian corporation, and, if the trust is a “SIFT wind-up entity”, that the distribution occurs no more than 60 days after the earlier two events. Those events are the trust’s own first distribution that is a SIFT trust wind-up event and the first distribution to it that is a SIFT trust wind-up event of a subsidiary trust.

Subsection 107(3.1) allows for a tax-deferred distribution of a SIFT trust’s property.

This is achieved by deeming the trust being wound up to dispose of the property for proceeds of disposition equal to the adjusted cost base of the property immediately before the disposition.

The taxpayer holding the beneficial interest in the trust who receives the property is deemed to have disposed of its interest as a beneficiary of the trust for proceeds of disposition equal to the cost amount to the taxpayer of the interest immediately before the distribution.

If the taxpayer is the only beneficiary of the trust, as would happen where the trust is wholly owned by another trust or corporation, and the taxpayer is a “SIFT wind-up entity” or a taxable Canadian corporation, the taxpayer is deemed to have acquired the trust property at a cost equal to the adjusted cost base to the trust immediately before the disposition.

In any other case, such as where the beneficial interests in the trust are held by the public, the property is deemed to be acquired at the cost amount to the taxpayer of the taxpayer’s interest as a beneficiary of the trust.

If the taxpayer’s interest as a beneficiary under the trust was taxable Canadian property, the new property received is deemed to continue to be taxable Canadian property of the taxpayer.

Subsection (3.1) also provides a rule in respect of certain of the trust’s debts and other obligations. If a liability owed by the trust is, as a consequence of the distribution, assumed by the corporation described in paragraph 107(3)(*b*) in respect of the distribution (that is, the corporation the shares of which are being distributed) and the amount payable on maturity by the corporation is the same as that amount payable by the trust, then a rule similar to that in subsection 87(7) is applied. That is, no income tax consequences will arise from the assumption of that liability and the liability is deemed to have been incurred or issued by the corporation and not the trust.

For more information, readers may refer to the notes under the definition “SIFT trust wind-up event” in subsection 248(1).

This amendment applies after July 14, 2008 except that the 60 day timing requirement in subsection 107(3) does not apply to distributions that occur no more than 60 days after Royal Assent.

Clause 21

Qualifying dispositions

ITA
107.4

Section 107.4 of the Act provides for the income tax consequences of a qualifying disposition (also defined in that section) of property to a trust.

Tax consequences of qualifying dispositions

ITA
107.4(3)(*f*)

Subsection 107.4(3) of the Act applies where there has been a “qualifying disposition” of property to a trust within the meaning of subsection 107.4(1). Paragraph 107.4(3)(*f*) deems the transferred property to be taxable Canadian property (“TCP”) of the trust if it was – by operation of any one of a number of specified provisions that deem property to be TCP – TCP of the transferor.

Paragraph 107.4(3)(*f*) is amended to add to the list of specified deeming provisions existing paragraph 44.1(2)(c) and subsection 85.1(5), and new paragraphs 85.1(8)(*c*) and 107(3.1)(*d*) of the Act. Those new paragraphs apply to deem, in certain circumstances involving the conversion of a SIFT wind-up entity into a corporation, a share to be TCP of a taxpayer.

This amendment applies to dispositions that occur after December 23, 1998. It also applies in respect of the 1996 and subsequent taxation years to transfers of capital property that occurred before December 24, 1998.

Clause 22

Trusts – definitions and rules

ITA
108

Section 108 of the Act sets out certain definitions and rules that apply for the purposes of subdivision k, which deals with the taxation of trusts and their beneficiaries.

Definitions

ITA
108(1)

“cost amount”

The definition “cost amount” in subsection 108(1) of the Act generally applies, for the purposes of sections 104 to 108, in determining the cost amount to a taxpayer of the taxpayer’s capital interest in a trust.

The definition is amended as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. This amendment ensures that the references in new paragraphs 107(3.1)(*b*) and (*c*) to the cost amount to a taxpayer of the taxpayer's beneficial interest in a trust is determined without reference to the special definition "cost amount" in subsection 108(1). As a result, that cost amount is to be determined under the definition of that expression in subsection 248(1).

This amendment applies after July 14, 2008.

Clause 23

Eligible medical gift

ITA
110.1(8)(*e*)

The English version of subsection 110.1(8)(*e*) of the Act is amended to correct the title of the Minister for International Cooperation and to clarify that the conditions referred to paragraph are prescribed by the *Income Tax Regulations*.

This amendment applies in respect of gifts made after June 2008.

Rules governing international medical charities

ITA
110.1(9)

Section 110.1 of the Act provides for the deductibility, in computing the income of a corporation, of charitable donations and certain other gifts. New subsection 110.1(9) of the Act applies for the purpose of an "eligible medical gift" made by a corporation after June 30, 2008 and described in subsection 110.1(8) and is applicable if the Minister for International Cooperation is of the opinion that the donee is a registered charity that meets certain conditions.

These conditions are prescribed by new section 3505 of the *Income Tax Regulations* and are introduced concurrently with paragraph 110.1(9)(a). Paragraph 110.1(9)(*a*) clarifies that nothing in paragraph 110.1(8)(*b*) modifies the application to a registered charity of those prescribed conditions. In particular, those prescribed conditions make reference to the requirements of the inter-agency Guidelines for Drug Donations issued by the World Health Organization ("WHO Guidelines"). The WHO Guidelines specify that donated drugs generally should have a remaining shelf-life of 12 months upon arrival in a recipient country. The application of those prescribed conditions is not modified by the reference to a six-month period in paragraph 110.1(8)(*b*) of the Act, which is an absolute period applicable to any eligible medical gift under subsection 110.1(8).

New paragraph 110.1(9)(*b*) allows that Minister to designate a period of time for which such an opinion will be valid, and to revoke an opinion previously given in respect of a registered charity if the registered charity no longer meets the prescribed conditions or any person has made any misrepresentation that is attributable to neglect, carelessness or wilful default for the purpose of obtaining that Minister's opinion.

New paragraph 110.1(9)(*c*) provides that the revocation of an opinion is effective as of the time that notice in writing is issued to the registered charity.

Clause 24

Exchange rate and foreign currency debt

ITA
111

Section 111 of the Act provides rules relating to the treatment of losses, and in particular establishes the extent to which a taxpayer is permitted to deduct, in computing taxable income for a taxation year, losses of other years.

The new definitions “exchange rate” and “foreign currency debt” are added to subsection 111(8). As well, new subsection 111(12) is added to extend the general treatment of accrued capital gains and losses on an acquisition of control of a corporation, so that that treatment applies also to a corporation’s accrued capital gains and capital losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency.

Definitions

ITA
111(8)

“exchange rate”

The new definition “exchange rate” is relevant for the purposes of new subsections 40(10) and (11) of the Act and for new subsection 111(12), regarding capital gains and losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency. The “exchange rate” at any time in respect of a foreign currency is the rate of exchange between that currency and Canadian currency quoted by the Bank of Canada at noon (often referred to as the “Noon Rate”) on the day that includes that time or, if that day is not a business day, on the day before; or a rate of exchange acceptable to the Minister.

“foreign currency debt”

The new definition “foreign currency debt” is relevant for the purposes of new subsections 40(10) and (11) of the Act and for new subsection 111(12), regarding capital gains and losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency. A “foreign currency debt” means a debt obligation denominated in a currency of a country other than Canada.

Foreign currency debt on acquisition of control

ITA
111(12)

Under subsection 111(4) of the Act, a corporation that undergoes an acquisition of control is required to recognize, for income tax purposes, all of its accrued capital losses on property that the corporation owns at that time. Those newly-realized capital losses, together with the corporation’s existing net capital losses, cannot be used after the acquisition of control. The corporation can, however, elect to realize any accrued capital gains on other property that the corporation owns, allowing it to use some or all of its capital losses to offset those capital gains.

Unlike other accrued capital gains and losses, capital gains and losses resulting from foreign currency fluctuations on a corporation’s debt liabilities have not been subject to these rules, even though in other respects the Act generally treats capital gains and losses realized in respect of foreign currency fluctuations like other capital gains and losses.

New subsection 111(12) of the Act extends the general treatment of accrued capital gains and losses on an acquisition of control of a corporation to a corporation's accrued capital gains and capital losses resulting from foreign currency fluctuations on debt liabilities denominated in a foreign currency. It should be noted that these rules apply only to foreign currency debts the repayment of which would have generated a capital loss or gain.

New subsection 111(12) provides that for the purposes of subsection 111(4), if at any time a corporation owes a foreign currency debt, the corporation is deemed to own, immediately before that time (referred to in these notes and in new subsection 111(12) as the "measurement time"), a property with an adjusted cost base (ACB) and fair market value (FMV) determined by the formulas contained in paragraphs 111(12)(*a*) and (*b*) respectively. Establishing an ACB and an FMV for this notional property allows for the calculation of capital losses or gains, as the case may be, in respect of the foreign currency debt.

Under new paragraph 111(12)(*a*), the ACB of the notional property at the measurement time is determined by the formula:

$$A + B - C$$

A is the amount of principal owed by the corporation under the foreign currency debt at the measurement time (calculated, for greater certainty, using the exchange rate applicable at the measurement time).

B is the portion of any gain previously recognized in respect of the foreign currency debt because of section 111 that is reasonably attributable to the principal owed by the corporation as described in A.

C is the portion of any capital loss previously recognized in respect of the foreign currency debt because of section 111 that is reasonably attributable to the principal owed by the corporation as described in A.

Under new paragraph 111(12)(*b*), the FMV of the notional property at the measurement time is the amount that would be the amount of the principal owed by the corporation under the foreign currency debt at the measurement time if that amount were calculated using the exchange rate applicable at the time of the original borrowing.

For this purpose, new borrowings under an existing credit facility after an acquisition of control will be treated as a separate debt, pursuant to subsection 248(27) of the Act.

New subsection 111(12) will apply to acquisitions of control that occur after March 7, 2008, other than an acquisition of control that occurs before 2009, where the persons acquiring control are obligated to acquire the control pursuant to the terms of an agreement in writing made by them on or before March 7, 2008. Corporations will also be able to elect to have new subsection 111(12) apply to acquisitions of control that occur after 2005.

Clause 25

Non-resident's taxable income earned in Canada

ITA
115(1)(*a*)

Subsection 115(1)(*a*) of the Act determines the amount of the taxable income earned in Canada on which a non-resident is subject to taxation under Part I of the Act.

Subparagraph 115(1)(*a*)(iii.21) is amended to ensure that any amounts received under the *Wage Earner Protection Program Act* (WEPP) are included in computing a non-resident's taxable income earned in Canada. For further information regarding WEPP, readers may refer to the commentary on paragraph 56(1)(*r*) of the Act.

This amendment applies to the 2008 and subsequent taxation years.

Clause 26

Excluded property

ITA
116

Section 116 of the Act establishes procedures for collecting tax from non-residents on the disposition of taxable Canadian property, Canadian resource properties, and certain other properties.

ITA
116(6)

Subsection 116(6) of the Act sets out a list of kinds of property ("excluded property") to which the requirements of section 116 do not apply. Paragraph 116(6)(*b*) is amended to add to that list SIFT wind-up equity that is listed on a recognized stock exchange.

This amendment applies after July 14, 2008.

Clause 27

Canada Employment Credit

ITA
118(10)

Subsection 118(10) of the Act provides to an individual a non-refundable tax credit on up to $1,000 of employment income for a taxation year. The employment income eligible for the tax credit is calculated without taking into account any deductions allowed under section 8 of the Act. Paragraph (*b*) of the description of B in the formula in subsection 118(10) is amended so that the credit also applies to amounts received under the *Wage Earner Protection Program Act* (WEPP).

For further information regarding the WEPP, readers may refer to the commentary on paragraph 56(1)(*r*).

This amendment applies to the 2008 and subsequent taxation years.

Clause 28

Charitable and other gifts

ITA
118.1

Section 118.1 of the Act provides a tax credit in respect of an individual's charitable gifts, Crown gifts, cultural gifts and ecological gifts.

Direct designation – RRSPs, RRIFs and TFSAs

ITA
118.1(5.3)

Subsection 118.1(5.3) of the Act allows the proceeds of a deceased individual's registered retirement savings plan (RRSP), registered retirement income fund (RRIF) or tax-free savings account (TFSA) that are donated by way of a direct designation under the terms of the arrangement to a qualified donee to be claimed as a tax credit in computing the individual's tax for the year of death. To qualify, subsection 118.1(5.3) requires that the arrangement be an RRSP, a RRIF or a TFSA at the time of the transfer.

Subsection 118.1(5.3) is amended to provide that, in the case of the donation of TFSA proceeds, the arrangement need be a TFSA only immediately before the individual's death. This corrects a technical deficiency that arose from the fact that an arrangement ceases to be a TFSA on the death of the last holder (unlike an RRSP or a RRIF, which generally retains its character as such, after the death of the last annuitant, for as long as the arrangement remains in existence).

This amendment applies to the 2009 and subsequent taxation years.

Clause 29

SIFT trusts and SIFT partnerships

ITA
122.1

Section 122.1 of the Act sets out rules that apply in respect of the taxation of specified investment flow-through (SIFT) trusts and, in some cases, SIFT partnerships. "SIFT trust" is defined in subsection 122.1(1), and "SIFT partnership" is defined in section 197 of the Act; both definitions are made by subsection 248(1) of the Act to apply for all purposes of the Act.

Definitions

ITA
122.1(1)

Subsection 122.1(1) of the Act sets out a number of definitions that apply for the purposes of the rules for SIFT trusts and, in some cases, SIFT partnerships. The definitions in subsection 122.1(1) apply for the purposes of sections 104 and 122, as well as for the purposes of section 122.1.

Subsection 122.1(1) is amended by adding several definitions and modifying a number of others. These amendments come into force on October 31, 2006. The following notes describe the new and amended definitions in alphabetical order.

"equity"

The new definition "equity" applies for purposes of the definitions "excluded subsidiary entity", "publicly-traded liability" and "regulated innovative capital". "Equity" means a share of a corporation, a beneficial interest in a trust, an interest as a member of a partnership, any of certain liabilities of an entity that are equity-like (as described in greater detail below), and a right to, or to acquire, any of the above.

An equity-like liability of an entity means a liability of the entity (and, for the purpose of the definition "publicly-traded liability", a security of the entity that is a liability of another entity) if:

- the liability is convertible into or exchangeable for equity of the entity or of another entity (including another equity-like debt of the entity or of another entity), or
- the amount payable on the liability is contingent or dependent on the use of or production from property, or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable, or income or capital paid or payable to a member of a partnership or a beneficiary of a trust.

"excluded subsidiary entity"

The new definition "excluded subsidiary entity" is relevant to determining whether a trust or partnership will be a SIFT trust or SIFT partnership for a taxation year. In brief, a trust or partnership that is an excluded subsidiary entity is not a SIFT trust or SIFT partnership. As defined, an excluded subsidiary entity for a taxation year is an entity the equity (as defined in subsection 122.1(1)) of which meets two conditions at all times in the taxation year. The first condition is that the equity not be listed or traded on a stock exchange or other public market. The second condition is that the equity not be held by any person

or partnership other than: a real estate investment trust, a taxable Canadian corporation, a SIFT trust or a SIFT partnership (ignoring the transitional rules that otherwise suspend for a period the definitions "SIFT trust" and SIFT partnership"), another excluded subsidiary entity for the taxation year, or any combination of these qualifying interest holders.

"investment"

As currently defined, "investment" in a trust or partnership is meant to cover a broad range of properties and rights. The definition is amended to exclude an unaffiliated publicly-traded liability of a trust or partnership and regulated innovative capital. For more detail, readers may refer to the commentary on the new definitions "unaffiliated publicly-traded liability" and "regulated innovative capital"

"non-portfolio property"

Under its existing definition, a "non-portfolio property" of a trust or partnership is a property of any of three types.

The first type of non-portfolio property is comprised of certain securities of a "subject entity". These are securities that, as described in paragraph (*a*) of the definition "non-portfolio property", either:

- have a total fair market value that is greater than 10% of the equity value of the subject entity; or
- make up — together with any securities that the trust or partnership holds of entities affiliated with the subject entity — more than 50% of the equity value of the trust or partnership.

Paragraph (*a*) of the definition "non-portfolio property" is amended so that securities of a subject entity that is a portfolio investment entity are excluded from that paragraph. As a result that paragraph will not apply to make these securities non-portfolio property. However, securities of a portfolio investment entity may still be non-portfolio property of a trust or partnership under the remaining two types of non-portfolio property described in paragraphs (*b*) and (*c)* of the definition "non-portfolio property".

For more detail, readers may refer to the commentary on the new definition "portfolio investment entity".

"portfolio investment entity"

The definition "portfolio investment entity" is added. A portfolio investment entity at any time is an entity that does not at that time hold any non-portfolio property.

"publicly-traded liability"

The new definition "publicly-traded liability" applies for purposes of the definition "unaffiliated publicly-traded liability". A publicly-traded liability of an entity means a liability that is a security of the entity that is not equity (as defined in the new definition "equity" of the entity and that is listed or traded on a stock exchange or other public market.

For more detail, see the commentary on the new definitions "equity" and "unaffiliated publicly-traded liability".

"qualified REIT property"

The definition "qualified REIT property" applies in determining whether a trust is a real estate investment trust ("REIT") for purposes of the SIFT rules. In order to qualify as a REIT, a trust cannot hold any non-portfolio property other than qualified REIT property.

The existing definition "qualified REIT property" describes four types of property. The first type is real or immovable property situated in Canada. The description of this type of qualified REIT property is amended to delete the words "situated in Canada". This amendment is part of a series of similar amendments intended to ensure that the geographic location of a trust's real or immovable property will not be relevant in determining whether the trust is a REIT for purposes of the SIFT rules.

The third type of qualified REIT property, described in paragraph (*c*) of the definition "qualified REIT property", consists of shares of the capital stock of a REIT's nominee corporation; in effect, a corporation that acts as bare trustee and that holds individual real or immovable properties on behalf of the REIT. The description of this type of qualified REIT property is amended to extend qualified REIT property status to shares of a nominee corporation that acts as bare trustee, and that holds legal title to real or immovable property, on behalf of a wholly-owned subsidiary of the REIT.

"real estate investment trust"

A trust is a "real estate investment trust" (REIT) for a taxation year if it is resident in Canada throughout the year and meets a number of other conditions, including the requirement that the trust derive at least 75% of its revenues from rent from, and capital gains from the disposition of, Canadian real or immovable properties, and interest from mortgages on Canadian real or immovable properties.

The provision setting out this 75% revenue requirement is amended to delete the words "situated in Canada". This amendment is part of a series of similar amendments intended to ensure that the geographic location of a trust's real or immovable property will not be relevant in determining whether the trust is a REIT for purposes of the SIFT rules.

Another condition for REIT status is that at each time in the relevant trust's taxation year the total fair market values at that time of certain qualifying assets – real or immovable property situated in Canada, cash, and certain debt securities – must equal at least 75% of the trust's equity value at that time. The provision describing this condition is amended in a number of ways. First, the words "situated in Canada" are deleted, such that qualifying assets will now include real or immovable property wherever situated. Secondly, the reference to "cash" is replaced with a reference to money (indirectly, by way of a reference to property described in paragraph (*a*) of the definition "qualified investment" in section 204 of the Act). Finally, the list of qualifying assets is expanded to include certain cash equivalents, such as bankers' acceptances and certain deposits with financial institutions.

"regulated innovative capital"

The new definition "regulated innovative capital" provides an exclusion to the definition "investment" in subsection 122.1(1). Regulated innovative capital is equity of a trust where

- the equity was before November 2006, and continues to be, authorized as Tier 1 or Tier 2 capital of a financial institution;
- the terms of that equity have not changed after August 1, 2008;
- the trust has not issued any equity after October 31, 2006; and
- the trust does not hold any non-portfolio property other than liabilities of the financial institution.

"rent from real or immovable properties"

"Rent from real or immovable properties" is currently defined to include rent or similar payments for the use of, or right to use, real or immovable properties, and payment for services ancillary to the rental of real or immovable properties and customarily supplied or rendered in connection with the rental of real or immovable properties.

The definition is amended to include, as a taxpayer's rent from real or immovable property, a payment out of the current income of a trust, but only to the extent that the payment is included in the recipient trust's income and is paid from the part of the payer trust's income that was derived from rent from real or immovable properties.

“SIFT trust”

A “specified investment flow-through trust” or “SIFT trust” for a taxation year means a trust that meets the following conditions at any time during the taxation year: it is resident in Canada, investments in it are listed or traded on a stock exchange or other public market, and it holds one or more non-portfolio properties. A real estate investment trust (REIT) is excluded from the definition of SIFT trust.

The definition is amended to exclude from treatment as a SIFT trust for a taxation year an entity that is an excluded subsidiary entity for the taxation year. For more information, readers may refer to the commentary on the new definition “excluded subsidiary entity”.

“unaffiliated publicly-traded liability”

The new definition “unaffiliated publicly-traded liability” is relevant to determining whether a liability is an investment in a trust or partnership. An unaffiliated publicly-traded liability of an entity at any time means a publicly-traded liability of the entity if at that time at least 90% (measured by fair market value) of all of the publicly-traded liabilities of the entity are held by persons or partnerships that are not affiliated with the entity.

SIFT transitional rules

ITA
122.1(2)

Subsection 122.1(2) of the Act limits the application of the definition “SIFT trust” in subsection (1) for the 2007 to 2010 taxation years. Where a trust (in this commentary referred to as a “transitional SIFT”) would, under the text of that definition, be a SIFT trust on October 31, 2006, subsection 122.1(2) provides that the SIFT trust definition will not apply until the earlier of the trust's 2011 taxation year or the taxation year in which the trust exceeds its normal growth (as determined by guidelines issued by the Department of Finance on December 15, 2006), unless that excess arose as a result of a prescribed transaction.

For this purpose, the normal growth guidelines set the maximum growth from November 2006 to December 2010 as the greater of $50 million and a safe harbour amount. That safe harbour amount is measured with respect to the transitional SIFT’s market capitalization on October 31, 2006 and is staged as follows: 40% for Nov 2006 – Dec 2007; 20% for 2008; 20% for 2009; and 20% for 2010. These percentages are cumulative (the $50 million “de minimis” amount is not), meaning that a transitional SIFT will be able to issue, as of January 2010, new equity of up to 100% of its October 31, 2006 market capitalization.

This note is included to serve as notification that the Department’s normal growth guidelines are revised, effective Announcement Date.

The first revision applies to certain situations involving a transitional SIFT, units of which are publicly traded, that holds securities in another transitional SIFT (whether a trust or partnership and referred to in this commentary as the “second transitional SIFT”) the units of which are not publicly traded. If the transitional SIFT’s securities in the second transitional SIFT are non-portfolio property of the transitional SIFT (determined for purposes of this revision to the guidelines as through the definition “non-portfolio property” in subsection 122.1(1) of the Act were read without reference to its paragraphs (*b*) and (*c*) and as though a reference to “10%” in its paragraph (*a*) were a reference to “25%”), then new equity issued by the second transitional SIFT will count towards the growth of the transitional SIFT and not the second transitional SIFT, provided either or both of two conditions are met. Those conditions are:

- that the new equity is convertible into the equity of the transitional SIFT; and
- that the new equity can reasonably be regarded to be funded by the issuance of new equity in the transitional SIFT.

This revision of the normal growth guidelines is intended to prevent, in the particular circumstances described, an inappropriate duplication of growth as between the transitional SIFT and the second transitional SIFT where there is a sufficient level of non-arm's length relations between the two entities.

The normal growth guidelines are also being revised to accelerate the safe harbour amount for each of 2009 and 2010 so that it is available on and after Announcement Date. This change does not change the maximum available growth of a transitional SIFT, but allows it to use remaining growth room in a single year, rather than staging it (i.e., at 20% per year) over the 2009 and 2010 years. As a result, for the period from Announcement Date to the end of 2010, a grandfathered SIFT's safe harbour will be a maximum of 60% of its market capitalization on October 31, 2006. For example, a SIFT that had issued in 2008 before Announcement Date new equity amounting to 15% of its market capitalization on October 31, 2006, would have a remaining safe harbour for the period from Announcement Date to the end of 2010 of 45% (i.e., 60% - 15%) of that October 31, 2006 market capitalization.

It should be noted that the annual safe harbour amounts remains cumulative. Thus for example a transitional SIFT that had issued no new equity in the period between October 31, 2006 and Announcement Date would, as of Announcement Date, be able to issue new equity up to 100% of its October 31, 2006 market capitalization without exceeding its normal growth.

Clause 30

Refundable medical expense supplement

Definitions

ITA
122.51(1)

The definitions in subsection 122.51(1) of the Act apply for the purposes of the Refundable Medical Expense Supplement.

"eligible individual"

For the purpose of the medical expense supplement, paragraph (*c*) of the definition of "eligible individual" is amended to extend the definition to an individual (other than a trust) whose total business income, employment income (excluding disability benefits), and amounts received under the *Wage Earner Protection Program Act* (WEPP) for a taxation year, is at least $2,500. For further information regarding the WEPP, readers may refer to the commentary on paragraph 56(1)(*r*).

This amendment applies to the 2008 and subsequent taxation years.

Clause 31

Working income tax benefit

Definitions

ITA
122.7(1)

"working income"

The definition of "working income" is relevant in determining if an eligible individual qualifies for the Working Income Tax Benefit in a taxation year. Paragraph (*b*) of the definition of "working income" in subsection 122.7(1) is amended to extend an individual's working income for a taxation year to include amounts received under the *Wage Earner Protection Program Act* (WEPP). For further information regarding the WEPP, readers may refer to the commentary on paragraph 56(1)(*r*).

This amendment applies to the 2008 and subsequent taxation years.

Clause 32

Investment tax credits

ITA
127

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

Transitional application of investment tax credit definition

ITA
127(9.01)(*b*)

Subsection 127(9.01) of the Act provides for a substitution of the number of taxation years referenced in paragraphs (*c*) to (*f*), (*h*) and (*i*) in the definition "investment tax credit" in subsection 127(9) of the Act in order to provide for a maximum 20-year carry-forward period for investment tax credits earned in the 2006 and subsequent taxation years.

Paragraph 127(9.01)(*b*) is amended to change the reference to "2005" to "1997". This amendment in effect extends the maximum 20-year carry-forward to amounts from the 1998 to 2005 taxation years.

This amendment applies to the 2008 and subsequent taxation years.

ITA
127(9.02)(*b*)

Subsection 127(9.02) of the Act provides for a substitution of the number of taxation years referenced in paragraph (*g*) in the definition "investment tax credit" in subsection 127(9) of the Act in order to provide for a maximum 20-year carry-forward period for investment tax credits earned in the 2006 and subsequent taxation years.

Paragraph 127(9.02)(*b*) is amended to change the reference to "2005" to "1997". This amendment is part of the extension of the maximum 20-year carry-forward to amounts from the 1998 to 2005 taxation years.

This amendment applies to 2008 and subsequent taxation years.

Expenditure limit determined

ITA
127(10.2)

Subsection 127(10.1) of the Act provides an additional 15% ITC (enhanced ITC) to Canadian-controlled private corporations (CCPCs), based on the least of: the amount that the corporation claims (paragraph 127(10.1)(*a*)), the corporation's SR&ED qualified expenditure pool (paragraph 127(10.1)(*b*)) and the corporation's expenditure limit (paragraph 127(10.1)(*c*)).

The expenditure limit of a corporation for a particular taxation year is an amount from nil to $3 million, as determined by a formula set out in subsection 127(10.2). The formula includes two variables: the taxable income and the taxable capital employed in Canada of the corporation and its associated corporations, if any, for the preceding taxation year. The effects of these variables are that a corporation's $3 million maximum expenditure limit decreases by $10 for each dollar of taxable income over $400,000 in the preceding taxation year. The resulting figure is further reduced in proportion to any taxable capital employed in Canada of the corporation in excess of $10 million. This restriction ensures that the expenditure limit of the corporation is reduced $3 for every $40 in taxable capital employed in Canada in excess of $10 million.

For this purpose, the taxable capital employed in Canada by the corporation has the meaning assigned by section 181.2 of the Act and includes the taxable capital employed in Canada in the year of any associated corporation.

Subparagraphs (*a*)(i) and (ii) of the description of B in the formula in subsection 127(10.2) are amended to add a reference to section 181.3. If a corporation is a financial institution, its taxable capital employed in Canada is described in subsection 181.3. Therefore this amendment ensures the correct measurement, for the purposes of the formula in subsection 127(10.2), of the taxable capital employed in Canada by a CCPC that is a financial institution.

These amendments generally apply to taxation years that end on or after February 26, 2008. For a taxation year that includes February 26, 2008, any increase in the expenditure limit is pro-rated based on the number of days in that taxation year that are after February 25, 2008.

Expenditure limit – associated CCPCs

ITA
127(10.22)

Subsection 127(10.22) of the Act provides a special relieving rule that can apply for the purpose of calculating a corporation's expenditure limit for a particular taxation year under subsection 127(10.2) of the Act. If subsection 127(10.22) applies to a particular corporation in respect of another corporation, the particular corporation is considered not to be associated with the other corporation for the purpose of determining the particular corporation's expenditure limit under subsection 127(10.2), nor for the purpose of determining the particular corporation's business limit under section 125 (as applied for the purpose only of determining the particular corporation's expenditure limit under subsection 127(10.2)).

This reference to the corporation’s business limit is no longer required, since the formula for the calculation of the corporation’s expenditure limit under subsection 127(10.2), as modified by S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*), no longer relies upon the corporation’s business limit. Subsection 127(10.22) of the Act is therefore amended to remove the reference.

Amended subsection 127(10.22) applies to taxation years that end on or after March 9, 2009. This is because, for a taxation year that includes February 26, 2008, any increase in the expenditure limit is pro-rated based on the number of days in that taxation year that are after February 25, 2008. No such taxation year could end after March 8, 2009.

Expenditure limit determination in certain cases

ITA
127(10.6)(*c*)

Subsection 127(10.6) of the Act provides for the increase (a “gross-up”) of a CCPC's taxable income and business limit where the CCPC’s taxation year is less than 51 weeks, which gross-up is relevant in determining the CCPC's expenditure limit for a taxation year under subsection 127(10.2) and paragraph 127(10.6)(*b*).

Paragraph 127(10.6)(*c*) is amended to remove the reference to a corporation’s business limit, because the new formula for the calculation of the corporation’s expenditure limit under subsection 127(10.2) of the Act no longer relies upon the corporation’s business limit.

Amended paragraph 127(10.6)(*c*) applies to taxation years that end on or after March 9, 2009. For a taxation year that includes February 26, 2008, any increase in the expenditure limit is pro-rated based on the number of days in that taxation year that are after February 25, 2008. No such taxation year could end after March 8, 2009.

Transitional application of investment tax credit recapture

ITA
127(36)(*b*)

Subsection 127(36) of the Act provides for a substitution of the number of taxation years and fiscal periods referenced in subsections 127(27), (28) (29), (34) and (35) of the Act, which concern the recapture of investment tax credits in certain circumstances.

Paragraph 127(36)(*b*) is amended to change the reference to "2005" to "1997". This ensures a maximum 20-year recapture period for investment tax credits earned in the 1998 and subsequent taxation years, and is part of the extension of the maximum 20-year carry-forward to amounts from those taxation years.

This amendment applies to the 2008 and subsequent taxation years.

Clause 33

Refundable investment tax credits

ITA
127.1

Section 127.1 of the Act provides for the refundability of investment tax credits under certain circumstances. A qualifying corporation may be eligible for either a 40% or 100% refund for its investment tax credits depending on the nature of its expenditures.

"qualifying corporation"
"qualifying income limit"

ITA
127.1(2)

Subsection 127.1(2) of the Act sets out definitions relevant for the purposes of section 127. 1. Subsection 127.1(2) is amended in two respects - the definition of "qualifying corporation" is replaced and a new definition of "qualifying income limit" is introduced.

Under the current definition, a "qualifying corporation" is, for a particular taxation year, a Canadian-controlled private corporation (CCPC) the taxable income of which for its preceding taxation year together with the taxable incomes of all associated corporations for their preceding taxation years does not exceed the total of the business limits (as determined under section 125 of the Act) of the corporation and its associated corporations for those preceding years.[3]

The definition of "qualifying corporation" is amended to replace the references to business limit with a reference to the "qualifying income limit". Under the amended definition, a qualifying corporation for a particular taxation year is a CCPC the taxable income of which for its preceding taxation year, together with the taxable incomes of all associated corporations for their preceding taxation years, does not exceed the qualifying income limit of the corporation.

The new definition "qualifying income limit" of a corporation in subsection 127.1(2) of the Act is relevant for the purposes of the definition "qualifying corporation." The qualifying income limit of a corporation is determined by a formula — $400,000 x [($40 million – A)/$40 million] — which no longer relies upon the business limit determined under section 125 of the Act.

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[3] What are described in these notes as the "preceding" taxation years are in certain cases described slightly differently – although to the same general effect – in the relevant legislation, both actual and proposed.

The amount described in the formula as A is nil if the corporation's taxable capital employed in Canada is less than or equal to $10 million. In any other case, A is equal to the excess of the corporation's taxable capital employed in Canada over $10 million. For this purpose, the taxable capital employed in Canada by the corporation has the meaning assigned by section 181.2 or 181.3 of the Act and includes the taxable capital employed in Canada in the year of any associated corporation.

The amended definition of "qualifying corporation" applies to taxation years that end on or after February 26, 2008. The new definition of "qualifying income limit" generally applies to taxation years that end on or after February 26, 2008. For a taxation year that includes February 26, 2008, the amount by which the new amount calculated for the qualifying income limit exceeds the business limit as described in the old definition of the qualifying corporation is pro-rated based on the number of days in that taxation year that are after February 25, 2008.

Clause 34

Qualifying trust

ITA
127.4(1)

Subsection 127.4(1) contains the definition "qualifying trust" for the purposes of the labour-sponsored venture capital corporation (LSVCC) tax credit. This definition is amended in two ways.

In 2000, the Act was amended to include common-law partners, but some provisions, including the English version of the definition of "qualifying trust", were overlooked. This definition is therefore amended to correct this omission. This amendment applies, in general, to the 2001 and subsequent taxation years. However, it may apply as of 1998 if the common-law partners jointly choose to be deemed as such, beginning in that year, for the purposes of the application of the Act.

The definition is also amended to include, in new paragraph (*c*), a trust governed by a TFSA. The amendment allows LSVCC investors to contribute shares to a TFSA while retaining eligibility for the LSVCC tax credit. This amendment applies to taxation years after 2008.

Clause 35

Former resident – replaced shares

ITA
128.3

Under the taxpayer migration rules in section 128.1 of the Act, the post-departure disposition of a property can have important tax consequences for an emigrant individual. Section 128.3 of the Act allows for a deferral of these consequences in certain circumstances, by deeming the individual not to have disposed of shares that were converted to new shares under section 51 of the Act, or subject to a share for share exchange, reorganization or amalgamation under any of sections 85.1, 86 or 87 of the Act. Section 128.3 also deems the share received by an individual to be the same as the old share for the purposes of section 119 and subsections 126(2.21) to (2.23), 128.1(6) to (8), 180.1(1.4) and 220(4.5) and (4.6).

Section 128.3 is amended to add to the list of specified provisions providing for tax-deferred share exchanges a reference to new subsection 85.1(7) of the Act. Subsection 85.1(7) provides, where a number of conditions are met, for a tax-deferred exchange of SIFT wind-up entity equity in exchange for a share of a taxable Canadian corporation.

This amendment to section 128.3 is part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity.

This amendment applies after December 19, 2007.

Clause 36

Qualifying exchange

Section 132.2 of the Act provides rules to allow two mutual fund trusts, or a mutual fund trust and a mutual fund corporation to merge on a tax deferred basis. The merger is accomplished in part through a transfer of property from one fund (the “transferor fund”) to the other (the “transferee fund”), provided that the transferee fund is a mutual fund trust.

Definitions

ITA
132.2(2)

“qualifying exchange”

The definition “qualifying exchange” in subsection 132.2(2) of the Act is amended to ensure that it does not apply if the transferor fund is a SIFT wind-up corporation. Because of a related amendment to paragraph 87(2)(*s.1*) of the Act, a SIFT wind-up corporation includes a corporation that results from an amalgamation (within the meaning assigned by subsection 87(1)) of corporations one of which is a SIFT wind-up corporation or from the winding-up of a SIFT wind-up corporation into its parent in circumstances to which subsection 88(1) of the Act applies.

This amendment applies after December 19, 2007.

Clause 37

Insurance Corporations

ITA
138

Section 138 of the Act sets out detailed rules relating to the taxation of insurance corporations. Section 138 is amended to provide transitional rules for insurers in respect of their life insurance businesses as a result of changes to accounting rules.

The new transitional rules in section 138 are intended to ensure that any increase or decrease in the reserves of an insurer resulting from these accounting changes will be taken into account in computing income for tax purposes over a five-year period. As such, they generally replicate the effect of new sections 12.5 and 20.4 of the Act, with appropriate modifications to reflect their application to life insurers. Instead of providing what would be largely repetitious specific descriptions of the new rules in section 138, the following table sets out these correspondences.

Subject	Section 138 amendment	Compare to
Definitions “base year”, “reserve transition amount”, “transition year”	138(12)	12.5(1)
Transition year income inclusion	138(16)	12.5(2)
Transition year income deduction	138(17)	20.4(2)
Transition year income inclusion reversal	138(18)	20.4(3)
Transition year income deduction reversal	138(19)	12.5(3)
Winding-up	138(20)	12.5(4)
Amalgamations	138(21)	12.5(5)

Subject	Section 138 amendment	Compare to
Transfer of business	138(22), (23)	12.5(6), (7)
Ceasing to carry on business	138(24)	12.5(8), 20.4(4)
Ceasing to exist	138(25)	12.5(9)

Application of financial institution rules

ITA
138(10)

Subsection 138(10) of the Act provides that, in computing the income of a life insurer that carries on business in Canada and outside of Canada from its insurance business carried on in Canada, the financial institution rules in sections 142.2 to 142.5 apply only in respect of the insurer's designated insurance property in respect of the business.

Subsection 138(10) is amended to add a reference to new section 142.51 of the Act. New section 142.51 provides transitional rules for financial institutions as a result of changes to accounting rules that may result in changes to the manner in which these financial institutions calculate their income under sections 142.2 to 142.6. For more detail readers may refer to the commentary on subsection 142.51.

This amendment applies to taxation years that begin after September 2006.

Clause 38

Financial institutions

ITA
142.2

Sections 142.2 to 142.6 of the Act contain rules for the tax treatment of most shares and debt obligations held by financial institutions.

Definitions

ITA
142.2(1)

Subsection 142.2(1) of the Act defines several terms for the purposes of the rules in sections 142.2 to 142.6 of the Act relating to securities held by financial institutions. Subsection 142.2(1) is amended by modifying some of the existing definitions and by adding new ones.

"excluded property"

The new definition "excluded property" subsection 142.2(1) identifies property specifically exempted from classification as "mark-to-market property" for purposes of the rules in sections 142.2 to 142.6 of the Act.

Under this new definition, excluded property of a taxpayer for a taxation year is property, held at any time in the taxation year by the taxpayer, that is

- a share of a corporation if, at any time in the taxation year, the taxpayer has a significant interest in the corporation,
- a property that is, at all times in the taxation year at which the taxpayer held the property, a prescribed payment card corporation share of the taxpayer,

- if the taxpayer is an investment dealer, a property that is, at all times in the taxation year at which the taxpayer held the property, a prescribed securities exchange investment of the taxpayer,
- a share of a corporation if
  - control of the corporation is, at any time (the "acquisition of control time") in the 24-month period that begins immediately after the end of the year, acquired by
    - the taxpayer,
    - one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*) of the Act), or
    - the taxpayer and one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*)), and
  - the taxpayer elects in writing that this provision apply and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the acquisition of control time, or
- a prescribed property.

The definition "excluded property" applies to taxation years that begin after September 2006.

"fair value property"

The new definition "fair value property" in subsection 142.2(1) is relevant to determining whether a tracking property or a specified debt obligation is mark-to-market property (as those expressions are defined in subsection 142.2(1)). Fair value property of a taxpayer for a taxation year is defined as property, held at any time in the taxation year by the taxpayer, that is — or it is reasonable to expect would, if the taxpayer held the property at the end of the taxation year, be — valued (otherwise than solely because its fair value was less than its cost to the taxpayer or, if the property is a specified debt obligation, because of a default of the debtor) in accordance with generally accepted accounting principles, at its fair value (determined in accordance with those principles) in the taxpayer's balance sheet as at the end of the taxation year.

This definition applies to taxation years that begin after September 2006.

"mark-to-market property"

The existing definition "mark-to-market property" in subsection 142.2(1) is amended consequential to changes in accounting rules.

Specifically, the definition "mark-to-market property" is amended to reflect the addition of the new definitions "excluded property", "fair value property" and "tracking property" in subsection 142.2(1). As well, properties specifically excluded from treatment as mark-to-market property have been removed from the definition and will now be listed in the new definition "excluded property" in subsection 142.2(1). (For more detail, readers may refer to the commentary on that definition.)

In conjunction with the addition of the term "fair value property" it should be noted that a specified debt obligation held by a taxpayer (other than an investment dealer) will be mark-to-market property of the taxpayer where it is fair value property of the taxpayer for the taxation year, regardless of the taxpayer's treatment of the property in previous taxation years.

Property qualifying as tracking property is added as mark-to-market property to ensure that a financial institution will not be able to avoid mark-to-market treatment on properties by investing through an intermediary or through the use of another financial instrument (such as a derivative). For more detail, readers may refer to the commentary on the definition "tracking property" in subsection 142.2(1).

As a result of these changes to the definition, mark-to-market property of a taxpayer for a taxation year will be property (other than an excluded property) held at any time in the taxation year by the taxpayer that is

- a share,
- if the taxpayer is not an investment dealer, a specified debt obligation that is a fair value property of the taxpayer for the taxation year,
- if the taxpayer is an investment dealer, a specified debt obligation, and
- a tracking property of the taxpayer that is a fair value property of the taxpayer for the taxation year.

These amendments apply to taxation years that begin after September 2006, except that, for taxation years that begin before November 7, 2007, mark-to-market property does not include tracking property.

In addition to the above amendments, the definition "mark-to-market property" is also amended, for taxation years that end after February 22, 1994, to exclude the following property from treatment as mark-to-market property:

- property that is, at every time in the year at which the taxpayer holds the property, a prescribed payment card corporation share of the taxpayer,
- if the year begins after 1998 and the taxpayer is an investment dealer, a property that is, at every time in the year at which the taxpayer holds the property, a prescribed securities exchange investment of the taxpayer, and
- a share of a corporation held, at any time in the year, by the taxpayer if
  - control of the corporation is, at any time (referred to in this paragraph as the "acquisition of control time") that is after 2001 and is in the 24-month period that begins immediately after the end of the year, acquired by
    - the taxpayer,
    - one or more persons related to the taxpayer (otherwise than by reason of a right referred to in paragraph 251(5)(*b*) of the Act), or
    - the taxpayer and one or more such persons, and
  - the taxpayer elects in writing and files the election with the Minister of National Revenue on or before the taxpayer's filing-due date for the taxpayer's taxation year that includes the acquisition of control time.

"tracking property"

The new definition "tracking property" in subsection 142.2(1) of the Act applies in determining whether property is a mark-to-market property of a taxpayer. Under this definition, property is tracking property of a taxpayer if the fair market value of the property is determined primarily by reference to one or more specified criteria in respect of property (referred to in this definition as "tracked property") that, if owned by the taxpayer, would be mark-to-market property of the taxpayer. The specified criteria are the fair market value of the tracked property, the profits or gains from the disposition of the tracked property, the revenue, income or cash flow from the tracked property, or any other similar criteria in respect of the tracked property.

This definition applies to taxation years that begin after September 2006.

Significant interest

ITA
142.2(2)

The definition “mark-to-market property” in subsection 142.2(1) of the Act excludes a share of a corporation in which a taxpayer has a significant interest. Subsections 142.2(2) to (5) of the Act contain the definition “significant interest” and related rules.

Subsection 142.2(2) provides that a taxpayer has a significant interest in a corporation at any time if the taxpayer is related to the corporation at that time (ignoring any rights described in paragraph 251(5)(*b*) of the Act) or if the taxpayer holds shares of the corporation carrying at least 10% of the votes, and representing at least 10% of the fair market value, of all issued shares of the corporation.

For greater certainty, subsection 142.2(2) is amended to specifically provide that it applies for the purposes of the definitions “excluded property” and “specified debt obligation” in subsection 142.2(1) as well as new subsection 142.6(1.6).

This amendment applies to taxation years that begin after September 2006.

Extended meaning of “related”

ITA
142.2(4)

Subsection 142.2(4) of the Act extends the concept of relatedness (as defined in section 251 of the Act) for the purpose of establishing whether a taxpayer has a significant interest in a corporation. Subsection 142.2(4) identifies a number of assumptions to apply in conjunction with section 251 in determining whether a person or partnership is related to any other person or partnership.

Subsection 142.2(4) is amended to provide that, for the purposes of subsections 142.2(2) to (4), in determining if, at a particular time, a person or partnership is related to another person or partnership, the rules in section 251 are to be applied as if,

- a partnership were a corporation having capital stock of a single class divided into 100 issued shares and each member of the partnership owned, at the particular time, that proportion of the issued shares of that class that the fair market value of the member’s partnership interest in the partnership at the particular time is of the fair market value of all partnership interests in the partnership at the particular time, and
- a trust were a corporation having capital stock of a single class divided into 100 issued shares and each beneficiary under the trust owned, at the particular time, that proportion of the issued shares of that class that the fair market value of the beneficiary’s beneficial interest in the trust at the particular time is of the fair market value at that time of all beneficial interest in the trust.

The above rules will not apply to a partnership or a trust in respect of which any amount of the income or capital of the partnership or trust that any entity may receive directly from the partnership or trust at any time as a member of the partnership or beneficiary under the trust depends on the exercise by any entity of, or the failure by any entity to exercise, a discretionary power.

This amendment applies to taxation years that begin after September 2006.

Clause 39

Mark-to market properties

ITA
142.5

Section 142.5 of the Act requires shares and certain debt obligations to be marked to market each year, and puts the profit or loss on income account.

Rules applicable to first deemed disposition of debt obligation

ITA
142.5(8.1) and (8.2)

New subsection 142.5(8.2) of the Act applies to a taxpayer for the taxpayer's first taxation year that begins after September 2006 (the taxpayer's "transition year" as defined in subsection 142.51(1)) where

- subsection 142.5(2) deems the taxpayer to have disposed of a particular specified debt obligation immediately before the end of the transition year (the "particular disposition"), and
- the particular specified debt obligation was owned by the taxpayer at the end of the taxation year (the taxpayer's "base year" as defined in subsection 142.51(1)) immediately preceding the first taxation year and was not a mark-to-market property of the taxpayer for that base year.

Where subsection 142.5(8.2) applies to a taxpayer for the transition year, the following rules apply to the taxpayer in respect of the particular disposition:

- subsection 20(21) of the Act does not apply to the taxpayer in respect of the particular disposition, and
- if section 12.4 of the Act does not apply to the taxpayer in respect of the particular disposition, there shall be included in computing the taxpayer's income for the transition year the amount, if any, by which
  - the total of all amounts each of which is
    - an amount deducted under paragraph 20(1)(l) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the base year,
    - an amount deducted under paragraph 20(1)(p) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for a taxation year that preceded the transition year,

  exceeds
  - the total of all amounts each of which is
    - an amount included under paragraph 12(1)(d) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the transition year, or
    - an amount included under paragraph 12(1)(i) of the Act in respect of the particular specified debt obligation of the taxpayer in computing the taxpayer's income for the transition year or a preceding taxation year.

Clause 40

Transition

ITA
142.51

New section 142.51 of the Act provides transitional rules for financial institutions as a result of changes to accounting rules.

New section 142.51 is part of a package of amendments involving also sections 12.5, 20.4 and 138 of the Act.

Definitions

ITA
142.51(1)

New subsection 142.51(1) of the Act contains definitions that apply for the purposes of section 142.51 and new subsections 142.5(8.1) and (8.2).

The definitions in subsection 142.51(1) apply to taxation years that begin after September 2006.

“base year”

The new definition “base year” in subsection 142.51(1) provides that the base year of a taxpayer is the taxpayer’s taxation year that immediately precedes its transition year. Certain amounts determined in respect of the taxpayer’s base year are relevant to determining the taxpayer’s transition amount, as described in greater detail below.

“transition amount”

The “transition amount” of a taxpayer for the taxpayer’s transition year is defined as the positive or negative amount determined by the formula A – B.

In applying the formula, element A is the total of all amounts each of which is the fair market value, at the end of the taxpayer’s base year, of a transition property of the taxpayer.

Element B is the total of all amounts each of which is the cost amount to the taxpayer, at the end of the taxpayer’s base year, of a transition property of the taxpayer.

“transition property”

A “transition property” of a taxpayer is defined as a property that

- was a specified debt obligation held by the taxpayer at the end of the taxpayer’s base year,
- was not a mark-to-market property of the taxpayer for the taxpayer’s base year, but would have been a mark-to-market property of the taxpayer for the taxpayer’s base year if the property had been carried at the property’s fair market value in the taxpayer’s balance sheet as at the end of each taxation year of the taxpayer that ends after the taxpayer last acquired the property (otherwise than by reason of a reacquisition under subsection 142.5(2)) and before the commencement of the taxpayer’s transition year, and
- was a mark-to-market property of the taxpayer for the transition year of the taxpayer.

“transition year”

The “transition year” of a taxpayer is defined as the taxpayer’s first taxation year that begins after September 2006.

Transition year income inclusion

ITA
142.51(2)

New subsection 142.51(2) of the Act provides that, if a taxpayer is a financial institution in its transition year, the taxpayer must include in computing its income, for its transition year, the absolute value of the negative amount, if any, of the taxpayer's transition amount for its transition year.

For further details, readers may refer to the commentary to the definition of "transition amount" and "transition property" in proposed subsection 142.51(1) of the Act.

New subsection 142.51(2) applies to taxation years that begin after September 2006.

Transition year income deduction

ITA
142.51(3)

New subsection 142.51(3) of the Act provides that, if a taxpayer is a financial institution in its transition year, the taxpayer must deduct in computing its income, for its transition year, the positive amount, if any, of its transition amount for its transition year.

For further details, readers may refer to the commentary to the definition of "transition amount" and "transition property" in proposed subsection 142.51(1) of the Act.

New subsection 142.51(3) applies to taxation years that begin after September 2006.

Transition year income inclusion reversal

ITA
142.51(4)

New subsection 142.51(4) of the Act provides that, where an amount has been included under subsection 142.51(2) of the Act in computing a taxpayer's income for its transition year, there is to be deducted in computing the taxpayer's income for each particular taxation year of the taxpayer that ends after the beginning of the transition year and in which the taxpayer is a financial institution, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount included under subsection 142.51(2) in computing the taxpayer's income for the transition year, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

New subsection 142.51(4) applies to taxation years that begin after September 2006.

Transition year income deduction reversal

ITA
142.51(5)

New subsection 142.51(5) of the Act provides that, where an amount has been deducted under subsection 142.51(3) of the Act in computing the taxpayer's income for its transition year, there is to be included in computing the taxpayer's income, for each particular taxation year of the taxpayer that ends after the beginning of the transition year and in which the taxpayer is a financial institution, the amount determined by the formula

$$A \times B/1825$$

where

A is the amount deducted under subsection 142.51(3) in computing the taxpayer's income for the transition year, and

B is the number of days in the particular taxation year that are before the day that is 1825 days after the first day of the transition year.

New subsection 142.51(5) applies to taxation years that begin after September 2006.

Winding-up

ITA
142.51(6)

New subsection 142.51(6) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

New subsection 142.51(6) provides that, where a taxpayer has (in a winding-up to which subsection 88(1) of the Act has applied) been wound-up into another corporation (the "parent"), and immediately after the winding-up the parent is a financial institution, in applying subsections 142.51(4) and (5) of the Act in computing the income of the taxpayer and that of the parent for particular taxation years that end on or after the first day (the "start day") on which assets of the taxpayer were distributed to the parent on the winding-up,

- the parent is, on and after the start day, deemed to be the same corporation as and a continuation of the taxpayer in respect of
  - any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act by the taxpayer in computing the taxpayer's income for its transition year,
  - any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the taxpayer's income for a taxation year of the taxpayer that begins before the start day, and
  - any amount that, in the absence of subsection 142.51(6) — and assuming that the taxpayer is a financial institution on each day (that is the start day or a subsequent day) that the parent is a financial institution — would be required to be deducted or included, in respect of days that are on or after the start day, under subsection 142.51(4) or (5) in computing the taxpayer's income for its transition year, and
- the taxpayer is, in respect of each of its particular taxation years, to determine the value for B in the formulas in subsections 142.51(4) and (5) without reference to the start day and days after the start day.

New subsection 142.51(6) applies to taxation years that begin after September 2006.

Amalgamations

ITA
142.51(7)

New subsection 142.51(7) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(7) provides that, where there is an amalgamation (within the meaning assigned by subsection 87(1) of the Act) of a taxpayer with one or more other corporations to form one corporation (referred to in this subsection as the "new corporation"), and immediately after the winding-up the new corporation is a financial institution, in applying subsections 142.51(4) and (5) of the Act in computing the income of the new corporation for particular taxation years of the new corporation that begin on or after the day on which the amalgamation occurred, the new corporation is, on and after that day, deemed to be the same corporation as and a continuation of the taxpayer in respect of

- any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the taxpayer's income for its transition year of the taxpayer,
- any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the taxpayer's income for a taxation year of the taxpayer that begins before the day on which the amalgamation occurred, and
- any amount that, in the absence of subsection 142.51(7) — and assuming that the taxpayer is a financial institution on each day (that is the day on which the amalgamation occurred or a subsequent day) that the new corporation is a financial institution — would be required to be included or deducted, in respect of any of those days, under subsection 142.51(4) or (5) in computing the taxpayer's income.

New subsection 142.51(7) applies to taxation years that begin after September 2006.

Transfer of business

ITA
142.51(8) and (9)

New subsections 142.51(8) and (9) of the Act are part of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(8) provides that subsection 142.51(9) applies if, at a particular time, a taxpayer (the "transferor") transfers, to a related corporation (the "transferee"), property in respect of a business carried on by the transferor in Canada (the "transferred business") and

- subsection 138(11.5) or (11.94) of the Act applies to the transfer, or
- subsection 85(1) of the Act applies to the transfer, the transfer includes all or substantially all of the property and liabilities of the transferred business and, immediately after the transfer, the transferee is a financial institution.

In these circumstances, subsection 142.51(9) provides that in respect of the transfer:

- the transferee is, at and after the particular time, deemed to be the same corporation as and a continuation of the transferor in respect of
  - any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the transferor's income for its transition year that can reasonably be attributed to the transferred business,
  - any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the transferor's income for a taxation year of the transferor that begins before the particular time that can reasonably be attributed to the transferred business, and

- any amount that — in the absence of subsection 142.51(9) and assuming that the transferor is a financial institution on each day (that includes that time or is a subsequent day) that the transferee is a financial institution — would be required to be deducted or included, under subsection 142.51(4) or (5) in computing the transferor's income that can reasonably be attributed to the transferred business, and

- in determining, in respect of the day that includes the particular time or any subsequent day, any amount that is required under subsection 142.51(4) or (5) to be deducted or included in computing the transferor's income for each particular taxation year from the transferred business, the description of A in the formulas in those subsections is deemed to be nil.

New subsections 142.51(8) and (9) apply to taxation years that begin after September 2006.

Transfer to new partnership

ITA
142.51(10)

New subsection 142.51(10) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(10) provides that, if subsection 98(6) of the Act deems a partnership (the "new partnership") to be a continuation of another partnership (the "predecessor partnership"), and at the time that is immediately after the predecessor partnership ceases to exist, the new partnership is a financial institution, in applying subsections 142.51(4) and (5) of the Act in computing the income of the new partnership for particular taxation years of the new partnership that begin on or after the day on which the new partnership comes into existence, the new partnership is, starting on that day, deemed to be the same partnership as and a continuation of the predecessor partnership in respect of

- any amount included under subsection 142.51(2) of the Act or deducted under subsection 142.51(3) of the Act in computing the predecessor partnership's income for its transition year,
- any amount deducted under subsection 142.51(4) or included under subsection 142.51(5) in computing the predecessor partnership's income for a taxation year of the predecessor partnership that begins before the day on which the new partnership comes into existence, and
- any amount that, in the absence of subsection 142.51(10) — and assuming that the predecessor partnership is a financial institution on each day (that is the day on which the new partnership comes into existence or a subsequent day) that the new partnership is a financial institution — would be required to be deducted or included, in respect of days that are on or after the day on which the new partnership comes into existence, under subsection 142.51(4) or (5) in computing the predecessor partnership's income.

New subsection 142.51(10) applies to taxation years that begin after September 2006.

Ceasing to carry on business

ITA
142.51(11)

New subsection 142.51(11) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(11) applies if at a particular time a taxpayer ceases to be a financial institution.

In these circumstances, the subsection requires that the taxpayer deduct, in computing its income for its taxation year that includes the time that is immediately before the particular time, the amount determined by the formula A-B. Element A of the formula is the amount included under subsection 142.51(2) of the Act in computing the taxpayer's income for its transition year. Element B of the formula is the total of all amounts each of which is an amount deducted under subsection 142.51(4) of the Act in computing the income of the taxpayer for a taxation year that began before the particular time.

The subsection can also apply, where a taxpayer ceases at a particular time to be a financial institution, to require the taxpayer to include in computing its income for the taxation year of the taxpayer that includes the time that is immediately before the particular time the amount determined by the formula C – D. Element C of this formula is the amount deducted under subsection 142.51(3) of the Act in computing the taxpayer's income for its transition year. Element D of the formula is the total of all amounts each of which is an amount included under subsection 142.51(5) of the Act in computing the taxpayer's income for a taxation year that began before the particular time.

Readers may also refer to also the commentary for subsection 142.51(12) of the Act.

New subsection 142.51(11) applies to taxation years that begin after September 2006.

Ceasing to carry on business

ITA
142.51(12)

New subsection 142.51(12) of the Act is one of a series of special rules contained in subsections 142.51(6) to (12) that provide for the appropriate treatment of a taxpayer's transition amounts in circumstances in which the taxpayer or its business, as the case may be, has been transferred, reorganized or ended.

Subsection 142.51(12) provides that, where at any time a taxpayer that carried on a business ceases to exist (otherwise than as a result of a merger to which subsection 87(2) of the Act applies, a winding-up to which subsection 88(1) of the Act applies or a continuation to which subsection 98(6) of the Act applies), for the purposes of subsection 142.51(11) of the Act, the taxpayer is deemed to have ceased to be a financial institution at the earlier of

- the time (determined without reference to this subsection) at which the taxpayer ceased to be a financial institution, and
- the time that is immediately before the end of the last taxation year of the taxpayer that ended at or before the time at which the taxpayer ceased to exist.

New subsection 142.51(12) applies to taxation years that begin after September 2006.

Clause 41

Securities held by financial institutions

ITA
142.6

Section 142.6 of the Act contains rules dealing with special situations involving securities held by financial institutions.

Change in status — prescribed payment card corporation share

ITA
142.6(1.4)

New subsection 142.6(1.4) of the Act applies where a property ceases, at a particular time in a taxation year of a taxpayer that is a financial institution for the year, to be a prescribed payment card corporation share of the taxpayer and, as a result, becomes mark-to-market property of the taxpayer for the taxation year. In these circumstances, subsection 142.6(1.4) deems the taxpayer

- to have disposed of the property (this being a disposition to which subsection 142.5(1) of the Act does not apply) immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, and
- to have acquired the property, at the particular time, at a cost equal to those proceeds,

New subsection 142.6(1.4) applies to taxation years that begin after February 24, 1994.

Change in status — prescribed securities exchange investment

ITA
142.6(1.5)

New subsection 142.6(1.5) of the Act applies where a property ceases, at a particular time in a taxation year of a taxpayer that is a financial institution for the year, to be a prescribed securities exchange investment of a taxpayer and, as a result, becomes mark-to-market property of the taxpayer for the taxation year.

In these circumstances, subsection 142.6(1.5) deems the taxpayer

- to have disposed of the property (this being a disposition to which subsection 142.5(1) of the Act does not apply) immediately before the particular time for proceeds of disposition equal to its fair market value immediately before the particular time, and
- to have acquired the property, at the particular time, at a cost equal to those proceeds,

New subsection 142.6(1.5) applies for taxation years that begin after 1998.

Change in status — significant interest

ITA
142.6(1.6)

New subsection 142.6(1.6) of the Act applies if, at the end of a particular taxation year of a taxpayer that is a financial institution for the year, a taxpayer holds a share of the capital stock of a corporation, the taxpayer has a significant interest in that corporation at any time in that taxation year, and the share is mark-to-market property of the taxpayer for the immediately following taxation year.

In these circumstances, subsection 142.6(1.6) deems the taxpayer to have

- disposed of the share immediately before the end of the particular taxation year for proceeds equal to the share’s fair market value immediately before the end of the particular taxation year, and
- acquired the share at the end of the particular taxation year at a cost equal to those proceeds.

New subsection 142.6(1.6) applies for taxation years that begin after September 2006.

Deemed disposition not applicable

ITA
142.6(2)

Subsection 142.6(2) of the Act provides that, for the purposes of the Act, a deemed disposition and reacquisition of a share under certain rules relating to securities held by financial institutions does not affect the time at which a taxpayer is considered to have acquired the share.

Subsection 142.6(2) is amended to add a reference to new subsections 142.6(1.4), (1.5) and (1.6).

This amendment applies to taxation years that begin after September 2006.

Clause 42

Registered Retirement Savings Plans

ITA
146(1)

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

"earned income"

The definition "earned income" is relevant in determining the maximum tax-deductible contributions that a taxpayer may make to Registered Retirement Savings Plans. Paragraph (*b*) of the definition is amended to ensure that amounts received under the *Wage Earner Protection Program Act* (WEPP) is included in the determination of "earned income". For further information regarding the WEPP, readers may refer to the commentary on paragraph 56(1)(*r*). This amendment applies to the 2008 and subsequent taxation years.

Paragraph (*b*) is also amended to remove references of provisions that have previously been repealed and to update references to provisions that have been re-numbered . This amendment applies to the 1997 and subsequent taxation years.

"unused RRSP deduction room"

The "unused RRSP deduction room" of a taxpayer measures the amount of deduction room for RRSP contributions that an individual may carry forward from one year to use in future years.

Variable D of the formula included in the definition describes certain amounts which reduce unused RRSP deduction room. Variable D is amended, consequential on the anticipated entry into effect of the Fifth Protocol to the Canada-United States Tax Convention. Amended variable D includes amounts deducted by the taxpayer in computing the taxpayer's taxable income for the year under new paragraph 10 of Article XVIII of the Convention (or a similar provision in another tax treaty). Under new paragraph 11 of Article XVIII of the Convention, which is being introduced as part of the Fifth Protocol, a Canadian resident who works in the U.S. may deduct contributions made to a U.S. pension plan under certain circumstances, but only to the extent of the taxpayer's RRSP deduction limit. New paragraph 11 also provides for a reduction of the taxpayer's unused RRSP deduction room by the amount deducted. The amendment to variable D effects that reduction.

This amendment applies for taxation years that begin after the calendar year in which the Protocol enters into force.

Clause 43

Tax-Free Savings Accounts

ITA
146.2

Section 146.2 of the Act provides rules relating to tax-free savings accounts (TFSAs). Several amendments are being made to section 146.2 to respond to issues identified after the introduction of S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*), which contained the original legislation to implement TFSAs. These amendments are discussed in the commentary below.

Consequential to these amendments, subsections 146.2(3) to (6) are renumbered as subsections 146.2(5) to (8) and subsections 146.2(7) to (9) are renumbered as subsections 146.2(10) to (12). References in these notes are to the subsections as renumbered. For ease of reference, the effects of the renumbering are outlined in the following Table of Concordance.

Former 146.2 Subsection	New 146.2 Subsection
(1) Definitions	(1) Definitions
(2) Qualifying arrangement conditions	(2) Qualifying arrangement conditions
	(3) Paragraphs (2)(*a*), (*b*) and (*e*) not applicable
	(4) Using TFSA interest as security for a loan
(3) TFSA	(5) TFSA
(4) Trust not taxable	(6) Trust not taxable
(5) Amount credited to a deposit	(7) Amount credited to a deposit
(6) Trust ceasing to be a TFSA	(8) Trust ceasing to be a TFSA
	(9) Trust ceasing to be a TFSA on death of holder
(7) Annuity contract ceasing to be a TFSA	(10) Annuity contract ceasing to be a TFSA
(8) Deposit ceasing to be a TFSA	(11) Deposit ceasing to be a TFSA
(9) Arrangement is TFSA only	(12) Arrangement is TFSA only
	(13) Regulations

The amendments to section 146.2 apply to the 2009 and subsequent taxation years.

Definitions

ITA
146.2(1)

“qualifying arrangement”

The definition “qualifying arrangement” in subsection 146.2(1) of the Act is relevant primarily for subsection 146.2(5) of the Act. Under that subsection, an arrangement can become a tax-free savings account (TFSA) only if it is a qualifying arrangement at the time it is entered into, and ceases to be a TFSA if it subsequently ceases to be a qualifying arrangement.

An annuity contract with a licensed annuities provider is one of the three types of qualifying arrangements. To qualify, subparagraph (*b*)(ii) of the definition requires that the annuity contract not be adjoined to another contract or arrangement. This condition was intended to preclude contracts commonly referred to as "split dollar" arrangements due to potential concerns about shared-ownership and cross-subsidization between arrangements. However, this condition may have overly broad effects in some instances.

Given that the policy concerns that the condition was intended to address are generally addressed by other provisions in section 146.2 and Part XI.01 of the Act, subparagraph (*b*)(ii) is amended to eliminate this condition.

Using TFSA interest as security for a loan

ITA
146.2(3) and (4)

New subsections 146.2(3) and (4) of the Act are introduced to clarify that none of the rules in paragraphs 146.2(2)(*a*), (*b*) and (*e*) of the Act apply to prevent the holder of a tax-free savings account (TFSA) from using his or her interest in the TFSA as security for a loan or other indebtedness. To guard against the "sale" or "rental" of TFSA contribution room, the relief conferred by these subsections will apply only if the debt agreement is on arm's length terms and it is reasonable to conclude that none of its main purposes is to enable another person or partnership to benefit from the exemption from tax provided in respect of the TFSA.

TFSA

ITA
146.2(5)

Subsection 146.2(5) of the Act describes the circumstances under which an arrangement becomes, and ceases to be, a tax-free savings account (TFSA). One of the conditions that must be met for an arrangement to be considered to be a TFSA is that, on or before the 60th day after the year in which the arrangement was entered into, the issuer file with the Minister an election (in prescribed form and manner) to register the arrangement as a TFSA.

Subsection 146.2(5) is amended in two respects. First, the filing deadline for the election is changed to the last day of February of the year following the year in which the arrangement is entered into. This corresponds to the filing deadline for the TFSA annual information return required under new subsection 223(1) of the *Income Tax Regulations*. It is expected that the filing of the first information return for a TFSA will constitute a valid election, provided that the return is filed on time. Second, subsection 146.2(5) is amended to clarify the precise timing as to when an arrangement ceases to be a TFSA.

Trust ceasing to be a TFSA on death of holder

ITA
146.2(9)

Subsection 146.2(5) of the Act provides that an arrangement ceases to be a tax-free savings account (TFSA), and thus loses its tax-exempt status, on the death of the last holder of the TFSA. In the case of a trusteed arrangement, subsection 146.2(8) of the Act treats the trust as having disposed of and reacquired all of its property for the property's fair market value (FMV). This ensures that the trust is taxed only on income accruing after the holder's death, and that capital gains and losses arising from any subsequent dispositions of property reflect only increases or decreases in value occurring after the holder's death.

New subsection 146.2(9) is introduced to prevent this treatment of trusteed TFSAs from causing undue administrative and reporting difficulties. The new subsection provides several rules that modify the tax treatment of trusteed TFSAs on the death of the holder, and bring the tax treatment of trusteed TFSAs into closer alignment with the tax treatment of trusteed RRSPs on the death of the annuitant.

New paragraph 146.2(9)(*a*) deems the trusteed arrangement to continue to be a TFSA for specified provisions of the Act and Regulations. (For all other purposes, it is no longer a TFSA.) The main effect of this deeming rule is to allow the trust to continue to maintain its tax-exempt status under subsection 146.2(6) of the Act until the end of the year following the year in which the holder dies. If it is still in existence at the beginning of the second year following the holder's death, the trust will become taxable from that point forward and, by virtue of subsection 146.2(8) of the Act, will be treated as having disposed of, and reacquired, its property for its FMV at that time.

New paragraph 146.2(9)(*b*) requires that any payments made from the trust during the exempt period in full or partial satisfaction of a taxpayer's beneficial interest in the trust be included in the taxpayer's income for the year of receipt, except to the extent designated by the trust as being attributable to the FMV of the TFSA at death. In other words, to the extent that the payment represents the distribution of income earned on, or appreciation in the value of, the trust's property during the exempt period, that amount will be included in the taxpayer's income. As with RRSPs, there are no specific rules in the Act for the trust to follow in determining the extent to which any given payment made following the death of the TFSA holder is attributable to post-death income or appreciation in value. The only constraint imposed on the trust is that the total amounts designated as being non-taxable cannot exceed the FMV of the trust's assets at death.

New paragraph 12(1)(*z.5*) of the Act requires that the income inclusion determined under paragraph 146.2(9)(*b*) be included in the determining the taxpayer's income from property. With the exception of payments to non-residents, there is no requirement for the issuer to withhold tax on the payments.

New paragraph 146.2(9)(*c*) is relevant only if the trust continues to exist after the end of the exempt period. It provides that the trust is required to include in its income for its first taxable year any post-death exempt period income or appreciation that was not paid out during the exempt period. Paragraph 12(1)(*z.5*) requires this amount to be included in the trust's income as income from property, which may be flowed out to the beneficiaries of the trust under regular trust taxation rules.

Regulations

ITA
146.2(13)

New subsection 146.2(13) of the Act allows the Governor in Council to make regulations requiring issuers to file information returns relating to tax-free savings accounts (TFSAs). In this regard, new subsection 223(1) of the Regulations requires TFSA issuers to file annual information returns. For further details, refer to the commentary on that subsection below.

Clause 44

Registered Retirement Income Funds

ITA
146.3

Section 146.3 of the Act contains the rules governing registered retirement income funds (RRIFs).

ITA
146.3(1.1)

Section 146.3 requires that payments be made each year from a RRIF that are not less than the minimum amount for the RRIF for the year. The minimum amount is defined in subsection 146.3(1), and is generally the fair market value of the fund's assets at the beginning of the year multiplied by an age-based factor set out in the Income Tax Regulations.

New subsection 146.3(1.1) provides that the minimum amount for a RRIF for 2008 is reduced by 25%.

ITA
146.3(1.2)

New subsection 146.3(1.2) provides that the unreduced minimum amount for 2008 (i.e. before applying the 25% reduction provided for by new subsection 146.3(1.1)) continues to apply for certain limited relieving purposes. Specifically, the unreduced minimum amount will apply for the purposes of

- the exemption from withholding tax on RRIF withdrawals up to the minimum amount;
- the spousal attribution rules; and
- non-resident withholding taxes.

These amendments apply on Royal Assent.

Clause 45

Charities

ITA
149.1(1)

Section 149.1 of the Act provides the rules that must be met for charities to obtain and keep registered charity status. Budget 2007 introduced an excess corporate holdings regime for private foundations that requires a private foundation to divest itself of excessive shareholdings in corporations.

The definitions in subsection 149.1(1) of the Act apply for the purposes of sections 149.1 and 149.2 and Part V of the Act. Certain definitions in subsection 149.1(1) are amended or replaced concurrently with amendments to section 149.2, generally to provide an exception in respect of certain shares, not listed on a designated stock exchange, acquired by a private foundation before March 19, 2007.

These amendments to subsection 149.1(1) apply after March 18, 2007.

"divestment obligation percentage"

The "divestment obligation percentage" of a private foundation for a taxation year generally represents the percentage of outstanding shares of a class of the capital stock of a corporation that must be divested by the private foundation before the end of the year in order to avoid the application of a penalty under subsection 188.1(3.1) of the Act. The definition is amended to provide that the percentage otherwise determined cannot be greater than the amount by which the percentage of shares of a class that are held by the foundation exceeds the "exempt shares percentage" of the foundation. As such, a foundation is not required in a taxation year to divest of corporate shares if, at the end of the year, the foundation holds no shares other than exempt shares.

For more information, readers may refer to the commentary for the definitions "exempt shares" and "exempt shares percentage".

“entrusted shares percentage”

Where a private foundation has an entrusted shares percentage greater than 20 per cent, the excess corporate holdings percentage is calculated by using the entrusted shares percentage instead of the 20 per cent threshold. Entrusted shares are shares of a class of the capital stock of a corporation, held by a foundation at a particular time, that were acquired (generally before March 19, 2007) by way of a gift that is subject to a trust or direction that the foundation may not dispose of them before that time.

The definition “entrusted shares percentage” is repealed and replaced with paragraph (*a*) of the new definition “exempt shares”, which applies for the purpose of the new definition of the “exempt shares percentage” of a private foundation. For more information, readers may refer to the commentary for those definitions.

“equity percentage”

The new definition “equity percentage” applies for the purpose of the new definition of “exempt shares”. Generally, the excess corporate holdings regime does not require a private foundation to divest of exempt shares that it held on March 19, 2007. Such exempt shares may include corporate shares that are not listed on a designated stock exchange: however, an exception is unlisted shares of a corporation that holds an equity percentage in a public corporation.

In this regard, “equity percentage” has, subject to subsection 149.2(2.1), the same meaning as defined in subsection 95(4) of the Act. However, for the purpose of identifying exempt shares under the excess corporate holdings regime, it is not necessary to calculate the amount of the percentage: rather, it is only necessary to determine that the percentage would be greater than zero.

It is thus sufficient to know that a particular corporation (some unlisted shares of which are held by the private foundation) holds either directly or indirectly through its shareholdings in another corporation an interest in the shares of a public corporation. If this is the case, then the particular corporation will have an equity percentage in the public corporation.

For this purpose, new subsection 149.2(2.1) of the Act generally treats a right to acquire shares, or to control voting rights in respect of shares, as an interest in the shares.

For more information, readers may refer to the commentary for subsection 149.2(2) and to the example under the commentary for the definition “exempt shares”.

“exempt shares”

The new definition “exempt shares” applies for the purpose of the new definition of “exempt shares percentage” of a private foundation. In general, under the excess corporate holdings regime, no obligation is imposed on a private foundation to divest of shares, previously described as “entrusted shares”, that were

- donated to the foundation before March 19, 2007 and that are subject to a condition that they be retained by the foundation; or
- donated on or after March 19, 2007 and before March 19, 2012, pursuant to the terms of a will signed, or an inter vivos trust settled, before March 19, 2007 that included such a condition and that was not amended after that date.

The new definition of exempt shares also includes shares acquired by a private foundation in exchange for other shares that were exempt shares. For more information, readers may refer to the commentary for the definition of “substituted shares”.

Further, exempt shares include certain shares held by a private foundation as of March 18, 2007 that are not listed on a designated stock exchange (“unlisted shares”). This exemption does not, however, extend to unlisted shares in a particular corporation through which the foundation has, directly or indirectly, an interest in shares of a public corporation. More specifically, unlisted shares in a particular corporation held by the foundation will not be exempt if

1. the particular corporation has an “equity percentage” in the shares of a public corporation (discussed further below); and
2. the particular corporation, or a third corporation through which the particular corporation indirectly holds its equity percentage in the public corporation, is controlled by relevant persons in respect of the foundation or by the foundation alone or together with relevant persons;

unless

3. the foundation, even if it held directly the shares of the public corporation that give rise to the equity interest, would not have an excess corporation holdings percentage in respect of the class of those public corporation shares; or
4. the foundation, alone or together with any controlled corporation referred to in no.2 above, holds no more than 2% of all the issued and outstanding shares of that class of the public corporation.

Unlisted shares that are not exempt shares, and all listed shares, held on March 18, 2007 are subject to the transitional excess corporate holdings rules in subsection 149.2(8) of the Act.

An “equity percentage” of a particular corporation in the shares of a public corporation is, in general, an interest held directly or indirectly through its shareholdings in another corporation. For further detail, readers may refer to the commentary on the definitions “equity percentage”. A “relevant person” in respect of a private foundation is defined in subsection 149.1(1) of the Act, and is generally a person that does not deal at arm’s length with the private foundation.

Example 1 – direct interest of corporation

Mr. X is the sole trustee of the X Family Foundation. On March 18, 2007, the X Family Foundation held 48% of the voting shares of X Corporation, a private corporation of which Mr. X owned the other 52% of the voting shares.

On November 1, 2008, X Corporation acquired 16% of the Class A shares of PubCo, a public corporation, and the X Family Foundation purchased 5% of the same class of shares. None of these shareholdings had changed as of December 31, 2008.

The X Family Foundation must determine whether, on December 31, 2008, its unlisted shares in X Corporation are exempt from the excess corporate holdings regime or, in the alternative, are subject to the transitional rules that apply to corporate shares held by a private foundation on March 18, 2007.

- *X Corporation has an equity percentage in PubCo, because it holds shares in PubCo. It is not necessary to calculate the amount of the equity percentage.*
- *The X Family Foundation does not control X Corporation (the owner of the PubCo shares), but X Corporation is controlled by Mr. X, who is a relevant person in respect of the X Family Foundation because he controls the foundation.*
- *The X Family Foundation, if it held the PubCo Class A shares itself, would hold 21% of that class of shares, and therefore would have an “excess holdings percentage” in respect of those shares of 1% (calculated without reference to the transitional rules).*

- *The X Family Foundation, together with X Corporation (the "controlled corporation"), holds more than 2% of the PubCo Class A shares.*

Even though the X Family Foundation's shares of X Corporation were acquired before March 19, 2007, they are not "exempt shares" as of December 31, 2008 because on that date X Corporation (being a corporation controlled by a relevant person, Mr. X) has an interest in a public corporation.

Example 2 – indirect interest of corporation

As with Example 1, Mr. X is the sole trustee of the X Family Foundation. On March 18, 2007, the X Family Foundation held 48% of the voting shares of Y Corporation, a private corporation of which Mr. X owned the other 52% of the voting shares.

On July 1, 2008, Y Corporation purchased 25% of the voting shares of AA Corporation, a private corporation of which Mrs. X (spouse of Mr. X) held the other 75%.

On November 1, 2008, AA Corporation acquired 16% of the Class A shares of PubCo, a public corporation, and the X Family Foundation purchased 5% of the same class of shares. None of these shareholdings had changed as of December 31, 2008.

The X Family Foundation must determine whether, on December 31, 2008, its unlisted shares in Y Corporation are exempt from the excess corporate holdings regime or, in the alternative, are subject to the transitional rules that apply to corporate shares held by a private foundation on March 18, 2007.

- *Y Corporation has an equity percentage in PubCo, because it holds shares of AA Corporation, which in turn holds shares in PubCo. It is not necessary to calculate the amount of the equity percentage.*
- *The X Family Foundation does not control A Corporation (the owner of the PubCo shares). But AA Corporation is controlled by Mrs. X, who is a relevant person in respect of the X Family Foundation because she is related to Mr. X, who controls the foundation.*
- *The X Family Foundation, if it held the PubCo Class A shares itself, would hold 21% of that class of shares, and therefore have an "excess holdings percentage" in respect of those shares of 1% (calculated without reference to the transitional rules).*
- *The X Family Foundation, together with AA Corporation (the "controlled corporation"), holds more than 2% of the PubCo Class A shares.*

Even though the X Family Foundation shares of Y Corporation were acquired before March 19, 2007, they are not "exempt shares" as of December 31, 2008 because on that date Y Corporation has an indirect interest in a public corporation, via its interest in AA Corporation (being a corporation controlled by a relevant person).

Example 3– no excess holdings percentage

Assume that, in Example 2, AA Corporation had acquired only a 12% interest in Pubco. The Y Corporation shares held by the foundation would remain exempt shares, because the combined shareholdings in PubCo of the foundation, relevant persons and AA Corporation would be only 17%. That is, the foundation would not, even if it owned all those shares directly, have an excess (over 20%) holdings percentage.

“exempt shares percentage”

The new definition “exempt shares percentage” of a private foundation applies for the purpose of calculating the “divestment obligation percentage” of a private foundation, as defined in subsection 149.1(1) of the Act. The exempt shares percentage of a private foundation is the percentage of issued and outstanding shares of a corporation that are exempt shares held by the foundation. A private foundation may cease to have an exempt shares percentage if shares that it holds cease to be exempt shares. Similarly, a private foundation may commence to have an exempt shares percentage if unlisted shares that it held on March 18, 2007 have ceased to be exempt shares as defined in subsection 149.1(1).

If a private foundation holds identical shares of a class of capital stock of a corporation, some of which were held on March 18, 2007, and others of which were acquired after that day, the disposition of some shares is considered not to reduce the exempt shares percentage except to the extent that the number disposed of exceeds the number of shares acquired after March 18, 2007. However, where exempt shares are disposed of, a later acquisition of identical shares will not restore the foundation’s exempt shares percentage.

For more information, readers may refer to the commentary for the definitions “divestment obligation percentage” and “exempt shares”.

“substituted shares”

The new definition “substituted shares” applies for the purpose of the definition of “exempt shares”. In general, certain shares acquired by a private foundation in exchange for exempt shares will themselves be exempt. The new shares must be acquired in the course of a transaction to which section 51, subsection 85.1(1), or section 86 or 87 of the Act applies.

Information may be communicated

ITA
149.1(15)

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

New paragraph 149.1(15)(*d*) of the Act is added concurrently with the introduction of prescribed conditions, referred to in paragraph 110.1(8)(*e*) of the Act, in respect of a registered charity that receives gifts of medicines for which a deduction is available to a corporation under paragraph 110.1(1)(*a.1*) of the Act. Upon Royal Assent, new paragraph 149.1(15)(*d*) provides authority to the Minister of National Revenue or the Minister for International Cooperation to make available to the public a list of registered charities in respect of which an opinion has been formed under paragraph 110.1(8)(*e*) or revoked under subsection 110.1(9) of the Act.

Clause 46

Excess corporate holdings – private foundations

ITA
149.2

Section 149.2 of the Act includes some of the rules relevant to the excess corporate holdings regime in respect of private foundations, such as for the calculation of the divestment obligation percentages of a private foundation in respect of its excess holdings of the shares of the capital stock of a corporation.

Ownership

ITA
149.2(2.1)

New subsection 149.2(2.1) of the Act applies for the purposes of the definition “equity percentage” in subsection 149.1(1) of the Act, applicable after March 18, 2007. That definition applies for the purpose of determining whether certain shares, held by a private foundation on March 18, 2007, are exempt from divestment under the excess corporate holdings regime.

In general, a particular corporation has an equity percentage in another corporation if the particular corporation has an interest in the shares of the other corporation (held either directly or indirectly through the particular corporation’s shareholdings in a third, intermediary corporation). For example, if the particular corporation owns shares in a second corporation, which in turn owns shares in a public corporation, then the particular corporation has an equity interest in the public corporation.

Subsection 149.2(2.1) extends this definition such that a “right under a contract” described in paragraph 251(5)(*b*) of the Act will be considered to represent ownership of shares. Such a right under a contract could include, for instance, a right to acquire shares or to control the voting rights of shares, a right to cause a corporation to redeem, acquire or cancel the shares of another shareholder, or a right to cause a reduction to the voting rights of another shareholder.

As such, in the example described above, if the second corporation held a right to control the voting rights of shares in the public corporation, rather than the shares themselves, the particular corporation would still have an equity interest in the public corporation.

Shares held through a trust on March 18, 2007

ITA
149.2(9) to (11)

New subsections 149.2(9) to (11) of the Act apply for the purpose of the excess corporate holdings regime for private foundations. These provisions attribute to a foundation, in certain circumstances, shares held by a trust on March 18, 2007.

New subsection 149.2(10) deems a foundation to own shares held by a trust on March 18, 2007, in proportion to the value of the foundation’s proportionate interest in the trust, where the following conditions in subsection 149.2(9) are met:

- the foundation is the sole trustee of the trust; or
- the foundation is a “majority interest beneficiary” (as that term is defined in subsection 251.1(3) of the Act) of the trust, and a majority of the trustees of the trust consist of the foundation and relevant persons in respect of the foundation.

Where the foundation is deemed to hold shares that meet the conditions of the definition “exempt shares” in subsection 149.1(1) of the Act, the foundation may not, as a consequence, have a divestment obligation in respect of those shares.

For the purpose of simplifying the valuation of a foundation’s interest in a discretionary trust, subsection 149.2(11) removes the significance of a person exercising, or failing to exercise, a discretionary power in respect of the allocation of income or capital of the trust.

These amendments apply for taxation years of private foundations that begin on or after February 26, 2008.

Allocation of net increase in excess corporation holdings percentage

ITA
149.2(5)(*b*) and (*c*)

Subsection 149.2(5) of the Act allocates the increase, in a taxation year, in a private foundation's "excess corporation holdings percentage" in respect of corporate shares. The increase is allocated to the divestment obligation percentage for a taxation year in accordance with the manner in which the foundation acquired shares of that class.

The divestment obligation percentage is effectively a "pool" of acquisitions of the current year or prior years.

Subsection 149.2(5) is amended to provide a relieving technical amendment that applies to registered charities that were private foundations on March 19, 2007. In applying paragraphs 149.2(5)(*b*) and (*c*) of the Act to the first taxation year of the foundation that begins after that date, the phrase "in the current year" in those paragraphs is to be read as the phrase "in the period that begins on March 18, 2007 and ends at the end of the current year".

This amendment ensures that longer divestment periods for bequests and arm's length gifts of shares are retained for shares acquired by the foundation in the "stub period" from March 18, 2007 to the end of the taxation year of the foundation that includes that date.

Clause 47

Assessment

ITA
152

Section 152 of the *Income Tax Act* contains rules relating to assessments (including reassessments) of tax, interest and penalties payable by a taxpayer.

Assessment and reassessment – limitation period

ITA
152(4)

Subsection 152(4) of the Act generally provides that the Minister of National Revenue may not reassess tax payable by a taxpayer for a taxation year after the normal reassessment period for the taxpayer in respect of the year unless certain conditions described in paragraph 152(4)(*a*) or (*b*) have been met.

Subsection 152(4) is amended by adding new paragraph (*c*), consequential on the *Canada-Ontario Memorandum of Agreement Concerning a Single Administration of Ontario Corporate Tax*. New paragraph (*c*) provides for an extension of the normal reassessment period to one year after the later of two dates. These two dates are the day on which the Minister is advised of a provincial reassessment and the day that is 90 days after the mailing of a provincial reassessment notice.

"Provincial reassessment" is used in new paragraph 152(4)(*c*) to refer to a specific type of assessment or reassessment. Generally, a provincial reassessment is an assessment, reassessment or additional assessment of tax payable by a corporation for a taxation year under the law of a province that imposes a corporate income tax, where that assessment or reassessment is made because of a change in the allocation of the corporation's taxable income earned in a province.

This amendment applies on Royal Assent.

Extended reassessment period

ITA
152(6.2)

New subsection 152(6.2) of the Act requires that the Minister of National Revenue reassess a taxpayer's tax for a particular taxation year, in order to take into account the application of paragraph (*d*) of the definition "excluded property" in subsection 142.2(1), or the application of subsection 142.6(1.6), in respect of shares held by the taxpayer in the particular taxation year, if

- the taxpayer has filed for the particular taxation year the return of income required by section 150, and
- the taxpayer has filed with the Minister, on or before the filing-due date of the taxpayer's relevant taxation year, a prescribed form amending the return.

For this purpose, the taxpayer's relevant taxation year is, if the filing is in respect of paragraph (*d*) of the definition "excluded property", the year that includes the acquisition of control time referred to in that paragraph, and if the filing is in respect of the subsection 142.6(1.6), the year that immediately follows the particular taxation year.

This change applies for taxation years that begin after 2001. However, for taxation years that began before October 1, 2006, the reference to "paragraph (*d*) of the definition of excluded property" is to be read as a reference to "paragraph (*d.3*) of the definition of mark-to-market property".

Clause 48

Large corporations

ITA
181.3

Section 181.3 of the Act provides rules for determining the capital, taxable capital, taxable capital employed in Canada and investment allowance of a financial institution (as defined in subsection 181(1) of the Act) for the purposes of the former large corporation tax.

Taxable capital employed in Canada of financial institution

ITA
181.3(1)(*c*)(ii)(B)

Subsection 181.3(1) of the Act provides the rules for determining the amount of a financial institution's "taxable capital employed in Canada" for the purposes of the former large corporation tax in Part I.3. Although that tax no longer applies, various aspects of its calculation are used for other purposes under the Act.

In the case of an insurance corporation ("insurer"), a "reserve adjustment" under clause 181.3(1)(*c*)(ii)(B) is added to taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in clause 181.3(1)(*c*)(ii)(B) no longer being necessary. Accordingly it is repealed applicable to taxation years that begin after September 2006.

Clause 49

Charities – penalties

ITA
188.1

Section 188.1 of the Act applies penalties to charities. The penalties generally apply in respect of activities that charities are not permitted to undertake.

Foundation – anti-avoidance

ITA
188.1(3.2)(*c*)
188.1(3.3) to (3.5)

Subsection 188.1(3.2) of the Act is an anti-avoidance rule that addresses any attempt by a private foundation to circumvent the reporting and divestment obligation requirements of the excess corporate holdings regime.

New subsections 188.1(3.3) to (3.5) of the Act add an anti-avoidance provision in respect of the indirect holding by a private foundation or relevant person, though an interest in a trust, of shares or certain other interests in a corporation. Subsection 188.1(3.5) deems a foundation (or, in some circumstances, a relevant person in respect of the foundation) to own shares that are actually held by a trust, in proportion to the value of the foundation's proportionate interest in the trust, where the following conditions in subsection 188.1(3.3) are met:

- the private foundation or relevant person (each of which is referred to as an "insider") is a beneficiary under the trust;
- it may reasonably be considered that one of the purposes of the establishment of a trust is to hold or acquire shares or other interests or rights in a corporation; and
- the private foundation would have a divestment obligation in respect of the particular class of shares if the private foundation held (in addition to any shares of the class that it actually owns) the shares (or deemed shares – see below) that are owned by the trust.

In this regard, where the trust owns an interest, other than shares, in a corporation, and that interest is associated with a "right under a contract" in respect of shares described in paragraph 251(5)(*b*) of the Act, the trust is deemed by paragraph 188.1(3.4)(*a*) to own shares of the same class that correspond to the value of the actual non-share interest in the corporation. Such a right under a contract could include, for instance, a right to acquire shares or to control the voting rights of shares, a right to cause a corporation to redeem, acquire or cancel the shares of another shareholder, or a right to cause a reduction to the voting rights of another shareholder.

For the purpose of simplifying the valuation of a foundation's interest in a discretionary trust, paragraph 188.1(3.4)(*b*) removes the significance of a person exercising, or failing to exercise, a discretionary power in respect of the allocation of income or capital of the trust.

Paragraph 188.1(3.2)(*c*) is amended to clarify that the fair market value of a share deemed to be issued by a corporation under this subsection is determined as that of an actual share and without reference to this subsection. This amendment is made concurrently with the inclusion of identical language in new paragraph 188.1(3.5)(*c*).

These amendments apply to taxation years of private foundations that begin on or after February 26, 2008.

Clause 50

Tax on Capital of Financial Institutions
Part VI

Taxable capital employed in Canada

ITA
190.11

Section 190.11 of the Act contains rules for determining the taxable capital employed in Canada by a resident life insurance corporation for the purposes of Part VI of the Act.

Life insurer

ITA
190.11(*b*)(ii)

In the case of a life insurance corporation that was resident throughout the year, a "reserve adjustment" under subparagraph 190.11(*b*)(ii) is added to taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in subparagraph 190.11(*b*)(ii) no longer being necessary. Accordingly it is repealed applicable to taxation years that begin after September 2006.

Clause 51

Tax on Capital of Financial Institutions
Part VI

Capital

ITA
190.13

Section 190.13 of the Act contains rules for determining the taxable capital employed in Canada by a financial institution for the purposes of Part VI of the Act.

Non-resident life insurer

ITA
190.13(*c*)(iv)

In the case of a life insurance corporation that was non-resident throughout the year, a "reserve adjustment" under subparagraph 190.13(*c*)(iv) is added to taxable capital employed in Canada.

The demutualization of the insurance industry in Canada has resulted in subparagraph 190.13(*c*)(iv) no longer being necessary. Accordingly it is repealed applicable to taxation years that begin after September 2006.

Clause 52

SIFT partnerships

ITA
197

Section 197 of the Act applies a tax on certain earnings of a SIFT partnership.

Definitions

ITA
197(1)

"SIFT partnership"

A "SIFT partnership", being a specified flow-through investment partnership, for a taxation year means a Canadian resident partnership if, at any time in the taxation year, the partnership holds non-portfolio property and its securities are listed on a stock exchange or other public market.

The definition is amended to exclude from treatment as a SIFT partnership for a taxation year an entity that is an excluded subsidiary entity for the taxation year. For more information, readers may refer to the commentary on the new definition "excluded subsidiary entity" in subsection 122.1(1).

This amendment comes into force on October 31, 2006.

SIFT transitional rules

ITA
197(8)

Subsection 197(8) of the Act limits the application of the definition "SIFT partnership" in subsection (1) for the 2007 to 2010 taxation years. Where a partnership (in this commentary referred to as a "transitional SIFT") would, under the text of that definition, be a SIFT partnership on October 31, 2006, subsection 197(8) provides that the SIFT partnership definition will not apply until the earlier of the partnership's 2011 taxation year or the taxation year in which it exceeds certain normal growth guidelines issued by the Department of Finance on December 15, 2006 (unless that excess arose as a result of a prescribed transaction).

For this purpose, the normal growth guidelines set the maximum growth from November 2006 to December 2010 as the greater of $50 million and a safe harbour amount. That safe harbour amount is measured with respect to the transitional SIFT's market capitalization on October 31, 2006 and is staged as follows: 40% for Nov 2006 – Dec 2007; 20% for 2008; 20% for 2009; and 20% for 2010. These percentages are cumulative (the $50 million "de minimis" amount is not), meaning that a transitional SIFT will be able to issue, as of January 2010, new equity of up to 100% of its October 31, 2006 market capitalization.

This note is included to serve as notification that the Department's normal growth guidelines are revised, effective Announcement Date.

The first revision applies to certain situations involving a transitional SIFT, units of which are publicly traded, that holds securities in another transitional SIFT (whether a trust or partnership and referred to in this commentary as the "second transitional SIFT") the units of which are not publicly traded. If the transitional SIFT's securities in the second transitional SIFT are non-portfolio property of the transitional SIFT (determined for purposes of this revision to the guidelines as through the definition "non-portfolio property" in subsection 122.1(1) of the Act were read without reference to its paragraphs (*b*) and (*c*) and as though a reference to "10%" in its paragraph (*a*) were a reference to "25%"), then new equity issued by the second transitional SIFT will count towards the growth of the transitional SIFT and not the second transitional SIFT, provided either or both of two conditions are met. Those conditions are:

- that the new equity is convertible into the equity of the transitional SIFT; and
- that the new equity can reasonably be regarded to be funded by the issuance of new equity in the transitional SIFT.

This revision of the normal growth guidelines is intended to prevent, in the particular circumstances described, an inappropriate duplication of growth as between the transitional SIFT and the second transitional SIFT where there is a sufficient level of non-arm's length relations between the two entities.

The normal growth guidelines are also being revised to accelerate the safe harbour amount for each of 2009 and 2010 so that it is available on and after Announcement Date. This change does not change the maximum available growth of a transitional SIFT, but allows it to use remaining growth room in a single year, rather than staging it (i.e., at 20% per year) over the 2009 and 2010 years. As a result, for the period from Announcement Date to the end of 2010, a grandfathered SIFT's safe harbour will be a maximum of 60% of its market capitalization on October 31, 2006. For example, a SIFT that had issued in 2008 before Announcement Date new equity amounting to 15% of its market capitalization on October 31, 2006, would have a remaining safe harbour for the period from Announcement Date to the end of 2010 of 45% (i.e., 60% - 15%) of that October 31, 2006 market capitalization.

It should be noted that the annual safe harbour amounts remains cumulative. Thus for example a transitional SIFT that had issued no new equity in the period between October 31, 2006 and Announcement Date would, as of Announcement Date, be able to issue new equity up to 100% of its October 31, 2006 market capitalization without exceeding its normal growth.

Clause 53

Definitions

ITA
204

Section 204 of the Act sets out a number of definitions that apply for the purposes of Part X of the Act.

"qualified investment"

The definition "qualified investment" in section 204 of the Act sets out the types of property that a trust governed by a deferred profit sharing plan is permitted to hold. The definition is also relevant for RRSPs, RESPs, RRIFs, registered disability savings plans (RDSPs) and tax-free savings accounts (TFSAs), as the definitions "qualified investment" in each of subsections 146(1), 146.1(1), 146.3(1), 205(1) and 207.01(1) largely adopt the list of investments described by the definition in section 204. It is also relevant for investment intermediaries that are registered investments (RIs) under any of paragraphs 204.4(2)(*b*), (*d*) or (*f*) of the Act and that, as a result, are required to limit their investments to qualified investments.

Paragraph (*c.1*) of the definition includes a debt obligation that has, at the time of acquisition, an investment grade rating with a prescribed credit rating agency and that is part of a minimum $25 million issuance. In the case of debt obligations that are issued on a continuous basis, the $25 million issuance requirement can be satisfied by having regard to all of the issuer's outstanding debt obligations of that type.

Paragraph (*c.1*) is amended in three respects. First, it is amended so that the investment grade rating condition may be satisfied either at the time of acquisition or on an on-going basis. This amendment is intended, in particular, to provide a means for an issuer of a previously non-rated debt obligation that had been a qualified investment under another provision of the Act or Regulations, but that later ceases to qualify under that provision, to retain qualified investment status by obtaining an investment grade rating for the debt obligation.

Second, paragraph (*c.1*) is amended to waive the investment grade rating condition in the case of debt obligations that are acquired pursuant to a court-approved proposal under Canadian insolvency legislation in exchange for debt obligations that previously had an investment grade rating. This amendment is intended, in particular, to ensure that any RIs or registered plan trusts that held third-party asset-backed commercial paper are not adversely impacted under the income tax rules by the restructuring plan developed by the Pan-Canadian Investors Committee.

Third, paragraph (*c.1*) is amended to clarify the application of the $25 million issuance condition. The existing wording caused some uncertainty in its application to debt issuance programs that involve multiple series of debt obligations. As amended, the condition looks to the issuer's outstanding debt obligations issued under the particular debt issuance program, rather than to the issuer's outstanding debt obligations of the same type.

These amendments apply in determining qualified investment status at any time after March 18, 2007, which corresponds to the introduction of paragraph (*c.1*).

Clause 54

LSVCC conditions for registration

ITA
204.81(1)

Subsection 204.81(1) sets out the conditions for the registration of labour-sponsored venture capital corporations (LSVCCs). Under existing clause 204.81(1)(*c*)(ii)(A), LSVCCs can issue Class A shares only to individuals (other than trusts) and trusts governed by registered retirement savings plans (RRSPs).

Clause 204.81(1)(*c*)(ii)(A) is amended to allow LSVCCs to issue Class A shares to trusts governed by TFSAs as well. This allows LSVCCs to amend their articles of incorporation to allow the issuance of Class A shares to an individual (other than a trust), to a trust governed by an RRSP, to a trust governed by a TFSA, or to any combination thereof.

This amendment applies to the 2009 and subsequent taxation years.

Clause 55 – 58

Taxes in respect of TFSAs

ITA
Part XI.01

Part XI.01 of the Act imposes special taxes relating to tax-free savings accounts (TFSAs), including a tax on excess contributions and taxes on supplementary advantages and non-qualified or prohibited investments.

Several amendments are being made to Part XI.01 to respond to issues identified after the introduction of S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*), which contained the original legislation to implement TFSAs. These amendments are discussed in the commentary below.

The amendments to Part XI.01 apply to the 2009 and subsequent taxation years.

Definitions

ITA
207.01(1)

Subsection 207.01(1) of the Act defines a number of expressions that apply for the purposes of Part XI.01.

"advantage"

Section 207.05 of the Act imposes a special tax if an advantage in relation to a tax-free savings account (TFSA) is extended to any person who is, or who does not deal at arm's length with, the holder of the TFSA. An "advantage" is defined as any benefit, loan or indebtedness that is, in any way, dependent on the existence of the TFSA, with certain exceptions. The definition "advantage" is amended in several respects.

First, it is amended to confirm, for greater certainty, that a distribution from a TFSA is not an advantage under paragraph (*a*) of the definition. "Distribution" is defined by subsection 146.2(1) of the Act as any payment made out of or under the TFSA in full or partial satisfaction of the holder's interest in the TFSA.

Second, it is amended to provide that the payment or allocation of an amount to the TFSA by the issuer is not an advantage under paragraph (*a*) of the definition. This exception is intended to accommodate, for example, reasonable payments of bonus interest to TFSA accounts.

It is important to note that benefits and amounts that are excluded from paragraph (*a)* could nevertheless be described in paragraph (*b*) of the definition. That is, the anti-avoidance rules in paragraph (*b*), described in more detail below, could apply to treat a payment of bonus interest, or another payment to or distribution from a TFSA, as an advantage where the conditions in paragraph (*b*) are met.

Finally, paragraph (*b*) of the definition is amended to provide that an advantage includes any increase in the value of the TSFA that can reasonably be considered to be attributable, directly or indirectly, to:

- a transaction or event (or series of transactions or events) that does not reflect commercial terms and a main purpose of which is to enable the holder (or other person or partnership) to benefit from the tax-exempt status of the TFSA; or
- a payment received in substitution for either (i) a payment for services rendered by the holder or non-arm's length person, or (ii) a payment of a return on investment or proceeds of disposition in respect of property held outside of the TFSA by the holder or non-arm's length person.

This provision is intended to guard against transactions designed to artificially shift taxable income away from the holder and into the shelter of a TFSA or to circumvent the TFSA contribution limits.

The definition "advantage" also includes, under paragraph (*c*), a prescribed benefit. At this time, it is not anticipated that any amendments will be made to the regulations to prescribe a benefit for the purpose of the definition "advantage".

These amendments apply to the 2009 and subsequent taxation years.

"excess TFSA amount"

The expression "excess TFSA amount" is relevant primarily for the special tax imposed under section 207.02 of the Act on excess TFSA contributions. The amount of the tax is determined on the basis of an individual's highest excess TFSA amount (determined by a formula) in a particular month.

Under variable E of the formula, an individual's excess TFSA amount is reduced by the total amount of distributions made in the year, and at or before the time, under tax-free savings accounts (TFSAs) of the individual – other than distributions made by way of a qualifying transfer and prescribed distributions. For this purpose, it had been intended that a particular distribution be prescribed to the extent that it was not required to reduce or eliminate the individual's excess TFSA amount.

The definition "excess TFSA amount" is amended to incorporate, directly into the description of variable E, what had been intended to be dealt with by regulation. As amended, variable E includes only the "qualifying portion" of a distribution, and defines "qualifying portion" as the lesser of the amount of the distribution and the amount that would have been the individual's excess TFSA amount at the time of the distribution had the distribution not been made. To illustrate, assume that an individual with an $8,000 excess TFSA amount makes a $10,000 TFSA withdrawal. Since only $8,000 is required to eliminate the excess TFSA amount, only $8,000 is included in determining the value of variable E.

In the case of a distribution that is a "qualifying transfer" (as defined in subsection 207.01(1)) or a prescribed distribution, the qualifying portion is defined by variable E to be nil. At this time, it is not anticipated that any amendments will be made to the regulations to prescribe a distribution for the purpose of variable E.

These amendments to variable E do not represent any change in policy, but are rather intended solely to improve the ease with which these rules can be applied.

The expression “excess TFSA amount” is also relevant for the purposes of paragraph 74.5(12)(*c*) of the Act, subparagraph (*d*)(iii) of the new definition “exempt contribution” in subsection 207.01(1) and subsection 207.01(3) of the Act, which all depend on whether an individual has an excess TFSA amount at a particular time. For the purpose of applying these provisions, it is important to note that the inclusion of the words “if any” in the preamble of the existing definition indicates that an individual is not considered to have an excess TFSA amount where the amount determined by the formula in the definition is nil (either in fact or because of the application of section 257 of the Act).

“exempt contribution”

Subsection 207.01(2) of the Act defines an “exempt contribution” for the purpose of the definition “excess TFSA amount” in subsection 207.01(1). In general terms, an exempt contribution is a TFSA contribution made by an individual (the “survivor”) with proceeds received from an arrangement that ceased to be a tax-free savings account (TFSA) because of the death of the survivor’s spouse or common-law partner (the “deceased”). Exempt contributions are disregarded in determining if the survivor has an excess TFSA amount.

To be an exempt contribution, the contribution must be made during the period (referred to as the “rollover period”) that begins when the deceased dies and that ends on the second anniversary of that death (or at any later time that is acceptable to the Minister), and the survivor must designate the contribution as an exempt contribution in their return of income for the taxation year in which the contribution is made.

The definition “exempt contribution” is amended in several ways. First, it is moved from subsection 207.01(2) to subsection 207.01(1).

Second, the deadline for making an exempt contribution without having to obtain the approval of the Minister is modified to correspond to the post-death exempt period provided under new paragraph 146.2(9)(*a*) of the Act for TFSA trusts – i.e., the end of the calendar year following the year of death (rather than the second anniversary of the death).

Third, to simplify administration, the definition is amended to require that the contribution designation be made by filing a prescribed form in prescribed manner within 30 days after the day on which the contribution is made (rather than on the survivor’s return of income).

Finally, the definition is amended to reflect the renumbering of subsections 146.2(6), (7) and (8) of the Act as subsections 146.2(8), (10) and (11), respectively.

“prohibited investment”
“restricted property”

The definition “prohibited investment” is relevant for the special taxes imposed under section 207.04 of the Act. The definition specifically excludes (in the preamble) a prescribed property. The existing definition also specifically includes (in paragraph (*d*)) a restricted property, which is defined in subsection 207.01(1) as having the meaning assigned by regulation. To date, no regulations have been made with respect to either prescribed property or restricted property.

The definition “prohibited investment” is amended to replace the expression “restricted property” in paragraph (*d*) with the expression “prescribed property”. The definition “restricted property” is repealed. This means that there are two types of property prescribed for the definition “prohibited investment”: (i) property that is prescribed for purposes of the preamble and is therefore excluded from being a prohibited investment; and (ii) property that is prescribed for purposes of paragraph (*d*) and is therefore a prohibited investment. These amendments do not represent any change in policy.

New sections 5000 and 5001 of the Regulations set out the property that is prescribed for these two distinct purposes. For details, readers may refer to the commentary on those sections.

These amendments apply to the 2009 and subsequent taxation years.

Survivor as successor holder

ITA
207.01(3)

Subsection 207.01(3) of the Act provides a special rule that applies for the purpose of the tax on excess TFSA contributions where an individual becomes a successor holder of a tax-free savings account (TFSA) on the death of the individual's spouse or common-law partner. Subsection 207.01(3) is amended to reflect the movement of the definition "exempt contribution" from subsection 207.01(2) of the Act to subsection 207.01(1) of the Act.

Tax payable on non-resident contributions

ITA
207.03

Section 207.03 of the Act imposes a special tax on an individual who makes a TFSA contribution while non-resident. The tax is equal to one per cent of the contribution and is imposed on a monthly basis until the individual withdraws the contribution or becomes resident in Canada.

Section 207.03 is amended to exclude from its application non-residents' contributions that are made as "qualifying transfers" or "exempt contributions". In general terms, a TFSA contribution is defined by subsection 207.01(1) of the Regulations to be

- a "qualifying transfer" if it is transferred from another TFSA of the same individual or from a TFSA of the individual's spouse or common-law partner and the transfer is in connection with the breakdown of their marriage or common-law partnership, and
- an "exempt contribution" if it is made with TFSA proceeds received by the individual on the death of the individual's spouse or common-law partner.

This amendment applies to the 2009 and subsequent taxation years.

Tax payable on prohibited or non-qualified investment

ITA
207.04

Section 207.04 of the Act imposes taxes on the holder of a tax-free savings account (TFSA) if a trust governed by the TFSA holds a non-qualified investment or a prohibited investment (as those terms are defined in subsection 207.01(1)).

Subsection 207.04(7) of the Act sets out the manner for determining the amount of tax payable under subsection 207.04(6) by the holder of a tax-free savings account (TFSA) if a trust governed by the TFSA holds a prohibited investment. The tax is calculated as the amount that would be payable under Part I of the Act by the trust on that investment, if the trust were taxable and certain other assumptions were made. Subsection 207.04(7) is amended to provide that the amount of the tax is 150% of that amount. This change ensures that there is no provincial income tax advantage to holding a prohibited investment in a TFSA.

Section 207.04 is also amended so that the references in that section to subsection 146.2(4) of the Act reflect the renumbering of that subsection as subsection 146.2(6).

These amendments apply to the 2009 and subsequent taxation years.

Waiver of tax payable

ITA
207.06(2)

Section 207.06 of the Act allows the Minister to waive all or part of any tax imposed under sections 207.02, 207.03, 207.04 and 207.05 in connection with tax-free savings accounts (TFSAs).

Subsection 207.06(2) of the Act allows the Minister to waive all or part of any tax imposed under sections 207.04 and 207.05 in connection with tax-free savings accounts (TFSAs), where it is just and equitable to do so. Among these special taxes is a tax imposed on a TFSA holder under subsection 207.04(6) of the Act on income and capital gains derived from prohibited investments.

Subsection 207.06(2) is amended to remove the Minister's authority to waive the tax on prohibited investment income. This is consistent with the fact that no authority is given to the Minister to waive the tax imposed under subsection 146.2(6) of the Act on income and capital gains derived from non-qualified investments.

Clause 59

Tax on investment income of life insurers

ITA
211

Section 211 of the Act sets out definitions and related rules the purposes of Part XII.3 of the Act, which imposes a special tax on the taxable Canadian life investment income of a life insurer. "Registered life insurance policies", which include among other things a life insurance policy that is issued as a tax-free savings account (TFSA), are specifically excluded from the scope of this tax.

"Registered life insurance policy"

ITA
211(1)

The definition "registered life insurance policy" in subsection 211(1) of the Act is amended to delete the reference to a tax-free savings account (TFSA), as it is redundant. An annuity contract, which is the only type of insurance product that is eligible to be issued as a TFSA, is already excluded from the scope of Part XII.3 tax by virtue of being specifically excluded from the definition "taxable life insurance policy" in subsection 211(1).

This amendment applies to the 2009 and subsequent taxation years.

Clause 60

Tax on non-residents

ITA
212

Section 212 of the Act imposes an income tax on various types of property income earned by non-residents from sources in Canada. Because the tax is usually required to be withheld and remitted by the payers of the amounts, it is commonly referred to as a "non-resident withholding tax".

Former TFSA

ITA
212(1)(*p*)

Paragraph 212(1)(*p*) of the Act provides for non-resident withholding tax on payments out of a registered home ownership savings plan (RHOSP).

With the elimination of RHOSPs in 1986, paragraph 212(1)(*p*) is now obsolete and is repealed. In its place, new paragraph 212(1)(*p*) is introduced to provide for non-resident withholding tax on certain payments made out of a trust governed by a former tax-free savings account (TFSA) after the death of the holder of the TFSA. The withholding tax applies only to the portion of the payment that would have been included in computing the recipient's income because of paragraph 12(1)(*z.5*) of the Act if the recipient had been resident in Canada.

These amendments apply to the 2009 and subsequent taxation years.

Clause 61

Non-resident investors in Canadian mutual funds
Part XIII.2

Part XIII.2 Tax

ITA
218.3

Section 218.3 of the Act imposes a tax on certain distributions of mutual funds holding Canadian property to non-resident investors.

"assessable distribution"

ITA
218.3(1)

Subsection 218.3(1) of the Act sets out a number of definitions that apply for purposes of Part XIII.2. The definition "assessable distribution" is amended to exclude a distribution that is a SIFT trust wind-up event (as defined in subsection 248(1) of the Act) from the application of this withholding tax.

For more detail, readers may refer to the commentary on the definition "SIFT trust wind-up event" in subsection 248(1) of the Act.

This amendment applies after July 14, 2008.

Clause 62

Communication of information

ITA
241

Section 241 of the Act prohibits officials and other persons from using or communicating taxpayer information obtained under the Act unless they are specifically authorized to do so by one of the exceptions found in that section.

Subsections 241(1), (2), (5), (6), (10), and paragraph 241(4)(*l*) of the Act are amended and new subsections 241(9.2) to (9.4) of the Act are added to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners), with a view to reducing paper work and duplication of effort for business and government alike. Specifically, these amendments provide for:

- broadening the BN-related information that may be shared with BN Partners;
- expanding the type of government entities that qualify as BN Partners; and
- allowing for the publication of the BN by BN Partners in connection with programs and services provided by the BN Partners.

Provision of information

ITA
241(1)

Subsection 241(1) of the Act prohibits the use or communication of taxpayer information by an official, except as authorized by section 241. The preamble to subsection 241(1) is amended to add a reference to a representative of a government entity, consequential on the introduction of the new definition "representative" in subsection 241(10). This ensures that representatives of a government entity are also prohibited from the unauthorized use or communication of taxpayer information. The amendment also ensures that the offence for contravening subsection 241(1), provided for in subsection 239(2.2) of the Act, applies to a representative of a government entity as well.

For more information regarding the new definition "representative" of a government entity readers may refer to the explanatory notes below.

This amendment applies on Royal Assent.

Evidence

ITA
241(2)

Subsection 241(2) of the Act provides that, notwithstanding any other Act of Parliament or other law, no official can be compelled to produce evidence relating to any taxpayer information in connection with any legal proceedings. Subsection 241(2) is amended to extend its application to a representative of a government entity, in respect of taxpayer information legally obtained by that representative of a government entity.

This amendment applies on Royal Assent.

Disclosure of personal information

ITA
241(4)(*l*)

Subsection 241(4) of the Act sets out circumstances in which, and the purpose for which, taxpayer information may be disclosed.

Paragraph 241(4)(*l*) allows an official (as defined in subsection 241(10) of the Act) to provide the business number, name, address, telephone number and facsimile number of the holder of the business number to another official of a department or agency of the government of Canada or of a province solely for the purpose of the administration or enforcement of an Act of Parliament or a law of a province. This information can only be provided if that Act or law requires the holder of the business number to provide the information (other than the business number itself) to that government department or agency.

Paragraph 241(4)(*l*) is amended to broaden both the information that an official may share and the types of officials that may gain access to that information. The amendment allows an official to share with a representative of a government entity (as newly defined in subsection (10)) the following types of information:

- the business number and the name (including any trade name or other name used) of the holder of a business number; and
- "contact information", "corporate information" and "registration information" – all as defined in subsection (10) – in respect of the holder of a business number.

A common feature of this type of information is that it is generally publicly available, for example through provincial corporate registries.

An official may provide information contained in paragraph 241(4)(*l*) to a representative of a government entity in connection with a program, an activity or service provided or undertaken by the entity only if the business number is used as an identifier in connection with the program, activity or service.

To protect the privacy of individuals who do not own a business, an official cannot share under this paragraph information regarding "excluded individuals" (as defined in subsection (10)).

The amendments to paragraph 241(4)(*l*) apply on Royal Assent.

Appeal from order or direction

ITA
241(5)

Subsection 241(5) of the Act provides that an official may provide taxpayer information relating to a taxpayer to the taxpayer or to other persons, if the taxpayer consents to the disclosure.

Subsection 241(5) is amended to extend its application to a representative of a government entity, in respect of taxpayer information legally obtained by that representative of a government entity.

This amendment applies on Royal Assent.

Disclosure to taxpayer or on consent

ITA
241(6)

Subsection 241(6) of the Act provides that an official or authorized person may appeal an order or direction made in the course of or in connection with any legal proceeding requiring them to disclose taxpayer information. Subsection 241(6) is amended to extend its application to a representative of a government entity, in respect of taxpayer information legally obtained by that representative of a government entity.

This amendment applies on Royal Assent.

Public disclosure and restriction

ITA
241(9.2), (9.3) and (9.4)

New subsection 241(9.2) of the Act precludes an official from disclosing information described in paragraph 241(4)(*l*) in connection with a program, activity or service provided or undertaken by a government entity (as newly defined in subsection 241(10) of the Act) unless the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsection 241(9.3) of the Act allows the Minister to make public the business number and name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service provided or undertaken by the Minister.

New subsection 241(9.4) of the Act allows a representative of a government entity to make public the business number and the name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service undertaken by the government entity if the representative of the government entity was provided with that information pursuant to paragraph 241(4)(*l*) and the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsections (9.2), (9.3) and (9.4) apply on Royal Assent.

Definitions

ITA
241(10)

Subsection 241(10) of the Act provides definitions that apply for the purposes of section 241. The amendments to section 241 change the definition "taxpayer information" and add new definitions "aboriginal government", "contact information", "corporate information", "excluded individual", "government entity", "registration information", and "representative" of a government entity.

"taxpayer information"

"Taxpayer information" generally refers to information of any kind and in any form relating to one or more taxpayers that is obtained by or on behalf of the Minister of National Revenue (the "Minister") for the purposes of the Act, or prepared from such information.

The definition "taxpayer information" is amended to specify that for the purposes of applying subsections 241(2), (5) and (6) to a representative of a government entity, taxpayer information includes only the information provided in paragraph 241(4)(*l*) of the Act (i.e. business number-related information that the representative of a government entity has obtained from an official).

"aboriginal government"

The new definition "aboriginal government" has the same meaning as under subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*. That Act defines an aboriginal government to mean an Indian government, an Inuit government or a Métis government, or the "council of the band" as defined in subsection 2(1) of the *Indian Act*. That provision of the *Indian Act* in turn defines a council of the band as,

- in the case of a band to which section 74 of the *Indian Act* applies, the council established pursuant to that section; and
- in the case of a band to which section 74 of the *Indian Act* does not apply, the council chosen according to the custom of the band, or where there is no council, the chief of the band chosen according to the custom of the band.

"contact information"

The new definition "contact information" in respect of the holder of a business number defines one subset of information that an official may, under amended paragraph 241(4)(*l*), share in respect of the holder of the business number. The definition refers to the name, address, telephone number, facsimile number and preferred language of communication of the business number holder and any other specified similar information obtained by the Minister. To accommodate cases where the business number holder is not a natural person, contact information also includes this information in respect of one or more of the holder's trustees, members or officers, as appropriate.

"corporate information"

The new definition "corporate information" in respect of a holder of a business number defines a second subset of information that an official may share with a representative of a government entity in respect of a corporation under paragraph 241(4)(*l*). "Corporate information" means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation.

"excluded individual"

The new definition "excluded individual" refers to an individual who holds a business number for non business-related reasons. An excluded individual includes, for example, a person who has a business number solely because he or she employs a nanny or a gardener, or solely because she or he is a foster parent.

An excluded individual is specifically excluded from the application of paragraph 241(4)(*l*), so that an official cannot share the business number-related information with a representative of a government entity under that paragraph.

"government entity"

The new definition "government entity" means any of several types of federal, provincial, municipal and aboriginal entities. A "government entity" includes a department or agency of the Government of Canada or of a province, a municipality in Canada or an aboriginal government. It also includes a corporation all the shares of which are owned by one or more persons each of which is Her Majesty in right of Canada, Her Majesty in right of a province, a municipality in Canada or another such corporation. It further includes a board or commission established by Her Majesty in right of Canada, or Her Majesty in right of a province, that performs an administrative or regulatory function of government. Lastly, it includes a board or commission established by one or more municipalities that performs an administrative or regulatory function of a municipality.

This definition is used for the purposes of the definition "representative" of a government entity.

"registration information"

The new definition "registration information" in respect of a holder of a business number defines a third subset of information that an official may share with a representative of a government entity under paragraph 241(4)(*l*). "Registration information" in respect of a holder of a business number means any information pertaining to the legal form of the business number holder (i.e. whether the business number is held by a natural person, a partnership, an incorporated entity, etc.), the type of activities carried on or proposed to be carried on by the holder, the date on which the business number was issued to the holder, the date on which the holder began activities, the date on which the business number assigned to the holder was changed, and whether the holder is carrying on business activities or has ceased or resumed to carry on these activities (including the date and reason for doing so).

"representative"

The new definition "representative" of a government entity generally means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of a government entity. An official may now share information with a representative of a government entity under paragraph 241(4)(*l*).

A person who was formerly employed in the service of, who formerly occupied a position of responsibility in the service of, or who was formerly engaged by or on behalf of a government entity is also considered a representative of a government entity, but only for the purposes of subsections 241(1), (2), (5) and (6) of the Act. This ensures among other things that, if such a person has obtained confidential information and contravenes subsection 241(1), the offence provided in subsection 239(2.2) of the Act applies to them as well.

These amendments apply on Royal Assent.

Clause 63

Interpretation

ITA
248

Section 248 of the Act defines a number of terms that apply for the purposes of the Act, and sets out various rules relating to the interpretation and application of various provisions of the Act.

Definitions

ITA
248(1)

Subsection 248(1) sets out a number of definitions for the purposes of the Act. The subsection is amended by modifying the existing definitions "personal trust" and "TFSA" and by adding several new definitions.

"SIFT trust wind-up event"

The new definition "SIFT trust wind-up event" is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a trust that is a SIFT wind-up entity. The definition sets out conditions that must be met in order for a distribution of property by a Canadian resident trust to a taxpayer to be subject to the new rules in section 88.1, subsections 107(3) and (3.1) and paragraph 256(7)(*f*) of the Act, and for the rules in subsection 80.01(5.1) of the Act to apply to a settlement of debt in consequence of such a distribution.

To qualify as a SIFT trust wind-up event, a distribution to a taxpayer must take place before 2013 and result in a disposition of all of the taxpayer's interest as a beneficiary under the trust. As well, the trust making the distribution must cease to exist immediately after the distribution or immediately after the last of a series of the trust's SIFT wind-up event distributions that includes the distribution (such a series will not exceed 60 days because of the rules in paragraph 88.1(1)(*c*) and 107(3)(*c*)).

Finally, a distribution that is a SIFT trust wind-up event can be made only by certain Canadian resident trusts, specifically:

- a SIFT wind-up entity (as defined in subsection 248(1));
- a particular trust the only beneficiary of which is another trust resident in Canada that, throughout the relevant period (meaning the period that starts on July 14, 2008 and that ends at the time of distribution), is a SIFT wind-up entity – in effect, this is the parent SIFT wind-up entity trust's direct wholly owned subsidiary trust;
- applying the above rule iteratively, a particular trust the only beneficiary of which is another trust resident in Canada that, throughout the relevant period, is a trust described above;
- a particular trust the only beneficiary of which is another trust resident in Canada that at the time of distribution, is a trust described above, and that throughout the relevant period is a majority interest beneficiary (within the meaning assigned by section 251.1) of the particular trust – this describes a trust that may not have been wholly owned by another qualifying trust throughout the relevant period, but is so at the time of the distribution.

This new definition applies after December 19, 2007.

"SIFT wind-up corporation"

The new definition "SIFT wind-up corporation" is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The expression is used in subparagraph 7(1.4)(*b*)(iv), paragraph 87(2)(*s.1*), subsection 107(3.1) and the definition "qualifying exchange" in section 132.2 of the Act, which are also included in that series of amendments.

A SIFT wind-up corporation in respect of a SIFT wind-up entity means at any particular time a corporation

- under paragraph (*a*) of this definition, that owns – at any time in the period after July 14, 2008 and before the earlier of the particular time and 2013 - all of the equity in the SIFT wind-up entity; or

- under paragraph (*b*) of this definition, a share of the capital stock of which has, at or before the particular time, been distributed on a SIFT trust wind-up event of the SIFT wind-up entity.

This new definition applies after December 19, 2007.

"SIFT wind-up entity"

The new definition "SIFT wind-up entity" in subsection 248(1) of the Act is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The related amendments include new subparagraph 7(1.4)(*b*)(iv), subsections 80.01(5.1), 85.1(7) and (8), 88.1(1) and (2), 107(3) and (3.1) of the Act and the new definitions "SIFT wind-up corporation" and "SIFT trust wind-up event" in subsection 248(1) of the Act.

"SIFT wind-up entity" means a trust or partnership that at any time in the period that begins on October 31, 2006 and that ends on July 14, 2008 is a SIFT trust, a SIFT partnership, or a REIT (as defined in subsection 122.1(1)). For this purpose, the definitions "SIFT trust" and "SIFT partnership" are treated as applying effective October 31, 2006 (i.e., read without reference to the special transitional rules that would otherwise suspend their application in respect of a given trust or partnership to no later than the end of 2010).

This new definition applies after December 19, 2007.

"SIFT wind-up entity equity"

The new definition "SIFT wind-up entity equity" in subsection 248(1) of the Act is added as part of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The expression is used, in respect of trusts that are SIFT wind-up entities, in new subparagraph 7(1.4)(*b*)(vi) and it is also used, in respect of trusts or partnerships that are SIFT wind-up entities, in respect of new paragraph 40(3.5)(*b*), subsections 85.1(7) and (8), and the new definition "SIFT wind-up corporation" in subsection 248(1).

Under this definition, SIFT wind-up entity equity (including a reference to equity in a SIFT wind-up entity) means, in the case of a SIFT wind-up entity that is a trust, a capital interest in the trust determined without reference to subsection 248(25) of the Act. In the case of a SIFT wind-up entity that is a partnership, the expression refers to the membership interest of a limited partner, with the result that the membership interest of the general partner is not included in the reference. Note, however, that where all of those capital interests in the trust or all of those member interests of limited partners in the partnership, as the case may be, are described by reference to units, a reference to SIFT wind-up entity equity means the part of the interest represented by the unit.

This new definition applies after December 19, 2007.

"personal trust"

A "personal trust" is defined in subsection 248(1) of the Act as a testamentary trust or an *inter vivos* trust no beneficial interest in which was acquired for consideration (as determined by subsection 108(7) of the Act) payable to the trust or to a contributor to the trust. However, after 1999, a personal trust does not include a unit trust (within the meaning assigned by subsection 108(2) of the Act).

The definition "personal trust" is amended in two ways as one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. The first amendment provides that a trust is disqualified from personal trust status if it is, or at any time after 1999 was, a unit trust. The second amendment clarifies that, for purposes of the rule disqualifying a trust from personal trust status if a beneficial interest has been acquired for consideration payable in any way to a contributor to the trust, a contributor includes a partnership.

These amendments apply after July 14, 2008.

"TFSA"

Subsection 248(1) of the Act includes the definition "TFSA" for purposes of the Act. A TFSA is a tax-free savings account and has the meaning assigned by subsection 146.2(3) of the Act. The definition TFSA is amended to reflect the renumbering of subsection 146.2(3) as subsection 146.2(5).

This amendment applies to the 2009 and subsequent taxation years.

Property subject to certain Quebec institutions and arrangements

ITA
248(3)

Subsection 248(3) of the Act contains a number of rules that apply to property subject to an institution or arrangement governed by the laws of the Province of Quebec for the purposes of applying the Act. Existing paragraphs 248(3)(*a*) to (*d*) deem certain institutions or arrangements created under the laws of the Province of Quebec to be trusts for those purposes. Existing paragraph 248(3)(*e*) clarifies that a person is deemed to be beneficially interested in a trust if the person has any right to receive the income or the capital in respect of property that is deemed, under any of paragraphs 248(3)(*a*) to (*d*), to be held in trust. Existing paragraph 248(3)(*f*) provides that a person beneficially owns property, even if there is a servitude in respect of the property, in relation to which the person has rights described in any of subparagraphs 248(3)(*f*)(i) to (iii).

A number of changes are being made to subsection 248(3), generally effective for taxation years beginning after October 30, 2003. These changes are as follows.

Preamble

The opening words of subsection 248(3) are amended to clarify that the application of the provision is limited to institutions or arrangements governed by the laws of the Province of Quebec.

New paragraph 248(3)(a)

The rules found in existing paragraphs 248(3)(*a*) to (*c*), which deal with property subject to usufructs, rights of use or habitation, and substitutions, are now found in new paragraph 248(3)(*a*).

New paragraphs 248(3)(b) and (c)

New paragraphs 248(3)(*b*) and (*c*) are a continuation of existing paragraph 248(3)(*d*), with some modifications. Existing paragraph 248(3)(*d*) provides that an arrangement established by or under a written contract governed by the laws of Quebec (and that is not otherwise a trust) is deemed to be a trust, and its property is deemed to be held in trust, if:

(i) the rights and obligations created under that arrangement are similar to those under a trust; and

(ii) the contract specifically provides that, for the purposes of the *Income Tax Act*, the arrangement shall be considered to be a trust.

The purpose of this provision was to allow certain commercial arrangements that were created for investment purposes -- but which could not be considered to be trusts under the *Civil Code of Lower Canada* (CCLC), since they were not constituted by gift or legacy -- to be characterized as trusts for the purposes of applying the *Income Tax Act* in the Province of Quebec.

With the replacement of the CCLC by the *Civil Code of Quebec* (CCQ) in 1994, it generally became possible for arrangements that were intended to be accommodated by existing paragraph 248(3)(*d*) to be established as valid trusts in Quebec. As a result, such arrangements did not have to rely on the deeming rules in existing paragraph 248(3)(*d*) to be characterized as trusts for purposes of the *Income Tax Act.*

Since the status of arrangements established before the introduction of the CCQ were not altered with the introduction of the CCQ, they continued to rely on the deeming provisions in existing paragraph 248(3)(*d*) for their trust status under the *Income Tax Act*.

These arrangements (other than qualifying arrangements) continue to be accommodated under new paragraph 248(3)(*b*). (Qualifying arrangements are described in new subsection 248(3.2) and include, for example, registered retirement savings plans (RRSPs). For more detail, refer to the notes on that provision below.)

New paragraph 248(3)(*b*) also accommodates non-trust arrangements that, although not specifically intended to be accommodated under existing paragraph 248(3)(*d*), nevertheless fall within the ambit of that paragraph. This is the case, however, only for arrangements established before October 31, 2003. New paragraph 248(3)(*b*) also clarifies that it does not apply to partnerships or to arrangements that are already trusts without reference to the provision.

New paragraph 248(3)(*c*) accommodates qualifying arrangements, including those that were established before the introduction of the CCQ. Under this paragraph, such arrangements are deemed to be trusts. Further, the paragraph deems any property contributed at any time to the arrangement to have been transferred to the trust by the contributor. It also deems property subject to rights and obligations under the arrangement to be held in trust.

New paragraphs 248(3)(d) and (e)

The provisions of existing paragraphs 248(3)(*e*) and (*f*) are found in new paragraphs 248(3)(*d*) and (*e*), respectively. In the latter, the obsolete terms "lessee under an emphyteutic lease" / droit de preneur dans un bail emphytéotique are replaced with "lessee under an emphyteusis" / droit d'emphytéote, the new terminology used in the CCQ.

The amendments to subsection 248(3) generally apply to taxation years that begin after October 30, 2003.

Bare ownership – gifts to charity

ITA
248(3.1)

Where, under the laws of Quebec, a property is subject to dismemberment such as a usufruct or a right of use established in favour of an individual while another has the bare ownership, subsection 248(3) of the Act deems the property subject to such a usufruct or right of use to have been transferred to a trust. The whole property will thus be disposed of. Subsection 248(3), as it now reads, does not provide for any exception where the bare ownership of an immovable is gifted to a registered charity. New subsection 248(3.1) provides relief, similar to the exception found in subsection 43.1(1) of the Act for life interests created at common law, where the usufruct or right of use of an immovable is retained by a taxpayer but the bare ownership of the immovable is gifted in circumstances where the gift generates entitlement to a charitable donations credit.

Under new subsection 248(3.1) and subsection 69(1), the dismemberment will entail a disposition only of the bare ownership of an immovable for an amount equal to its fair market value (FMV). In the case of capital property, the adjusted cost base (ACB) of the property will be divided under subsection 43(1) of the Act pro rata between the bare ownership and usufruct or right of use. The usufruct or right of use will be considered to have been disposed of only when it is actually disposed of or is otherwise deemed to be disposed of by the taxpayer.

Example

Mrs. A, whose property is governed by the civil law of the province of Quebec, owns as capital property an immovable worth $100,000, which has an ACB of $10,000. She creates a dismemberment of the property by giving the bare ownership (FMV of $60,000) to a registered charitable organization and retaining the right of use (FMV of $40,000).

Under the present rules, subsections 248(3) and 69(1) of the Act apply and Mrs. A is considered to have disposed of the immovable at its FMV ($100,000) in favour of a deemed trust. A gain of $90,000 is triggered ($100,000 - $10,000).

Because of new subsection 248(3.1) and subsection 69(1), there is a disposition only of the bare ownership for proceeds of disposition equal to its FMV, i.e. $60,000. This amount can be included in the calculation of her charitable gifts credit. The ACB attributable to the bare ownership is $6,000 ($10,000 X 6/10). This transaction will give rise to a gain of $54,000 ($60,000 - $6,000). Mrs. A retains the right of use of the immovable and there is no disposition of this right. At death, a deemed disposition of her right of use will occur at FMV (established in the same way as for a life estate and remainder interest).

These amendments apply to dispositions that occur after July 18, 2005.

Qualifying arrangement

ITA
248(3.2)

New subsection 248(3.2) describes a qualifying arrangement for the purposes of paragraphs 248(3)(*b*) and (*c*). This new subsection provides that an arrangement is a qualifying arrangement if

(i) it is entered into with a corporation that is 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 trustee,

(ii) it is established by or under a written contract that is governed by the laws of the province of Quebec,

(iii) it is presented as a declaration of trust or provides that, for the purposes of the Act, it shall be considered to be a trust, and

(iv) it is presented as an arrangement in respect of which the corporation will take steps for the arrangement to become a registered disability savings plan (RDSP), a registered education savings plan (RESP), a registered retirement income fund (RRIF), a registered retirement savings plan (RRSP) or a tax-free savings account (TFSA).

New subsection 248(3.2) and new paragraph 248(3)(*c*) are introduced in response to the judgment of the Supreme Court of Canada in *Bank of Nova Scotia v. Thibault*, [2004] 1 S.C.R. 785. In that judgment, which involved the seizability of an arrangement that had been marketed as a self-directed trusteed RRSP, the Court concluded that a trust had not been created under the *Civil Code of Québec* (CCQ). This created uncertainty as to whether the arrangement in question was in fact an RRSP under the Act and, if not, whether the status of similar arrangements purporting to be trusteed arrangements was also in jeopardy.

The conditions in new subsection 248(3.2) recognize that there are elements of the *Thibault* decision that give rise to concerns that the particular arrangement considered by the Court (and other similar arrangements seeking registered status) might not be able to satisfy the conditions for existing paragraph 248(3)(*d*) to apply. (These modified conditions are also incorporated, as required, into existing paragraph 248(3)(*d*).)

Subsection 248(3.2) applies to taxation years that begin after October 30, 2003, with some exceptions that recognize that RDSPs and TFSAs were introduced subsequently.

Clause 64

Investments in limited partnerships

ITA
253.1

Section 253.1 of the Act provides that, for specified provisions of the Act and Regulations (including subsection 146.2(4) relating to tax-free savings accounts), a trust or corporation will not, solely because of its acquisition and holding of an interest as a limited partner in a limited partnership, be considered to carry on any business or other activity of the partnership. Section 253.1 is amended to reflect the renumbering of subsection 146.2(4) as subsection 146.2(6).

This amendment applies to the 2009 and subsequent taxation years.

Clause 65

Associated corporations

ITA
256

Section 256 of the Act provides rules for determining whether corporations are to be considered to be associated and whether control of a corporation has been acquired for the purposes of the Act.

Acquiring control

ITA
256(7)(*f*)

Subsection 256(7) sets out rules for determining in special circumstances whether there has been an acquisition of control for the purposes of certain provisions of the Act.

New paragraph 256(7)(*f*) of the Act is introduced as one of a series of amendments intended to provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. Paragraph 256(7)(*f*) applies in respect of the distribution by a trust (“the distributing trust”) of property to another trust (“the particular trust”), where the property distributed is shares of the capital stock of a corporation and the distribution qualifies as a “SIFT trust wind-up event” (newly defined in subsection 248(1) of the Act). Paragraph 256(7)(*f*) responds to the possibility that, if control of the corporation is determined to be with the trustees of the distributing trust, the distribution could result in an acquisition of control of the corporation by the trustees of the particular trust. Under paragraph 256(7)(*f*) the particular trust is deemed, if certain additional conditions are met, not to acquire control of the corporation solely because of the distribution.

The additional conditions that must be met in order for paragraph 256(7)(*f*) to apply are that:

- the corporation be controlled by the trustees of the distributing trust immediately before the distribution;
- the particular trust be the only beneficiary under the distributing trust;
- the particular trust be described in paragraph (*c*) of the new definition “SIFT trust wind-up event” in subsection 248(1) (in effect, the particular trust be a SIFT wind-up entity or a trust the only beneficiary of which is another trust that is a SIFT wind-up entity); and
- the particular trust would, in the absence of paragraph 256(7)(*f*), have acquired control of the corporation on the SIFT trust wind-up event.

New paragraph 256(7)(*f*) of the Act applies after July 14, 2008.

Clause 66

Proportional holdings in trust property

ITA
259

Section 259 of the Act provides, for specified provisions of the Act (including subsection 146.2(4) relating to tax-free savings accounts (TFSAs)), a "look-through" rule that applies where a registered plan trust acquires units of a "qualified trust".

ITA
259(1)

Subsection 259(1) of the Act, which is the main substantive element of the section 259 "look-through", is amended to reflect the renumbering of subsection 146.2(4) of the Act as subsection 146.2(6).

This amendment applies to the 2009 and subsequent taxation years.

Budget Implementation Act, 2008

Clause 67

Budget Implementation Act, 2008
19(5)

Subsection 19(5) of S.C. 2008, c. 28 (the *Budget Implementation Act, 2008*) enacted a transitional version of the formula used in subsection 127(10.2) of the *Income Tax Act* to determine the expenditure limit of a corporation for investment tax credit purposes. The description of the amount B in the formula is amended as a consequence of the amendments made by subclause 32(3) of this Act to subparagraphs (*a*)(i) and (ii) of that description. Those amendments add references to section 181.3 of the *Income Tax Act*, and this consequential amendment ensures that those references apply in the context of the transitional version of the formula.

Income Tax Regulations

Clause 68

Information returns
Part II

Part II of the *Income Tax Regulations* sets out a wide variety of information and reporting requirements.

Payments to non-residents

ITR
202(2)(*h*)

Section 202 of the Regulations provides rules setting out the circumstances under which information returns are required in connection with payments to non-residents. Paragraph 202(2)(*h*) requires the filing of a return in connection with payments made to non-residents out of a registered home ownership savings plan (RHOSP).

With the elimination of RHOSPs in 1986, paragraph 202(2)(*h*) is now obsolete and is repealed. In its place, new paragraph 202(2)(*h*) is introduced to require an issuer of a trusteed tax-free savings account (TFSA) who makes a payment of a taxable amount under paragraph 212(1)(*p*) of the Act to a non-resident beneficiary of the trust, after the death of the holder of the TFSA and before the end of the tax-exempt period, to file an information return reporting the amount.

This amendment applies to the 2009 and subsequent taxation years.

Clause 69

Estates and trusts

ITR
204(3)

Section 204 of the Regulations generally requires that a person receiving income, gains or profits in a fiduciary capacity file an information return in respect of such amounts within 90 days from the end of the taxation year in which the amounts arose.

Paragraph 204(3)(*f*) is added so that this requirement does not apply to a trust governed by a tax-free savings account (TFSA) or by an arrangement that is deemed by paragraph 146.2(9)(*a*) of the Act to be a TFSA. TFSA trusts are required to file information returns under the reporting rules in section 223 of the Regulations that apply specifically to TFSA issuers.

If a trust governed by a former TFSA continues to exist after the tax-exempt period provided under paragraph 146.2(9)(*a*), the filing exclusion would no longer apply and thus the trust would be required to begin filing regular trust returns under section 204.

This amendment applies to the 2009 and subsequent taxation years.

Clause 70

Distribution of taxpayers' portions of returns

ITR
209(1)

Subsection 209(1) of the Regulations requires issuers of T4 slips and other specified information returns to provide two copies of the relevant portion of the return to the taxpayer to whom the return relates.

Subsection 209(1) is amended to replace the reference to section 223 of the Regulations with a reference to subsection 223(2). For details, readers may refer to the commentary on subsection 223(2).

This amendment applies to the 2009 and subsequent taxation years.

Clause 71

Qualified investments

ITR
221(2)

Subsection 221(2) of the Regulations requires any of certain types of corporations and trusts to file an information return whenever the corporation or trust claims that its shares or units are a qualified investment for registered retirement savings plans (RRSPs) or other registered plans.

Subsection 221(2) is amended to extend the requirement for filing an information return to a corporation or a trust that claims that its shares or units are a qualified investment for tax-free savings accounts (TFSAs). This amendment, which applies to the 2009 and subsequent taxation years, is consequential on the introduction of TFSAs.

Clause 72

TFSAs

ITR
223

Section 223 of the Regulations provides rules setting out the circumstances under which information returns are required in connection with registered home ownership savings plans (RHOSPs).

With the elimination of RHOSPs in 1986, section 223 is now obsolete and is repealed. In its place, new section 223 is introduced to provide reporting rules for issuers of tax-free savings accounts (TFSAs).

New subsection 223(1) requires the issuer of a TFSA (including an arrangement that is deemed to be a TFSA by paragraph 146.2(9)(*a*) of the Act) to file an annual information return in respect of the TFSA. The return is required to be filed on or before the last day of February of the following calendar year (by virtue of existing subsection 205(1) of the Regulations).

This information contained in the return will be used for calculating TFSA contribution room, identifying TFSA overcontributions and other potential non-compliance situations, and collecting statistical information for program evaluation.

New subsection 223(2) requires an issuer of a trusteed TFSA who, after the death of the holder of the TFSA and before the end of the tax-exempt period, makes a payment from the trust of an amount that is taxable under paragraph 146.2(9)(*b*) of the Act to file an information return reporting the amount. For further details, refer to the commentary on paragraph 146.2(9)(*b*).

New subsection 223(3) applies if, at any time, a TFSA trust acquires or disposes of a non-qualified investment or property held by a TFSA trust becomes or ceases to be a non-qualified investment. Subsection 223(3) requires the issuer of the TFSA to so notify the holder of the TFSA in prescribed form and manner on or before the last day of February of the following year. This notification requirement is intended to ensure that the holder is provided with sufficient information to comply with their tax obligations under Part XI.01 of the Act in connection with the non-qualified investment. It is expected that the issuer will be required to report the same information to the CRA on the TFSA annual information return.

These amendments apply to the 2009 and subsequent taxation years.

Clause 73

Annuities and life insurance policies
Part III

Part III of the Regulations sets out prescribed rules for annuities and life insurance corporations.

Prescribed annuity contracts

ITR
304(1)

Section 304 of the Regulations prescribes certain annuity contracts for exclusion from the rules in section 12.2 of the Act that require income from life insurance policies to be reported on an accrual basis. Paragraph 304(1)(*a*) provides an exclusion for annuity contracts purchased pursuant to a registered retirement savings plan (RRSP) or any of certain other registered plans.

Paragraph 304(1)(*a*) is amended to extend the exclusion from the accrual rules to annuity contracts issued as a tax-free savings account (TFSA) or a registered retirement income fund (RRIF). This change is implemented by referring to annuity contracts issued as or pursuant to an arrangement described in any of paragraphs 148(1)(*a*) to (*b.2*) or (*d*) of the Act (which exclude TFSA, RRIF and other registered plan annuity contracts from the rules in subsection 148(1) that require an income inclusion on the disposition of a life insurance policy). Paragraph 304(1)(*a*) is also amended to update the language for consistency with subsection 148(1).

This amendment applies to annuity contracts issued after 2008.

Clause 74

Taxable income earned in a province by a corporation
Part IV

Part IV of the *Income Tax Regulations* provides prescribed rules for determining the amount of a corporation's taxable income earned in the year in a province for the purpose of the abatement in section 124 of the *Income Tax Act*.

Interpretation

ITR
400(1)

Subsection 400(1) of the Regulations is amended to refer to the definition of "taxable income earned in the year in a province" in subsection 124(4) of the Act. Subsection 400(1) clarifies that the prescribed rules referred to in that definition are contained in Part IV of the Regulations.

This amendment applies to the 2009 and subsequent taxation years.

International Banking Centres

ITR
400(1.1)

New subsection 400(1.1) of the Regulations provides that the amount that is not added or deducted, in respect of a corporation's income or loss for a year from its international banking centre (IBC) business, in computing its income for the year is to be added or deducted to its taxable income for the year. This ensures that a corporation's taxable income for a taxation year is calculated prior to claiming the IBC exemption for the purpose of Part IV of the Regulations.

This amendment applies to the 2009 and subsequent taxation years.

Permanent establishment

ITR
400(2)(*e.1*)

Subsection 400(2) of the Regulations provides for the definition of "permanent establishment" for the purpose of determining whether a corporation's taxable income for a taxation year is allocated to a particular province under Part IV of the Regulations.

New paragraph 400(2)(*e.1*) provides that, where a corporation does not have any permanent establishment, the corporation is deemed to have a permanent establishment in the jurisdiction in which its head office or registered office is located.

This amendment applies to the 2009 and subsequent taxation years.

Clause 75

Computation of taxable income

ITR
401

Section 401 of the Regulations provides that Part IV of the Regulations applies to determine the amount of taxable income of a corporation earned in a taxation year in a particular province. The section is reworded to modernize its style.

This amendment applies to the 2009 and subsequent taxation years.

Clause 76

Central paymaster

ITR
402.1

Existing sections 402.1 and 402.2 of the Regulations applied special rules for certain corporations' 1978 and 1980 taxation years. Those sections are now redundant, and are replaced by a new, unrelated section 402.1. The new section applies in certain cases where an individual employed provides services for the benefit of a corporation that is not the employer.

New subsections 402.1(1) and (2) generally provide that the salary or wages earned by an employee for the performing of a service in a particular province for the benefit of a corporation that is not the employer are deemed to be salary or wages paid by the corporation to an employee of its permanent establishments in the province if the corporation and the employer do not deal at arm's length and the corporation has a permanent establishment in the province.

Subsection 402.1(3) provides that the amount of salaries and wages paid in a taxation year by the employer that is deemed to be paid by the corporation is deducted from the employer's salaries and wages paid in the year.

Subsection 402.1(4) provides that new section 402.1 applies to a corporation and an employer that deal at arm's length if the Minister of National Revenue determines that they have entered into an arrangement for the provisions of services in a particular province by the employer for the benefit of the corporation the purpose of which is to reduce the corporation's income tax in the province.

Subsection 402.1(5) provides that a partnership is deemed to be a corporation for the purpose of section 402.1 and its fiscal period is deemed to be the corporation's taxation year.

New section 402.1 applies to the 2009 and subsequent taxation years.

Clause 77

Foreign net insurance premiums

ITR
403(4)

Section 403 of the Regulations provides special rules for the determination of an insurance corporation's taxable income earned in a year in a particular province. An insurance corporation's taxable income earned in a year in a particular province is deemed equal to that proportion of its taxable income that its net premiums for the year in respect of insurance on property situated in the province or from contracts with persons resident in the province is of the total of its net premiums for the year.

Subsection 403(3) of the Regulations generally provides that each net premium for a year in respect of insurance on property situated in a particular province or from contracts with persons resident in the particular province in which an insurance corporation had no permanent establishment in the year is deemed to be a net premium in respect of insurance on property situated in the province or from contracts with persons resident in the province in which the corporation's permanent establishment to which the net premium is reasonably attributed is located.

New subsection 403(4) provides that each net premium for a year in respect of insurance on property situated in a country other than Canada or from contracts with persons resident in the country in which an insurance corporation has no permanent establishment in the year is deemed to be a net premium in respect of insurance on property situated in the province or country or from contracts with persons resident in the province or country in which the corporation's permanent establishment to which the net premium is reasonably attributed in the circumstances is located.

This amendment applies to the 2009 and subsequent taxation years.

Clause 78

Non-resident corporations

ITR
413(1)

Subsection 413(1) deems "salaries and wages paid in a year" by a corporation that is not resident in Canada not to include salaries and wages paid to its employees of a permanent establishment outside Canada and "taxable income" to refer to taxable income earned in Canada as determined under section 115 of the Act.

Subsection 413(1) is amended consequential to the addition of paragraph 400(1.1)(*a*) that refers to a corporation's taxable income earned in Canada for a corporation that is not resident in Canada.

This amendment applies to the 2009 and subsequent taxation years.

Clause 79

International Banking Centre exception

ITR
413.1

Under section 33.1 of the *Income Tax Act*, special rules apply to the calculation of income from an "international banking centre" business. New section 413.1 of the Regulations ensures that these special rules are appropriately accommodated under Part IV of the Regulations. Specifically, section 413.1 provides that a corporation's taxable income earned in a year in a particular province is to be adjusted to reflect amounts that are either not deductible, or not required to be included, in computing international banking centre business income from a branch or office in the particular province.

This amendment applies to the 2009 and subsequent taxation years.

Clause 80

Provincial SIFT tax rate

ITR
414 and 415

Sections 414 and 415 of the Regulations set out the prescribed meaning of terms that were once defined in subsection 123(2) of the Act. With the repeal of subsection 123(2) of the Act (for taxation years that begin after December 22, 1989), sections 414 and 415 of the Regulations no longer have effect.

New section 414 of the Regulations sets out the manner for determining the prescribed amount that is the "provincial SIFT tax rate", defined in subsection 248(1) of the Act, in respect of a SIFT trust or SIFT partnership for a taxation year. The provincial SIFT tax rate is used in calculating the tax payable under Part I of the *Income Tax Act* on the taxable SIFT trust distributions of a SIFT trust or the taxable non-portfolio earnings of a SIFT partnership.

This amendment applies to the 2007 and subsequent taxation years.

Definitions

ITR
414(1)

New subsection 414(1) of the Regulations provides three definitions that apply for purposes of section 414 of the Regulations. These new definitions apply to the 2007 and subsequent taxation years.

"general corporate income tax rate"

The definition "general corporate income tax rate" in subsection 414(1) of the Regulations is relevant to applying the allocation formula in subsection 414(3) of the Regulations, in particular variable D of the formula in paragraph 414(3)(*c*).

Under the definition, for the province of Quebec the general corporate income tax rate is set at 0%. This will ensure that a SIFT trust or SIFT partnership that has a permanent establishment (as defined in Part IV of the Regulations) in Quebec and that is subject to Quebec's provincial SIFT tax in respect of amounts attributable to that permanent establishment will not be subject to the provincial component of the federal tax in respect of those amounts.

For each other province, the general corporate income tax rate for a taxation year means the highest corporate income tax rate applicable to public corporations in that province for that taxation year. (Note that for the Newfoundland offshore area, it is the laws of Newfoundland and Labrador that apply and that, for the Nova Scotia offshore area, it is the laws of Nova Scotia that apply.)

"province"

The definition "province" is added to ensure that that expression as used in section 414 of the Regulations has the same meaning that it has in applying Part IV of the regulations to corporations. (Part IV applies to corporations in the context of the provincial abatement under section 124 of the Act.) To this end, the definition "province" in subsection 414(1) provides that a reference to province has the meaning it has under section 124 of the Act.

Because of the definition "province" in the federal *Interpretation Act* the reference includes the Northwest Territories, Yukon and Nunavut, and because of the definition "province" in section 124 of the Act, the meaning assigned by the *Interpretation Act* is extended to include the Newfoundland and Nova Scotia offshore areas (as defined, in turn, by subsection 248(1) of the Act).

It should be noted that a similar definition is not needed in Part IV of the Regulations for the purposes of applying those regulations to a corporation because the definition "province" in section 124 of the Act – which is the provision that confers the power to make the regulations in Part IV that apply to corporations – applies automatically for those purposes by operation of the federal *Interpretation Act*.

"taxable SIFT distributions"

The definition "taxable SIFT distributions" provides the allocable tax base for purposes of applying the allocation formula for SIFT trusts and SIFT partnerships in subsection 414(3).

For a SIFT partnership, taxable SIFT distributions for a taxation year means the partnership's taxable non-portfolio earnings (which is defined in section 197 of the Act) for the taxation year. This is the same amount that is the taxable base on which the SIFT tax is imposed upon the SIFT partnership under Part IX.1 of the Act.

For a SIFT trust, taxable SIFT distributions for a taxation year means its non-deductible distributions amount (which is defined in section 122 of the Act, by reference to subsection 104(16) of the Act) for the taxation year.

Rules of application

ITR
414(2)

Subsection 414(2) of the Regulations provides a number of rules of application to ensure the proper integration of section 414 with the rest of Part IV of the Regulations in determining the amount of a SIFT trust's or SIFT partnership's taxable SIFT distributions for a taxation year earned in a province. These rules apply to the 2007 and subsequent taxation years.

Because a SIFT trust or SIFT partnership is intended to use, in applying the formula in paragraph 414(3)(*c*), only the general allocation rules in subsection 404(3) of the Regulations, paragraph 414(2)(*b*) provides that subsection 400(1), section 401, subsections 402(1) and (2), and sections 403 to 413 do not apply in determining the amount of a SIFT trust's or SIFT partnership's taxable SIFT distributions for a taxation year earned in a province.

With the exception of the provisions identified in paragraph 414(2)(*b*), the rules in Part IV of the Regulations will otherwise apply, as modified by paragraph 414(2)(*a*), in determining the amount of a SIFT trust's or SIFT partnership's taxable SIFT distributions for a taxation year earned in a province. More particularly, in applying the relevant provisions of Part IV of the Regulations for that determination:

- a reference to "corporation" (other than in the expression "subsidiary controlled corporation") is to be read as a reference to "SIFT trust" or "SIFT partnership" as the case may be,
- a reference to "its incorporating documents or bylaws" is to be read as a reference to "the agreement governing the SIFT trust" or "the agreement governing the SIFT partnership", as the case may be,
- a reference to "taxable income" is to read as a reference to "taxable SIFT distributions", and
- a reference to "subsidiary controlled corporation" in respect of a SIFT trust or a SIFT partnership is to be read as meaning a corporation more than 50% of the issued share capital of which (having full voting rights under all circumstances) belongs to the SIFT trust or SIFT partnership.

These modifications will, among other things, ensure that the meaning of "permanent establishment" in subsection 400(2) of the Regulations applies to a SIFT trust or SIFT partnership, in applying subsection 414(3), as it applies for purposes of Part IV generally to a corporation carrying on similar activities.

Prescribed provincial SIFT tax rate

ITR
414(3)

Subsection 414(3) of the Regulations provides rules for determining the prescribed amount under the definition "provincial SIFT tax rate" in subsection 248(1) of the Act. This amendment applies to the 2007 and subsequent taxation years.

Subsection 414(3) contemplates three different rules for determining the prescribed amount. The first rule, contained in paragraph 414(3)(*a*), applies if the SIFT trust or SIFT partnership has no permanent establishment in a province in the taxation year. If this is the case, the prescribed amount that is the SIFT trust's or partnership's provincial SIFT tax rate for the taxation year is 10%.

The second rule, contained in paragraph 414(3)(*b*), applies if the SIFT trust or SIFT partnership has a permanent establishment in a single province, but no permanent establishment outside that province, in a taxation year. If this is the case, the prescribed amount that is the SIFT trust's or partnership's provincial SIFT tax rate for the taxation year is the general corporate income tax rate in the province for the taxation year.

The final rule, contained in paragraph 414(3)(*b*), applies if the SIFT trust or partnership has a permanent establishment in a province in a taxation year and a permanent establishment outside that province (whether inside or outside Canada) in that taxation year. In these circumstances, the prescribed amount that is the SIFT trust's or partnership's provincial SIFT tax rate for the taxation year is the positive amount determined by the formula A + B described in that paragraph. This formula, which applies in conjunction with the application rules in subsection 414(2), computes the prescribed amount using the factors from the general corporate allocation formula in subsection 402(3) of the Regulations. The intended effect is to arrive at a rate for the provincial component of the federal SIFT tax that represents a weighted average of the corporate income tax rates of each province in which the SIFT trust or SIFT partnership has a permanent establishment in the relevant taxation year. Note that the formula applies a 10% rate to that portion of the SIFT trust or partnership's taxable SIFT distributions that is not allocated to a permanent establishment in a province in the relevant taxation year.

Variable A of the formula applies to determine the weighted average portion of the prescribed amount that is attributable to the SIFT trust's or partnership's taxable SIFT distributions earned in a year in a province in which it has a permanent establishment for the taxation year. The nested formula within variable A determines the proportion of the SIFT trust's or SIFT partnership's allocable base in the province, and multiplies that amount by the general corporate income tax rate in that province. More specifically, variable A is the total of all amounts each of which is in respect of a province in which the SIFT trust or partnership has a permanent establishment in the taxation year and is the positive amount determined by the formula

$$C/D \times E$$

where

- C is the trust's or partnership's taxable SIFT distributions for the taxation year earned in the province; this is determined in respect of each relevant province by making an allocation of the trust's or partnership's taxable SIFT distributions for the year (as defined in subsection 414(1) of the Regulations) using the rules in subsections 402(3) to (8) of the Regulations, as modified by subsection 414(2) of the Regulations;
- D is its total taxable SIFT distributions for the taxation year, and
- E is the decimal fraction equivalent of the general corporate income tax rate (as defined in subsection 414(1) of the Regulations) in the province for the taxation year.

Variable B of the formula applies to determine the weighted average portion of the prescribed amount that is not attributable to the SIFT trust's or partnership's taxable SIFT distributions earned in a year in a province in which it has a permanent establishment for the taxation year. The nested formula in variable B calculates the proportion of the SIFT trust's or SIFT partnership's allocable base not attributable to a province, and multiplies that amount by 10%. More specifically, variable B is the amount determined by the formula (1 – F/D) x 0.1, where F is the total of all amounts each of which is an amount determined under the description of C in the description of A in respect of a province in which the SIFT trust or SIFT partnership has a permanent establishment in the taxation year.

The total of A +B provides the corresponding weighted average rate that, expressed as a decimal fraction, is the prescribed amount for a SIFT trust or partnership in circumstances in which paragraph 414(3)(*c*) applies.

The following examples illustrate the intended application of the formula in paragraph 414(3)(*c*).

Example 1

A SIFT trust has permanent establishments in Province A, Province B, and outside of Canada in the year. The SIFT trust's taxable SIFT trust distributions for the year are $100,000. Pursuant to section 402 of the Regulations, as modified by subsection 414(2), the SIFT trust has $30,000 of taxable SIFT distributions earned in Province A in the year and $60,000 earned in Province B. The remaining $10,000 in taxable SIFT distributions are not attributable to any province in which the trust has a permanent establishment in the year. Province A has a general corporate income tax rate for the year of 16% and Province B, 12%.

Variable A is determined adding together the results of C/D x E for each province in which there is a permanent establishment.

Province A: *$30,000 / $100,000 x 0.16 = 0.048*

Province B: *$60,000 / $100,000 x 0.12 = 0.072*

Total *0.12*

Variable B is determined by the formula (1- F/D) x 0.1

Therefore, variable B is

(1- $90,000 / $100,000) x 0.1 = 0.01

The provincial SIFT tax rate, expressed as a decimal fraction, is the sum of A and B, which is 0.12 + 0.01 = 0.13, or 13%. Therefore, the SIFT trust will pay $13,000 in federal tax as its provincial component of the SIFT tax, and this will be distributed to the provinces as follows: $4,800 to Province A and $7,200 to Province B.

Example 2

A SIFT partnership has permanent establishments in Quebec and outside of Canada in the year. The SIFT partnership's taxable SIFT distributions earned in Quebec for the year are $30,000. The remaining $70,000 of taxable SIFT distributions are not attributable to any province in which the partnership has a permanent establishment in the year.

In determining variable A, Quebec's general corporate income tax rate for the year is 0%. Therefore, A will be $30,000 / $100,000 x 0 = 0.

Variable B is determined by the formula (1- F/D) x 0.1, which is (1-$30,000 / $100,000) x 0.1 = 0.07.

The provincial SIFT tax rate, expressed as a decimal fraction, is the sum of A and B, which provides the SIFT partnership with a rate of 0.07. Therefore, the SIFT Partnership will pay $7,000 in federal tax as its provincial component of the SIFT tax. None of this tax will be distributed to the provinces.

Clause 81

Insurance business policy reserves
Part XIV

Part XIV of the Regulations provides rules in respect of insurance business policy reserves.

Clause 82

Policy reserves for pre-1996 policies

ITR
1401

Section 1401 establishes the amount that a life insurer is permitted to deduct as a policy reserve under subparagraph 138(3)(*a*)(i) in respect of its pre-1996 life insurance policies.

The preamble of section 1401 is amended by deleting the references to subsection 138(3)(*a*)(i) of the Act. For the purposes of calculating a life insurer's pre-1996 life insurance policy reserves, policies that were previously considered to be "pre-1996 life insurance policies" will now be subject to the same policy reserve rules as "post-1995 life insurance policies" (as described in section 1404 of the Regulations). Accordingly, paragraphs 1401(1)(*d.1*), (*d.2*), (*e*), and subsections 1401(1.1), (3), and (4) of the Regulations are no longer be needed and are being repealed.

The remaining portions of subsection 1401(1) will apply for the purposes of calculating the Part XII.3 tax on investment income accruing to fund insurance liabilities of a life insurance corporation and the calculation of a policy's accumulating fund in section 307 of the Regulations. Therefore, the preamble to subsection 1401(1) of the Regulations, and paragraphs 1401(1)(*a*) to (*d*), will continue to apply and have been modified to give effect to this restricted application.

The amendments to section 1401 apply to taxation years that begin after September 2006.

Clause 83

Policy reserves

ITR
1404

Section 1404 of the Regulations establishes the basis for determining the amount an insurer may deduct under subparagraph 138(3)(*a*)(i) of the Act as a policy reserve in respect of its life insurance policies that are post-1995 life insurance policies.

Section 1404 is amended to remove the reference to "post-1995 life insurance policies", consequential to amendments to section 1401 of the Regulations. Section 1404 will apply in respect of all life insurance policies of an insurer as a consequence of the amendments.

For further details, readers may refer to the commentary to proposed amendments to section 1401.

This change applies for taxation years that begin after September 2006.

Clause 84

Definitions

ITR
1408

Section 1408 of the Regulations provides a number of definitions and interpretative rules that apply for purposes of the rules in Part XIV of the Regulations dealing with the determination of an insurer's policy reserves.

The definitions "life insurance policy in Canada" and "life insurance policy" in subsection 1408(1) of the Regulations are amended to state that each of these terms has, for the purposes of Part XIV of the Regulations, the same meaning as for the purposes of section 138 of the Act.

This amendment applies to taxation years that begin after November 7, 2007.

Clause 85

Insurers
Part XXIV

Part XXIV of the Regulations sets out special rules for the computation of an insurer's income.

Transition year

ITR
2400(8)

Certain of the accounting rules that insurance corporations must follow are being changed effective for fiscal years beginning after September 2006. These changes impact the tax rules that apply to insurance corporations for taxation years commencing after September 2006.

In order to ensure that no inconsistencies arise under Part XXIV of the Regulations in respect of the tax treatment of insurance corporations as a result of these changes, new subsection 2400(8) of the Regulations provides a special rule for computations that are required to be made under Part XXIV in respect of an insurer's taxation year that included September 30, 2006 and that is relevant to a computation (the "transition year computation") that is required to be made under Part XXIV in respect of the insurer's first taxation year that begins after September 2006. The rule specifies that such computations are, for the purposes only of the transition year computation, to be made using the same definitions, rules and methodologies that are used in the transition year computation. These would include accounting rules required to be complied with by the insurer in its transition year.

New subsection 2400(8) applies to taxation years that begin after September 2006.

Clause 86

Interpretation

ITR
2600(1)

Subsection 2600(1) is amended to refer to the definition “income earned in the year in a province” in subsection 120(4) of the Act. Amended subsection 2600(1) provides that the prescribed rules in that definition are contained in Part XXVI of the Regulations.

This amendment, which is stylistic in nature, applies to the 2009 and subsequent taxation years.

Clause 87

Conditions

ITR
3505

New section 3505 of the Income Tax Regulations sets out conditions prescribed for the purposes of paragraph 110.1(8)(*e*) of the Act. That paragraph generally provides that, to be an “eligible medical gift” described in subsection 110.1(8) of the Act, a gift must be made to a donee that is a registered charity that, in the opinion of the Minister for International Cooperation, meets these prescribed conditions.

New subsection 3505(1) of the Regulations sets out the following general conditions:

- The donee must have applied to that Minister for a determination that the prescribed conditions have been met.
- Medicines received by the donee for use outside Canada must either be delivered outside Canada by the donee for use in its charitable activities or transferred to another registered charity that meets the prescribed conditions. As such, if the original donee of a gift of medicines does not use those medicines in the course of its own charitable activities, a further donation of those medicines to another registered charity that meets the requirements of this section will not jeopardize the status of the original donee. The same applies if the medicines are further donated by that other registered charity.
- In the course of delivering medicines outside of Canada, the donee must act in a manner consistent with the principles and objectives of the inter-agency *Guidelines for Drug Donations* issued by the World Health Organization (the "WHO Guidelines").
- The donee must have sufficient expertise in delivering medicines for use in charitable activities carried on outside Canada.
- The donee must carry on a program that includes delivering medicines for use in charitable activities carried on outside Canada that is an international development assistance program or an international humanitarian assistance program responding to situations of international humanitarian crisis (resulting from either natural disaster or complex emergency).
- The donee must have sufficient expertise to design, implement and monitor each program described above that it carries on, unless the donee has declared that it will not deliver medicines in that program.

New subsections 3505(2) and (3) of the Regulations provide minimum criteria in respect of the conditions set out in subsection 3505(1).

Subsection 3505(2) requires that the donee's directors, trustees, officers or like officials approve a policy and procedural framework, under which the donee is required to act in a manner consistent with the WHO Guidelines, and that those officials declared that the donee is acting in compliance with that policy and procedural framework.

Subsection 3505(3) generally requires that the donee's programs, for the delivery of medicines, international development assistance and international humanitarian assistance,

- address the specific and differentiated needs, interests and vulnerabilities of affected women and men, girls and boys;
- incorporate, in the design of projects, consideration for environmental effects of those projects; and
- have policies and practices for the design, implementation and monitoring of the program.

New subsection 3505(4) provides that the Minister for International Cooperation may rely on any information or evidence in making a determination under subsection 3505(1), and may require the donee to provide any other information or evidence that that Minister considers relevant and sufficient for the purpose of section 3505.

These amendments apply in respect of an application made by a donee in respect of a gift made after June 30, 2008.

Clauses 88 and 89

Deferred income plans – qualified investments
Part XLIX

Part XLIX of the Regulations lists a number of types of property that are prescribed to be qualified investments for trusts governed by RRSPs and other registered plans.

Qualified investments

ITR
4900 and 4901

Section 4900 of the Regulations lists a number of types of property that are prescribed to be qualified investments for trusts governed by registered retirement savings plans (RRSPs) and other registered plans. Section 4901 contains several interpretive provisions for the purposes of these rules.

Sections 4900 and 4901 are amended, effective for the 2009 and subsequent taxation years, to apply for the purposes of the definition "qualified investment" in subsection 207.01(1) of the Act that applies for trusts governed by tax-free savings accounts (TFSAs). With the exception of property described in subsection 4900(6) of the Regulations, the amendments provide that the types of property that are prescribed to be qualified investments for a TFSA trust correspond to those that are prescribed for an RRSP trust. (For details on new subsection 4900(14) of the Regulations, readers may refer to the commentary on new section 5001 of the Regulations.)

Section 4900 is also amended to introduce new paragraph 4900(1)(*w*) to provide that an American Depositary Receipt (ADR) is a qualified investment for a registered plan trust, provided that the underlying security that the ADR represents is listed on a designated stock exchange. This amendment is intended to ensure, in particular, that the de-listing of an ADR will not, in and of itself, result in the ADR becoming a non-qualified investment. (An ADR that is itself listed on a designated stock exchange is also covered by the general rule for listed securities in paragraph (*d*) of the definition "qualified investment" in section 204 of the Act.) This amendment applies in determining qualified investment status at any time after 2005.

Finally, several housekeeping amendments are being made to subsection 4900(1), effective for property acquired after the day on which this provision receives Royal Assent.

- Paragraphs 4900(1)(*i.3*) (asset-backed securities), (*l*) (debt issued by the World Bank and other supranational institutions) and (*o*) (investment-grade debt issued by foreign governments) are repealed. The types of property described by these paragraphs are covered by the general rule for investment grade debt in paragraph (*c.1*) of the definition "qualified investment" in section 204 of the Act.
- Paragraph 4900(1)(*j.2*) (mortgage-backed certificates) is amended to replace the reference to a bond rating agency that rates debt in the ordinary course of its business with a reference to a credit rating agency referred to in subsection 4900(2).
- Paragraphs 4900(1)(*k*) (pre-1981 qualified investments) and (*s*) (pre-2002 over-the-counter securities) are repealed since those provisions apply to property acquired in the past.

Clause 90

TFSA – Prohibited Investments
Part L

ITR
5000 and 5001

Section 207.04 of the Act imposes special taxes on the holder of a tax-free savings account (TFSA) if a trust governed by the TFSA holds a non-qualified investment or a prohibited investment (as defined in subsection 207.01(1) of the Act). The qualified investment regime sets out the basic investment framework for TFSA trusts, whereas the prohibited investment regime represents an overriding investment restriction for TFSA trusts that is intended to guard against tax planning opportunities with respect to closely-held investments. Responsibility for compliance with the qualified investment rules generally lies with TFSA issuers; responsibility for compliance with the prohibited investment rules lies with TFSA holders. This distinction recognizes the practical difficulties that TFSA issuers would have in obtaining the necessary information to ensure compliance with the prohibited investment rules on an on-going basis.

Regulations 5000 and 5001 prescribe two different types of property for the purposes of the definition "prohibited investment":

- property that is *excluded* from being a prohibited investment (and which is referred to in these notes as "Regulation 5000 prescribed property"), and
- property that *is* a prohibited investment (referred to here as "Regulation 5001 prescribed property").

Regulation 5000 describes property that is prescribed property for the purposes of the preamble to the definition "prohibited investment" in subsection 207.01(1) of the Act. Again, Regulation 5000 prescribed property is not a prohibited investment, and the Regulation now refers to prescribed property described in paragraph 4900(1)(*j*.1) of the Regulations. Paragraph 4900(1)(*j*.1) describes a debt obligation that is secured by a mortgage or hypothecary claim in respect of real or immovable property situated in Canada, insured either under the *National Housing Act* or by an approved private insurer. Including these debt obligations as Regulation 5000 prescribed property will allow individuals (once they have accumulated sufficient TFSA funds) to hold their own insured mortgage loan as an investment in their TFSA.

Regulation 5001 prescribed property is included in paragraph (*d*) of the definition "prohibited investment" in subsection 207.01(1) of the Act, and is a type of prohibited investment. New regulation 5001 is relevant where a TFSA trust holds shares of a specified small business corporation or a specified cooperative corporation (as defined in subsection 4901(2) of the Regulations) or a venture capital corporation described in any of sections 6700, 6700.1 or 6700.2 of the Regulations and those shares are a qualified investment for the trust solely because of new subsection 4900(14) of the Regulations.

Subsection 4900(14) generally provides that a share of such a corporation is a qualified investment for a TFSA trust if the share is not a prohibited investment for the trust. As is the case with subsection 4900(12) (which is a comparable provision that applies for registered retirement savings plans, registered retirement income funds and registered education savings plans), the qualification conditions in subsection 4900(14) apply only at the time of acquisition. Consequently, shares that are a qualified investment under subsection 4900(14) retain their qualified investment status for as long as they are held by the TFSA trust, even if they cease to be shares of a specified small business corporation, a specified cooperative corporation or a venture capital corporation.

New section 5001 provides that, if a share of a corporation that is a qualified investment for a TSFA trust solely because of subsection 4900(14) ceases to be described in paragraph 4900(14)(a) after it is acquired by the TFSA trust, it is a Regulation 5001 prescribed property (and consequently, a prohibited investment) for the TFSA trust. In other words, if a corporation whose shares are held by a TFSA trust subsequently ceases to satisfy the relevant conditions to be a specified small business corporation, specified cooperative corporation or Regulation 6700, 6700.1 or 6700.2 venture capital corporation (as the case may be), the shares become a prohibited investment for the TFSA trust. Consequently, the holder of the TFSA will be liable for tax under section 207.04 of the Act.

These amendments apply to the 2009 and subsequent taxation years.

Clause 91

Medical expense tax credit
Part LVII

Part LVII of the Regulations provides rules related to the medical expense tax credit.

The heading “Medical Devices and Equipment” for Part LVII is replaced by “Medical Expense Tax Credit” to reflect the introduction of new section 5701, which identifies prescribed drugs, medicaments, preparations or substances.

Clause 92

Medical devices and equipment

ITR
5700

Section 5700 of the Regulations provides a list of the medical devices and equipment that the costs of which are eligible for inclusion in the calculation of the medical expense tax credit (METC) under paragraph 118.2(2)(*m*) of the Act. Section 5700 is amended to add to that list four new kinds of devices or equipment:

- altered auditory feedback devices for the treatment of a speech disorder;
- electrotherapy devices for the treatment of a medical condition or a severe mobility impairment;
- standing devices for standing therapy in the treatment of a severe mobility impairment; and
- pressure pulse therapy devices for the treatment of a balance disorder.

This amendment applies to the 2008 and subsequent taxation years.

Clause 93

Prescribed drugs, medicaments, etc.

ITR
5701

New section 5701 of the Regulations describes the type of drugs, medicaments, preparations or substances that are prescribed for the purpose of subparagraph 118.2(2)(*n*)(ii) of the Act. The *Budget Implementation Act, 2008* (S.C. 2008, c. 28) amended paragraph 118.2(2)(*n*) of the Act to clarify the types of drugs and medications the cost of which is eligible for the medical expense tax credit (METC). Under subparagraph 118.2(2)(*n*)(ii), eligible drugs and medications include such substances that are prescribed by regulation.

New section 5701 stipulates that a substance is prescribed for this purpose if it

(*a*) is manufactured, sold or represented for use in the diagnosis, treatment or prevention of a disease, disorder or abnormal physical state, or its symptoms, or in restoring, correcting or modifying an organic function;

(*b*) is prescribed for a patient by a medical practitioner; and

(*c*) may, in the jurisdiction in which it is acquired, be lawfully acquired for use by the patient only with the intervention of a medical practitioner.

In the result, a medication that is available without a prescription, but only with the intervention of a medical practitioner (e.g. a pharmacist) may qualify for the METC, but only if it is prescribed for the patient by a medical practitioner.

These amendments apply after February 26, 2008.

Clauses 94 and 95

Foreign affiliates
Part LIX

Part LIX of the Regulations provides rules for the provisions in the Act relating to foreign affiliates of a taxpayer.

ITR
5906

Section 5906 of the Regulations provides, for the purposes of Part LIX, rules to determine, with respect to an active business carried on by a foreign affiliate of a corporation resident in Canada, the country in which that active business is considered to be carried on. The determination of the country in which a foreign affiliate carries on an active business is necessary for the calculation of the amounts of the foreign affiliate's surpluses and deficits under Part LIX.

Subsection 5906(1) provides, among other things, that a foreign affiliate is deemed to carry on an active business in a country other than Canada only to the extent that such business is carried on through a permanent establishment situated in that country.

Subsection 5906(2) defines the term "permanent establishment" for the purposes of subsection 5906(1). It essentially requires the use of the double taxation agreement definition of "permanent establishment" where such an agreement is in force between the Government of Canada and the country in which the business is carried on and such term is defined in that agreement or, in any other case, the use the rules in subsection 400(2) of the Regulations.

Subsection 400(2) defines “permanent establishment” for the purposes of Part IV of the Regulations. That subsection is being amended to add a paragraph (*e.1*) that would provide that, if, but for that paragraph, a corporation would not have a permanent establishment, the corporation is deemed to have a permanent establishment at the place designated in its incorporating documents or bylaws as its head office or registered office. For more detail, readers may refer to the commentary for subsection 400(2).

Subsection 5906(2) is amended in two respects. First, the subsection is amended to exclude the application of new paragraph 400(2)(*e.1*). This is because that paragraph is appropriate in the context of Part IV of the Regulations, which deals with the computation of taxable income earned in a year in a province, but is not appropriate in the context of Part LIX of the Regulations. Second, the language in the subsection is updated to use the expression “tax treaty” as defined in subsection 248(1) of the Act.

Amended subsection 5906(2) applies to the 2009 and subsequent taxation years, which is the same timing as for new paragraph 400(2)(*e.1*).

ITR
5907

Section 5907 of the Regulations provides definitions and interpretation rules for the purposes of Part LIX.

ITR
5907(11) and (11.11)

Subsection 5907(11) of the Regulations defines “designated treaty country” for the purposes of Part LIX. The subsection currently defines “designated treaty country” for a taxation year of a foreign affiliate of a corporation to mean a country with which Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income that has entered into force and has effect for that taxation year of the foreign affiliate. The subsection goes on to provide that any territory, possession, department, dependency or area of that country to which that agreement or convention does not apply is not included in that designated treaty country.

Subsection 5907(11) is amended to address comprehensive tax information exchange agreements as well as comprehensive agreements and conventions for the elimination of double taxation on income. As amended, the subsection defines “designated treaty country” for a taxation year of a foreign affiliate of a corporation to mean a sovereign state or other jurisdiction if Canada has entered into a comprehensive agreement or convention for the elimination of double taxation on income, or a comprehensive tax information exchange agreement, in respect of that sovereign state or jurisdiction, that has entered into force and has effect for that taxation year. The amended subsection also provides that any territory, possession, department, dependency or area of that sovereign state or jurisdiction to which that agreement or convention does not apply is not considered to be part of that sovereign state or jurisdiction for the purpose of determining whether it is a designated treaty country.

New subsection 5907(11.11) is added to section 5907. It provides that, for the purpose of applying subsection 5907(11) in respect of a foreign affiliate of a corporation, where a comprehensive tax information exchange agreement enters into force on a particular day, the agreement is deemed to enter into force and to come into effect on the first day of the foreign affiliate’s taxation year that includes the particular day.

Amended subsection 5907(11) and new subsection 5907(11.11) apply after 2007.

Clause 96

Prescribed amounts and areas
Part LXXIII

Part LXXIII of the Regulations sets out prescribed amounts and prescribed areas for a variety of purposes under the Act.

Automobile benefits

ITR
7305.1

Section 7305.1 of the Regulations prescribes the automobile benefit rates that apply to calculate taxable benefits related to employer-provided automobiles. Proposed changes to these rates are announced each year by news release.

On December 24, 2007 the Minister of Finance announced that the prescribed rate used to determine the taxable benefit relating to the personal portion of automobile operating expenses paid by employers for 2008 would increase by 2 cents to 24 cents per kilometre. For taxpayers employed principally in selling or leasing automobiles, it was announced that the prescribed rate would increase by 2 cents to 21 cents per kilometre.

Section 7305.1 of the Regulations is amended to give effect to these increases.

This amendment applies to taxation years that end after 2007.

Clause 97

Automobile deduction limits

ITR
7306

Section 7306 of the Regulations prescribes the automobile deduction limits that apply to per-kilometre allowances paid by employers. Proposed changes to these limits are announced each year by news release.

On December 24, 2007 the Minister of Finance announced that the limit on the deduction of tax-exempt allowances paid by employers to employees using their personal vehicle for business purposes for 2008 would be increased by 2 cents to 52 cents per kilometre for the first 5,000 kilometres driven and 46 cents for each additional kilometre. It was also announced that for the Yukon Territory, Northwest Territories and Nunavut, the tax-exempt allowance would rise by 2 cents to 56 cents for the first 5,000 kilometres driven and 50 cents for each additional kilometre.

Paragraph 7306(*a*) of the Regulations is amended to give effect to these increases.

This amendment applies to taxation years that end after 2007.

Clause 98

Pension credit – tax treaty

ITR
8308.1(2.1)

Section 8308.1 of the Regulations provides rules for calculating pension credits and past service pension adjustments (PSPAs) for Canadian-resident individuals who accrue benefits under unregistered foreign pension plans in respect of employment with an employer carrying on business in Canada. Pension credits and PSPAs are relevant in the determination of RRSP deduction room.

Subsection 8308.1(2) provides rules for calculating an individual's pension credit under a foreign plan. Section 8308.1 is amended, consequential on the anticipated ratification of the Fifth Protocol to the Canada-United States Tax Convention, to add new subsection 8308.1(2.1), which provides rules for applying subsection 8308.1(2).

The Protocol, by introducing new paragraph 8 of Article XVIII of the Convention, extends benefits to, for example, individuals on short-term assignments in Canada who continue coverage under their U.S. pension plan during the assignment. To ensure the appropriate recognition of such pension contributions, the tax relief under new paragraph 8 of Article XVIII of the Convention generally applies only if the individual's employment in Canada does not give rise to tax-deferred retirement savings opportunities under the Canadian system.

New subsection 8308.1(2.1) therefore imposes special rules that ensure that an individual who deducts foreign pension plan contributions because of new paragraph 8 of Article XVIII, or under a similar provision in another tax convention, does not accrue RRSP room in respect of that same employment.

Specifically, new subsection 8308.1(2.1) imposes a special reading for subsection 8308.1(2) of the Regulations. In determining pension credits for individuals deducting foreign pension plan contributions, subsection 8308.1(2.1) requires that,

- subsection 8308.1(2) be read without reference to the words "was resident in Canada and" in subparagraph (2)(*b*)(ii), and
- subparagraphs 8308.1(2)(*b*)(v) and (vi) be read as "the lesser of the money purchase limit for the year and 18% of the individual's resident compensation from the employer for the year."

The effect of this special reading is that a pension credit is determined under subsection 8308.1(2) of the Regulations for the individual and that the PA offset (which is defined by subsection 8300(1) of the Regulations to be $600) is disregarded for the purposes of this determination. This eliminates any RRSP deduction room that would otherwise accrue to the individual in respect of the employment.

This amendment applies in determining pension credits for calendar years that begin after the calendar year in which the Protocol enters into force.

Clause 99

Prescribed amount under foreign plans

ITR
8308.2

Subsection 8308.2(1) of the Regulations prescribes a reduction in the RRSP limit of certain individuals who are resident in Canada and participate in foreign pension plans. The most common application of this subsection is with respect to Canadian residents who are employed in the U.S. by corporations that do not carry on business in Canada.

Existing subsection 8308.2(1) prescribes an amount for a particular calendar year in respect of a Canadian-resident individual if the individual accrued benefits under a foreign plan in respect of services (referred to in these note as "foreign services") rendered to an employer in the previous calendar year ("service year") and those services were rendered primarily outside Canada and otherwise than in connection with a business carried on by the employer in Canada. The amount prescribed for the particular year reduces the amount of new RRSP deduction room that would otherwise become available to the individual for the particular year.

The amount prescribed for the particular year is the lesser of:

- the money purchase limit (as defined in subsection 147.1(1) of the Act) for the service year minus the PA offset (defined by subsection 8300(1) of the Regulations to be $600), and
- 10% of such portion of the individual's resident compensation for the service year from the employer as is attributable to the foreign services. (Subsection 8300(1) of the Regulations defines "resident compensation" as the amount referred to in paragraph (*a*) of the definition "compensation" in subsection 147.1(1) of the Act.)

A number of amendments are made to section 8308.2, consequential on the anticipated ratification of the Fifth Protocol to the Canada-United States Tax Convention. These amendments apply in determining prescribed amounts for calendar years that begin after the Protocol enters into force.

As part of these amendments, section 8308.2 is being reorganized. As amended, subsection 8308.2(1) sets out the circumstances in which an amount is prescribed (which are the same as under the existing rules), and provides that the prescribed amount is the lesser of:

- the money purchase limit for the service year, and
- the amount determined under new subsection 8308.2(2).

Under amended subsection 8308.2(1), the reference to the PA offset is eliminated. Thus, the ceiling on the prescribed amount for a particular year is the money purchase limit for the preceding year. However, for the first year in which these amendments apply, the money purchase limit for the preceding year is deemed to be $600 less than it actually is. This delays the impact of this particular amendment by one year, in recognition that the prescribed amount is based on benefits provided in the preceding year.

New subsection (2) replaces existing subsection (2), which contains transitional rules for determining prescribed amounts for years after 1996 and before 2004 and thus is not relevant for years after the Protocol comes into force. The amount that is determined under new subsection 8308.2(2) depends on whether the individual is accruing benefits under a money purchase provision or a defined benefit provision (as those terms are defined in subsection 147.1(1) of the Act) or a combination of the two.

If the individual is accruing benefits only under a money purchase provision, paragraph 8308.2(2)(*a*) provides that the amount determined under this subsection is the amount that would be the individual's pension credit for the service year under the provision if the plan were a registered pension plan. The pension credit would be determined in accordance with subsection 8301(4) of the Regulations but, as provided for in new subparagraph 8308.2(2)(*a*)(ii), without taking into account employee contributions. This means that the amount determined under this subsection will generally be the amount of the employer's contributions made in the service year in respect of the individual. However, if any employer contributions made after the service year are treated under the laws of the foreign country as having been made in the service year, new subparagraph 8308.2(2)(*a*)(iii) provides that the contributions are considered to have been made in the service year.

If the individual is accruing benefits only under a defined benefit provision, new paragraph 8308.2(2)(*b*) provides that the amount determined for the purposes of subsection 8308.2(1) is (as under existing rules) 10% of such portion of the individual's resident compensation for the service year from the employer as is attributable to the foreign services.

If the individual is accruing benefits under a combination of the two types of provisions, the amount determined under new paragraph 8308.2(2)(*b*) is the greater of:

- the amount determined under the 10% rule applicable to defined benefit provisions, and
- the amount that would be determined under paragraph 8308.2(2)(*a*) if the individual had not accrued benefits under the defined benefit provision.

These amendments recognize that, in the case of money purchase provisions, determining the value of the accrual for the individual, and thus the appropriate reduction in RRSP room, is relatively straightforward. The fact that employee contributions are not included in the determination of the prescribed amount recognizes that employee contributions are generally not deductible. Although the Protocol does allow for the deduction of certain Canadian-resident employee contributions to foreign plans, the employee's RRSP room in reduced by the amount of the deducted contributions.

Clause 100

Variable benefit minimum amount

ITR
8506

Section 8506 of the Income Tax Regulations (the Regulations) contains rules that apply to benefits provided under a money purchase provision of a registered pension plan (RPP).

ITR
8506(7)

Paragraph 8506(1)(*e.*1) of the Regulations permits an RPP to provide, as an alternative to the acquisition of an annuity, retirement benefits to a member under a money purchase provision in the same manner as is permitted under a registered retirement income fund (RRIF). These benefits are referred to as "variable benefits".

The amount of variable benefits payable each year from a member's account must not be less than the minimum amount determined in accordance with the rules set out in subsections 8506(5) to (7) of the Regulations. Subsections 8506(5) and (6) provide rules for determining the minimum amount that are similar to the RRIF minimum amount rules. Subsection 8506(7) currently provides an overriding rule that sets the minimum amount at nil for calendar years that end before the member turns 72 years of age.

Subsection 8506(7) is amended to move the existing rule into new paragraph (*a*), and to provide, in new paragraph (*b*), that the minimum amount for 2008 is reduced by 25%, consistent with the 25% reduction in the RRIF minimum amount for 2008, as provided for in new subsection 146.3(1.1) of the *Income Tax Act* (the Act).

This amendment applies on Royal Assent.

ITR
8506(9) and (10)

New subsections 8506(9) and (10) of the Regulations provide rules to allow for the re-contribution of certain variable benefit payments to an RPP in cases where a member has received, in 2008, more than the reduced minimum amount.

New subsection 8506(9) contains provisions that apply to contributions that meet the conditions described in new subsection 8506(10).

- Paragraph 8506(9)(*a*) deems the contributions to have been made in accordance with the plan as registered, allowing the member to deduct them.
- Paragraph 8506(9)(*b*) provides for the contributions to be disregarded for the purposes of paragraph 8506(2)(*c.1*) of the Regulations. That paragraph generally prohibits money purchase contributions after the member turns 71 years of age.
- Paragraph 8506(9)(*c*) deems the contributions to be excluded contributions for the purposes of paragraph 8301(4)(*a*) of the Regulations, thus ensuring that they do not give rise to a pension adjustment amount for the member.

New subsection 8506(10) sets out three conditions that a contribution must satisfy for subsection 8506(9) to apply.

First, the contribution must be made in 2008 or within 60 days after the end of 2008 (or within such longer period after the end of the year as is acceptable to the Minister). For this purpose, if the legislation implementing these new measures receives Royal Assent after January 30, 2009, re-contributions made after March 1, 2009 and on or before the day that is 30 days after the legislation implementing these measures receives Royal Assent will be deemed to have been made on March 1, 2009. In effect, this means that re-contributions made pursuant to these new rules will be permitted until the later of March 1, 2009 and 30 days after the legislation implementing these measures receives Royal Assent.

Second, the contribution must be designated for this purpose in a manner acceptable to the Minister.

Finally, the amount of the contribution must not exceed the amount determined by the formula

$$A - B - C$$

Variable A is the lesser of two amounts. The first amount is, in general terms, the total variable benefit payments received in 2008 from the account and included, because of paragraph 56(1)(*a*) of the Act in computing the member's income. The second amount is the minimum amount for the account for 2008, determined without reference to the 25% reduction provided for in new paragraph 8506(7)(*b*) of the Regulations.

Variable B is the minimum amount for the account for 2008, determined after taking into account the 25% reduction provided for in new paragraph 8506(7)(*b*) of the Regulations.

Variable C is the portion of the member's excess variable benefit payments under the money purchase provision that have already been re-contributed and designated for this purpose under this subsection.

These amendments apply on Royal Assent.

Clause 101

Prescribed payment card corporation shares

ITR
9002.1

New section 9002.1 of the Regulations prescribes, for the purposes of paragraph (*b*) of the definition "excluded property" in subsection 142.2(1) of the Act, certain property as prescribed payment card corporation shares.

A prescribed payment card corporation share of a taxpayer at any time means a share of the capital stock of a particular corporation if, at that time, the particular corporation is MasterCard International Incorporated, MasterCard Incorporated, or Visa Inc., and the share meets the following conditions:

- it is of a class of shares that is not listed on a stock exchange,
- it is not convertible into or exchangeable for a share of the class of the capital stock of a corporation that is listed on a stock exchange, and
- it was issued by the particular corporation to the taxpayer or to a person related to the taxpayer.

This amendment applies to taxation years that begin after February 24, 1994, except that, for taxation years that begin before October 1, 2006, the reference in the section to "paragraph (*b*) of "excluded property" in subsection 142.2(1) of the Act" is to be read as a reference to "paragraph (*d.1*) of the definition "mark-to-market property" in subsection 142.2(1) of the Act".

Prescribed securities exchange investments

ITR
9002.2

New section 9002.2 of the Regulations prescribes, for the purposes of paragraph (*c*) of the definition "excluded property" in subsection 142.2(1) of the Act, certain property as a prescribed securities exchange investment of a taxpayer.

A prescribed securities exchange investment of a taxpayer at any time means a share of the capital stock of a corporation if, at that time, the corporation is a corporation (other than a public corporation) that is The Toronto Stock Exchange Inc., TSX Inc., TSX Group Inc., Bourse de Montréal Inc., or Canadian Venture Exchange Inc.

New section 9002.2 applies to taxation years that begin after 1998 and before 2008, except that, for taxation years that begin before October 1, 2006, the reference in the section to "paragraph (*c*) of the definition" excluded property" in subsection 142.2(1) of the Act" is to be read as a reference to "paragraph (*d.2*) of the definition "mark-to-market property" in subsection 142.2(1) of the Act".

Part 2

Amendments in respect of Sales and Excise Taxes

Excise Act, 2001

Clause 102

Definition "officer"

EA, 2001
2

Section 2 of the *Excise Act, 2001* (the "Act") defines terms that apply for the purposes of the Act.

Except for the purposes of sections 167, 226 and 296, "officer" is currently defined under the Act to mean a person engaged in the administration or enforcement of the Act. It includes a member of the R.C.M.P. and a member of a police force designated under subsection 10(1). In sections 167, 226 and 296, the general meaning of officer applies.

The definition "officer" is amended to exclude its application from the new definition "contact information" and consequently have the general meaning of officer applied to it. This change is consistent with other amendments to the Act to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners) (see clause 103).

This amendment comes into force on Royal Assent.

Clause 103

Communication of information

EA, 2001
211

Section 211 of the Act prohibits officials and other persons from using or communicating confidential information obtained in the course of administering the Act unless they are specifically authorized to do so by one of the exceptions found in that section.

Subsections 211(1) to (3), (6), (8) and (9) are amended and new subsections 211(6.1) to (6.3) are added to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners), with a view to reducing paper work and duplication of effort for business and government alike. Specifically, these amendments provide for:

- broadening the BN-related information that may be shared with BN Partners;
- expanding the type of government entities that qualify as BN Partners; and
- allowing for the publication of the BN by BN Partners in connection with programs and services provided by the BN Partners.

Subclauses 103(1) and (2)

Definitions

EA, 2001
211(1)

Subsection 211(1) of the Act provides definitions that apply for the purposes of section 211.
The amendments to section 211 change the definition "confidential information" and add new definitions "aboriginal government", "contact information", "corporate information", "government entity", "municipality", "registration information", and "representative".

“confidential information”

“Confidential information” generally refers to information of any kind and in any form relating to one or more persons that is obtained by or on behalf of the Minister of National Revenue (the “Minister”) for the purposes of the Act, by or on behalf of the Minister of Public Safety and Emergency Preparedness for the purposes of section 68, or prepared from such information.

The definition “confidential information” is amended to specify that for the purposes of applying subsections 211(3), (8) and (9) to a representative of a government entity, confidential information includes only the information provided in paragraph 211(6)(*j*) of the Act (i.e. business number-related information that the representative of a government entity has obtained from an official).

“aboriginal government”

The new definition “aboriginal government” has the same meaning as under subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*. That Act defines an aboriginal government to mean an Indian government, an Inuit government or a Métis government, or the “council of the band” as defined in subsection 2(1) of the *Indian Act*. That provision of the *Indian Act* in turn defines a council of the band as,

- in the case of a band to which section 74 of the *Indian Act* applies, the council established pursuant to that section; and
- in the case of a band to which section 74 of the *Indian Act* does not apply, the council chosen according to the custom of the band, or where there is no council, the chief of the band chosen according to the custom of the band.

“contact information”

The new definition “contact information” in respect of a holder of a business number defines one subset of information that an official may, under amended paragraph 211(6)(j), share in respect of the holder of the business number. The definition refers to the name, address, telephone number, facsimile number and preferred language of communication of the business number holder and any other specified similar information obtained by the Minister. To accommodate cases where the business number holder is not a natural person, contact information also includes this information in respect of one or more of the holder’s trustees, members or officers, as appropriate.

“corporate information”

The new definition “corporate information” in respect of a holder of a business number defines a second subset of information that an official may share with a representative of a government entity in respect of a corporation under paragraph 211(6)(*j*). “Corporate information” means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation.

“government entity”

The new definition “government entity” means any of several types of federal, provincial, municipal and aboriginal entities. A “government entity” includes a department or agency of the Government of Canada or of a province, a municipality or an aboriginal government. It also includes a corporation all the shares of which are owned by one or more persons each of which is Her Majesty, Her Majesty in right of a province, a municipality or another such corporation. It further includes a board or commission established by Her Majesty or Her Majesty in right of a province that performs an administrative or regulatory function of government. Lastly, it includes a board or commission established by one or more municipalities that performs an administrative or regulatory function of a municipality.

This definition is used for the purposes of the definition “representative” of a government entity.

“municipality”

The new definition “municipality” means an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated.

This definition is used for the purposes of amended paragraph 211(6)(*j*) and the definition “government entity”.

“registration information”

The new definition “registration information” in respect of a holder of a business number defines a third subset of information that an official may share with a representative of a government entity under paragraph 211(6)(*j*). “Registration information” in respect of a holder of a business number means any information pertaining to the legal form of the business number holder (i.e. whether the business number is held by a natural person, a partnership, an incorporated entity, etc.), the type of activities carried on or proposed to be carried on by the holder, the date on which the business number was issued to the holder, the date on which the holder began activities, the date on which the business number assigned to the holder was changed and whether the holder is carrying on business activities or has ceased or resumed to carry on these activities (including the date and reason for doing so).

“representative”

The new definition “representative” of a government entity generally means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of a government entity. An official may now share information with a representative of a government entity under paragraph 211(6)(*j*).

A person who was formerly employed in the service of, who formerly occupied a position of responsibility in the service of, or who was formerly engaged by or on behalf of a government entity is also considered a representative of a government entity, but only for the purposes of subsections 211(2), (3), (8) and (9) of the Act. This ensures among other things that, if such a person has obtained confidential information and contravenes subsection 211(2), the offence provided in subsection 221(1) of the Act applies to them as well.

These amendments come into force on Royal Assent.

Subclause 103(3)

Provision of information

EA, 2001
211(2)

Subsection 211(2) of the Act prohibits the use or communication of confidential information by an official, except as authorized by section 211. The preamble to subsection 211(2) is amended to add a reference to a representative of a government entity, consequential on the introduction of the new definition “representative” in subsection 211(1). This ensures that representatives of a government entity are also prohibited from the unauthorized use or communication of confidential information. The amendment also ensures that the offence for contravening subsection 211(2), provided for in subsection 221(1) of the Act, applies to a representative of a government entity as well.

This amendment comes into force on Royal Assent.

Subclause 103(4)

Evidence

EA, 2001
211(3)

Subsection 211(3) of the Act provides that, notwithstanding any other Act of Parliament or other law, no official can be compelled to produce evidence relating to any confidential information in connection with any legal proceedings. Subsection 211(3) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclause 103(5)

Disclosure of personal information

EA, 2001
211(6)(*j*)

Subsection 211(6) of the Act sets out circumstances in which, and the purpose for which, confidential information may be disclosed. Paragraph 211(6)(*j*) allows an official (as defined in subsection 211(1)) to provide the business number, name, address, telephone number and facsimile number of the holder of a business number to another official of a department or agency of the Government of Canada or of a province solely for the purpose of the administration and enforcement of an Act of Parliament or a law of a province. This information can only be provided if that Act or law requires the holder of the business number to provide the information (other than the business number itself) to that government department or agency.

Paragraph 211(6)(*j*) is amended to broaden both the information that an official may share and the types of officials that may gain access to that information. The amendment allows an official to share with a representative of a government entity (as newly defined in subsection 211(1)) the following types of information:

- the business number and the name (including any trade name or other name used) of the holder of a business number; and
- “contact information”, “corporate information” and “registration information” – all as newly defined in subsection 211(1) – in respect of the holder of a business number.

A common feature of this type of information is that it is generally publicly available such as through provincial corporate registries.

These amendments come into force on Royal Assent.

Subclause 103(6)

Public disclosure and restriction

EA, 2001
211(6.1), (6.2) and (6.3)

New subsection 211(6.1) of the Act precludes an official from disclosing information described in paragraph 211(6)(*j*) in connection with a program, activity or service provided or undertaken by a government entity (as newly defined in subsection 211(1)) unless the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsection 211(6.2) allows the Minister to make public the business number and name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service provided or undertaken by the Minister.

New subsection 211(6.3) allows a representative of a government entity to make public the business number and the name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service undertaken by the government entity if a representative of the government entity was provided with that information pursuant to paragraph 211(6)(*j*) and the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsections (6.1), (6.2) and (6.3) come into force on Royal Assent.

Subclause 103(7)

Disclosure to person or on consent

EA, 2001
211(8)

Subsection 211(8) of the Act provides that an official may provide confidential information relating to a person to the person or to other persons, if the person consents to the disclosure. Subsection 211(8) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclause 103(8)

Appeal from order or direction

EA, 2001
211(9)

Subsection 211(9) of the Act provides that an official or authorized person may appeal an order or direction made in the course of or in connection with any legal proceeding requiring them to disclose confidential information. Subsection 211(9) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Excise Tax Act

Clause 104

Communication of Information

ETA
295

Section 295 of the *Excise Tax Act* (the "Act") prohibits officials and other persons from using or communicating confidential information obtained in the course of administering Part IX of the Act unless they are specifically authorized to do so by one of the exceptions found in that section.

Subsections 295(1) to (3) and (5) to (7) are amended and new subsections 295(5.01) to (5.03) are added to facilitate greater use of the Canada Revenue Agency Business Number (BN) by other levels of government (BN Partners), with a view to reducing paper work and duplication of effort for business and government alike. Specifically, these amendments provide for:

- broadening the BN-related information that may be shared with BN Partners;
- expanding the type of government entities that qualify as BN Partners; and
- allowing for the publication of the BN by BN Partners in connection with programs and services provided by the BN Partners.

Subclauses 104(1) and (2)

Definitions

ETA
295(1)

Subsection 295(1) of the Act provides definitions that apply for the purposes of section 295. The amendments to section 295 change the definition "confidential information" and add new definitions "aboriginal government", "contact information", "corporate information", "government entity", "municipality", "registration information", and "representative".

"confidential information"

"Confidential information" generally refers to information of any kind and in any form relating to one or more persons that is obtained by or on behalf of the Minister of National Revenue (the "Minister") for the purposes of Part IX of the Act, or prepared from such information.

The definition "confidential information" is amended to specify that for the purposes of applying subsections 295(3), (6) and (7) to a representative of a government entity, confidential information includes only the information provided in paragraph 295(5)(*j*) of the Act (i.e. business number-related information that the representative of a government entity has obtained from an official).

"aboriginal government"

The new definition "aboriginal government" has the same meaning as under subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*. That Act defines an aboriginal government to mean an Indian government, an Inuit government or a Métis government, or the "council of the band" as defined in subsection 2(1) of the *Indian Act*. That provision of the *Indian Act* in turn defines a council of the band as,

- in the case of a band to which section 74 of the *Indian Act* applies, the council established pursuant to that section; and
- in the case of a band to which section 74 of the *Indian Act* does not apply, the council chosen according to the custom of the band, or where there is no council, the chief of the band chosen according to the custom of the band.

“contact information”

The new definition “contact information” in respect of the holder of a business number defines one subset of information that an official may, under amended paragraph 295(5)(*j*), share in respect of the holder of the business number. The definition refers to the name, address, telephone number, facsimile number and preferred language of communication of the business number holder and any other specified similar information obtained by the Minister. To accommodate cases where the business number holder is not a natural person, contact information also includes this information in respect of one or more of the holder’s trustees, members or officers, as appropriate.

“corporate information”

The new definition “corporate information” in respect of a holder of a business number defines a second subset of information that an official may share with a representative of a government entity in respect of a corporation under paragraph 295(5)(*j*). “Corporate information” means the name (including the number assigned by the incorporating authority), date of incorporation, jurisdiction of incorporation and any information on the dissolution, reorganization, amalgamation, winding-up or revival of the corporation.

“government entity”

The new definition “government entity” means any of several types of federal, provincial, municipal and aboriginal entities. A “government entity” includes a department or agency of the Government of Canada or of a province, a municipality or an aboriginal government. It also includes a corporation all the shares of which are owned by one or more persons each of which is Her Majesty in right of Canada, Her Majesty in right of a province, a municipality or another such corporation. It further includes a board or commission established by Her Majesty in right of Canada or Her Majesty in right of a province that performs an administrative or regulatory function of government. Lastly, it includes a board or commission established by one or more municipalities that performs an administrative or regulatory function of a municipality.

This definition is used for the purposes of the definition “representative” of a government entity.

“municipality”

The new definition “municipality” restricts, for the purposes of section 295, the meaning of “municipality” as defined in subsection 123(1) of the Act by excluding a local authority determined by the Minister to be a municipality.

“registration information”

The new definition “registration information” in respect of a holder of a business number defines a third subset of information that an official may share with a representative of a government entity under paragraph 295(5)(*j*). “Registration information” in respect of a holder of a business number means any information pertaining to the legal form of the business number holder (i.e. whether the business number is held by a natural person, a partnership, an incorporated entity, etc.), the type of activities carried on or proposed to be carried on by the holder, the date on which the business number was issued to the holder, the date on which the holder began activities, the date on which the business number assigned to the holder was changed and whether the holder is carrying on business activities or has ceased or resumed to carry on these activities (including the date and reason for doing so).

“representative”

The new definition “representative” of a government entity generally means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of a government entity. An official may now share information with a representative of a government entity under paragraph 295(5)(*j*).

A person who was formerly employed in the service of, who formerly occupied a position of responsibility in the service of, or who was formerly engaged by or on behalf of a government entity is also considered a representative of a government entity, but only for the purposes of subsections 295(2), (3), (6) and (7) of the Act. This ensures among other things that, if such a person has obtained confidential information and contravenes subsection 295(2), the offence provided in subsection 328(1) of the Act applies to them as well.

These amendments come into force on Royal Assent.

Subclause 104(3)

Provision of information

ETA
295(2)

Subsection 295(2) of the Act prohibits the use or communication of confidential information by an official, except as authorized by section 295. The preamble to subsection 295(2) is amended to add a reference to a representative of a government entity, consequential on the introduction of the new definition “representative” in subsection 295(1). This ensures that representatives of a government entity are also prohibited from the unauthorized use or communication of confidential information. The amendment also ensures that the offence for contravening subsection 295(2), provided for in subsection 328(1) of the Act, applies to a representative of a government entity as well.

This amendment comes into force on Royal Assent.

Subclause 104(4)

Evidence relating to confidential information

ETA
295(3)

Subsection 295(3) of the Act provides that, notwithstanding any other Act of Parliament or other law, no official can be compelled to produce evidence relating to any confidential information in connection with any legal proceedings. Subsection 295(3) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclauses 104(5) and (6)

Disclosure of personal information

ETA
295(5)(*j*)

Subsection 295(5) of the Act sets out circumstances in which, and the purpose for which, confidential information may be disclosed. Paragraph 295(5)(*j*) allows an official (as defined in subsection 295(1)) to provide the business number, name, address, telephone number and facsimile number of the holder of the business number to another official of a department or agency of the Government of Canada or of a province solely for the purpose of the administration and enforcement of an Act of Parliament or a law of a province. This information can only be provided if that Act or law requires the holder of the business number to provide the information (other than the business number itself) to that government department or agency.

Paragraph 295(5)(*j*) is amended to broaden both the information that an official may share and the types of officials that may gain access to that information. The amendment allows an official to share with a representative of a government entity (as newly defined in subsection 295(1)) the following types of information:

- the business number and the name (including any trade name or other name used) of the holder of a business number; and
- "contact information", "corporate information" and "registration information" – all as newly defined in subsection 295(1) – in respect of the holder of a business number.

A common feature of this type of information is that it is generally publicly available such as through provincial corporate registries.

These amendments come into force on Royal Assent.

Subclause 104(7)

Public disclosure and restriction

ETA
295(5.01), (5.02) and (5.03)

New subsection 295(5.01) of the Act precludes an official from disclosing information described in paragraph 295(5)(*j*) in connection with a program, activity or service provided or undertaken by a government entity (as newly defined in subsection 295(1)) unless the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsection 295(5.02) allows the Minister to make public the business number and name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service provided or undertaken by the Minister.

New subsection 295(5.03) allows a representative of a government entity to make public the business number and the name of (including any trade name or other name used by) the holder of a business number in connection with a program, activity or service undertaken by the government entity if a representative of the government entity was provided with that information pursuant to paragraph 295(5)(*j*) and the government entity uses the business number as an identifier in connection with the program, activity or service.

New subsections (5.01), (5.02) and (5.03) come into force on Royal Assent.

Subclause 104(8)

Disclosure to person or on consent

ETA
295(6)

Subsection 295(6) of the Act provides that an official may provide confidential information relating to a person to the person or to other persons, if the person consents to the disclosure. Subsection 295(6) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.

Subclause 104(9)

Appeal from order or direction

ETA
295(7)

Subsection 295(7) of the Act provides that an official or authorized person may appeal an order or direction made in the course of or in connection with any legal proceeding requiring them to disclose confidential information. Subsection 295(7) is amended to extend its application to a representative of a government entity, in respect of confidential information legally obtained by that representative of a government entity.

This amendment comes into force on Royal Assent.