Explanatory Notes to Legislative Proposals Relating to Income Tax and Sales and Excise Taxes

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The Honourable James M. Flaherty, P.C., M.P.
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Preface

These explanatory notes are provided to assist in an understanding of legislative proposals relating to income tax and sales and excise taxes. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable James M. Flaherty, P.C., M.P.,
Minister of Finance

These 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

Income Tax

Please note that these draft legislative proposals have been prepared taking into account draft legislative proposals previously released by the Department of Finance (for example, the release made on July 16, 2010).

Income Tax Act

Clause 1

Income from Office or Employment

ITA
6

Section 6 of the *Income Tax Act* provides for the inclusion in an employee's income of most employment-related benefits other than those specifically excluded.

Value of benefits

ITA
6(1)(*a*)

Paragraph 6(1)(*a*) of the Act provides for the inclusion in an employee's income of benefits in respect of employment, with a number of specified exceptions in subparagraph 6(1)(*a*)(i) to (v).

Paragraph 6(1)(*a*) is amended to clarify that all employment benefits received by a person who does not deal at arm's length with the employee are included in the employee's income, other than those benefits specifically excluded (subject to the specified exceptions).

New subparagraph 6(1)(*a*)(vi) is added to exclude any benefit received or enjoyed by a person who is not the employee, under a program provided by the employer that is designed to assist individuals to further their education. This exception applies if the benefit is not a substitution for salary, wages or other remuneration of the employee, and only if the employee deals at arm's length with the employer.

This amendment applies to employment benefits received or enjoyed on or after Announcement Date.

Automobile Operating Expense Benefit

ITA
6(1)(*l*)

Paragraph 6(1)(*l*) of the Act includes in income the value of any benefit received by an employee for automobile operating expenses attributable to personal use.

Paragraph 6(1)(*l*) is amended to clarify that benefits for operating expenses received by a person who is related to an employee, are included in the employee's income.

This amendment applies to employment benefits received or enjoyed on or after Announcement Date.

Deeming Rule – Amount Received

ITA
6(1.2)

Paragraph 6(1)(*g*) of the Act requires the inclusion in the computation of a taxpayer's income from an office or employment of amounts received from an employee benefit plan (or from the disposition of an interest in an employee benefit plan), subject to the exceptions listed in subparagraphs 6(1)(*g*)(i) to (iv).

New subsection 6(1.2) of the Act is added to provide that for the purposes of paragraph 6(1)(*g*), an amount is deemed to have been received by a taxpayer and not by the individual who received the amount if the individual does not deal at arm's length with the taxpayer, the amount is received in respect of an office or employment of the taxpayer, and the taxpayer is living at the time the amount is received by the individual.

This amendment applies to employment benefits received or enjoyed on or after Announcement Date.

Clause 2

Reinsurance Commission

ITA
12(1)(*s*)

Paragraphs 12(1)(*s*) and 20(1)(*jj*) of the Act apply in the context of reinsurance. Paragraph 12(1)(*s*) requires that a reinsurer include in income the maximum amount that a primary insurer was entitled to claim as a reserve under paragraph 20(7)(*c*) in respect of unearned reinsurance commissions. Paragraph 20(1)(*jj*) then permits the reinsurer to deduct in the following year the amount included in its income under paragraph 12(1)(*s*). This has the effect of matching acquisition costs of a reinsurer with premium income under a policy.

Subsection 18(9.02) of the Act was introduced to apply to taxation years that begin after 1999. It requires both an insurer and a reinsurer to treat acquisition costs incurred by the insurer in respect of an insurance policy, or reinsurance commissions paid by a reinsurer in respect of a reinsurance policy, as if they were incurred as consideration for services that are to be rendered consistently throughout the period of coverage under the policy. The introduction of subsection 18(9.02) renders it unnecessary to apply paragraphs 12(1)(*s*) and 20(1)(*jj*) to a reinsurer.

Paragraphs 12(1)(*s*) and 20(1)(*jj*) are repealed, effective for reinsurance commissions paid after 1999.

Clause 3

Unpaid Claims Reserves

ITA
12.3

Section 12.3 of the Act provides a transitional rule relating to the introduction of the requirement that insurers fully discount their unpaid claims reserves for tax purposes.

Section 12.3 applies where an insurer has deducted, for its taxation year that includes February 23, 1994, an amount in respect of its unpaid claims reserve adjustment under subsection 20(26). This section requires the insurer to include in income for that taxation year, and in each of its subsequent taxation years beginning before 2004, a prescribed portion (as determined under Part LXXXI of the *Income Tax Regulations*) of the amount so deducted.

This section is obsolete and is repealed for taxations years that begin after Announcement Date. For further information, see the commentary on subsection 20(26) and Part LXXXI of the *Income Tax Regulations*.

Clause 4

Recaptured Depreciation

ITA
13(21)

“undepreciated capital cost”

Subsection 13(21) of the Act contains a number of definitions, including the definition “undepreciated capital cost”, that apply for purposes of section 13. The definition “undepreciated capital cost” in that subsection also applies for purposes of the Act by operation of subsection 248(1).

The undepreciated capital cost to a taxpayer of depreciable property of a prescribed class as of any time means the amount determined by the formula in that definition.

The description of E in the definition is amended consequential on the repeal of subsections 13(22) and (23) of the Act. This amendment ensures that the amounts described in those repealed subsections (*i.e.*, certain amounts deemed to have been allowed by insurers as deductions for depreciation for certain past taxation years) continue to be included in determining an insurer’s undepreciated capital cost despite the repeal of those subsections.

For further information, see the commentary on subsections 13(22) to (23.1).

ITA
13(22) to (23.1)

Subsections 13(22) and (23) of the Act deem certain amounts to have been allowed as a deduction to an insurer for its last taxation year before its 1977 and 1978 taxation years in respect of depreciable property. Subsection 13(22) deems an insurer who has made a branch accounting election for the 1975 taxation year, and has had a 1975 branch accounting election deficiency, to have claimed capital cost allowance for taxation years prior to 1977 in excess of what it claimed on its tax return.

Subsection 13(23) is a part of the transitional rules for purposes of changing to the method of taxing life insurers that commenced in the 1978 taxation year and deems an insurer to have been allowed a certain deduction for depreciation for property of a prescribed class under paragraph 20(1)(*a*) in computing its income for taxation years before its 1978 taxation year.

These subsections are being repealed, although a consequential amendment to the definition “undepreciated capital cost” in subsection 13(21) ensures that amounts determined under subsections 13(22) and (23) continue to be included in determining an insurer’s undepreciated capital cost.

Subsection 13(23.1) of the Act provides that the definitions in subsection 138(12) apply to section 13. Specifically, certain expressions defined in subsection 138(12) are relevant to the application of subsection 13(22), including the definitions “1975-76 excess capital cost allowance” and “1975 branch accounting election deficiency”. Subsection 13(23.1) is repealed consequential on the repeal of subsection 13(22).

These amendments apply to taxation years that begin after Announcement Date.

Clause 5

Eligible Capital Property

ITA
14(5)

"adjustment time"

Section 14 of the Act provides rules concerning the treatment of expenditures and receipts in respect of eligible capital property. Subsection 14(5) contains definitions that apply for the purposes of section 14.

Subsection 14(5) defines "adjustment time", which applies for the purpose of determining the time at which the three-quarters inclusion rate in respect of expenditures and receipts relating to eligible capital property applies to a taxpayer in calculating the taxpayer's cumulative eligible capital.

In the case of a corporation, the adjustment time is generally the time immediately after the beginning of the corporation's first taxation year that begins after June 30, 1988. In the case of any other taxpayer, the adjustment time is the time immediately after the beginning of the taxpayer's first fiscal period that begins after 1987.

The definition "adjustment time" in subsection 14(5) is amended to repeal paragraph (*a*) of the definition. Existing paragraph (*a*) provides that the adjustment time in respect of a corporation formed as a result of an amalgamation occurring after June 30, 1988 is the time immediately before the amalgamation. Existing paragraphs (*b*) and (*c*) of the definition are renumbered as paragraphs (*a*) and (*b*), respectively.

This amendment is consequential on the amendment of paragraph 87(2)(*f*) of the Act and the concurrent repeal of paragraph 87(2)(*f.1*) in 1994. Subsection 87(2) provides rules relating to the amalgamation of two or more corporations. Paragraph 87(2)(*f*) is intended to treat the cumulative eligible capital of a predecessor corporation in respect of a business as forming part of the cumulative eligible capital of the new corporation where the new corporation carries on the business. Paragraph 87(2)(*f*) provides that, for the purposes of determining the amount of the new corporation's cumulative eligible capital, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.

Prior to the enactment of the current paragraph 87(2)(*f*), former paragraphs 87(2)(*f*) and 87(2)(*f.1*) provided generally that the cumulative eligible capital of a new corporation was the sum of the cumulative eligible capital of the predecessor corporations. Paragraph 87(2)(*f*) was amended and paragraph 87(2)(*f.1*) was repealed, by S.C. 1994, c. 7, to ensure that the new corporation is placed in the same position as the predecessor corporations with regard to eligible capital property of a business carried on by a predecessor corporation before the amalgamation. As a result of the amendment to paragraph 87(2)(*f*) and the repeal of paragraph 87(2)(*f.1*), a new corporation formed by an amalgamation does not require a new adjustment time with respect to the cumulative eligible capital of the predecessor corporations.

This amendment applies after Announcement Date.

Clause 6

Benefit conferred on shareholder

ITA
15(1)

Subsection 15(1) of the Act requires a shareholder of a corporation to include in computing income for a taxation year the amount or value of a benefit conferred in the year by the corporation on the shareholder. The provision also applies to benefits conferred on a person in contemplation of the person becoming a shareholder of the corporation.

Subsection 15(1) is amended in conjunction with the introduction of new subsection 15(1.4) of the Act, which provides three new rules for applying subsection 15(1). Subsection 15(1) is amended in a number of respects.

Firstly, the wording of subsection 15(1) is revised to remove the postambles currently found at the end of paragraph (*c*) and at the end of the subsection. Paragraph 15(1)(*c*) is reworded and, in the case of the postamble at the end of subsection 15(1), its substance is moved to the preamble of the revised subsection: (1) the requirement that the benefit be included in computing income of the shareholder for the year; and (2) the exception that applies to the extent a benefit is deemed by section 84 to be a dividend. No substantive change is made to the wording of paragraphs 15(1)(*b*) to (*d*).

Secondly, subsection 15(1) is clarified to apply to a benefit conferred by a corporation on a member of a partnership that is a shareholder.

The reference to "contemplated shareholder" in subsection 15(1) is clarified and expanded by new paragraph 15(1.4)(*a*). Further information is provided in commentary on that new paragraph.

The application of subsection 15(1) in the context of multiple tiers of partnerships is clarified by the rule in new paragraph 15(1.4)(*b*). Further information is provided in the commentary on that new paragraph.

The exception in current paragraph 15(1)(*a*) – that applies to reductions of a corporation's paid-up capital, the redemption, cancellation or acquisition of its shares or on the winding up, discontinuance or reorganization of its business, or otherwise by way of a transaction to which section 88 applies – is narrowed so that it applies only if the corporation is a resident of Canada. This amendment, along with the introduction of paragraph 15(1)(*a.1*), responds to the decision of the Tax Court of Canada in *Morasse* [2004 DTC 2435, [2004] 2 CTC 3085], which indicated that current paragraph 15(1)(*a*) may apply where the corporation conferring the benefit in the course of a reorganization is a foreign corporation. As noted below under paragraph 15(1)(*a.1*), this exception is no longer available to a non-resident corporation.

Finally, new paragraph 15(1)(*a.1*) is added to provide an exception from subsection 15(1) where a corporation that is not resident in Canada confers a benefit on a shareholder of the corporation in any of the following ways:

- By way of a distribution to which subsection 86.1(1) applies – in general, to a distribution in which a foreign corporation distributes (spins-off) shares of another foreign corporation in circumstances where the spin-off distribution is an "eligible distribution" under section 86.1.
- By a reduction of paid-up capital of the corporation to which subparagraph 53(2)(*b*)(ii) of the Act applies. This amendment, which is intended to take into account amendments to paragraph 53(2)(*b*) that were proposed in a previous release dealing with foreign affiliates, ensures that the exception only applies to reductions of paid-up capital made by non-resident corporations that are not foreign affiliates.
- By the redemption, acquisition or cancellation by the corporation of shares of its capital stock.
- On the winding-up, or liquidation and dissolution, of the corporation.

These amendments apply in respect of benefits conferred on or after Announcement Date.

Interpretation – subsection (1)

ITA
15(1.4)

New subsection 15(1.4) of the Act provides rules of interpretation that apply for the purposes of applying the shareholder benefit income inclusion rule in subsection 15(1).

New paragraph 15(1.4)(*a*) clarifies that subsection 15(1) applies not only where a benefit is conferred by a corporation on a person in contemplation of the person becoming a shareholder, but also where the benefit is conferred on a partnership in contemplation of the partnership becoming a shareholder of the corporation.

Further, a “contemplated shareholder” includes a member of a partnership on whom a benefit is conferred by the corporation in contemplation of the partnership becoming a shareholder of the corporation. This clarifies that subsection 15(1) applies where the benefit is conferred on a member of a partnership in contemplation of the partnership becoming a shareholder of the corporation.

New paragraph 15(1.4)(*b*) provides that a “person or partnership” that is (or is treated by the paragraph as being) a member of a particular partnership that is a member of another partnership, is deemed to be a member of the other partnership. In general, this extension provides a partnership look-through rule when considering if a person or partnership is a member of a partnership that is a shareholder of a corporation or a partnership that is a contemplated shareholder of the corporation.

New paragraph 15(1.4)(*c*) provides a rule that applies, in general, if a benefit is conferred on an individual – other than a trust in respect of which no individual (other than a trust) is beneficially interested – who does not deal at arm’s length with, or is affiliated with, a shareholder of the corporation, a member of a partnership that is a shareholder of the corporation or a contemplated shareholder of the corporation. In such cases, new paragraph 15(1.4)(*c*) provides that – for the purposes of subsection 15(1) – the benefit is conferred on the shareholder, the member of the partnership or the contemplated shareholder, as the case may be. This rule does not apply to the extent the benefit is conferred on an individual who is required to include the value of the benefit in computing the individual’s own income under subsection 15(1) or subsection 105(1).

New subsection 15(1.4) applies in respect of benefits conferred on or after Announcement Date.

Shareholder Debt

ITA
15(2.1)

Subsection 15(2) of the Act generally requires that certain indebtedness be included in the income of the debtor in the year in which the indebtedness arose. This subsection is intended to prevent a person, that is directly or indirectly a shareholder of a particular corporation or that is connected with a shareholder of the particular corporation, from avoiding tax by receiving property from the corporation through an otherwise non-taxable loan, rather than as a dividend or other taxable amount. Paragraphs 15(2)(*a*) to (*c*) describe the debtors to which section 15(2) applies in terms of their relationships with the particular corporation. In this regard, paragraph 15(2)(*b*) provides that subsection 15(2) may apply to a debtor if the debtor is connected with a shareholder of the particular corporation.

Section 15(2.1) of the Act generally provides, for the purposes of subsection 15(2), that a person is connected with a shareholder of a particular corporation if the person does not deal at arm’s length with the shareholder. Subsection 15(2.1) is amended to clarify that a partnership can be connected with a shareholder of a particular corporation if that partnership does not deal at arm’s length with, or is affiliated with, the shareholder.

This amendment applies in respect of loans made and indebtedness arising after Announcement Date.

Clause 7

Deductions

ITA
20

Section 20 of the Act provides rules relating to the deductibility of certain outlays, expenses and other amounts in computing a taxpayer’s income for the year from business or property.

Fees Paid to Investment Counsel

ITA
20(1)(*bb*)

Paragraph 20(1)(*bb*) generally allows a taxpayer to deduct fees, other than commissions, paid for advice on buying or selling a specific share or security of the taxpayer or for the administration or management of the shares or securities of the taxpayer. The fees must be paid to a person whose principal business is advising on the buying or selling of specific shares or securities or whose principal business includes the administration or management of shares or securities.

The definition "person" in subsection 248(1) of the Act does not include a partnership. Paragraph 20(1)(*bb*) is amended to allow for the deduction of fees paid to a person or partnership if the other conditions in paragraph 20(1)(*bb*) are met.

This amendment applies to amounts paid after June 30, 2005.

Reinsurance Commission

ITA
20(1)(*jj*)

For information on the repeal of paragraph 20(1)(*jj*), see the commentary on paragraph 12(1)(*s*) above. This amendment applies to reinsurance commissions paid after 1999.

Unpaid Claims Reserves

ITA
20(26)

Subsection 20(26) of the Act provides a transitional rule relating to the introduction of the requirement that insurers fully discount their unpaid claims reserves for tax purposes.

This subsection permits an insurer to deduct, in calculating its income for its taxation year that includes February 23, 1994, an amount not exceeding the amount prescribed (under part LXXXI of the *Income Tax Regulations*) to be the insurer's unpaid claims reserve adjustment.

Subsection 20(26) is now obsolete and is repealed for taxation years that begin after Announcement Date. For further information, see the commentary on section 12.3 and Part LXXXI of the *Income Tax Regulations*.

Clause 8

Universal Child Care Benefit

ITA
56(9.1)

Subsection 56(6) of the Act generally provides that the Universal Child Care Benefit ("UCCB") is to be reported by the spouse or common-law partner with the lower income for a taxation year. Other provisions in the Act similarly apply to include amounts in the income of, or to allow deductions to, the spouse or common-law partner with the higher or lower net income in the year.

New subsection 56(9.1) defines "income" for the purpose of determining the income of each spouse or common-law partner for the purposes of subsection 56(6). The new rule requires that, in calculating for these purposes the income of the taxpayer and the taxpayer's spouse or common-law partner, the following amounts will not be considered:

- certain grants and social assistance payments received by a married person or that person’s spouse, which are for other purposes added in computing income; and
- child care expense deductions, and repayments of old age security, employment insurance and UCCB which are for other purposes deductible in computing income.

This amendment applies to the 2006 and subsequent taxation years.

Clause 9

Foreign Resource Expense

ITA
66.21

Section 66.21of the Act sets out the rules governing the foreign resource expenses of a taxpayer.

Definitions

ITA
66.21(1)

Subsection 66.21(1) of the Act sets out a number of definitions that apply for the purposes of rules governing the foreign resource expenses of a taxpayer.

“Cumulative Foreign Resource Expense”

A taxpayer's “cumulative foreign resource expense” (CFRE) in respect of a country other than Canada includes the taxpayer's undeducted pool of foreign resource expenses in respect of the country. A taxpayer is generally permitted a deduction on a country-by-country basis under subsection 66.21(4) in respect of a positive CFRE. A “negative” CFRE is included in a taxpayer's income under subsection 66.21(3).

Formula in the definition of CFRE is amended by adding new element A.1. Element A.1 adds the cost of foreign resource property deemed to have been acquired when the taxpayer last became resident in Canada to the taxpayer's CFRE.

This amendment applies after 2004.

Clause 10

Exceptions to Subsection 75(2)

ITA
75(3)(*b*)

Subsection 75(3) of the Act exempts property held by certain trusts from the application of subsection 75(2). Absent subsection 75(3), income or losses from property is in certain circumstances attributed for income tax purposes to the person from whom the property was received by the trust.

Paragraph 75(3)(*b*) is amended to apply to property held by a trust that is a private foundation and a registered charity.

This amendment applies to taxation years that begin after Announcement Date.

Clause 11

Debt Forgiveness

ITA
80 to 80.04

Sections 80 to 80.04 of the Act set out the rules that apply when an obligation is settled or extinguished for less than its principal amount or the amount for which it was issued. When such a commercial debt obligation is settled or extinguished, it gives rise to a "forgiven amount" as defined in subsection 80(1). A forgiven amount in respect of a commercial debt obligation issued by a debtor is required to be applied against certain tax pools of the debtor, in a specified order, as provided in subsections 80(3) to (12). In general, subsection 80(13) requires that one half of any remaining unapplied portion of the forgiven amount be included in computing the debtor's income, unless it can be transferred to another taxpayer under section 80.04.

ITA
80.04(6)(*a*)

Section 80.04 of the Act allows a debtor to enter into an agreement with an eligible transferee (generally a person related to the debtor) to transfer a portion of any unapplied forgiven amount, as specified in the agreement, to the transferee. The transferred amount reduces the amount that the debtor is required to include in income under subsection 80(13), while the eligible transferee is required to reduce its tax pools as provided in subsection 80(3) to (12) by the transferred amount.

Manner of filing agreement

Subsection 80.04(6) of the Act sets out the conditions that must be satisfied in filing an agreement under section 80.04. If the requirements are not satisfied, the agreement is not considered valid.

Subparagraph 80.04(6)(*a*)(ii) provides that the agreement, which has to be in prescribed form, must be filed with the debtor's or the transferee's notice of objection to an assessment of tax payable for the taxation year in which the settlement arose.

Subparagraph 80.04(6)(*a*)(ii) is amended to take into account situations where no tax is payable for the taxation year in which the settlement arose by either the debtor or the transferee. In particular, subparagraph 80.04(6)(*a*)(ii) is amended to provide that an agreement may be filed on or before the later of:

- 90 days after the day an assessment of tax payable, or a notification that no tax is payable, is mailed; and
- if the debtor is an individual (other than a trust) or a testamentary trust, the day that is one year after the taxpayer's filing-due date for the year.

This amendment applies for taxation years that end after February 21, 1994.

Clause 12

Shareholder Debt

ITA
80.4(8)

Subsection 80.4(2) of the Act generally deems a debtor to have received a benefit in respect of certain low-interest or non-interest bearing shareholder indebtedness. This subsection is intended to prevent a person, that is directly or indirectly a shareholder of a particular corporation or that is connected with a shareholder of the particular corporation, from avoiding tax by receiving the benefit of a non-taxable low interest or interest-free loan from the corporation, rather than as a dividend or other taxable amount. The benefit is generally calculated

with reference to a prescribed interest rate prevailing during the term of the loan. Paragraphs 80.4(2)(*a*) to (*c*) describe the debtors to which subsection 80.4(2) will apply in terms of their relationships with the particular corporation. In this regard, paragraph 80.4(2)(*b*) provides that subsection 80.4(2) may apply to a debtor if the debtor is connected with a shareholder of the particular corporation.

Section 80.4(8) of the Act generally provides, for the purposes of subsection 80.4(2), that a person is connected with a shareholder of a corporation if the person does not deal at arm's length with the shareholder. Subsection 80.4(8) is amended to clarify that a partnership can be connected with a shareholder of a particular corporation if that partnership does not deal at arm's length with, or is affiliated with, the shareholder.

This amendment applies in respect of loans made and indebtedness arising after Announcement Date.

Clause 13

Hepatitis C and Indian Residential School Trusts

ITA
81(1)(*g.3*)

Section 81 of the Act lists various amounts that are not included in computing a taxpayer's income. Paragraph 81(1)(*g.3*) of the Act applies to the trust established under the 1986-1990 Hepatitis C Settlement Agreement, an agreement executed by the federal, provincial and territorial governments in order to provide compensation for certain individuals infected with the Hepatitis C virus. As long as no contribution to the trust, other than contributions provided for under the Agreement, is made before the end of a taxation year of the trust, the effect of paragraph 81(1)(*g.3*) is to completely exempt the trust's income from income taxation for that taxation year.

Paragraph 81(1)(*g.3*) of the Act is amended to add references to two additional trusts. The first is the trust created under the Pre-1986/Post-1990 Hepatitis C Settlement Agreement, and the second is the trust created under the Indian Residential Schools Settlement Agreement. These trusts are funded with contributions from the federal government. As a result of these amendments, as long as no contribution, other than contributions provided for under each of those Agreements, is made to the relevant trust, before the end of a taxation year of the trust, the trust's income will effectively be exempt from income taxation for that taxation year.

This amendment applies to the 2006 and subsequent taxation years for the pre-1986/post-1990 Hepatitis C Settlement Agreement trust, and to the 2007 and subsequent taxation years for the Indian Residential Schools Settlement Agreement trust.

Clause 14

Rollover on SIFT Unit for Share Exchange

ITA
85.1(7)

Subsections 85.1(7) and (8) of the Act are part of a set of rules that provide for the income tax effects on a reorganization into corporate form of a SIFT wind-up entity. 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 in a SIFT wind-up entity to a corporation in exchange for a share of the corporation.

The opening words of subsection 85.1(7) are amended to correct a typographical error in the reference in subsection 85.1(8) to the term "particular unit".

This amendment comes into force on Royal Assent.

ITA
85.1(8)

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

The opening words of paragraph 85.1(8)(*f*) are amended to correct a typographical error in the term "paid-up capital".

This amendment comes into force on Royal Assent.

Clause 15

Amalgamations

ITA
87

Section 87 of the Act provides rules that apply in the case of a qualifying amalgamation or merger of taxable Canadian corporations.

ITA
87(2)(*g.1*) and (*g.2*)

Paragraph 87(2)(*g.1*) of the Act provides that, for the purposes of section 12.4, the rules relating to the special reserves for banks under section 26 and transitional unpaid claims reserves for insurers under section 12.3 and subsection 20(26), a new corporation formed as a result of an amalgamation is to be treated as a continuation of each predecessor corporation.

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

Paragraphs 87(2)(*g.1*) and (*g.2*) are amended for taxation years that begin after Announcement Date to reflect the repeal of section 12.3 and subsections 20(26) and 142.5(5) and (7).

ITA
87(2)(*j.9*)

Paragraph 87(2)(*j.9*) of the Act provides that a new corporation formed on an amalgamation is treated as a continuation of its predecessor corporations for the purposes of determining the new corporation's claim under section 125.2 or 125.3 in respect of the carry-forward of the predecessors' unused Part VI and Part I.3 tax credits.

Paragraph 87(2)(*j.9*) is amended to remove reference to section 125.2 of the Act consequential on the repeal of that section. For further information, see the commentary on section 125.2.

This amendment applies to taxation years that begin after Announcement Date.

ITA
87(2)(*s*)

Paragraph 87(2)(*s*) of the Act is amended as a consequence of the addition of new subsection 135.1(10) of the Act relating to tax deferred cooperative shares held by an eligible member of an agricultural cooperative corporation. In particular, the existing rules in clauses 87(2)(*s*)(ii)(A) and (B) are replaced with a rule that provides that new subsection 135.1(10) applies. The rules in new subsection 135.1(10) are substantially the same as the rules under those clauses.

As a result of paragraph 88(1)(*e.2*) of the Act, the equivalent of revised paragraph 87(2)(*s*), applies to shares acquired on a winding-up to which subsection 88(2) applies.

This amendment applies after September 28, 2009.

Clause 16

Definitions

ITA
89(1)

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

"capital dividend account"

Clauses (a)(i)(A) and (a)(ii)(A)

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

Clauses (*a*)(i)(A) and (*a*)(ii)(A) of the definition "capital dividend account" in subsection 89(1) of the Act are amended so that it is computed without reference to dispositions that are deemed to occur under paragraph 40(3.1)(*a*) and subsection 40(3.12).

Subsection 40(3.1) is an anti-avoidance rule that deems a capital gain to arise if the adjusted cost base to a taxpayer of an interest as a limited partner in a partnership is negative. This can arise, for example, when partner drawings on equity are financed by partnership debt, rather than by net partnership income or gains or previous equity contributions. Subsection 40(3.12) allows a deemed capital loss in a subsequent year if the adjusted cost base of the partner's interest later becomes positive.

These amendments apply to dispositions made after Announcement Date.

Clause (f)(i)(B)

Paragraph (*f*) of the definition "capital dividend account" provides for the inclusion in a corporation's capital dividend account of an amount in respect of the non-taxable portion of capital gains distributed by a trust to the corporation. The amount permitted to be included is equal to the lesser of two amounts.

The first of the two amounts is the amount by which the distribution exceeds the amount designated under subsection 104(21) of the Act by the trust (other than a designation to which subsection 104(21.4) of the Act applies) in respect of the corporation in respect of those capital gains. The exclusion from the first amount of a designated amount to which subsection 104(21.4) applies prevents a double addition to the corporation's capital dividend account. This is because subsection 104(21.4) already deems certain capital gains of a trust to be those of the beneficiary.

Subsection 104(21.4) provides a special rule that applies where a trust designates, for its taxation year that includes either February 28, 2000 or October 17, 2000, an amount in respect of a beneficiary. Consequential on the proposed repeal of subsection 104(21.4) of the Act as described below, clause (*f*)(i)(B) of the definition is amended to refer to a designation to which subsection 104(21.4) applied as it read in its application to the corporation's last taxation year that began on or before Announcement Date.

This amendment applies to taxation years that begin after Announcement Date.

Clause 17

Deferral of Deemed Disposition for Trusts

ITA
104(5.3) to (5.7)

Subsections 104(4) to (5.2) of the Act set out what is generally referred to as the "21-year deemed realization rule" for trusts. Subsections 104(5.3) to (5.7) allow the deferral of the 21-year deemed disposition date for certain family trusts for taxation years that ended before 2000. Consequently, the last deemed disposition date that could be deferred was no later than January 1, 1999. Accordingly, subsections 104(5.3) to (5.7) are now obsolete and are repealed.

This amendment applies to taxation years that begin after Announcement Date.

Where Property Owned for Non-residents

ITA
104(10) and (11)

Prior to the end of the non-resident owned investment corporation (NRO) system, a trust that received a dividend from an NRO and that did not in turn distribute the amount of the dividend to its non-resident beneficiaries was entitled to deduct that amount from its income under subsection 104(10) of the Act. Subsection 104(11) then deemed the amount deducted under subsection 104(10) to have been paid to a non-resident beneficiary, with the result that Part XIII withholding tax would typically be payable. As a consequence of the phasing out of section 133, subsection 104(10) and (11) are repealed.

This amendment applies to the 2005 and subsequent taxation years.

Amounts Deemed Not Paid

ITA
104(13.2)

Subsection 104(13.2) of the Act applies in instances where a trust has a non-capital loss carry forward from a prior taxation year and current taxable capital gains. In such circumstances, the trust may choose not to deduct the full amount to which it is entitled under subsection 104(6), in order create sufficient taxable income attributable to taxable capital gains against which the non-capital losses carried forward may be deducted. This is accomplished through a designation under subsection 104(13.2).

Subsection 104(13.2) is amended to replace the reference to "beneficiaries" in paragraph 104(13.2)(*a*) with "beneficiary", consistent with the wording of subsection 104(13.1).

This amendment comes into force on Royal Assent.

Beneficiary's Taxable Capital Gain

ITA
104(21.1)

Subsection 104(21.1) of the Act sets out the appropriate income inclusion rate for capital gains realized before 1990 that were allocated to a beneficiary under a trust. As this subsection has no further application to any future taxation year, it is repealed with effect for taxation years that begin after Announcement Date.

Net Taxable Capital Gains of Trust Determined

ITA
104(21.3)

Subsection 104(21.3) of the Act defines the term "net taxable capital gains". The term is used in subsections 104(21) and (21.2) of the Act, which permit a trust, for certain purposes, to characterize, as taxable capital gains, income of the trust that flows through to a beneficiary under the trust. The trust can designate amounts for such treatment only to the extent of its net taxable capital gains for the year.

Subsection 104(21.3) is amended to confirm the result when such a flow through of income designated as taxable capital gains is made to a particular trust from another trust. In these circumstances, the particular trust will be permitted to in turn designate under subsection 104(21) those taxable capital gains in favour of its own beneficiaries, to the extent that the remaining legislative conditions for validly making such a designation are satisfied.

This result is achieved by amending subsection 104(21.3) to recast the computation under that subsection as a formula, and including as element B of the formula the total of all amounts each of which is deemed by subsection 104(21) to be a taxable capital gain of the trust for the year. Element A of the formula is the total of all amounts each of which is a taxable capital gain of the trust for the year from the disposition of a capital property that was held by the trust immediately before the disposition. The words "held by the trust" in element A are not strictly necessary, but are included to clarify that there is intended to be no overlap (*i.e.*, double counting is unintended) in terms of including the same taxable capital gain in both elements A and B of the formula. Paragraphs (*a*) and (*b*) of former subsection 104(21.3) are elements C and D of the formula.

This amendment is intended to replace the Canada Revenue Agency's Technical Interpretation 9813685 on a prospective basis.

This amendment applies to taxation years that begin after Announcement Date.

Deemed Gains

ITA
104(21.4) to (21.7)

Subsections 104(21.4) to 104(21.7) of the Act set out the appropriate capital gains inclusion rate for capital gains realized by a trust in the 2000 taxation year, including where those gains were allocated to a beneficiary of the trust. As these provisions have no further application, they are repealed with effect for taxation years that begin after Announcement Date.

Clause 18

Acquisition and Disposition of a Capital Interest in a Trust

ITA
107

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

ITA
107(2.11)

Subsection 107(2.11) of the Act provides a special rule that, for the purposes of subsections 104(6) and (13), allows income of a trust for a taxation year (computed without reference to subsection 104(6)) to be computed without regard to the tax consequences under subsection 107(2.1) (and former subsection 107(5)) of property distributed in kind to beneficiaries. This ensures that the gains, if any, that might arguably flow-out in some

circumstances to beneficiaries as a consequence of the operation of subsections 107(2.1) and former 107(5), will instead be included in income at the trust level.

Subsection 107(2.11) is amended to ensure that it does not apply to distributions of cash denominated in Canadian dollars. As a result, notwithstanding an election by a trust under subsection 107(2.11), income paid out of the trust in the form of a distribution of such cash, will be included in the beneficiary's income by operation of subsection 104(13).

This amendment applies to the 2002 and subsequent taxation years. It also applies to the 2000 and 2001 taxation years of a trust if a trust so elects in writing on or before the trust's filing due date for the taxation year that includes Royal Assent.

ITA
107(4)

Subsection 107(4) of the Act applies to certain distributions of property by specified trusts. For this purpose, a specified trust is a post-1971 spousal or common-law partner trust, an alter ego trust or a joint spousal or common-law partner trust (as defined in subsection 248(1)). These trusts are all required to contain terms requiring that a specified beneficiary (*e.g*., in the case of a spousal trust, the beneficiary spouse or common-law partner referred to in paragraph 104(4)(*a*)) be entitled to receive all of the income of the trust that arises before specified beneficiary's death and that no person, except the specified beneficiary, receive or otherwise obtain the use of any of the income or capital of the trust before the specified beneficiary's death.

Subsection 107(4) applies in respect of a distribution from a specified trust if the trust distributes property to a beneficiary other than the trust's specified beneficiary and the specified beneficiary is alive on the day of the distribution. For example, such a distribution may occur on the day on which the specified beneficiary dies, but before the end of that day. Alternatively, and perhaps more rarely, such a distribution might be made before the day on which the specified beneficiary dies and, therefore, in breach of the terms of the trust. Subsection 107(4) recognizes that the making of such a distribution is inconsistent with the rationale (*i.e*., that the relevant property is for, or for the benefit of, the specified beneficiary during his or her lifetime) for the deferral of gains taxation in respect of the settlement of property on the specified trust.

Subsection 107(4) is amended to clarify that it applies on a distribution of property by a specified trust to a beneficiary (other than a specified beneficiary) under the trust if the distribution occurs on or before the earlier of the trust ceasing to exist and the reacquisition, by the trust of any property, determined under paragraph 104(4)(*a*) in respect of the trust.

This amendment applies to distributions made after Announcement Date.

ITA
107(4.1)

Subsection 107(4.1) prevents the application of subsection 107(2) to a distribution of trust property to a beneficiary where, generally, subsection 75(2) was at any time applicable in respect of property of the trust. Subsection 107(4.1) is amended so that the determination, for purposes of subsection 107(4.1), of whether subsection 75(2) was at any time applicable in respect of property is made as though subsection 75(2) was applicable to attribute amounts in respect of property to non-resident persons.

This amendment applies to distributions made after Announcement Date.

For further information on another amendment to subsection 107(4.1), see the commentary on the amendment to the *Income Tax Amendments Act, 2000*.

ITA
107(5.1)

Subsection 107(5.1) of the Act is a rule that applies for the purposes of computing the instalment interest of a trust where paragraphs 107(2)(*a*) to (*c*) do not apply in respect of certain gains recognized on a distribution of property from the trust solely because of the application of subsection 107(5).

Subsection 107(5.1) is amended to remove cross-references to Part I.1, which was repealed by S.C. 2001, c. 17, and to subsection 156.1(4) to ensure consistency with a similar provision found in section 128.1.

This amendment applies to distributions made after Announcement Date.

ITA
107(6)

Subsection 107(6) of the Act is an anti-avoidance rule designed to deal with an acquisition of a capital interest in a trust that has a property with an accrued loss. Where the property is distributed to the beneficiary in satisfaction of that interest, any loss realized on a subsequent disposition of the property by that beneficiary is denied to the extent that it can reasonably be considered to have accrued when the property was owned by the trust and at a time when neither the beneficiary nor certain affiliated persons had a capital interest in the trust.

Paragraph 107(6)(*a*) is amended to replace the word "owned" with the word "held". This change is strictly technical and is not intended to represent a change in policy.

Paragraph 107(6)(*b*) is amended to also apply to deny the loss realized by a beneficiary on a subsequent disposition of property to the extent that the loss can reasonably be considered to have accrued during a period in which the trust holding the property (or property for which it was substituted) was non-resident and the property (or property for which it was substituted) is not taxable Canadian property.

The following example illustrates the intended operation of this provision.

Example

Trust A distributes property to a beneficiary and subsection 107(2) applies in respect of the distribution. The adjusted cost base to Trust A of the property is $1,000 and its fair market value at the time of its distribution was $700 (an accrued loss to the trust, as of the time of distribution, of $300). Assume that the adjusted cost base to the beneficiary of the property is, as a result of the distribution, $1,000. Throughout the period that Trust A held the property it was non-resident. The property is at all times at which it was held by Trust A not taxable Canadian property of the trust. The beneficiary subsequently disposes of that property for proceeds of disposition of $500, resulting in a loss of $500. Subsection 107(6) would apply in these circumstances to deny the beneficiary recognition of the $300 portion of the beneficiary's loss that was attributable to the period during which the property was held by Trust A, resulting in a loss available to the beneficiary in respect of the disposition of the property of $200.

If, on the other hand, subsection 107(2.1), and not subsection 107(2), had applied to the distribution of the property to the beneficiary, the beneficiary's adjusted cost base of the property as of the time of the distribution would have been $700 and the beneficiary's loss on subsequent disposition of the property would have been $200. In that case, no part of the beneficiary's loss would be viewed as accruing during the period in which the trust held the property. Subsection 107(6) would not apply to restrict the amount of the beneficiary's loss on a subsequent disposition of the property.

This amendment applies to dispositions made after Announcement Date.

Clause 19

Definitions

ITA
108(1)

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

“cost amount”

The definition “cost amount” in subsection 108(1) of the Act generally applies in determining the cost amount to a taxpayer of the taxpayer's capital interest in a trust. Paragraph (*a.1*) of that definition applies where the time of measurement of a taxpayer’s cost amount of a capital interest in a trust is immediately before the time of death of the taxpayer and subsection 104(4) or (5) deems the trust to dispose of the property at the end of the day that includes the measurement time.

Paragraph (*a.1*) of the definition “cost amount” is amended to clarify the times in respect of which the rule operates. This amendment comes into force on Royal Assent.

“trust”

For the purposes of the 21-year deemed disposition rule and other specified measures, subsection 108(1) of the Act defines “trust” to exclude certain trusts. Paragraph (*g*) of the definition “trust” refers to a trust in which all interests have vested indefeasibly but excludes certain trusts. Paragraph (*g*) of the definition “trust” is amended to remove one of those exclusions, specifically the exclusion for a trust that has made an election under subsection 104(5.3). Subsection 104(5.3), which provides a deferral of the 21-year deemed disposition date that would otherwise have applied to certain family trusts before 1999, is repealed for taxation years that begin after Announcement Date, on the basis that the most recent deemed disposition date that could be deferred under that provision was January 1, 1999. Consequently, paragraph (*g*) of the definition “trust” is also repealed.

This amendment applies to taxation years that begin after Announcement Date.

ITA
108(2)

Subsection 108(2) of the Act sets out the requirements for a trust to be a "unit trust". To be a unit trust, if the issued units of a trust do not meet the conditions of paragraph 108(2)(*a*), the trust must at that time meet the requirements of paragraph 108(2)(*b*) or (*c*). For a trust that relies upon paragraph 108(2)(*b*), subparagraph 108(2)(*b*)(iii) imposes upon the trust the condition that at least 80% of the trust’s property consist of any combination of property described in clauses 108(2)(*b*)(iii)(A) to (G). Subparagraph 108(2)(*b*)(iv) requires, in general terms, that at least 95% of the trust’s income over certain periods of time be derived from investments, or dispositions of investments, in property described in subparagraph 108(2)(*b*)(iii).

Subsection 39(2) deems the net amount of certain gains and losses resulting from the fluctuation in value of foreign currency to be a capital gain or loss from the disposition of foreign currency.

Subparagraph 108(2)(*b*)(iv) is amended so that for the purposes of determining whether the conditions in paragraph 108(2)(*b*) have been met, the trust's income will be determined without regard to subsection 39(2).

This amendment applies to the 2003 and subsequent taxation years.

Clause 20

Lump-sum Averaging

ITA
110.2(1)

"qualifying amount"

Subsection 110.2(1) of the Act defines the terms used for the purpose of calculating the lump-sum deduction in subsection 110.2(2). If a taxpayer claims a lump-sum deduction in respect of a qualifying amount, that amount is subject to a special tax that is meant approximate the tax and interest that would result if the recipient's income tax return for a prior taxation year were adjusted to include the amount.

In general, a "qualifying amount" is a specific type of lump-sum payment, received in a year but relating to a preceding year, the principal portion of which must be included in income. It can include, for example, certain employment insurance benefits. This definition is amended to add income replacement benefits of Canadian Forces members and veterans, as described in paragraph 6(1)(*f.1*) of the Act.

This amendment is deemed to have come into force on April 1, 2006.

Clause 21

Failure to Report a Capital Gain

ITA
110.6(6)

Subsection 110.6(6) of the Act denies a capital gains exemption for certain unreported gains, notwithstanding the amount that could otherwise be claimed as a capital gains exemption under subsections 110.6(2) to (2.3). Subsection 110.6(6) applies where an individual has realized a capital gain on a disposition of capital property in a taxation year and knowingly or under circumstances amounting to gross negligence fails to report the disposition in their return of income for that taxation year or fails to file a return for that taxation year within one year following the taxpayer's filing-due-date for the taxation year and the Minister of National Revenue establishes the facts justifying the denial.

In May 2006, amendments to this provision inadvertently removed the words "or any subsequent taxation year". Subsection 110.6(6) is amended to return the provision to its original wording to clarify that a failure to report a capital gain in a taxation year will result in a denial of the lifetime capital gains exemption against that gain in any subsequent taxation year. This could apply, for example, if a taxpayer were, after initially failing to report any capital gain in the year of a disposition of a capital property, to claim a reserve in respect of the capital gain for the year of disposition, such that a portion of the capital gain would instead be reported in a subsequent year. The amendment ensures that a claim for a capital gains exemption in the subsequent year will not be available.

This amendment applies to taxation years for which a return of income has not been filed before Announcement Date except in respect of gains realized in taxation years for which a return of income was filed before Announcement Date.

Trust Deduction — Death of Spouse or Common-Law Partner

ITA
110.6(12)

Subsection 110.6(12) of the Act allows trusts described in paragraph 104(4)(*a*) or (*a.1*) to take advantage of any unused capital gains exemption of the trust's spouse beneficiary after that person dies. To avoid administrative complexity, this advantage is not extended to pre-1972 spousal trusts described in paragraph 104(4)(*a.1*) that have made an election under subsection 104(5.3).

Subsection 110.6(12) is amended by removing the reference to subsection 104(5.3), which is repealed for taxation years that begin after Announcement Date. For further information, see the commentary on subsection 104(5.3).

This amendment applies to taxation years that begin after Announcement Date.

Clause 22

Losses Deductible

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 incurred in other years.

ITA
111(1.1)

Subsection 111(1.1) of the Act determines the amount that a taxpayer may deduct in respect of a net capital loss claimed under paragraph 111(1)(*b*). The amount that may be deducted under paragraph 111(1)(*b*) in respect of net capital losses will differ from the amount claimed under paragraph 111(1)(*b*) where the inclusion rate for capital gains and losses for the year in which the loss was realized differs from the inclusion rate for the year in which the loss is deducted against taxable capital gains.

Paragraph 111(1.1)(*c*) provides the Minister of National Revenue the discretion to determine the appropriate deduction where the formula in paragraph 111(1.1)(*a*) provides an inappropriate result because of the application of one or more of subsections 104(21.6), 130.1(4), 131(1) or 138.1(3.2) to a particular taxpayer. Consequential on the proposed repeal of subsections 104(21.6) and 138.1(3.2) and proposed amendments to subsections 130.1(4) and 131(1), subsection 111(1.1)(*c*) is amended to refer to those provisions as they applied to the taxpayer's last taxation year that began on or before Announcement Date.

This amendment applies to taxation years that begin after Announcement Date.

ITA
111(7.1) to (7.2)

Subsections 111(7.1), (7.11) and (7.2) of the Act apply with respect to certain losses of life insurance companies realized in their taxation years that ended before 1977. These subsections provide relief for losses in those cases where the losses and deductions of prior years exceeded a company's reserves. Since subsections 111(7.1) to 111(7.2) apply only to specific taxation years before 1978 and are no longer relevant they are repealed.

This amendment applies to taxation years that begin after Announcement Date.

Clause 23

Not Carrying on Business in Canada

ITA
115.2(2)

Section 115.2 of the Act is an interpretive rule that ensures that, provided certain conditions are met, a qualified non-resident is not considered to be carrying on business in Canada solely because of the provision to the non-resident of designated investment services by a Canadian service provider. Subsection 115.2(2) outlines the

qualifying conditions and sets out the relevant applications of this interpretive rule. The rule currently applies for the purposes of subsection 115(1) and Part XIV branch tax.

Subsection 115.2(2) of the Act is amended to apply the interpretative rule, in addition to subsection 115(1) and Part XIV, for the purposes of subsection 150(1). If a non-resident benefits from section 115.2, the non-resident is considered not to be carrying on business in Canada for the purposes of subsection 150(1).

The amendment applies to taxation years that end after 1998.

ITA
115.2(2)(*c*)

Subparagraph 115.2(2)(*c*) of the Act precludes a non-resident from benefiting from section 115.2 if, at the particular time that is one year after the partnership was formed, the non-resident is a member of a partnership whose members that are affiliated with the Canadian service provider ("CSP") that provides designated investment services to the partnership own more than 25% of the fair market value of the partnership, which is generally referred to as an "independence test".

Subparagraph 115.2(2)(*c*) is amended to ensure that the independence test between the non-resident and the CSP is applied at the partner level instead of at the partnership level. Consequently, subparagraph 115.2(2)(*c*)(ii) will preclude a non-resident member from benefiting from section 115.2 if the non-resident member is, or is affiliated with, a person that is affiliated with the CSP or is owned more than 25% by a person or partnership affiliated with the CSP ("an unqualified person") and, either alone or together with other unqualified persons, owns more than 25% of the fair market value of all interests in the partnership.

The amendment applies to taxation years that end after 2001. A transitional provision provides that the amendment will not apply to a taxpayer for the period that ends on Announcement Date if the taxpayer elects, in writing, on or before the filing-due date of its taxation year that includes the Announcement Date.

Interpretation

ITA
115.2(3)

Subsection 115.2(3) of the Act provides an interpretative rule for the determination of fair market value for the purpose of subparagraph 115.2(2)(*b*)(iii) and subsection 115.2(3). As subparagraph 115.2(2)(*c*)(ii) also requires a determination of fair market value for the purpose of that subparagraph in the same manner as subparagraph 115.2(2)(*b*)(iii), and subparagraph 115.2(2)(*c*)(ii) has been in force for taxation years that end after 2001, subsection 115.2(3) is amended to apply the interpretative rule to the determination of fair market value for the purposes of subparagraph 115.2(2)(*c*)(ii) as well.

The amendment applies to taxation years that end after 2001.

Taxable Canadian Property

ITA
115.2(5)

Prior to March 5, 2010, the definition "taxable Canadian property" in subsection 248(1) of the Act included property used or held in carrying on a business in Canada by a partnership as well as the interest of that partnership.

New subsection 115.2(5) applies for the purpose of determining whether a non-resident's interest in a partnership is, at any particular time before March 5, 2010, a taxable Canadian property. For this purpose, property of the partnership is not considered to be used or held by the partnership in a business carried on in Canada, if because of subsection 115.2(2) the member is considered not to be carrying on business in Canada at that particular time.

The subsection applies to taxation years that end after 2007, but is repealed effective March 5, 2010 because as of that date this interpretative rule has no further relevance. The definition "taxable Canadian property" in subsection 248(1) from March 5, 2010 includes only interests of a partnership where more than 50% of the fair market value of the partnership is derived directly or indirectly from a combination of real property in Canada, Canadian resource property, timber resource property and options or interests in any of those properties.

Clause 24

Medical Expense Credit

ITA
118.2(1)

Subsection 118.2(1) of the Act provides the calculation of an individual's medical expense tax credit.

The description of B in subsection 118.2(1) is amended to clarify that an individual may claim the medical expenses of a spouse or a common-law partner, but not both.

This amendment applies to taxation years that end after Announcement Date.

ITA
118.2(2)(*l.9*)

Subsection 118.2(2) of the Act sets out the expenses that may be included in the computation of an individual's medical expense tax credit. Under paragraph 118.2(2)(*l.9*) the cost paid for therapy may qualify as a medical expense, but not if the payee is the individual's spouse or under the age of 18.

Paragraph 118.2(2)(*l.9*) is amended to provide that the payee also cannot be the individual's common-law partner.

This amendment applies to taxation years that end after Announcement Date.

Clause 25

Goods and Services Tax Credit

ITA
122.5(7)

Section 122.5 of the Act provides rules for determining the goods and services tax (GST) credit for individuals. Subsection 122.5(7) is intended to ensure that the bankruptcy of an individual or the individual's spouse will not affect the amount of the individual's GST credit.

For most purposes, paragraph 128(2)(*d*) of the Act divides the calendar year in which an individual becomes bankrupt into two taxation years. A taxation year of an individual is deemed to have ended immediately before the day on which the individual became a bankrupt and another taxation year is deemed to have begun at the beginning of the day on which the individual became a bankrupt.

Existing paragraph 122.5(7)(*b*) provides that, for the purpose of determining the GST credit for the year that includes the bankruptcy of a single person with no dependents, the amount of the person's personal credit for the pre-bankruptcy taxation year will be used in the calculation. Paragraph 122.5(7)(*b*) originally achieved this by reference to clause 122.5(3)(*e*)(ii)(B), which in turn referred to paragraph (*c*) of the description of B in subsection 118(1) of the Act.

Paragraph 122.5(7)(*b*) is repealed consequential to the removal of the reference to paragraph (*c*) of the description of B in subsection 118(1) in former clause 122.5(3)(*e*)(ii)(B) by S.C. 1999, c. 26. The calculation of

the GST credit for a single person with no dependents is now provided for in paragraph 122.5(3)(*f*), without reference to section 118.

This amendment comes into force on Royal Assent.

Clause 26

Corporate Tax Reductions

ITA
123.4(1)

"full rate taxable income"

Section 123.4 of the Act contains rules that allow a corporation to reduce its tax otherwise payable under Part I of the Act by a percentage of its "full rate taxable income". The "full rate taxable income" of a corporation for a taxation year is, in general terms, that part of the corporation's taxable income for the year that is not exempt from tax and has not benefited from any of the various special effective tax rates provided under the Act. This amount is determined differently depending on the status of the corporation and the type of income.

Two amendments are made to subsection 123.4(1).

Subsection 123.4(1) is amended to exclude from the definition "full rate taxable income", income earned by a corporation from a personal service business, as defined in subsection 125(7). This amendment provides that the general rate reduction percentage does not apply to the portion of the taxable income of a corporation earned in the year from a personal service business.

This amendment applies to taxation years that begin after Announcement Date.

Paragraph (*b*) of the definition "full rate taxable income" applies to Canadian-controlled private corporations. The preamble of that paragraph is amended to clarify that the general rate reduction percentage in subsection 123.4(2) does not apply to the portion of the taxable income of a corporation for which tax payable is not based on the general corporate income tax rate of 38% established under paragraph 123(1)(*a*).

This amendment applies to taxation years that end after Announcement Date.

Clause 27

Small Business Deduction

ITA
125(1)

Section 125 of the Act contains rules concerning the small business deduction that may be claimed by Canadian-controlled private corporations in respect of income from carrying on an active business in Canada. Under subsection 125(1), a Canadian-controlled private corporation's small business deduction for a taxation year is calculated as 17% of the least of three amounts. One of these, set out in paragraph 125(1)(*b*), is the amount by which the corporation's taxable income for the year exceeds income that has supported a foreign tax credit (FTC) or that is statutorily exempt from tax. The amount of income that has supported an FTC is determined by multiplying the corporation's FTCs for the year (subject to certain adjustments) by a factor that reflects an assumed rate of tax. For FTCs in respect of foreign non-business income, the factor is currently 10/3, which reflects an assumed tax rate of 30%. The assumed corporate tax rate is based on the fact that foreign non-business income of a corporate taxpayer resident in Canada is typically taxable by a province, in which case the taxpayer is entitled to a 10% abatement under subsection 124(1). Subparagraph 125(1)(*b*)(i) is amended to adjust the factor for foreign non-business income following the elimination of the surtax that was imposed on corporations before 2008.

This amendment applies to taxation years that end after Announcement Date, subject to a transitional rule for taxation years that straddle Announcement Date.

Clause 28

Deduction of Part VI Tax

ITA
125.2

Part VI of the Act levies a tax on capital employed in Canada by large financial institutions. Amendments made in 1992 reversed the former process of crediting Part VI tax payable against Part I tax liability, providing instead that a financial institution's Part I tax payable may be applied to reduce its Part VI tax. As part of those 1992 amendments, transitional relief was provided under section 125.2 of the Act. That relief allowed a financial institution that had not previously deducted its Part VI tax for a pre-1992 taxation year, to carry forward for up to seven years the undeducted balance and to deduct it from Part I tax. That carry-forward period has now expired. This section is therefore repealed.

This amendment applies to taxation years that begin after Announcement Date.

Clause 29

Deduction of Part I.3 Tax

ITA
125.3(1.1)(*b*)

Part I.3 of the Act levies a tax on taxable capital employed in Canada by large corporations. Section 125.3 of the Act provides a corporation with a deduction from Part I tax for the corporation's unused Part I.3 tax credits. Subsection 125.3(1.1) computes this deduction if the corporation is a financial institution (as defined in section 190). The deduction under subsection 125.3(1.1) may be taken in a taxation year of the financial institution to the extent that it does not exceed the lesser of two amounts. These two amounts are described in paragraphs 125.3(1.1)(*a*) and (*b*) and are, respectively, the amount by which the financial institution's "Canadian surtax payable" for the year exceeds the amount that would be its tax payable under Part I.3 for the year but for its unused Part I.3 tax credits, and the amount by which the financial institution's tax payable under Part I for the year (determined without reference to sections 125.2 and 125.3) exceeds the amount that would be its tax payable under Parts I.3 and VI for the year but for its unused Part I.3 and Part VI tax credits.

Paragraph 125.3(1.1)(*b*) is amended consequential to the repeal of section 125.2 to remove the reference to that section. For further information, see the commentary on section 125.2.

This amendment applies to taxation years that begin after Announcement Date.

Clause 30

Foreign Tax Credit

ITA
126(4.2)

Section 126 of the Act provides rules under which a taxpayer may deduct, from tax otherwise payable, amounts that have been paid in respect of foreign tax. Subsection 126(4.2) limits the foreign tax credit in respect of dividends or interest on a share or debt obligation held by the taxpayer for one year or less. The tax credit is limited to the amount of Canadian tax that would be payable at a notional rate on the gross income from a foreign country in which the tax was paid. The rule applies to foreign taxes on dividends or interest that are similar to the non-resident withholding tax levied on non-residents of Canada under Part XIII. The rule limits

the amount of foreign tax included in the taxpayer's business-income tax or non-business-income tax to 40% (in the former case) or 30% (in the latter case) of the taxpayer's gross profit from the share or debt. The difference in rates reflects the fact that non-business foreign income of a corporate taxpayer resident in Canada is typically taxable by a province, in which case the taxpayer is entitled to a 10% abatement under subsection 124(1). Foreign business income earned through a permanent establishment outside Canada is not typically taxable by a province. As part of a series of amendments reflecting reductions in corporate income tax rates, as well as the elimination as of January 1, 2008 of the surtax that was imposed on corporations, the description of A is amended to adjust the factors for foreign business income and non-business income taxes.

This amendment applies to taxation years that begin after Announcement Date.

ITA
126(5)

Ordinarily, the only foreign taxes that may be credited against tax under Part I of the Act are income or profits taxes. Subsection 126(5) of the Act, together with several definitions in subsection 126(7), treat certain levies imposed by a foreign government in connection with oil and gas businesses as income or profits taxes paid to that government. The general effect of that subsection is to treat a taxpayer's "production tax amount" as a foreign income or profits tax, subject to a maximum of 40% of the taxpayer's income from the business in question. The 40% rate is an approximation of the Canadian corporate income tax rate, and is based on the fact that foreign business income earned through a permanent establishment outside Canada is typically not taxable by a province. As part of a series of amendments reflecting reductions in corporate income tax rates, as well as the elimination as of January 1, 2008 of the surtax that was imposed on corporations, subparagraph 126(5)(*a*)(i) is amended to adjust the factor for foreign business income.

This amendment applies to taxation years that begin after Announcement Date.

Clause 31

Time of Expenditure and Acquisition

ITA
127(11.2)(*b*)

Subsection 127(11.2) of the Act provides that, for various purposes relating to the investment tax credit available under section 127, property is not considered to have been acquired, and expenditures are not considered to have been made, until the property is considered to have become "available for use."

Paragraph 127(11.2)(*b*) is amended to clarify the reference to an eligible child care space expenditure, which is defined in subsection 127(9).

This amendment applies in respect of expenditures incurred after Announcement Date.

Clause 32

Alternative Minimum Tax ─ Adjusted Taxable Income Determined

ITA
127.52(1)

Section 127.52 of the Act defines the "adjusted taxable income" of an individual for a taxation year for the purpose of determining the individual's alternative minimum tax liability. Adjusted taxable income is calculated on the basis of the various assumptions set out in paragraphs 127.52(1)(*b*) to (*j*).

ITA
127.52(1)(*d*)(ii)

Paragraph 127.52(1)(*d*) provides that in computing an individual's adjusted taxable income for alternative minimum tax purposes, the total amount of capital gains and losses is to be taken into account.

Subparagraph 127.52(1)(*d*)(ii) is amended to remove the reference to subsection 104(21.4), which is repealed. Since subsection 104(21.4) has no further application to taxation years that begin after Announcement Date, this amendment has no effect on the computation of alternative minimum tax. For further information, see the commentary on subsection 104(21.4).

This amendment applies to taxation years that begin after Announcement Date.

ITA
127.52(1)(*d*)(iii)

Paragraph 127.52(1)(*d*), as it would be amended by the draft legislative proposals released July 16, 2010, provides that in computing an individual's adjusted taxable income for alternative minimum tax purposes, the total amount of capital gains and losses is to be taken into account. In some cases, because of subsection 104(21.6) more than the total amount of capital gains and losses would be taken into account. Excess capital gains are deemed by subsection 104(21.6) to have been realized in order to ensure that the inclusion rate for capital gains realized on property disposed of by a trust prior to February 28, 2000 is 3/4 and property disposed of by a trust after February 27, 2000 and before October 18, 2000 is 2/3. Proposed subparagraph 127.52(1)(*d*)(iii) ensures that only the actual amount of the gain is included in computing the alternative minimum tax for the 2000 taxation year. As subpargraph 127.52(1)(*d*)(iii) has no application to any future taxation year, it is repealed for taxation years that begin after Announcement Date.

ITA
127.52(1)(*e*)

Paragraph 127.52(1)(*e*) provides that "adjusted taxable income" is computed on the assumption that the total of specified resource-related deductions does not exceed specified resource income.

In particular, deductions for Canadian exploration expenses (CEE) in a taxation year are limited to the individual's income from the production of petroleum, natural gas and minerals. CEE includes Canadian renewable and conservation expense (CRCE) under section 66.1 of the Act. If the majority of tangible property in a project is eligible for inclusion in either capital cost allowance (CCA) Class 43.1 or Class 43.2 of Schedule II to the *Income Tax Regulations*, certain project start-up expenses (for example, engineering and design work and feasibility studies) qualify as CRCE, which can be fully deducted in the year incurred in calculating taxable income of a taxpayer.

New subparagraph (*e*)(i.1) is introduced to ensure that in applying the limitation in respect of the deduction of resource related expenses under this paragraph, the sources of income against which an individual may deduct CRCE amounts include income from property or from the business of selling the product of property, described in CCA Class 43.1 and Class 43.2.

This amendment applies to taxation years that end after 2008.

Clause 33

Instalment Interest

ITA
128.1(5)

Subsection 128.1(5) of the Act is a rule that applies for the purposes of computing instalment interest. This subsection is amended to remove cross-references to Part I.1 of the Act, which was repealed by S.C. 2001, c. 17.

This amendment applies to taxation years that begin after Announcement Date.

Clause 34

Private Corporations – Refundable Dividend Tax on Hand

ITA
129(3)(*a*)(ii)

Section 129 of the Act allows a private corporation that pays a taxable dividend to obtain a partial refund of the income taxes it has paid on its investment income. For this purpose, paragraph 129(3)(*a*) adds to the "refundable dividend tax on hand" of a Canadian-controlled private corporation at the end of a taxation year the least of three amounts. One of these amounts, which is described in subparagraph 129(3)(*a*)(ii), is 26 2/3% of the corporation's taxable income, less income that either benefited from the section 125 small business deduction or supported a foreign tax credit (FTC). Income that supported an FTC is measured by multiplying both the corporation's non-business income and business-income FTCs by factors that reflect assumed Canadian corporate income tax rates. Subparagraph 129(3)(*a*)(ii) is amended to adjust the factor for foreign non-business income to reflect the elimination of the surtax that was imposed on corporations before 2008.

This amendment applies to taxation years that begin after Announcement Date.

ITA
129(3)(*a*)(iii)

Section 129 of the Act allows a private corporation that pays a taxable dividend to obtain a partial refund of the income taxes it has paid on its investment income. For this purpose, paragraph 129(3)(*a*) adds to the "refundable dividend tax on hand" of a Canadian-controlled private corporation at the end of a taxation year the least of three amounts. One of these amounts, which is described in subparagraph 129(3)(*a*)(iii), is the corporation's tax payable for the year under Part I determined without reference to section 123.2. That section, which imposed a corporate surtax, has been repealed for taxation years that begin after 2007. This amendment deletes the reference to "without reference to section 123.2" in subparagraph 129(3)(*a*)(iii) to reflect the repeal of that section.

This amendment applies to taxation years that begin after 2007.

Clause 35

"investment corporation"

ITA
130(3)(*a*)

Section 130 of the Act sets out special rules relating to the taxation of investment corporations. Paragraph 130(3)(*a*) specifies conditions that must be satisfied throughout a taxation year in order for a corporation to qualify as an investment corporation. One such condition is set out in subparagraph 130(3)(*a*)(vii), which requires that no person have been a "specified shareholder" of the corporation in the year if the percentage

described in the definition "specified shareholder" in subsection 248(1) were read as "more than 25%" rather than "not less than 10%". This would prevent a corporation more than 25% of any class of the capital stock of which is owned by a shareholder, either alone or in combination with shares owned by persons with whom that shareholder was not dealing at arm's length, from qualifying as an investment corporation. The condition in subparagraph 130(3)(*a*)(vii) is generally applicable to corporations for taxation years that begin after June 20, 1996.

For corporations that had a specified shareholder on June 20, 1996, transitional relief is provided under the *Income Tax Amendments Act, 1998*, S.C. 1999, c. 22, such that subparagraph 130(3)(*a*)(vii) will apply only in limited circumstances. Unless a specified shareholder of a corporation acquires additional shares of the corporation after June 20, 1996 otherwise than by means of a "permitted acquisition" (as defined under the transitional rules), subparagraph 130(3)(*a*)(vii) will not apply to the corporation. In general terms, a "permitted acquisition" is one where a particular person acquires a share of a class of the capital stock of a corporation that was held, at each particular time after June 20, 1996 and before its acquisition, by the particular person or a person who was related to the particular person.

For the purposes of this transitional rule, a definition "related persons" is provided that expands upon the definition "related persons" in subsection 251(2). However, due to the particular interaction of the definitions in the transitional rules, those rules may have applied to a broader set of circumstances than was originally intended, thereby giving rise to potential uncertainty regarding their application. Specifically, the acquisition of shares of a corporation by a beneficiary under a trust governed by a registered education savings plan who had not attained 19 years of age may have resulted in an acquisition by a specified shareholder that was not a "permitted acquisition" under the transitional rules.

Accordingly, the version of subparagraph 130(3)(*a*)(vii) found in subsection 92(1) of the *Income Tax Amendments Act, 1998*, is amended such that the definition "specified shareholder" in subsection 248(1) will, when modified for the purposes of subparagraph 130(3)(*a*)(vii), exclude from deemed ownership of shares held in a trust by a beneficiary those beneficiaries under the trust governed by a registered education savings plan that have not attained 19 years of age.

This amendment is deemed to have come into force on June 18, 1998. However, the provisions added to subparagraph 130(3)(*a*)(vii) by the amendment are repealed for taxation years that begin after Announcement Date. Therefore, this amendment will have effect only for taxation years that begin on or before Announcement Date.

Clause 36

Mortgage Investment Corporations

ITA
130.1

Section 130.1 of the Act sets out rules that apply to mortgage investment corporations and their shareholders. A mortgage investment corporation is essentially treated as a conduit in that its income may be flowed through to its shareholders and taxed in their hands rather than as income of the corporation.

Election Regarding Capital Gains Dividend

ITA
130.1(4), (4.2) to (4.5)

Section 130.1 of the Act provides for an election by a mortgage investment corporation that allows certain dividends payable by the mortgage investment corporation to the shareholders of any class of its capital stock to be treated as capital gains in the hands of the shareholders who receive the dividends. When a mortgage investment corporation elects in respect of the full amount of a dividend, subsection 130.1(4) deems the

dividend to be a capital gains dividend to the extent that it does not exceed the appropriate fraction of the undistributed taxed capital gains of the corporation for the year, and the dividend is deemed to be a capital gain of the recipient of the dividend from the disposition of property in the year in which the dividend was received.

Among other things, paragraph 130.1(4)(*b*) limits the amount of the dividend that can be included in the shareholder's income as a capital gain. Subsections 130.1(4.2) to (4.5) of the Act provides rules to ensure that this flow-through mechanism works appropriately for taxation years of the corporation that include either February 27, 2000 or October 17, 2000. When subsection 130.1(4) applies in respect of a dividend paid in the period that begins 91 days after the beginning of the corporation's taxation year that includes either February 28, 2000 or October 17, 2000 and ends 90 days after the end of that year by a mortgage investment corporation to a shareholder of any class of shares of its capital stock, subsections 130.1(4.2) to (4.4) provide rules for determining when the underlying capital gain was realized by the corporation, and thus, the appropriate portion of the dividend that can be treated as a capital gain. When no dividend was paid by the corporation during the above-mentioned periods but the corporation had net capital gains or net capital losses from the disposition of property during those periods, subsection 130.1(4.5) sets out an optional method for determining when the corporation is deemed to have realized the capital gains or capital losses, and thus, the appropriate amount of the corporation's net capital gains or net capital losses that will be included in its undistributed taxed capital gains at that time.

Recognizing that these provisions have limited application to future taxation years, they are repealed subject to the coming-into-force provision described below. Since these provisions relate solely to capital gains realized by the corporation in one of the above-mentioned periods, the repeal of these provisions has no practical effect on the designation of dividends as capital gains dividends for future taxation years.

In addition, paragraph 130.1(4)(*b*) is amended to conform to modern drafting standards by inserting existing language into subparagraph (i), and to renumber existing subparagraph (vii) as subparagraph (ii).

These amendments apply to taxation years that begin after Announcement Date, except that if any part of a dividend declared by a corporation is in respect of capital gains of the corporation from dispositions of property before October 18, 2000, then paragraph 130.1(4)(*b*) is to be read in its application to that part of the dividend as it read in its application to the corporation's last taxation year that began on or before Announcement Date.

"mortgage investment corporation"

ITA
130.1(6)

Section 130.1 of the Act sets out rules that apply to mortgage investment corporations and their shareholders. Subsection 130.1(6) defines "mortgage investment corporation" for the purposes of section 130.1. Subsection 130.1(6) lists certain criteria that a mortgage investment corporation must satisfy throughout a taxation year.

Paragraph 130.1(6)(*f*) provides that, in order to qualify as a mortgage investment corporation, the cost amount to the corporation of certain specified assets plus the amount of any money of the corporation must be at least 50% of the cost amount to the corporation of all of its property. For the purposes of this asset test, subparagraph 130.1(6)(*f*)(i) refers to debts owing to the corporation that were secured by mortgages, hypothecs or in any other manner, on houses or on property included within a housing project.

The terms "house" and "housing project" referenced in subparagraph 130.1(6)(*f*)(i) take their meaning from section 2 of the *National Housing Act*. A former enactment of the definition "housing project" in that Act specifically excluded hotels, which is consistent with the tax policy underlying subsection 130.1(6). However, that definition was replaced with the current enactment of the definition by S.C. 1999, c. 27, effective June 17, 1999.

In order to avoid any ambiguity in the meaning of the term "housing project" as it applies for the purposes of subsection 130.1(6) of the Act, subparagraph 130.1(6)(*f*)(i) is amended to provide that the term "housing

project" is to be read as it was defined in the *National Housing Act* as that definition read on June 16, 1999 (*i.e.*, as it read under its former enactment).

This amendment applies to property acquired after Announcement Date, subject to two exemptions. Firstly, as an extended transitional rule, the amendment will not apply to property acquired by a corporation after Announcement Date if that acquisition results from the renewal of mortgage debt held by the corporation, as a mortgage investment corporation, on Announcement Date and the term on that new debt does not exceed the term in effect on Announcement Date for the debt it is replacing. Secondly, as a suspension of this grandfathering rule, even if property was held by a corporation on Announcement Date (*i.e.*, would otherwise not be affected by this amendment), the property will be deemed to have been acquired by the corporation on a particular day that is after Announcement Date (*i.e.*, and therefore become subject to the amendment), if the property consists of debt the term for repayment of which is extended pursuant to an agreement entered into on the particular day, and the extended term exceeds the maximum term for repayment of the debt in effect on Announcement Date.

Clause 37

Capital Gains Dividend Election

ITA
131(1), (1.5) to (1.9) and (5.1)

Section 131 of the Act provides for an election by a mutual fund corporation that allows certain dividends payable by the corporation to the shareholders of any class of its capital stock to be treated as capital gains in the hands of the shareholders who receive the dividends. The percentage of the capital gain that is included in the shareholder's income as a taxable capital gain depends on when the mutual fund corporation realized the capital gain that forms part of its capital gains dividend account.

Subsection 131(1.5) provides that the income inclusion rate will be 75% unless the mutual fund corporation discloses the period in which the capital gain was realized in prescribed form. In addition, subparagraphs 131(1)(*b*)(i) to (vi) and (viii) to (ix) and subsections 131(1.6) to (1.9) determine the appropriate capital gains inclusion rate for capital gains realized by a mutual fund corporation in a taxation year that includes February 28, 2000 or October 13, 2000.

As each of the above-mentioned provisions has no further application to any future taxation year, they are repealed. However, paragraph 131(1)(*b*) is amended to conform to modern drafting standards by inserting existing language into subparagraph (i), and to renumber existing subparagraph (vii) as subparagraph (ii). Consequential on these amendments, subparagraph 131(5.1)(*b*)(i) is updated to refer to subparagraph 131(1)(*b*)(ii).

These amendments apply to taxation years that begin after Announcement Date, except that if any part of a dividend declared by a corporation is in respect of capital gains of the corporation from dispositions of property before October 18, 2000, then paragraph 131(1)(*b*) is to be read in its application to that part of the dividend as it read in its application to the corporation's last taxation year that began on or before Announcement Date.

"capital gains dividend account"

ITA
131(6)

Subsection 131(6) of the Act defines a number of terms used in section 131. Among these, the "capital gains dividend account" of a mutual fund corporation represents the cumulative net undistributed capital gains of the corporation on which it paid refundable capital gains tax.

Paragraph (*a*) of the definition is amended in order to allow for the inclusion in a mutual fund corporation's capital gains dividend account of an amount in respect of a capital gains distribution made by a trust to the corporation. Under the existing paragraph (*a*) of the definition, when a mutual fund corporation holds units of a trust that distributed funds out of its realized capital gains, and the trust makes an election under subsection 104(21) of the Act with respect to the corporation, the corporation is deemed to realize a taxable capital gain as opposed to a capital gain. No amount of the distribution is included in the capital gains dividend account of the corporation.

New subparagraph (*a*)(ii) of the definition will include in the capital gains dividend account of a mutual fund corporation amounts in respect of a capital gains distribution made by a trust to the corporation (at a time that is after its 2004 taxation year and at which it is a mutual fund corporation) equal to twice the amount determined by the formula A – B. Element A of the formula is the amount of the distribution. Element B of the formula is the amount designated under subsection 104(21) by the trust in respect of the net taxable capital gains of the trust attributable to those capital gains. The result is that the corporation may, under that subparagraph, add to its capital gains dividend account an amount only to the extent of twice the portion of a trust distribution representing the capital gain associated with a taxable capital gain designated under subsection 104(21) by the trust in the corporation's favour.

This amendment applies to the 2005 and subsequent taxation years.

Subparagraph (*b*)(iii) of the definition "capital gains dividend account" is also amended to remove references to provisions that no longer have effect in respect of certain capital gains refunds. This amendment applies to taxation years that begin after Announcement Date, except that, to ensure that the appropriate amount continues to be reflected in computing paragraph (*b*) of that definition in determining a corporation's capital gains dividend account balance, if a corporation had a capital gains refund for a taxation year that began on or before Announcement Date, then in computing the capital gains dividend account of the corporation at any time in a taxation year of the corporation that begins after Announcement Date, subparagraph (*b*)(iii) of the definition is to be read in its application to the corporation as it read in its application to the corporation's last taxation year that began on or before Announcement Date.

Clause 38

Mutual Funds – Qualifying Exchange

ITA
132.2

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. A merger of this type is referred to as a qualifying exchange.

If a transferor mutual fund acquires its own shares or units in exchange for units of a transferee mutual fund in the course of a qualifying exchange, section 116 may apply to impose a reporting and withholding obligation. Section 116 generally applies when a non-resident person disposes of taxable Canadian property that is not excluded property. Proposed subsection 132.2(3) is amended to ensure that a qualifying exchange is not subject to section 116.

If a transferor mutual fund acquires its own shares or units in exchange for units of a transferee mutual fund in the course of a qualifying exchange, Part XIII.2 may apply to impose a 15% tax. In general, Part XIII.2 will apply only if the units or shares of the transferor are listed on a designated (or for certain earlier periods, prescribed) stock exchange and their value is primarily attributable to real property in Canada, Canadian resource property or timber resource property. If the shares or units meet those conditions, a 15% tax will apply to any amount that is paid or credited to a non-resident investor that is not otherwise subject to tax under Part I

or Part XIII.2. Proposed subsection 132.2(3) is amended to ensure that a qualifying exchange is not subject to Part XIII.2.

It is intended that these amendments be co-ordinated with the proposed changes to section 132.2 contained in draft legislation released on July 16, 2010.

The amendment to eliminate section 116 reporting and withholdings requirements applies to qualifying exchanges that occur after June 1994. The amendment to eliminate the requirement for Part XIII.2 tax on the distribution of units to the non-resident investor applies after 2004.

Clause 39

Tax Deferred Cooperative Shares

ITA
135.1(7)

Section 135.1 of the Act provides rules that apply in respect of agricultural cooperatives and their members. Subsection 135.1(7) applies a withholding requirement in respect of any share that was at the time it was issued a tax deferred cooperative share of an agricultural cooperative corporation. The subsection provides that if the share is redeemed, acquired or cancelled by the agricultural cooperative corporation, or by a person or partnership with whom it does not deal at arm's length, that cooperative or person or partnership must withhold and forthwith remit to the Receiver General, on account of the shareholder's tax liability, 15% from the amount otherwise payable on the redemption, acquisition or cancellation.

Subsection 135.1(7) is amended to provide an exemption from the withholding requirement if the amount payable on the redemption, acquisition or cancellation is to a trust governed by an RRSP or a RRIF that is exempt from tax under section 149 of the Act. Because a share will only qualify as a tax deferred cooperative share if it is issued to an eligible member, which does not include RRSPs or RRIFs, the withholding exemption is expected to be available only in the relatively unusual circumstances that an eligible member decides to forego the deferred tax treatment of the shares by transferring them to a trust governed by an RRSP or an RRIF.

This amendment applies to tax deferred cooperative shares redeemed, acquired or cancelled after 2007.

Note that, because of the application of new subsection 135.1(10) (described below), subsection 135.1(7) does not impose a withholding requirement for amounts payable on the redemption, acquisition or cancellation of a share that arises as a result of an exchange described by paragraph 87(2)(*s*) or new subsection 135.1(9). For further information, see the commentary on new subsections 135.1(9) and (10).

ITA
135.1(9) and (10)

New subsection 135.1(9) of the Act sets out the conditions that must be satisfied in order for new subsection 135.1(10) to apply. Under subsection 135.1(10) a taxpayer will not be required to include an amount in income under subsection 135.1(2) if, as set out in subsection 135.1(9), that taxpayer disposes of a tax deferred cooperative share (referred to as the "old share") and the following criteria are met:

- the disposition arises as part of a reorganization of the share capital of the agricultural cooperative corporation;
- the only consideration received by the taxpayer for the disposition of the old share is a share (referred to as the "new share") of the same agricultural cooperative corporation and the new share meets the criteria in paragraphs (*b*) to (*d*) of the definition "tax deferred cooperative share" in subsection 135.1(1); and

- the amount that the taxpayer is entitled to receive on a redemption, acquisition or cancellation of the new share is equal to the amount that the eligible member would have been entitled to receive on a redemption, acquisition or cancellation of the old share.

If the conditions in paragraph 87(2)(*s*) or new subsection 135.1(9) are met in respect of a disposition of a share by a taxpayer, then new subsection 135.1(10) ensures that the taxpayer is not required to include an amount in income under subsection 135.1(2) and that, in conjunction with subsection 135.1(7), no withholding tax is required in respect of the disposition. In addition, new subsection 135.1(10) ensures that the new share will be treated as a tax deferred cooperative share until such time as it is ultimately disposed of by the taxpayer.

In particular, when new subsection 135.1(10) applies:

- the new share issued in exchange for the old share is deemed to have been issued pursuant to an allocation in proportion to patronage and at the same time that the old share was issued (in this regard, the limited application of subsection 135.1(10) does not allow for the agricultural cooperative corporation to claim a deduction in respect of the issuance of the new share; this is appropriate as the corporation would have claimed a deduction on the issuance of the old share or – in the context of multiple reorganizations – the original tax deferred cooperative share that was first issued to the taxpayer); and
- if no other person or partnership receives any consideration for the old share other than the new share, then the old share is deemed to have been disposed of for nil proceeds when applying subsections 135.1(2) and (7).

New subsections 135.1(9) and (10) apply after September 28, 2009. However, transitional rules are available in respect of shares acquired on an exchange that is described by paragraph 87(2)(*s*) that occurs before Announcement Date.

Firstly, if such a share was subsequently disposed before Announcement Date new paragraph 135.1(10)(*a*) is to be read (consistent with subparagraph 87(2)(*s*)(ii) as it would have actually read at that time) without reference to the condition that the share have been issued pursuant to an allocation in proportion to patronage.

Secondly, new paragraph 135.1(10)(*b*) is to be read (also consistent with subparagraph 87(2)(*s*)(ii) as it would have actually read at that time) without reference to the restriction that no other person or partnership receive at any time any consideration in exchange for the old share.

Clause 40

Credit Unions

ITA
137(4.3)(*a*)

Section 137 of the Act provides rules relating to the taxation of credit unions. Paragraph 137(4.3)(*a*) defines the "preferred-rate amount" of a corporation that is a credit union at the end of a taxation year. Income qualifying for the small business deduction under section 125 -- which, pursuant to subsection 137(4), includes income qualifying under subsection 137(3) -- is intended to be included in a corporation's preferred-rate amount. To determine the preferred-rate amount, the amount deducted under section 125 is multiplied by a factor that reflects the small business deduction rate. The current factor reflects a small business deduction rate of 16%. The small business deduction rate that is effective for the 2008 and subsequent taxation years has been increased to 17%. Consequently, the multiplication factor used in this paragraph to determine the amount of a corporation's income that has qualified under section 125 is changed to 100/17 from 25/4.

This amendment applies to the 2008 and subsequent taxation years. A transitional rule is provided to determine the preferred-rate amount of a credit union at the end of its taxation year which began in 2007 and ended in

2008. Under the transitional rule, the preferred-rate amount of a credit union at the end of such taxation year will be prorated based upon the number of days of its taxation year that are in 2007 and the number that are in 2008.

Clause 41

Insurance Corporations

ITA
138

Section 138 of the Act sets out detailed rules relating to the taxation of insurance corporations.

ITA
138(3)

Subsection 138(3) of the Act sets out certain deductions for life insurers in computing their income from carrying on a life insurance business in Canada.

Subparagraph 138(3)(*a*)(iii) of the Act permits a life insurer to make a deduction in respect of policy dividends paid or payable by it in a year under its participating life insurance policies. This deduction is limited to the insurer's income from its accumulated Canadian participating life insurance business earned after 1968. Under subparagraph 138(3)(*a*)(iv), a life insurer is also permitted a reserve for dividends that become payable in the following year on its participating policies.

Paragraph 138(3)(*a*) is amended to remove the restriction, under clause 138(3)(*a*)(iii)(B), on the deduction of policy dividends paid or payable in a year and to remove the deduction, under subparagraph (*a*)(iv), for dividends that become payable in the following year.

Paragraph 138(3)(*f*) provides a transitional rule. Life insurance companies first became taxable in 1969 and were required to include in their income any interest on a policy loan received in that year. At that time, no provision was made to exclude the policy loan interest earned before the 1969 taxation year. Subparagraph 138(3)(*f*)(i) permits a deduction in respect of policy loan interest earned before 1969 for the first taxation year of an insurer ending after November 12, 1981.

Since 1978, life insurance companies have been required to report their policy loan interest income on a cash basis. Some corporations recorded this income on an accrual basis to the end of the 1977 taxation year. However, when the transition was made in 1978 to the cash basis, no provision was made to exclude from 1978 income the accrued policy loan interest which had been included in income in previous years. Subparagraph 138(3)(*f*)(ii) permits a similar deduction for any policy loan interest income accrued at the end of the 1977 taxation year and included in the income of a subsequent taxation year.

Paragraph 138(3)(*f*) is now obsolete and is repealed.

These amendments apply to taxation years that begin after Announcement Date.

ITA
138(3.1) and (4.1) to (4.3)

Subsection 138(3.1) provides a transitional rule in respect of the years 1977 and 1978. For the purposes of clause 138(3)(*a*)(iii)(A), the subsection deems certain amounts to have been deductible in computing an insurer's income. For the purposes of paragraph 138(4)(*a*), subsections 138(4.1) to (4.3) similarly provide transitional rules that deem an insurer to have deducted certain amounts in past taxation years. As these provisions are no longer relevant, they are repealed for taxation years that begin after Announcement Date.

ITA
138(4)

Paragraph 138(4)(*a*) requires a life insurer to include in computing its income for a taxation year certain reserves deducted by it in computing its income for the immediately preceding taxation year. This paragraph is amended to remove the reference to subparagraph 138(3)(*a*)(iv) which, as described above, is repealed. This amendment applies to taxation years that begin after Announcement Date.

ITA
138(11.5)

Subsection 138(11.5) sets out the rules that allow a non-resident insurer to transfer, on a tax-deferred basis, an insurance business carried on in Canada through a branch to a qualified related corporation. Paragraphs (*j*) to (*l*) of this subsection are amended to remove references to subparagraph (3)(*a*)(iv) and subsections 142.5(5) and (7) which are repealed. For further information, see the commentary on subsections 138(3) and section 142.5.

This amendment applies to taxation years that begin after Announcement Date.

ITA
138(11.91)

Subsection 138(11.91) provides rules for the purpose of computing the income of a non-resident insurer that commences to carry on a business in Canada or that ceases to be exempt from tax under Part I in a particular taxation year. Paragraph (*d*) of this subsection is amended to remove the reference to subparagraph 138(3)(*a*)(iv), which is repealed. For further information, see the commentary on subsection 138(3).

This amendment applies to taxation years that begin after Announcement Date.

ITA
138(11.94)(*b*)

Subsection 138(11.94) of the Act provides for the transfer on a tax-deferred (*i.e.*, rollover) basis of an insurance business carried on in Canada by an insurer resident in Canada to a corporation resident in Canada that is a subsidiary wholly-owned corporation of that insurer. This rollover treatment is available on an elective basis, provided that the following conditions are met:

- the insurer ceases to carry on all or substantially all of an insurance business carried on in Canada;
- the insurer transfers all or substantially all of the property used or held in the insurance business at the time of the cessation, or within 60 days thereafter, to a subsidiary wholly-owned corporation for consideration that includes shares of the subsidiary wholly-owned corporation, and the subsidiary wholly-owned corporation then immediately commences to carry on the insurance business in Canada;
- the subsidiary wholly-owned corporation then, or within 60 days thereafter, assumes or reinsures all or substantially all of the business; and
- the insurer and the subsidiary wholly-owned corporation jointly file the election in prescribed form and in accordance with subsection 138(11.6).

The definition "subsidiary wholly-owned corporation" is found in subsection 248(1) of the Act. In its current form, the definition "subsidiary wholly-owned corporation" covers a corporation all of the issued shares of which (other than directors' qualifying shares) are held by a particular corporation of which it is a subsidiary.

Subparagraph 138(11.94)(*b*)(ii) is amended to replace the reference to "subsidiary wholly-owned corporation" with a reference to "qualified related corporation (within the meaning of subsection 219(8))". The effect of this amendment is that the rollover treatment under subsection 138(11.94) will be available when the transfer of an insurance business in Canada is made to a qualified related corporation, being a corporation all of the issued shares of which (other than directors' qualifying shares) are owned by a particular corporation of which it is a

subsidiary, or by other corporations that are subsidiary wholly-owned corporations of the particular corporation of which it is a subsidiary. This has the effect of broadening the rollover treatment to include a transfer of an insurance business made by a corporation to a corporation in the same corporate group, but that is not necessarily a direct subsidiary of the transferor corporation.

This amendment applies to transfers made after October 2004.

ITA
138(12)

Subsection 138(12) also defines the term "surplus funds derived from operations" of an insurer for the purpose of the rules in section 138 applicable to insurance corporations. This definition also applies, with certain modifications, in determining the capital of a non-resident insurance corporation for the purposes of the tax on large corporations under Part I.3 and the tax on the capital of financial institutions under Part VI. This definition is amended to consequential to the repeal of clause 138(3)(*a*)(iii)(B) and subsection 138(4.1). For further information on related amendments, see the commentary on those provisions.

These amendments apply to taxation years that begin after Announcement Date.

Certain definitions in subsection 138(12) were needed for the purposes of applying transitional rules and have no current application. These include the definitions “1975-76 excess capital cost allowance”, “1975-76 excess investment reserve”, “1975-76 excess policy dividend deduction”, “1975-76 excess policy reserves”, “1975-76 excess additional group term reserve” and “1975 branch accounting election deficiency”. As these provisions are no longer relevant, they are repealed.

Clause 42

Rules Relating to Segregated Funds

ITA
138.1

Section 138.1 of the Act provides rules governing the operation of segregated fund trusts established by insurance companies.

ITA
138.1(3.1) and (3.2)

Subsections 138.1(3.1) and (3.2) of the Act set out the appropriate inclusion rate for capital gains realized by a related segregated fund trust in a taxation year that included February 28, 2000 or October 17, 2000, but that were deemed to be the capital gain or loss of a policyholder or other beneficiary of the related segregated fund trust.

As these provisions have no effect for any future taxation year, they are repealed for taxation years that begin after Announcement Date.

Clause 43

Mark-to-Market Properties

ITA
142.5(4) to (7)

Section 142.5 of the Act requires shares and certain debt obligations to be marked to market by certain financial institutions each year, and requires the profit or loss to be included or deducted in computing the financial institutions income. The section also contains transitional rules for the introduction of the mark-to-market requirement.

Subsection 142.5(4) is a transitional rule for non-capital property deemed to be disposed of on the initial application of the mark-to-market requirement. This subsection allows a financial institution to deduct an amount not exceeding a prescribed amount (as determined under Part LXXXI of the *Income Tax Regulations*) in its taxation year that includes October 31, 1994. Subsection 142.5(5), in conjunction with the *Income Tax Regulations*, includes the deducted amount in income over a 5-year period starting with the taxation year that includes October 31, 1994.

Subsection 142.5(6) is a transitional rule that applies with respect to capital property that is deemed to be disposed of on the initial application of the mark-to-market requirement. It permits a financial institution to claim an allowable capital loss not exceeding a prescribed amount (as determined under Part LXXXI of the *Income Tax Regulations*). Subsection 142.5(7), in conjunction with the *Income Tax Regulations*, require an equivalent amount of taxable capital gains to be recognized over a 5-year period starting in the taxation year that includes October 31, 1994.

Subsections 142.5(4) to (7) are now obsolete and are repealed for taxation years that begin after Announcement Date.

Clause 44

Subsidiaries of Municipal Corporations

ITA
149(1)(*d.6*)

Paragraphs 149(1)(*c*) to (*d.6*) of the Act exempt from tax under Part I of the Act the taxable income of any corporation, commission or association the shares or the capital of which are owned 100% (or in some cases 90%) by the federal or provincial Crown, by municipalities and public bodies performing a function of government in Canada, or by Crown corporations, municipal corporations or certain other corporations jointly or indirectly held by the Crown or municipalities in Canada.

Currently, a corporation that is jointly held by a municipality directly and a municipal corporation (*i.e.*, by a municipality indirectly through a municipal holding corporation) with neither shareholder holding an interest of at least 90% is not captured by the exemptions from Part I tax under paragraphs 149(1)(*c*) to (*d.6*).

Paragraph 149(1)(*d.6*) is amended such that a particular corporation will be exempt from tax under Part I of the Act if all of the shares (except directors' qualifying shares) or of the capital of the particular corporation are owned by one or more entities each of which is a corporation, commission or association to which paragraph (*d.5*) applies, a corporation to which paragraph (*d.6*) applies, a municipality in Canada, or a municipal or public body performing a function of government in Canada (collectively referred to as "qualifying owners") provided the remaining existing conditions of that paragraph are satisfied. The particular corporation will qualify for exempt status under that paragraph only if no more than 10% of its income is from activities carried on outside the geographic boundaries of its qualifying owners.

This amendment applies to taxation years that end after April 30, 2004.

Election for Corporation to Remain Taxable

ITA
149(1.11)

Subsection 149(1.11) of the Act allows a person that would otherwise become tax exempt because the conditions in any of paragraphs 149(1)(*d.2*) to (*d.4*) have been satisfied, to remain taxable by filing a written election to that effect. This subsection was added when the addition of paragraphs 149(1)(*d.2*) to (*d.4*) would have caused some previously taxable persons to become tax exempt. The election to remain taxable is required

to have been made before 2002 and is effective only so long as, among certain other conditions, there is no change in the direct or indirect control of the electing person.

In the context of amalgamations, the Act generally treats an amalgamated corporation as a new corporation for income tax purposes. As such, if a particular corporation amalgamates with a subsidiary wholly-owned corporation pursuant to section 87, the effect of an election made by the particular corporation under subsection 149(1.11) would not be carried over to the new amalgamated corporation.

New subsection 149(1.12) is added to provide that if there is an amalgamation under subsection 87(1) between a parent corporation and one or more subsidiary wholly-owned corporations, and immediately before the amalgamation the parent is a person to which subsection 149(1) does not apply because of an election under subsection 149(1.11), the new corporation is deemed for the purposes of subsection 149(1.11) to be the same corporation as, and a continuation of, the parent corporation.

For this purpose, the term "subsidiary wholly-owned corporation" is to be read as it is defined under subsection 248(1).

This amendment applies to amalgamations that occur after October 4, 2004.

Clause 45

Reassessment Where Certain Deductions Claimed

ITA
152(6)

Paragraph 152(6)(*e*) of the Act requires the Minister of National Revenue to reassess prior taxation years in order to give effect to a taxpayer's carry-back of unused Part VI tax credits under section 125.2.

This paragraph is repealed consequential on the repeal of section 125.2. For further information, see the commentary on section 125.2.

This amendment applies to taxation years that begin after Announcement Date.

Clause 46

Effect of Carryback of Loss, Etc.

ITA
161(7)

Subparagraph 161(7)(*a*)(vi) of the Act provides that a reduction of tax resulting from the carryback of an unused Part VI tax credit from a subsequent taxation year will not be taken into account in determining interest charges on any unpaid tax (and certain penalties in respect of unpaid instalments) until the day that is 30 days after the latest of several dates.

This subparagraph is repealed consequential on the repeal of section 125.2. For further information, see the commentary on section 125.2.

This amendment applies to taxation years that begin after Announcement Date.

Clause 47

Effect of Carryback of Loss, Etc.

ITA
164(5)

Paragraph 164(5)(*g*) of the Act provides that an overpayment of tax resulting from the carryback of an unused Part VI tax credit from a subsequent taxation year will not be taken into account in determining interest payable on a refund of the overpayment until the day that is 30 days after the latest of several dates.

This paragraph is repealed consequential on the repeal of section 125.2. For further information, see the commentary on section 125.2.

This amendment applies to taxation years that begin after Announcement Date.

Clause 48

Documents to be Forwarded to the Tax Court of Canada

ITA
170(2)

Section 170 of the Act requires the transmittal of certain documents between the Tax Court of Canada and the Commissioner of Revenue.

Subsection 170(2) of the Act provides generally that, when a notice of appeal to the Tax Court of Canada under the Informal Procedure is received, the Commissioner of Revenue must transmit to the Tax Court of Canada copies of certain documents that are relevant to the appeal.

The requirements under subsection 170(2) are unnecessary since rules for the transmittal of documents to the Tax Court of Canada are provided under the *Tax Court of Canada Act*. Consequently, subsection 170(2) is repealed.

This repeal comes into force on Royal Assent.

Clause 49

Documents to be Transmitted to the Tax Court of Canada and the Federal Court of Appeal

ITA
176

Section 176 of the Act requires the Minister of National Revenue to transmit certain relevant documents to the Tax Court of Canada and the Federal Court of Appeal.

Subsection 176(1) provides generally that, when a notice of appeal to the Tax Court of Canada under the General Procedure is received, the Minister of National Revenue must cause to be transmitted to the Tax Court of Canada and to the appellant copies of certain documents that are relevant to the appeal.

Subsection 176(2) provides generally that, when a notice of appeal to the Federal Court of Appeal in respect of which section 180 applies is received, the Minister of National Revenue must cause to be transmitted to the Federal Court of Appeal copies of all documents that are relevant to the appeal.

The requirements under subsections 176(1) and (2) are unnecessary since rules for the transmittal of documents to the Tax Court of Canada and the Federal Court of Appeal are provided for under the *Tax Court of Canada Act* and the *Federal Courts Act*, respectively. Consequently, section 176 of the Act is repealed.

This repeal comes into force on Royal Assent.

Clause 50

Taxable Capital Employed in Canada

ITA
181.2

Section 181.2 of the Act provides rules for determining the capital, taxable capital, taxable capital employed in Canada and investment allowance of corporations (other than financial institutions) resident in Canada for the purposes of the Part I.3 tax on large corporations, which was fully phased out after 2005. The determination of a corporation's taxable capital employed in Canada is relevant for other provisions in the Act, including the calculation of a corporation's small business deduction and the SR&ED expenditure limit.

Capital

ITA
181.2(3)

Subsection 181.2(3) of the Act defines the "capital" of a corporation, and in paragraph 181.2(3)(*g*) includes in a corporation's capital a pro-rata share of the reserves, deferred foreign exchange gains and indebtedness of any partnership of which it is a member. To determine those amounts, the relevant paragraphs of subsection 181.2(3) are applied to the particular partnership in the same way as they apply to corporations. Paragraph 181.2(3)(*g*) also applies on this basis, such that it applies on an iterative basis to lower-tier partnerships in which the corporation has an interest through its membership in the particular partnership. This results in the proration of the reserves, deferred foreign exchange gains and debt amounts for the lower-tier partnerships. However, the calculation requires a corporation to look first to the fiscal period of the particular partnership of which the corporation is a member that ends in the corporation's taxation year, then to the fiscal period of the first lower-tier partnership that ends in the particular partnership's fiscal period, and so on.

In general, paragraph 181.2(3)(*g*) is amended eliminate the iterative nature of this calculation. The amount determined under that paragraph will calculate the corporation's pro-rata share of reserves, deferred foreign exchange gains and indebtedness of any partnership of which it is a member, whether directly or through one or more other partnerships. In this regard, the amount added to a corporation's capital in respect of any partnership is to be calculated based on the amount at the end of the partnership's last fiscal period that ends at or before the end of the corporation's taxation year.

This amendment applies to the 2012 and subsequent taxation years.

Investment Allowance

ITA
181.2(4)

Subsection 181.2(4) of the Act provides for the determination of a corporation's "investment allowance" by which, in broad terms, one corporation's investment in another is excluded from the first corporation's taxable capital. In general, investment in debt of a partnership is not included in a corporation's taxable capital if all the members of the partnership (an "eligible partnership") are "eligible corporations" (corporations, other than the investor corporation, that are neither financial institutions nor corporations exempt from Part I.3 tax otherwise than because they were non-residents and did not carry on a business through a permanent establishment in Canada). Paragraph 181.2(4)(*d.1*) of the Act is amended to allow for the effect of tiered partnerships: structures in which all the members of the investee partnership are eligible partnerships and eligible corporations.

This amendment applies to the 2004 and subsequent taxation years.

Clause 51

Calculation of Capital Tax

ITA
190.1

Part VI of the Act imposes a capital tax on financial institutions. A financial institution can reduce its capital tax payable by the amount of income tax it pays under Part I. If its income tax exceeds its capital tax payable for a taxation year, a financial institution can carry excess income tax credits forward seven years and back three years against Part VI tax.

ITA
190.1(3)(*a*)

Under the current rule, the amount of income tax payable in a taxation year that a corporation can deduct in computing its liability for tax under Part VI must be reduced by the lesser of the Canadian surtax payable and the tax payable under Part I.3 for the year by the corporation. Part I.3 formerly imposed a capital tax on large corporations. No tax is payable under Part I.3 for taxation years that begin after 2005, and the surtax has been eliminated for taxation years that begin after 2007. Consequently, the reference to a corporation's Canadian surtax payable for the year and to the tax payable under Part I.3 for the year is being removed.

This amendment applies to taxation years that begin after 2007.

ITA
190.1(5)

"unused Part I tax credit"

Under the current rule, the "unused Part I tax credit" of a corporation for a taxation year is the amount by which its tax payable under Part I for the year exceeds the total of its Part VI tax payable (determined without taking into account the deduction allowed with respect to the amount for Part I tax paid in the year) and the corporation's Canadian surtax payable for the year. In general, a corporation's Canadian surtax payable for a year is equal to the lesser of the amount of surtax payable by the corporation for the year and its income tax payable under Part I for the year. The surtax has been eliminated for taxation years beginning after 2007. Accordingly, this amendment removes the reference to a corporation's Canadian surtax payable for the year.

This amendment applies to taxation years that begin after 2007.

Clause 52

Capital Tax - Transitional Provisions

ITA
190.16

The Part VI minimum tax on financial institutions was amended in 2006 to increase the Part VI capital deduction to $1 billion from $200 million and introduce a single Part VI tax rate of 1.25% on taxable capital employed in Canada above that capital deduction, effective for taxation years that end on or after July 1, 2006. Section 190.16 sets out the transitional rules in respect of those amendments to Part VI.

As those transitional rules are no longer necessary, section 190.16 is repealed for taxation years that begin after Announcement Date.

Clause 53

Penalty

ITA
227(8)

Subsection 227(8) of the Act imposes a two-tier penalty for failure to deduct or withhold an amount as required by subsection 153(1) and section 215.

Subsection 227(8) is amended to replace the reference to subsection 227(8.5), which has been repealed, with a reference to subsection 227(9.5). Subsection 227(9.5) provides that in applying paragraph 227(8)(*b*), in respect of an amount required by paragraph 153(1)(*a*) to be deducted or withheld, each establishment of a person is deemed to be a separate person.

This amendment comes into force on Royal Assent.

Clause 54

Provision 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.

Subsection 241(11) is amended to provide that information obtained under the *Federal-Provincial Fiscal Arrangements Act* is afforded similar protection. In addition, the reference to the *Petroleum and Gas Revenue Tax Act* is being removed as it is no longer in effect.

This amendment comes into force on Royal Assent.

Clause 55

Definitions

ITA
248(1)

"eligible relocation"

The definition "eligible relocation" in subsection 248(1) of the Act applies for the purpose of the deduction of expenses under section 62 of the Act in respect of a move from an "old residence" to a "new residence". The definition is amended to clarify that, in order to claim these expenses, an individual who is absent from, but resident in, Canada must, like other individuals, ordinarily reside before the relocation at the old residence and after the relocation at the new residence.

This amendment applies to taxation years that end after Announcement Date.

"employee benefit plan"

The definition "employee benefit plan" in subsection 248(1) of the Act is amended consequential on the introduction of subsection 6(1.2) of the Act. The definition is amended to clarify that a payment that would not be required to be included in computing the income of the recipient or an employee or former employee under section 6 (read without reference to subparagraph 6(1)(*a*)(ii) or paragraph 6(1)(*g*)) does not cause a plan to be an employee benefit plan.

This amendment applies after Announcement Date.

"short-term preferred share"

The definition "short-term preferred share" is relevant for, among other provisions, Part VI.1 of the Act. In particular, subparagraph 191.1(1)(*a*)(i) of the Act provides for a tax on taxable dividends, other than excluded dividends, paid on short-term preferred shares after 1987. This tax is to prevent a corporation from issuing equity with debt-like characteristics where the corporation is not in need of an interest deduction in respect of the debt (*i.e.,* where the corporation is in a loss position for the taxation year).

Paragraph (*f*) of the definition "short-term preferred share" provides that a share of the capital stock of a corporation that is issued in circumstances where the existence of the corporation was, or there was an agreement under which it could be, limited to a period within 5 years from the date of the share's issue is deemed to be a short-term preferred share of the corporation.

However, in the context of a decision by a corporation to liquidate, if employees who were granted options under an employee stock option plan were only able to exercise those options following the corporation's decision to liquidate, any shares issued by the corporation in this situation would be deemed to be short-term preferred shares. This would be true even if the options were granted under the plan at a time when the existence of the corporation was not limited.

Accordingly, paragraph (*f*) of the definition is amended to provide that if a share of the capital stock of a corporation is issued to an individual after April 14, 2005 pursuant to an employee stock option plan, and if the existence of the corporation was not limited at the time the option to acquire the share was granted, then the share will not be deemed to be a short-term preferred share.

This amendment applies to shares issued after April 14, 2005.

Clause 56

Deemed Year End if Fiscal Period Exceeds 365 Days

ITA
249(3)

Subsection 249(3) of the Act provides that, if a fiscal period of a corporation exceeds 365 days and as a result the corporation does not have a taxation year that ends in a particular calendar year, the corporation's first taxation year that would otherwise end in the calendar year immediately following the particular calendar year is considered to end at the end of the particular calendar year.

Subsection 249(3) is amended to make two changes. First, if a corporation's taxation year is deemed to end on the last day of a particular calendar year under new paragraph 249(3)(*a*), the corporation's next taxation year is deemed to commence on the first day of the immediately following calendar year. Second, under new paragraph 249(3)(*b*), the corporation's fiscal period that was otherwise more than 365 days (and which resulted in paragraph (*a*) applying to end the corporation's taxation year at the end of the particular calendar year) is deemed to end at the end of the particular calendar year, and the corporation's next fiscal period is deemed to commence on the first day of the immediately following calendar year.

This amendment applies to the 2012 and subsequent taxation years.

Clause 57

Fiscal Period

ITA
249.1(1)(*b*)

Subsection 249.1(1) of the Act provides the definition “fiscal period” for the purposes of the Act. Paragraph 249.1(1)(*b*) provides restrictions on the timing of fiscal periods of certain individuals, trusts, partnerships and professional corporations (other than the fiscal period of a business not carried on in Canada or a business that is a prescribed business or is carried on by a prescribed person or partnership). Paragraph 249.1(1)(*b*) is intended to ensure that certain businesses will have a fiscal period end at the end of the calendar year.

The exception in paragraph 249.1(1)(*b*) for a business that “is a prescribed business or is carried on by a prescribed person or partnership” is repealed.

This amendment applies to fiscal periods that begin after Royal Assent.

Income Tax Amendments Act, 2000

Clause 58

Income Tax Amendments Act, 2000

80(27)

Subsection 80(27) of the *Income Tax Amendments Act, 2000* contains an application rule in respect of earlier amendments to subsection 107(4.1) of the *Income Tax Act*.

Under this amendment, subsection 107(4.1) is to be read without reference to its subparagraph (*b*)(ii) if two conditions are met. The first is that subsection 75(2) was not applicable in respect of the property distributed, or any property for which it was substituted, at any time during which it was held by the trust that distributed the property or by any other trust, the property of which included property that, through one or more tax-deferred dispositions, became the property of the trust. The second condition is that the only property in respect of which subsection 75(2) was applicable during a period of time during which it was held by any of the trusts described in the first condition above is property that was held by one of those trusts before 1989 at a time at which 75(2) of the Act was applicable in respect of the property.

This transitional relief allows a trust that holds no property on any of the conditions described by subsection 75(2) to distribute property to a beneficiary on a tax-deferred basis after 2001 and before 2009 even though the trust may have received property, through one or more tax-deferred transfers from another trust that held property in respect of which subsection 75(2) had applied before 1989.

This amendment is deemed to come into force on June 14, 2001.

Income Tax Regulations

Clause 59

Source Deductions not Required – Home Buyers' Plan

ITR
104(3)(*e*)

Part I of the *Income Tax Regulations* (the Regulations) provides the rules concerning taxes withheld at source from payments described under subsection 153(1) of the *Income Tax Act*, including lump sum payments out of a registered retirement savings plan (RRSP). Subsection 104(3) of the Regulations provides an exemption (from tax withheld) for payments out of an RRSP that are used to acquire a home in accordance with the Home Buyers' Plan (HBP) provisions under section 146.01 of the Act.

Subsection 104(3) is amended to increase the exemption on HBP withdrawals from $20,000 to $25,000. Specifically, the reference in paragraph (*a*) to "$20,000" is replaced by a reference to the dollar amount ($25,000) specified under paragraph (*h*) of the definition "regular eligible amount" in subsection 146.01(1) of the Act. This amendment is consequential on amendments made in 2009 to paragraph (*h*) of the definition "regular eligible amount" and paragraph (*g*) of the definition "supplemental pension amount" under subsection 146.01(1) of the Act, which increased the HBP withdrawal limit from $20,000 to $25,000.

This amendment is deemed to have come into force on January 28, 2009.

Clause 60

Partnership Return

ITR
229(1)

Subsection 229(1) of the Regulations requires that every member of a partnership that carries on a business in Canada must file a partnership return. The subsection is amended to exclude from the filing requirement a member of a partnership where, because of subsection 115.2(2) of the Act, the member is considered not to be carrying on business in Canada.

The amendment applies to fiscal periods that end after 2007.

Clauses 61 to 63

Prescribed Annuity Contracts

ITR
Part III

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 insurance policies to be reported on an accrual basis. Paragraph 304(1)(*c*) provides an exclusion for an annuity under which payments have commenced if a number of other conditions are also satisfied.

Subparagraph 304(1)(*c*)(iv) requires that the terms and conditions of the annuity must satisfy certain requirements. Clause 304(1)(*c*)(iv)(B) requires that the annuity payments under the annuity continue either for a fixed term or for the lives of certain individuals depending on the holder of the annuity. Clause 304(1)(*c*)(iv)(C) imposes restrictions on the length of a fixed or guaranteed term of an annuity depending on the holder of the annuity. Clause 304(1)(*c*)(iv)(D) requires that no loans exist under the contract and that the holder's rights under the contract not be disposed of in certain circumstances depending on the holder of the

annuity. Clause 304(1)(*c*)(iv)(E) requires that no payments be made from the annuity other than as permitted by section 304.

These clauses are amended to allow *alter ego* and testamentary trusts to hold prescribed annuity contracts, and also to allow last survivor annuity contracts held by certain trusts to be prescribed annuity contracts. Additionally, clauses 304(1)(*c*)(iv)(C) to (E) are restructured to improve clarity.

The amendments to section 304 of the Regulations apply to the 2000 and subsequent taxation years.

Section 309 of the Regulations prescribes certain premiums and increases in benefits under a life insurance policy for the purposes of section 306 of the Regulations and subsection 89(2) of the Act. This section also provides under what circumstances such premiums and increases will not be prescribed.

This section is amended updated and amended to reflect the amendments to Part XXIV of the Regulations. This amendment applies to taxation years that begin after Announcement Date. For further information on related amendments, see the commentary on Part XXIV of the Regulations.

New section 309.1 provides rules for determining an insurer's income for a year from its participating life insurance business carried on in Canada. This provision was formerly found under section 2402 of the Regulations. The substance of that section has been moved to Part III, the only Part to which it is applicable, and it has been updated to no longer reference obsolete provisions.

New section 309.1 applies to taxation years that begin after Announcement Date except that if a taxpayer has deducted an amount under subparagraph 138(3)(*a*)(iv) of the Act, as it read in its application to the taxpayer's last taxation year that began on or before Announcement Date, in computing the taxpayer's income for that taxation year, then for the taxpayer's first taxation year that begins after Announcement Date, paragraph 309.1(1)(*b*) of the Regulations shall be read with reference to former subparagraph 2402(*b*)(i).

For further information, see the commentary on Part XXIV of the Regulations.

Clause 64

Prescribed Provisions for Late Elections

ITR
Part VI

Section 600 of the Regulations sets out those elections in the Act and Regulations for which the Minister of National Revenue may grant an extension to file, amend or revoke. Paragraph 600(*b*) is amended to remove the references to subsections 7(10) and 104(5.3) of the Act, consequential on the repeal of those provisions.

This amendment applies after Announcement Date.

Clause 65

Prescribed Amount

ITR
1106(11)

Section 1106 of the Regulations provides rules related to the Canadian Film or Video Production Tax Credit.

Subsection 1106(11) prescribes amounts paid or payable under the Licence Fee Program of the Canada Television and Cable Production Fund or the Canada Television Fund for the purpose of the definition "assistance" in subsection 125.4 (1) of the Act. As a result, such payments will not be considered assistance for the purposes of the Canadian Film or Video Production Tax Credit provided under section 125.4 of the Act.

Subsection 1106(11) is amended to refer to the Licence Fee Program of the Canada Media Fund.

This amendment is deemed to have come into force April 1, 2010.

Clause 66

Insurance Business Policy Reserves

ITR
Part XIV

Part XIV of the Regulations provides rules for determining the amount that may be deducted by an insurer in computing its income for a taxation year under Part I of the Act as a reserve in respect of liabilities under insurance policies. Section 1403 of the Regulations provides rules regarding interest and mortality rates and other probabilities for the purposes of determining the life insurance policy reserve under paragraph 1401(1)(*c*). Subsection 1403(8) of the Regulations allows the Minister of National Revenue, in certain circumstances, to adjust upwards the life insurance policy reserves that otherwise may be claimed by a purchaser of an insurance business or line of business under paragraph 1401(1)(*c*) where the tax reserves are less than the actuarial reserves in respect of the insurance policies of that purchased business or line of business.

This subsection is amended to allow for the revision of policy lapse rates to eliminate all or part of a reserve deficiency if the deficiency is attributable to the fact that the lapse rates used by the insurer of the transferred policies are no longer reasonable in the circumstances. This subsection is also amended to better ensure that the ministerial discretion be limited to the approval of the adjusted rates provided the adjustments are reasonable.

This amendment applies to dispositions that occur after November 1999.

Clauses 67 & 68

Insurers

ITR
Part XXIV

Part XXIV of the Regulations sets out special rules for the computation of an insurer's income. Section 2402 of the Regulations provides rules for determining an insurer's income for a year from its participating life insurance business carried on in Canada. This income calculation is relevant for the purposes of subparagraph 138(3)(*a*)(iii) of the Act and subparagraph 309(1)(*e*)(i) of the Regulations. Subparagraph 138(3)(*a*)(iii) generally permits a life insurer to deduct policy dividends paid or payable by it in the year under its participating life insurance policies to the extent of its income from funds received under such policies.

Section 2402 has been moved from Part XXIV to Part III of the Regulations. It has also been updated and amended to reflect the repeal of clause 138(3)(*a*)(iii)(B) and subparagraph 138(3)(*a*)(iv) of the Act. Consequently, section 2402 is repealed for taxation years that begin after Announcement Date.

Section 2406 of the Regulations provides that sections 2404 and 2405 do not apply for the 1999 and subsequent taxation years. Sections 2404 to 2406 are repealed. This amendment applies to taxation years that begin after Announcement Date.

Sections 2407 to 2409 of the Regulations generally provide transitional rules that have no application to current taxation years. These sections are repealed.

This amendment applies to taxation years that begin after Announcement Date.

Clause 69

Transition for Financial Institutions

ITR
Part LXXXI

Sections 8100 and 8101 of the Regulations provide transitional rules in connection with the requirement that unpaid claims reserves for non-life insurance policies be determined on a fully-discounted basis. Sections 8102 to 8104 consist of rules supporting the transitional rules for the mark-to-market regime under section 142.5 of the Act.

This Part is now obsolete and is repealed for taxation years that begin after Announcement Date. For further information, see the commentary on section 12.3, and subsections 20(26) and 142.5(4) to (7) of the Act.

Clause 70

Prohibited Investments – Multi-employer Pension Plan

ITR
8514(2.1)

Subsection 8514(2.1) of the Regulations generally provides to registered pension plans that are multi-employer plans (MEPs, as defined in subsection 8500(1)) a conditional exclusion in respect of investments in connected employers that would otherwise fall within the definition of a "prohibited investment" in respect of a registered pension plan in subsection 8514(1) of the Regulations. A registered pension plan that holds a prohibited investment may be subject to de-registration.

One of the conditions for the application of the exclusion in subsection 8514(2.1) is that the MEP does not contain a money purchase provision.

Paragraph 8514(2.1)(*a*) is amended to a permit a MEP to offer a money purchase provision, and to continue to permit such a MEP to make limited investments in connected employers, provided that each member's money purchase account is credited only with income, gains and losses at the same rate that is earned or realized by the pension fund overall and not based on income, gains or losses attributable solely to property described in subsection 8514(2.1).

Existing Regulation 8500(3) defines who is a person "connected with an employer" for the purposes of Part LXXXV of the Regulations, including for purposes of the prohibited investment rules in section 8514.

This amendment applies after 2010.

Clause 71

Fiscal Period - Prescribed Partnership

ITR
8901

Subsection 249.1(1) of the Act defines "fiscal period" for the purposes of the Act. Paragraph 249.1(1)(*b*) provides restrictions on the timing of fiscal periods of certain individuals, trusts, partnerships and professional corporations (other than the fiscal period of a business not carried on in Canada or a business that is a prescribed business or is carried on by a prescribed person or partnership).

Section 8901 of the Regulations lists prescribed partnerships for the purposes of paragraph 249.1(1)(*b*). This section is repealed consequential on the concurrent amendment of paragraph 249.1(1)(*b*).

This amendment applies to fiscal periods that begin after Royal Assent.

Part 2

Sales and Excise Taxes

Excise Tax Act

Clause 72

Material sent to Tribunal

ETA
81.25(2)

Subsection 81.25(2) of the *Excise Tax Act* (the Act) requires the Commissioner of Revenue (the Commissioner) to send to the Canadian International Trade Tribunal (the Tribunal) copies of all returns, applications, notices of assessment, notices of objection, notices of decision and notifications that are relevant to an appeal to the Tribunal. Subsection 81.25(2) is parallel to subsection 176(1) of the *Income Tax Act*.

The amendment repeals subsection 81.25(2) since the Federal Court of Appeal found subsection 176(1) of the *Income Tax Act* to be unconstitutional.

The amendment comes into force on Royal Assent.

Clause 73

Material sent to Federal Court

ETA
81.29(3)

Subsection 81.29(3) of the Act requires to the Commissioner to send to the Federal Court copies of all returns, applications, notices of assessment, notices of objection, notices of decision and notifications that are relevant to an appeal to the Federal Court. Subsection 81.29(3) is parallel to subsection 176(1) of the *Income Tax Act*.

The amendment repeals subsection 81.29(3) since the Federal Court of Appeal found subsection 176(1) of the *Income Tax Act* to be unconstitutional.

The amendment comes into force on Royal Assent.

Clause 74

Private Copying Levy

ETA
177.1

New section 177.1 of the Act provides that the value of the consideration for a supply of a collection or distribution service in respect of the levy on blank media under the *Copyright Act* made by a collective society or a collecting body (as those terms are defined in subsections 177.1(1) and (2) respectively) is to be determined by the formula under subsection 177.1(3).

New section 177.1 applies to any supply made on or after March 19, 1998, which is the day that provisions of the *Copyright Act*, under which the levy is implemented, came into force.

Meaning of "collective society" and Copyright Act expressions

ETA
177.1(1) and (2)

Subsections 177.1(1) and (2) contain definitions of terms used in new section 177.1.

"collecting body"

The term "collecting body" means a collecting body as defined in the *Copyright Act*. In general, a collecting body is the collective society, or other society, association or corporation, that is established by the Copyright Board to administer the levy on blank media under the *Copyright Act*.

"collective society"

The term "collective society" means a collective society as defined in the *Copyright Act*. In general, a collective society is a society, association or corporation that carries on the business of collective administration of the blank media levy or the royalties scheme established under the *Copyright Act*.

"eligible author"

The term "eligible author" means an eligible author as defined in the *Copyright Act*. In general, an eligible author is the author of a Canadian musical work embodied in a sound recording.

"eligible maker"

The term "eligible maker" means an eligible maker as defined in the *Copyright Act*. In general an eligible maker is a Canadian maker of a sound recording that embodies a musical work.

"eligible performer"

The term "eligible performer" means an eligible performer as defined in the *Copyright Act*. In general this means the Canadian performer of a musical work embodied in a sound recording.

Supply by collecting body or collective society

ETA
177.1(3)

Subsection 177.1(3) provides that a collective society or a collecting body (as those terms are defined in subsections 177.1(1) and (2) respectively) must, for the purpose of determining tax payable in respect of the supply of a service of collecting or distributing the levy on blank media under the *Copyright Act*, use a formula to calculate the value of the consideration for their supply of that service to an eligible author, eligible maker, or eligible performer (as those terms are defined in subsection 177.1(2)) or for their supply of that service to another collective society. For the purpose stated above, the formula deems the value of the consideration to be equal to the value of the consideration for the supply as otherwise determined for the purposes of Part IX of the Act minus the part of the value of the consideration that is exclusively attributable to the collection and distribution of the levy on blank media.

New Harmonized Value-added Tax System Regulations, No. 2 (NHVATSR2)

Clause 75

Recapture of specified provincial input tax credits – definitions

NHVATSR2
26

Section 26 of the *New Harmonized Value-added Tax System Regulations, No. 2* (the Regulations) contains definitions of terms that are used in Part 6 of the Regulations.

Section 26 of the Regulations is amended to add the new definition “specified time”. The specified time in respect of a specified provincial input tax credit (as defined in subsection 236.01(1) of the Act) is generally defined as the earlier of the day on which the tax in respect of the specified provincial input tax credit is paid and the day on which it becomes payable. The new definition is relevant for the purpose of determining the recapture rate that is applicable in respect of a specified provincial input tax credit.

This amendment applies to any reporting period of a person that ends on or after July 1, 2010.

Clause 76

Ceasing to be a large business – addition

NHVATSR2
27(11)

Subsection 27(11) of the Regulations provides that if a person ceases in certain circumstances to be a large business (within the meaning of section 27 of the Regulations), the person is nevertheless prescribed to be a large business in respect of a specified provincial input tax credit that relates to a qualifying motor vehicle in respect of which paragraph 30(*a*) or section 32 of the Regulations applies or that relates to meal and entertainment expenses described in paragraph 28(1)(*h*) of the Regulations. As a result, the person is required to recapture an amount in respect of such specified provincial input tax credits even though the person has ceased to be a large business.

Consequential to the amendment to section 30 that allows for additional time to recapture specified provincial input tax credits that is attributable to tax in respect of an acquisition, importation or bringing into a specified province of many more types of specified property or services, subsection 27(11) is amended to not only apply to certain qualifying motor vehicles and certain meal and entertainment expenses but also to those additional types of specified property or services.

This amendment applies to any reporting period of a person that ends on or after July 1, 2010.

Clause 77

Prescribed time

NHVATSR2
30

Section 30 of the Regulations prescribes a time in respect of a specified provincial input tax credit that is relevant for determining when a person is required to recapture the specified provincial input tax credit. Generally, the prescribed time in respect of a specified provincial input tax credit that is attributable to tax in respect of an acquisition, importation or bringing into a specified province of a specified property or service is the earlier of the day on which the tax is paid and the day on which it becomes payable.

Section 30 is amended to allow monthly and quarterly filers, in certain circumstances, an additional reporting period to account for and recapture a specified provincial input tax credit. In particular, if the person is a monthly filer or a quarterly filer and the specified time (as newly defined in section 26 of the Regulations) in respect of the specified provincial input tax credit is in the last fiscal month of a reporting period, the prescribed time in respect of the specified provincial input tax credit is generally the earlier of:

- the particular day on which the tax is paid or becomes payable if an input tax credit in respect of the specified provincial input tax credit is claimed in the reporting period that includes the particular day; and
- either the day that is
    - the particular day if an amount is added to net tax in respect of the specified provincial input tax credit for the reporting period that includes the particular day, or
    - otherwise, the day that is the first day of the reporting period that follows the particular day.

This amendment applies to any reporting period of a person that ends on or after July 1, 2010.

Clause 78

Addition to net tax

NHVATSR2
31(2) to (5)

Subsections 31(2) to (5) of the Regulations prescribe the manner in which a large business is to determine, for a reporting period, an addition to its net tax of all or part of a specified provincial input tax credit to effect the recapture of the specified provincial input tax credit.

Subsections 31(2) to (5) are amended to provide that the recapture rate (as defined in section 26 of the Regulations) used to calculate the amount to be recaptured in respect of a specified provincial input tax credit is the recapture rate at the specified time (as newly defined in section 26 of the Regulations) for the specified provincial input tax credit.

This amendment applies to any reporting period of a person that ends on or after July 1, 2010.