Explanatory Notes to a Draft Bill Amending the Income Tax Act

Issued by
The Honourable Marc Lalonde
Minister of Finance

August 1983

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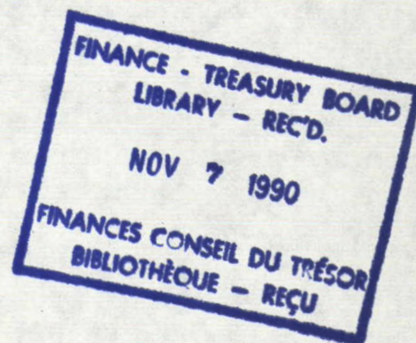

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Taxable Income Defined

Clause 1

ITA
2(2)

Taxable income of a taxpayer for a taxation year is defined in subsection 2(2) of the Act as his income for the year minus personal exemptions, charitable donations and the other deductions permitted by Division C of the Act. Subsection 2(2) is amended to require the inclusion in taxable income of the addition to taxable income stipulated under Division C. This amendment is consequential on the introduction in 1982 of forward averaging. The addition to taxable income is provided in subsection 110.4(2) of the Act and enables a taxpayer to obtain a refund of taxes previously paid under forward averaging.

The amendment applies to the 1983 and subsequent taxation years.

Deductions From Income From Employment

Clause 2

Employment Expense Deduction

ITA 8(1)(a)

Subclause 2(1)

Paragraph 8(1)(a) of the Act provides the employment expense deduction. The existing deduction is limited to the lesser of $500 and 3 per cent of the taxpayer's income for the year from an office or employment (including certain training allowances and scholarships). The amendment increases the percentage from 3 per cent to 20 per cent for the 1983 and subsequent taxation years.

Overseas Employment Deduction

ITA 8(10) and (11)

Subclause 2(2)

Subsections 8(10) and (11) of the Act provide for a deduction in computing an individual's income for a taxation year of 50 per cent of his overseas employment income for the year up to a maximum of $50,000. To qualify for the deduction, the individual must be resident in Canada in the year and must be employed abroad for six consecutive months or longer by a specified employer in connection with a contract for a construction, installation, agricultural, engineering or resource exploration or development project. Effective for the 1984 and subsequent taxation years, this deduction will be replaced by the 80 per cent overseas employment tax credit under new section 122.3. Accordingly, subsections 8(10) and (11) are repealed effective for the 1984 and subsequent taxation years.

Subclauses 2(3) and (4)

These set out the effective dates for the amendments to section 8 of the Act.

Inclusions in Income from Business or Property

Clause 3

Subclause 3 (1)

ITA 12(1)(o)(v)

Paragraph 12(1)(o) of the Act requires a taxpayer to include in income amounts which became receivable in the year by the Crown in respect of production from a resource property in which the taxpayer had an interest. This paragraph applies when the federal or a provincial government has an interest in production from, or ownership of, a mineral resource or an oil or gas well.

Paragraph 12(1)(o)(v) identifies the oil and gas and mineral interests which are subject to this rule. The amendment to this provision clarifies that such interests are only those with respect to which the statutory obligation (or contractual obligation substituted therefor) referred to in paragraph 12(1)(o) is imposed. The amendment applies to amounts that become receivable after April 19, 1983 in respect of any period after that date.

Subclause 3 (2)

ITA 12(9)

Subsection 12(9) of the Act provides that an amount of income must be accrued on certain debt obligations in the manner prescribed in regulations and that this income is to be regarded as interest income. This computation provided in the regulations is relevant in determining the amount of interest to be included in income under the new accrual rules in subsections 12(3), (4), (8) and (11) and for the purpose of the rule in subsection 20(14) that applies on a transfer of a debt obligation to require the interest thereon to be apportioned as between the transferor and the transferee. Subsection 12(9) is amended to add a reference to subsection 20(21) which is designed to provide a deduction to the extent that the amount of interest accrued and included in income on a debt obligation exceeds the interest actually realized thereon. This reference is intended to ensure that the prescribed amount will be considered to be interest for the purposes of paragraph 20(21)(b). This amendment is effective for taxation years commencing after 1981.

Subclauses 3 (3) and (4)

These set out the effective dates for the amendments to section 12.

ITA
18(1)(m)(v)

Cross Reference

The coming into force provision governing sub-paragraph 18(1)(m)(v) is amended by Clause 77 (see commentary thereunder).

Deductions Permitted – Business and Property Income

Clause 4

Subclause 4 (1)

ITA
20(1)(m.2)

Paragraph 12(1)(a) of the Act provides for the inclusion in business income of amounts received in a taxation year on account of goods not delivered or services not rendered before the end of the year. Where such amounts have been included in a taxpayer's income for the year or a preceding year, paragraph 20(1)(m) of the Act permits the deduction of a reasonable reserve in respect of goods and services that it is reasonably anticipated will have to be delivered or rendered after the end of the year.

A technical problem arises where the goods or services are not delivered or rendered but instead the amount received is subsequently repaid by the recipient. In this case, paragraph 20(1)(m) does not operate to allow a reserve nor does the Act specifically provide any deduction for the repaid amount. This amendment adds new paragraph 20(1)(m.2) to the Act to expressly provide for the deduction by a taxpayer of repayments in the year of amounts included under paragraph 12(1)(a) in computing his income for the year or a preceding year. This new paragraph is applicable with respect to the deduction of repayments made in the 1982 and subsequent taxation years.

Subclause 4 (2)

ITA
20(1)(ll)

A taxpayer who has made an overpayment on account of his tax payable under either the Income Tax Act or the Petroleum and Gas Revenue Tax Act may receive interest in respect of the overpayment. However, where it is subsequently determined that the overpayment is less than previously calculated, new subsection 164(3.1) of the Act (and a corresponding provision of the Petroleum and Gas Revenue Tax Act) provide that the Minister may recover any excess interest previously paid to a taxpayer in respect of the overpayment. Since such interest received by a taxpayer must be included in calculating his income, new paragraph 20(1)(ll), applicable with respect to repayments of excess interest made after April 19, 1983, provides a deduction for interest that is now required to be repaid in the year. The deduction is available to the extent that such interest has been included in computing the taxpayer's income and was not exempt from tax by virtue of the $1,000 investment income deduction provided in section 110.1 of the Act.

Subclause 4 (3)

ITA
20(20)

Subsection 20(20) of the Act provides a deduction in respect of any over-accrual of income on an annuity contract under which payments have not commenced. The computation of the over-accrual is made and the deduction is allowed at the time the contract is disposed of. The subsection is amended, for taxation years commencing after 1982, to remove the references to paragraph 56(1)(d.1). These references are inappropriate since that paragraph is relevant only to annuity contracts under which payments have commenced.

Subclauses 4(4) to (6)

These set out the effective dates for the amendments to section 20 of the Act.

Capital Loss in Respect of Unused Share-Purchase Tax Credit

Clause 5

ITA
39(7)

Subsection 39(7) of the Act has been added as a consequence of the introduction of the share-purchase tax credit as provided in new section 127.2 and Part VII of the Act. Where a taxpayer is unable to utilize any portion of his share-purchase tax credit for a year, he may under this subsection treat the unused portion of the credit as a capital loss. This subsection is applicable to the 1983 and subsequent taxation years.

Listed-Personal-Property Losses

Clause 6

ITA
41(2)(b)

Losses from the disposition of property owned for personal use or enjoyment are generally not deductible for tax purposes. Section 41 of the Act provides, however, that a loss in a taxation year arising from the disposition of listed personal property – a defined term which includes works of art, jewelry, rare books, stamps and coins – is available to offset listed-personal-property gains for the year. In addition, any such unabsorbed loss may be carried over to be deducted against listed-personal-property gains of the immediately preceding and five following taxation years. An amendment to paragraph 41(2)(b) permits listed-personal-property losses to be carried back three years and forward seven years. This amendment generally applies with respect to listed-personal-property losses incurred in the 1984 and subsequent taxation years. However, a 1984 loss may be carried back only two years.

A further amendment allows a taxpayer to deduct any portion of a listed-personal-property loss against gains of any taxation year in the carryover period. Thus, a taxpayer may choose not to claim the maximum loss to which he is entitled in a year and may choose instead to apply all or any portion thereof to a subsequent year. This contrasts with the existing requirement that losses be applied to the earliest years first and to the full extent of listed-personal-property gains of those years. This amendment applies to listed-personal-property losses incurred in the 1984 and subsequent taxation years and to the carry-forward of losses to the 1983 and subsequent taxation years.

Capital Properties – Cost Base Adjustments

Clause 7

Subclause 7(1)

ITA
53(1)(e)(i)(B)

Subparagraph 53(1)(e)(i) of the Act requires a taxpayer to add to the cost of a partnership interest his share of the partnership's income for a fiscal period computed without reference to those provisions of the Act that are specified in clauses (A) and (B) of the subparagraph. Clause (B) is amended to delete the reference to paragraph 69(7.1)(b) as a consequence of the repeal of the provisions in subsection 69(7.1) relating to the sale of aviation turbine fuel used on international flights. The amendment is effective after the enacting Bill receives Royal Assent.

Subclause 7(2)

ITA
53(1)(i)(ii)

Paragraph 53(1)(i) of the Act allows for a special increase in the adjusted cost base of farm land for interest and property taxes to the extent that those expenses were not deductible by the taxpayer under the rules of the Act that restrict the deduction of certain farm losses. The increase effectively capitalizes the undeducted interest and property taxes into the land cost for purposes of determining any gain or loss on sale of the land. Under the present Act, a restricted farm loss is required to be claimed first in the earliest year in which it may be deducted. Under paragraph 111(1)(c) and subsection 111(3) of the Act as amended, a taxpayer may choose not to claim all or any part of a restricted farm loss in computing taxable income for any taxation year in the carryover period and he may instead carry such losses forward to be deducted in later years. The amendment to subparagraph 53(1)(i)(ii) is strictly consequential on this new flexibility in claiming losses. It substitutes a reference to restricted farm losses which were "not deducted" rather than "not deductible" in the year of disposition or preceding years. This change applies to the 1983 and subsequent taxation years.

Subclause 7(3)

ITA
53(2)(a)(v)

Paragraph 53(2)(a) of the Act requires certain amounts to be deducted in computing the adjusted cost base of a share of the capital stock of a corporation resident in Canada. New subparagraph (v) has been added to reduce the adjusted cost base of a share by the amount of the share-purchase tax credit to which the taxpayer was entitled under new section 127.2 by reason of his acquisition of the share. This amendment is applicable to the 1983 and subsequent taxation years.

Subclause 7(4)

ITA
53(2)(c)(i)(B)

Subparagraph 53(2)(c)(i) of the Act requires a taxpayer to deduct from the cost of a partnership interest his share of the partnership's loss for a fiscal period computed without reference to those provisions of the Act that are specified in clauses (A) to (C) of the subparagraph. Clause (B) is amended to delete the reference to paragraph 69(7.1)(b) as a consequence of the repeal of the provisions in subsection 69(7.1) relating to the sale of aviation turbine fuel used on international flights. The amendment is effective after the enacting Bill receives Royal Assent.

Subclause 7(5)

ITA
53(2)(c)(vii)

Paragraph 53(2)(c) of the Act provides for certain deductions in computing the adjusted cost base of a partnership interest. New subparagraph (vii) is added to require a member of a partnership to reduce the adjusted cost base of his partnership interest by the amount of any share-purchase tax credit allocated to him by the partnership. This amendment applies to the 1983 and subsequent taxation years.

Subclause 7(6)

ITA
53(2)(f)

Where a shareholder corporation makes a loan or payment to a joint exploration corporation in respect of Canadian exploration expenses, Canadian development expenses, or Canadian oil and gas property expenses, the joint exploration corporation normally agrees to renounce those expenses in favour of the shareholder corporation. New subsection 66(10.4) of the Act deems any property received by the shareholder corporation in consideration for such a payment or loan to be acquired by the shareholder corporation at a cost to it of nil. The new subsection 66(10.4) is applicable for any such property (or property substituted therefor) received by a shareholder corporation in respect of payments or loans made after April 19, 1983.

The amendment to paragraph 53(2)(f) is consequential on the change described above. Under the existing Act, that paragraph reduces the adjusted cost base of any such property by the amount of any expenses renounced by a joint exploration corporation. Since the cost of such property received after April 19, 1983 is declared to be nil, the reduction of its cost base is no longer appropriate. Accordingly, paragraph 53(2)(f) is amended so that it does not apply with respect to property to which new subsection 66(10.4) applies.

Subclause 7(7)

ITA
53(2)(h)(iii)

Paragraph 53(2)(h) of the Act provides for certain deductions in computing the adjusted cost base of a beneficiary's capital interest in a trust or unit of a unit trust. New subparagraph (iii) has been added to require a beneficiary of a trust to reduce the adjusted cost base of his capital interest in the trust by the amount of the share-purchase tax credit that has been allocated to him by the trust. The amendment is applicable to the 1983 and subsequent taxation years.

Subclause 7(8)

ITA
53(2)(r)

Paragraph 53(2)(r) of the Act requires the amount of a life insurance capital dividend received on a share to be deducted in computing its adjusted cost base in those circumstances where the share was inherited on the death of a person. This ensures that any capital gain recognized by the deceased shareholder will not be sheltered by a capital loss that arises as a result of the receipt, in the form of a life insurance capital dividend, of tax-free insurance proceeds. The existing provision also extends the cost base adjustment to a share substituted for an inherited share

and to a share of the same class acquired by the taxpayer after the death. The amendment, applicable after June 28, 1982, ensures that the rule in paragraph 53(2)(r) does not apply with respect to shares acquired in other circumstances – for example, shares of the deceased acquired under a buy-sell agreement.

Subclauses 7(9) to (12)

These set out the effective dates for the amendments to section 53 of the Act.

Butterfly Transactions

Clause 8

ITA
55(3)(b)

Paragraph 55(3)(b) of the Act permits, as part of a "butterfly" type reorganization, certain types of assets of a corporation to be distributed to its corporate shareholders on a tax-deferred basis. The June 28, 1982 draft legislation proposed to amend this paragraph along with paragraph 88(1)(d) to ensure that the cost base of the property distributed to the shareholders could not be increased. The amendment to paragraph 55(3)(b) as enacted by Bill C-139 was more restrictive than the June 28th draft legislation on this point but no change was made to the coming-into-force date of June 28, 1982. The amendment proposed by Clause 8 will exempt from the more restrictive rule those transactions that commenced on or before December 7, 1982 – the date on which Bill C-139 was tabled.

Disposition of resource properties – successor corporations

ITA
59(3.3) and (3.4)(a)

Clause 9

The successor rules in sections 66, 66.1, 66.2 and 66.4 of the Act are being expanded to apply where a predecessor is an individual. Previously, those rules applied only where the predecessor was a corporation. The changes to the successor rules are further explained in the note on subclauses 12(1) to (3). These changes require consequential amendments to subsection 59(3.3) and paragraph 59(3.4)(a) of the Act. The definition of "successor corporation" in paragraph 59(3.4)(a) has been amended to provide for the acquisition of property from any person, not just a corporation; and the expression "predecessor corporation" in subsection 59(3.3) has been replaced by the expression "predecessor".

These amendments are applicable in respect of acquisitions of property after April 19, 1983.

Child Care Expenses

Clause 10

Subclause 10(1)

ITA
63(1), (2) and (2.1)

Section 63 of the Act provides the deduction for child care expenses. A number of significant amendments are being made effective for the 1983 and subsequent taxation years.

The amendments to subsection 63(1) double the amount of the child care expense deduction to $2,000 per eligible child and $8,000 per family. In addition, they remove differences in the qualifications for the deduction depending on the sex of the taxpayer. Under subsection 63(1) as revised, the amount of the deduction claimed by a taxpayer in respect of a child must be reduced by the child care expenses claimed by any other person providing support for that child.

Where two or more taxpayers contributed to the support of an eligible child, the deduction is generally limited to the taxpayer with the lower income. However, in the circumstances specified in paragraph 63(2)(b) of the Act, the supporting individual with the higher income may claim a deduction based on the number of weeks in the year throughout which the lower-income individual is separated, infirm, confined to a bed or a wheelchair, in prison or in full-time attendance at a designated educational institution. The lower-income individual's claim is then reduced accordingly.

Under subsection 63(2) the child care expense deduction is generally limited to the supporting individual with the lower income. Subsection 63(2.1) provides that where the incomes of two supporting persons are equal, a deduction will be allowed only if the two jointly elect which of them may claim it.

Subclauses 10(2) to (5)

ITA
63(3)(a)

Paragraph 63(3)(a) of the Act defines "child care expense". Certain technical changes are required to this definition because of the doubling of the deduction and the limitation of the deduction in many circumstances to the lower-income supporting individual. The amount deductible in respect of a period during which an eligible child is at a boarding school or camp is increased from $30 to $60 a week. In addition, it is no longer required that an eligible child be in the custody of the person claiming the child care deduction. Child care expenses will now qualify for a deduction by a taxpayer in any case where the expenses relate to an eligible child of the taxpayer as defined in paragraph 63(3)(c) and are incurred either by the taxpayer or by any other supporting person (as defined in paragraph 63(3)(d)) of the child.

Subclause 10(6)

ITA
63(3)(c) and (d)

Paragraphs 63(3)(c) and (d) have been added to define the terms "eligible child" and "supporting person" for the purpose of the child care expense deduction. An "eligible child" of a taxpayer will include a child of the taxpayer or his spouse and any child in respect of whom the taxpayer claimed a dependants' deduction under

section 109 of the Act. For this purpose a child will cease to be eligible in the year in which he becomes 15 years of age unless he remains dependent by reason of a mental or physical infirmity. The definition of a supporting person is necessary because of the restriction of the deduction for child care expenses to the taxpayer with the lower income. A "supporting person" of an eligible child of a taxpayer in a taxation year includes only those persons enumerated in paragraph 63(2)(d) who resided with the taxpayer at some time during the year and within the 60-day period following the end of the year.

Subclause 10(7)

ITA
63(4)

Under the existing provisions relating to child care expenses, a deduction is available only if the child is in the custody of the taxpayer. This requirement is no longer relevant and thus subsection 63(4) of the Act is repealed.

Subclause 10(8)

This sets out the effective date for the amendments to section 63 of the Act relating to child care expenses.

Child Care Expenses

Clause 11

ITA
63.1(c) and (e)

Section 63.1 of the Act extends the application of the provisions covering child care expenses to certain government employees and other persons outside Canada who are treated, under section 250 of the Act, as residents of Canada. This is achieved by permitting child care expenses incurred outside Canada to qualify where incurred by deemed residents. The amendments to this section are strictly consequential on the amendments to section 63 relating to the child care expense deduction. They are effective for the 1983 and subsequent taxation years.

Exploration and Development Expenses

Clause 12

Subclauses 12(1) to (3)

ITA
66(6) and (7)

The Act provides successor rules that allow the unused exploration, development or resource property expenses of one corporation to be deducted by a "successor" corporation which acquires all or substantially all its resource assets. The expenses that are passed on to a successsor corporation or second successor corporation may be deducted only against resource income from assets acquired from the original transferor. The successor rules are contained in subsections 66(6) and (7), 66.1(4) and (5), 66.2(3) and (4), and 66.4(3) and (4) of the Act.

The amendments to subsections 66(6) and 66(7) of the Act expand the existing successor rules by dropping the requirement that the transferor be a corporation. As a result, the successor rules will now also be available in the case where an individual or other person transfers all or substantially all of his resource assets to a corporation. These amendments are applicable to property acquired by a successor corporation from a predecessor after April 19, 1983.

(Note that similar amendments are made to subsections 29(25) and (29) of the *Income Tax Application Rules, 1971* which apply in respect of similar expenses incurred before 1972.)

Subclause 12(4)

ITA
66(10.1), (10.2) and (10.3)

Subsections 66(10.1) to (10.3) of the Act allow a joint exploration corporation to renounce all or any portion of its Canadian exploration, Canadian development and Canadian oil and gas property expenses in favour of one or more of its shareholder corporations, thereby transferring the deductibility of these expenses to the shareholder corporation.

The principal amendments to subsections 66(10.1) to (10.3) provide that a joint exploration corporation may renounce these expenses only to the extent they exceed any related government assistance or benefits – such as grants under the Petroleum Incentives Program Act. These amendments are effective with respect to Canadian exploration and development expenses incurred by a joint exploration corporation after March 16, 1983, other than those incurred before October, 1984 in respect of which payments or loans were made to the corporation by a shareholding corporation pursuant to arrangements which were substantially advanced and evidenced in writing on or before March 16, 1983.

A joint exploration corporation that wishes to renounce expenses in respect of a taxation year must elect to renounce the expenses during the year or within 6 months following the year end. The expenses renounced by the joint exploration corporation are deducted from its relevant cumulative expense account. Subsections 66(10.1) to (10.3) are also amended to clarify that the renounced expenses in respect of a year are to be deducted from the joint exploration corporation's cumulative expense accounts at the earlier of the time of renouncement and immediately before the year end. These amendments are applicable with respect to amounts renounced after April 19, 1983.

ITA
66(10.4)

When a shareholder corporation makes a payment or loan to a joint exploration corporation in respect of expenses that are to be renounced, the shareholder corporation may receive property from the joint exploration corporation as consideration for the payment or loan. For example, the payment can be made as a subscription for shares or a loan can be made as consideration for a debt. New subsection 66(10.4) deems the shareholder corporation's cost to be nil in respect of any such property received by it in consideration for a payment or a loan that will entitle the shareholder corporation to have expenses renounced to it. In addition, any property substituted for such property is deemed to have a nil cost to the shareholder corporation. (Note that subsection 66(10.4) does not apply where the payment by a shareholder corporation represents a contribution to the capital of a joint exploration corporation. In this case, paragraph 53(2)(f.1) of the Act will continue to apply.)

New subsection 66(10.4) applies with respect to property received by a shareholder corporation as consideration for loans or payments made after April 19, 1983.

Subclauses 12(5) and (6)

ITA
66(11.1) and (11.2)

Subsection 66(11.1) of the Act provides that the successor rules of the Act apply to a corporation in the resource sector if the corporation ceases to be tax exempt or if its control changes. The purpose of making the successor rules apply is to restrict the deductibility of the corporation's exploration and development expenses incurred before the change of control or the change in tax status. The expenses are restricted to its resource income from assets held by it immediately before the change. If the corporation later transfers all or substantially all of its resource assets to another corporation so that the successor rules again apply, subsection 66(11.2) provides that the corporation acquiring those assets will itself be subject to the same restrictions that applied to the original corporation with respect to the deduction of its expenses by virtue of subsection 66(11.1).

Consequential amendments are made to subsections 66(11.1) and (11.2) to reflect the expansion of the successor rules described in the note on subclauses 12(1) to (3).

A further amendment adds new paragraph 66(11.1)(f) to provide that, in computing the income of a corporation for its taxation year during which a change in control or change in tax status occurred, the exploration and development expenses made or incurred by the corporation before that time may be deducted from certain income in addition to the income referred to in the successor rules. Such additional income consists of the income of the corporation for the year from the disposition of resource properties before the change of control or change in tax status and includes any production revenue from those properties.

Subclause 12(7)

ITA
66(15)(a)(i)

Paragraph 66(15)(a) of the Act defines "agreed portion". This definition is used in subsections 66(10) to (10.3) of the Act which allow a joint exploration corporation to renounce all or a portion of its Canadian exploration and development expenses

in favour of one or more shareholder corporations. For these provisions to apply, the shareholder corporation must make payments to the joint exploration corporation in respect of such expenses incurred or to be incurred by the joint exploration corporation. This amendment clarifies that loans will be considered to be payments made by a shareholder corporation to a joint exploration corporation for the purpose of these provisions.

Subclause 12(8)

ITA
66(15)(g.3)

Under paragraph 98(3)(d) of the Act, a designated amount can be added to the cost of a resource property acquired by a partner on the dissolution of a partnership. Paragraph 98(5)(d) contains a similar rule which allows a designated amount to be added to the cost of a resource property acquired by a partner who carriers on as a sole proprietor of what was previously the business of a partnership.

Paragraph 66(15)(g.3) of the Act clarifies that an amount so designated under paragraph 98(3)(d) will be regarded as an "outlay" or "expense" made or incurred by the partners for purposes of sections 66, 66.1, 66.2 and 66.4 of the Act. The amendment to paragraph 66(15)(g.3) ensures that similar treatment applies for an amount designated under paragraph 98(5)(d). This amendment is applicable after 1980.

Subclause 12(9)

ITA
66(15)(i)(ii)

Paragraph 66(15)(i) of the Act defines a "shareholder corporation" for the purposes of subsections 66(10) to (10.3) of the Act. Those subsections allow a joint exploration corporation to renounce a portion of its Canadian exploration and development expenses in favour of one or more shareholder corporations. For those provisions to apply, the shareholder corporation must make payments to the joint exploration corporation in respect of such expenses incurred by the joint exploration corporation. The amendment to subparagraph 66(15)(i)(ii) clarifies that a loan will be considered to be a payment for the purpose of these provisions.

The definition "shareholder corporation" is also amended to clarify that a payment or loan may be made in respect of expenses to be incurred as well as in respect of expenses which have been incurred.

The amendments to paragraph 66(15)(i) are applicable with respect to the 1982 and subsequent taxation years.

Subclauses 12(10) to (13)

These set out the effective dates for the amendments to section 66.

Successor Corporation's Canadian Exploration Expense

ITA
66.1(4)
66.1(5)

Clause 13

Subsections 66.1(4) and (5) contain the successor rules that apply to the deduction of Canadian exploration expenses. As explained in the note on subclauses 12(1) to (3), the successor rules are being extended so that they will apply where a corporation acquires all or substantially all of the property used by an individual in carrying on his resource businesses and the individual and the corporation elect to have the rules apply. The existing rules apply only where the property is acquired from a corporation. The amendments to subsections 66.1(4) and (5) of the Act implement the extension of the successor rules for Canadian exploration expenses where the predecessor is an individual.

The amendments are applicable with respect to property acquisitions by a successor corporation from a predecessor after April 19, 1983.

Successor Corporation's Canadian Development Expenses

Clause 14

Subclauses 14(1) and (2)

ITA
66.2(3) to (5)

Subsection 66.2(3) to (5) of the Act contain the successor rules that apply to the deduction of Canadian development expenses. As explained in the note on subclauses 12(1) to (3), the successor rules are being extended so that they will apply where a corporation acquires all or substantially all of the property used by an individual in carrying on his resource businesses and the individual and the corporation elect to have the rules apply. The existing rules apply only where the property is acquired from a corporation. The amendments to subsection 66.2(3) to (5) extend the successor rules for Canadian development expenses where the predecessor is an individual. The amendments are applicable with respect to property acquisitions by a successor corporation from a predecessor after April 19, 1983.

Subclause 14(3)

ITA
66.2(5)(a)(i)(C)

An outlay or expense incurred by a taxpayer in drilling or converting a well in Canada for the injection of water or gas to assist in the recovery of petroleum or natural gas from another well is defined by clause 66.2(5)(a)(i)(C) of the Act as a Canadian development expense. The amendment to this clause provides that an expense incurred in drilling such an injection well will qualify as a Canadian development expense irrespective of the nature of the injected substance. This amendment is effective for expenses incurred after 1980.

Subclauses 14(4) and (5)

These set out the effective dates for the amendments to section 66.2 of the Act.

Successor Corporation's Canadian Oil and Gas Property Expense

ITA
66.4

Clause 15

Subsections 66.4(3) and (4) of the Act contain the successor rules that apply to the deduction of Canadian oil and gas property expenses. As explained in the note on subclauses 12(1) to (3), the successor rules are being extended to apply where a corporation acquires all or substantially all of the property used by an individual in carrying on his resource business and the individual and the corporation elect to have the rules apply. The existing rules apply only where the property is acquired from a corporation. The amendments to section 66.4 of the Act implement the extension of the successor rules for Canadian oil and gas property expenses where the predecessor is an individual. The amendments are applicable with respect to property acquisitions from a predecessor after April 19, 1983.

Aviation Turbine Fuel

Clause 16

ITA
69(7.1) and
69(11)

Subsection 69(7.1) of the Act requires a vendor of aviation turbine fuel used on an international flight to include a prescribed amount in income in addition to the actual sale proceeds. Subsection 69(11) sets out rules to establish the circumstances in which fuel is deemed to be used on an international flight for the purposes of subsection 69(7.1). This clause repeals subsections 69(7.1) and (11) effective with respect to dispositions of aviation turbine fuel after April 30, 1983.

Family Farm Corporations

Clause 17

ITA
70(10)(b)

Paragraph 70(10)(b) of the Act provides a definition of the expression "share of the capital stock of a family farm corporation". This definition is relevant for the purpose of the special rollover rules provided in sections 70 and 73 on the transfer of a family farm by a taxpayer to a child. The definition is extended to include the shares of a holding corporation where all or substantially all of the property of the corporation is shares or debt obligations of farm corporations involving the same family.

The amendment is effective for transfers of such shares made after May 25, 1978. This is the date that the corresponding provision, paragraph 70(11)(c) of the Act, relating to small business corporations was extended to holding companies.

Debtor's Gain on Settlement of Debts

Clause 18

ITA
80(1)(a)

Section 80 of the Act sets out the rules that apply where a taxpayer's debt is settled or extinguished for less than its principal amount. In most circumstances the resulting gain is not directly taxable to the debtor but rather reduces in turn the amount of his deductible loss carryovers from preceding taxation years, the capital cost of his depreciable property and the adjusted cost base of any other capital property.

The amendment to paragraph 80(1)(a) is consequential on the introduction of the new "farm loss" carryover in paragraph 111(1)(d) which extends the period over which losses incurred in farming and fishing businesses may be claimed. As a result of this amendment, the gain to which the rules in section 80 apply will reduce, in order, the debtor's non-capital losses, farm losses, net capital losses and restricted farm losses for preceding taxation years to the extent of the amount of those losses that would otherwise be deductible in computing taxable income for the current or a subsequent taxation year. This addition of a reference to farm losses in section 80 is applicable to the 1983 and subsequent taxation years.

Cross Reference

ITA 80(3)

Time for filing election specified in section 80(3) on winding up is extended by Clause 78 (see commentary thereunder).

Cross Reference

ITA
80.4

The coming into force provision governing recent changes to section 80.4 on deemed interest on low interest loans is amended by Clause 79 (see commentary thereunder).

Deemed Interest Expense

Clause 19

ITA
80.5

Section 80.5 of the Act provides that where a benefit is included in the income of a taxpayer under section 80.4 in respect of employee or shareholder debt, the amount of the benefit will be treated as interest expense of the debtor for the purposes of the rules in paragraph 20(1)(c) of the Act relating to the deduction of interest. As a result, the taxpayer will generally obtain an offsetting deduction in those circumstances where the borrowed money is invested or used in a business.

Under subparagraph 8(1)(j)(i) of the Act, employees are permitted to deduct interest on loans used to buy an automobile or an aircraft if they are eligible to deduct expenses under either the salesmen's or travel expense provisions. This amendment to section 80.5 allows these employees to treat any section 80.4 benefit as interest expense for the purpose of the deduction under subparagraph 8(1)(j)(i) of the Act. Generally speaking, this means that employees who require a car in their employment and otherwise meet the criteria of paragraph 8(1)(f) or (h) will have no net benefit under section 80.4 where the employer provides a low-interest or interest free loan for the car.

This amendment applies to taxation years commencing after 1981 when section 80.5 became effective.

Cross Reference

ITA
80.5

A new transitional rule governing the introduction of section 80.5 concerning the deductibility of 80.4 deemed interest is provided by Clause 80 (see commentary thereunder).

Amalgamations

Clause 20

Subclause 20(1)

ITA
87(1.2)(a)(ii)

Subsection 87(1.2) of the Act sets out the treatment in an amalgamated corporation of various types of resource expenses which the corporations being amalgamated may be entitled to deduct. Subparagraph 87(1.2)(a)(ii) is amended to replace the references therein to "predecessor corporation" by a reference to "predecessor" as a consequence of the amendments to the successor rules explained in the note for subclauses 12(1) to (3). This amendment is applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983.

Subclause 20(2)

ITA
87(2)(w)

Section 87 of the Act deals with amalgamations of corporations. On an amalgamation of two or more taxable Canadian corporations, the tax positions of the predecessor corporations are for the most part maintained in the amalgamated company. Paragraph 87(2)(w) of the present Act provides an exception to this general rule by denying the amalgamated corporation any deduction in respect of its predecessors' unclaimed restricted farm losses – that is, the undeducted losses from a farming business which was not the predecessor's chief source of income. Paragraph 87(2)(w) is repealed in respect of amalgamations occurring after 1982 with the result that restricted farm losses will be able to flow through on an amalgamation under subsection 87(2.1), as amended.

Subclause 20(3)

ITA
87(2)(nn)

Subsection 87(2) of the Act provides rules which apply on the amalgamation of two or more taxable Canadian corporations. The amalgamated corporation is generally treated as a continuation of its predecessor corporations for the purposes of the Act. The new paragraph 87(2)(nn) is added as a consequence of the introduction of the new Part VII tax. This paragraph provides that any Part VII tax paid by a predecessor corporation which has not been refunded to it will enter into the calculation of the refundable Part VII tax on hand of the amalgamated corporation. Thus a new corporation formed on an amalgamation will be entitled to offset the Part VII tax paid by a predecessor corporation by any share-purchase or investment tax credit earned by the new corporation. This amendment applies to the 1983 and subsequent taxation years.

Subclause 20(4)

ITA
87(2.1)

Subsection 87(2.1) of the Act permits an amalgamated corporation to deduct the unclaimed non-capital and net capital losses of its predecessor corporations. This subsection is amended as a consequence of the introduction of the new provisions relating to farm loss carryovers in section 111 of the Act. This amendment is necessary to permit an amalgamated corporation to continue to claim the unab-

sorbed farm losses of its predecessor corporations. The amendment to subsection 87(2.1) also introduces a similar "flow-through" of restricted farm losses on an amalgamation.

The amendments to subsection 87(2.1) apply to amalgamations occurring after 1982.

Subclauses 20(5) to (7)

These set out the effective dates for the amendments to section 87 of the Act.

Winding-up of a corporation

Clause 21

Subclause 21(1)

ITA
88(1)(d.2)

Section 88 of the Act sets out rules that apply on the winding-up of a corporation. Paragraph 88(1)(d.2) provides rules for determining when control of a subsidiary has been acquired for the purpose of the winding-up provisions. These rules are designed to restrict an increase in the cost base of the underlying property of the subsidiary for tax purposes through the transfer of its control between persons not dealing at arm's length.

A recent amendment to paragraph 88(1)(d.2), applicable to winding-ups commencing after November 12, 1981, added a reference to the acquisition of a share to clarify that the rules would apply where control was acquired from a group of persons. The amendment had unforeseen implications which are avoided by replacing the reference to the acquisition of a share by a reference to a non-arm's length acquisition of control from a person or a group of persons.

In corporate takeovers it is common practice for the acquiring corporation to obtain an option to purchase the shares of the target corporation. Under paragraph 251(5)(b) of the Act, a person who holds a right to acquire, or to control the voting rights of, shares of a corporation is treated as owning the shares. This may result in the acquiring corporation in a takeover situation being treated as controlling the target corporation and therefore as not dealing at arm's length with those persons from whom it is purchasing the shares. It is inappropriate for an unrelated purchaser and vendor of the shares in these circumstances to be treated as not dealing at arm's length simply because of the existence of an option. The amendment to paragraph 88(1)(d.2) corrects this problem.

This amendment, announced April 5, 1983, applies to winding-ups commencing after November 12, 1981.

Subclauses 21(2) and (3)

ITA
88(1)(e.2)
88(1)(e.2)(xvii)
and (xviii)

Subsection 88(1) of the Act sets out detailed rules that apply on the winding-up of a subsidiary into a parent corporation that owns at least 90 per cent of its shares. Under paragraph 88(1)(e.2), many of the detailed rules to be applied on a winding-up of a subsidiary into its parent are adopted by way of cross-reference to the corresponding provisions in section 87 relating to amalgamations. The amendments to paragraph 88(1)(e.2) make reference to new paragraph 87(2)(nn) and are consequential on the introduction of this provision in the Act. The effect is to enable a parent corporation to use its share-purchase and investment tax credits to obtain a refund of the Part VII tax paid by its subsidiary before the winding-up. These amendments are applicable to the 1983 and subsequent taxation years.

Subclauses 21(4) and (5)

ITA
88(1.1) and (1.2)

Subsection 88(1.1) of the present Act permits a parent corporation to utilize the non-capital losses of a subsidiary which has been wound up where the parent

owned at least 90 per cent of the subsidiary's issued shares. This provision is amended strictly as a consequence of the introduction of the new farm loss carryover in section 111 of the Act. The amendment is necessary to permit a parent corporation to continue to claim the farm losses of a subsidiary following a winding-up. The amendment also extends the flow-through to a parent company of restricted farm losses on a winding-up of a subsidiary.

Under amended section 111, a taxpayer is no longer required to claim the maximum loss carryover in the earliest year in which it is deductible, but rather may deduct whatever portion of any loss he may choose and defer the balance for deduction in any later year in the carryover period. This change to the loss rules requires amendments to subsections (1.1) and (1.2) which provide for the flow-through of losses on a winding-up. As amended, these subsections provide for the availability to a parent corporation of a subsidiary's losses which were not "deducted" rather than those that were not "deductible".

These amendments apply to windings-up commencing in the 1983 and subsequent taxation years.

Subclause 21(6)

ITA
88(1.3)

Where there has been a winding-up of a subsidiary corporation, subsections 88(1.1) and (1.2) of the Act treat the deductible losses of the subsidiary as losses of its parent corporation for the taxation year of the parent in which the subsidiary's loss year ended. Subsection 88(1.3) deals with the special case where the parent corporation was incorporated or otherwise formed after the end of a loss year of the subsidiary. In this case, subsection 88(1.3) treats the parent as having been in existence from the end of the loss year and as having been controlled throughout this period by the person or group of persons who controlled it immediately after its incorporation. This provision is amended, effective for winding-ups commencing after the 1982 taxation year, to clarify that the rules in subsection 88(1.3) apply not only where the parent corporation was incorporated after the end of the subsidiary's loss year, but also where the parent might have come into existence by way of an amalgamation or otherwise.

Subclauses 21(7) to (9)

These set out the effective dates for the amendments to section 88 of the Act relating to winding-ups.

Capital Dividend Account

Clause 22

ITA
89(1)(b)(i)(A)(II)
and (B)(II)

Paragraph 89(1)(b) of the Act defines "capital dividend account". This account is an integral part of the mechanism for allowing capital gains to flow through a private corporation without attracting an extra level of tax. The non-taxable half of a capital gain realized by a private corporation is added to its capital dividend account from which dividends may be received tax-free by its shareholders. Subparagraph 89(1)(b)(i) provides that the portion of a capital gain or loss that accrued while the property disposed of was held by a non-private corporation is excluded from the capital dividend account. This exclusion would apply where a private corporation disposes of capital property which it owned during a period of time when it was non-private or which it acquired from a non-private corporation on a tax-deferred "rollover" basis. The amendments to subclauses 89(1)(b)(i)(A)(II) and (B)(II) provide that the amount of such gains or losses which accrued while the property disposed of was owned by an investment corporation, a mortgage investment corporation or a mutual fund corporation will be included in the computation of the capital dividend account.

Clause 23

ITA
94(2)

Section 94 of the Act contains special rules for the taxation of certain non-resident trusts. The amendments to subsection 94(2) simply change the references therein and are strictly consequential on the amendments in Bill C-139 in which subparagraph 94(1)(b)(i) and (ii) were restated as clauses 94(1)(b)(i)(A) and (B). The amendments are effective for taxation years of trusts commencing after November 12, 1981.

Excluded Property

Clause 24

ITA
95(1)(a.1)

Paragraph 95(1)(a.1) of the Act defines the meaning of the term "excluded property" for the purposes of the provisions relating to foreign affiliates. This paragraph also provides that where a foreign affiliate of a taxpayer has an interest as a partner of at least 10 per cent in a partnership, the partnership shall be deemed to be a foreign affiliate of the taxpayer. The amendment to this paragraph specifies that an interest in a partnership that qualifies as a foreign affiliate of a taxpayer shall be deemed to represent shares of the capital stock of a foreign affiliate. This is necessary to ensure that where the interest is disposed of it will be treated as a disposition of excluded property provided that all or substantially all of the partnership property is itself excluded property, for example active business assets. As such, the disposition will not give rise to foreign accrual property income. This amendment is effective after November 12, 1981.

Partnerships

Clause 25

ITA
96(1)

Subsection 96(1) of the Act requires that the income earned and losses incurred by a partnership be calculated at the partnership level and be attributed to partners in accordance with their respective interests. Thus, the appropriate share of partnership income and losses is included in the calculation of each member's income, net capital loss, non-capital loss, restricted farm loss and taxable income. This provision is amended for the 1983 and subsequent taxation years to add a reference to the "farm loss" of a partner. A farm loss is a separate category of business loss introduced in section 111 and the amendment to section 96 is strictly consequential on this segregation of farm losses out of non-capital losses.

Restricted Farm Losses

Clause 26

ITA
101(b)

Paragraph 53(1)(i) of the Act provides a special rule for a taxpayer who has had a restricted farm loss and disposes of his farm land at a gain. In these circumstances, a portion of the undeducted restricted farm losses is added to the adjusted cost base of the property for the purposes of determining the amount of the capital gain. Section 101 of the Act provides a corresponding rule where the farm land is disposed of by a partnership. In this case, the intended reduction in the capital gain is achieved by allowing each partner to deduct from income one-half of his restricted farm losses that are attributable to the interest and property taxes paid on the land by the partnership to the extent of his share of the partnership's capital gain from the disposition.

Under section 111 as amended, a taxpayer is no longer required to claim a restricted farm loss carryover in the earliest year in which it may be deducted, but instead may preserve the loss to be carried forward to later years in the carryover period. The amendment to paragraph 101(b) of the Act is strictly consequential on this greater flexibility in determining the amount and timing of loss carryover deductions. The paragraph is amended, applicable to the 1983 and subsequent taxation years, to refer to restricted farm losses which were not "deducted" rather than those which were not "deductible".

Trusts

Clause 27

Subclause 27(1)

ITA
104(3)

Subsection 104(3) of the Act denies trusts the right to deduct either personal exemptions or the $100 optional standard deduction. The amendment to the subsection is strictly consequential on the repeal of the $100 optional standard deduction. It removes the reference to that deduction effective for the 1984 and subsequent taxation years.

Subclause 27(2)

ITA
104(13)(b)

Paragraph 104(13)(b) provides generally that trust income *payable* to a beneficiary is taxed to the beneficiary. However, this conflicts with the intention of the employee benefit plan rules that the employee should only be taxed when amounts are *paid* to him and deductible to the employer. Accordingly, paragraph 104(13)(b) is amended to ensure that amounts *payable* by a trust governed by an employee benefit plan are not taxable to the employee at that time. The amounts will be taxed when *paid* under paragraph 6(1)(g).

Subclause 27(3)

ITA
104(21)(a)(ii)

Subsection 104(21) of the Act enables a trust to designate a portion of its capital gain to be a beneficiary's capital gain. The aggregate amount designated in a particular taxation year cannot exceed the trust's taxable capital gains net of its allowable capital losses for the year and any amount deductible under paragraph 111(1)(b) in respect of a net capital loss carryover.

Under section 111 as amended, a taxpayer is no longer required to claim a net capital loss carryover in the earliest year in which it may be deducted but instead may preserve the loss to be carried forward to later years in the carryover period. The amendment to subparagraph 104(21)(a)(ii) is strictly consequential on this greater flexibility with respect to the application of loss carryovers. It changes the existing reference to amounts "deductible" under paragraph 111(1)(b) to a reference to amounts "deducted" under that paragraph.

This amendment is applicable to the 1983 and subsequent taxation years and in respect of net capital loss carryovers of losses determined in 1983 and subsequent taxation years.

Subclauses 27(4) to (6)

These set out the effective dates of the amendments to section 104 of the Act.

Clause 28

Subclause 28(1)

ITA
109(1)

Subsection 109(1) of the Act provides what are generally referred to as a taxpayer's personal exemptions. These tax deductions, in respect of both the taxpayer and his dependants, are currently characterized as deductions from income in computing taxable income. The preamble to subsection 109(1) is amended to permit the personal exemptions to be deducted not only from an individual's income but also against any forward-averaged amounts that he has elected to bring back into taxable income under section 110.4. This amendment is applicable to the 1983 and subsequent taxation years.

Subclauses 28(2) to (4)

ITA
109(1)(d)(iv),
(e)(iv) and (f)(iii)

Subparagraphs 109(1)(d)(iv), (e)(iv) and (f)(iii) of the Act are amended to limit the maximum exemption for a dependant under 18 years of age to $710 for the 1984 and subsequent taxation years. This maximum exemption is reduced by one-half of the dependant's income for the year in excess of $2,350. An amendment to section 117.1 is designed to ensure that the $2,350 will be adjusted annually so that the deduction in respect of a dependant under 18 years of age will effectively cease when his income exceeds the level of the personal exemption available to unmarried individuals.

Subclauses 28(5) and (6)

These set out the effective dates for the amendments to section 109 of the Act.

Clause 29

Subclause 29(1)

ITA
110(1)

Subsection 110(1) of the Act permits a taxpayer in computing his taxable income to deduct certain amounts in respect of expenditures such as charitable donations, gifts to Her Majesty and medical expenses. The preamble to subsection 110(1) is amended to permit these amounts to be deducted not only from a taxpayer's income but also against any forward-averaged amounts that he has elected to bring back into taxable income under section 110.4. This amendment is applicable to the 1983 and subsequent taxation years.

Subclause 29(2)

ITA
110(1)(d)

Paragraph 110(1)(d) of the Act is repealed. This means that, for 1984 and subsequent taxation years, the optional $100 standard deduction claimable in lieu of the amount of actual charitable donations and the deductible portion of medical expenses is no longer available.

Subclause 29(3)

ITA
110(2)

Subsection 110(2) of the Act permits an individual who is a member of a religious order and has taken a vow of perpetual poverty to deduct certain amounts paid by him to the order, in computing his taxable income for a taxation year. The amendment permits these payments to be deducted not only from a taxpayer's income but also against any forward-averaged amounts that he has elected to bring back into taxable income under section 110.4. This amendment is applicable to the 1983 and subsequent taxation years.

Subclauses 29(4) and (5)

These set out the effective date for the amendments to section 110 of the Act.

Deductions In Computing Taxable Income

Clauses 30, 31 and 32

ITA
110.1, 110.2
and 110.3

Subsection 110.1(1) of the Act provides what is generally referred to as the $1,000 investment income deduction, and subsections 110.2(1) and (2) provide what is generally referred to as the $1,000 pension income exclusion. Section 110.3 permits an individual to deduct, in computing taxable income for a taxation year, certain unused tax deductions of his or her spouse for that year. The purpose of the amendments to these provisions is to permit such amounts to be deducted not only from a taxpayer's income but also against any forward-averaged amounts that he has elected to bring back into taxable income under section 110.4. These amendments are effective for the 1983 and subsequent taxation years.

Clause 33

Subclause 33(1)

ITA
110.4(2)

Subsection 110.4(2) of the Act permits an individual to bring into his taxable income for a taxation year throughout which he is resident in Canada all or part of his accumulated averaging amount at the end of the preceding year. His accumulated averaging amount at the end of the preceding year is equal to the indexed total of all amounts deducted in computing his taxable income in preceding years under forward averaging elections minus any amounts which he previously elected to bring back into taxable income under subsection 110.4(2).

Technically, under the existing law, losses cannot offset accumulated averaging amounts brought into taxable income. The amendment allows an offset for non-capital and farm losses. It provides that the amount which would otherwise be required to be included in computing an individual's taxable income for a taxation year under subsection 110.4(2) is reduced by the individual's non-capital loss and farm loss for that year. Any portion of a non-capital loss or farm loss applied under subsection 110.4(2) to offset the increase in taxable income will not be available to be carried over to other taxation years. This change is applicable to the 1983 and subsequent taxation years.

Subclause 33(2)

ITA
110.4(4)

Under the forward averaging rules, elections to forward average and to bring back into taxable income amounts previously averaged can be made only where the individual was resident in Canada throughout the year. Subsection 110.4(4) of the Act treats a taxpayer, who died in the year and was resident in Canada throughout the portion of the year before the time of his death, as having been resident in Canada throughout that year. This provision enables forward averaging elections to be made in the year of death. The amendment to subsection 110.4(4) of the Act removes the reference to subsection 120.1(1) and is strictly consequential on the amendment to subsection 120.1(1) of the Act which removes the requirement that to obtain a forward averaging credit the deceased individual must have been resident in Canada throughout that portion of the year preceding his death. A reference in subsection 110.4(4) of the Act to section 120.1 of the Act is therefore no longer relevant. This rule applies to the 1982 and subsequent taxation years.

Subclause 33(3)

ITA
110.4(6)

Subsection 110.4(6) of the Act provides that, where an individual elects to forward average part of his income for a taxation year, he must pay all the assessed tax, interest and penalties within 30 days from the date of his initial assessment for the year. On the other hand, subsection 159(5) of the Act authorizes legal representatives of a deceased taxpayer to defer the payment of tax under certain circumstances. This amendment is intended to ensure that a deceased taxpayer can benefit from both the forward averaging provisions and the deferral of tax available under subsection 159(5). This change applies to the 1983 and subsequent taxation years.

Subclause 33(4)

ITA
110.4(8)(a)(i)(C)

Paragraph 110.4(8)(a) of the Act defines "accumulated averaging amount" as the net indexed value of income that has previously been forward averaged. Under clause 110.4(8)(a)(i)(C) an individual's accumulated averaging amount at the end of a taxation year is reduced by any amount which he has elected to add in computing his taxable income for the year under subsection 110.4(2). The amendment to the definition is strictly consequential on the change to subsection 110.4(2) which allows an offset of certain losses against forward averaging amounts. Thus, clause 110.4(8)(a)(i)(C), as amended, provides a deduction from the accumulated averaging amount of amounts specified in elections under 110.4(2) instead of a deduction of amounts required to be included in computing taxable income.

Subclause 33(5)

ITA
110.4(8)(a)(ii)

Under the forward averaging system, the annual indexing of the accumulated averaging amount is provided for within the definition of that expression in paragraph 110.4(8)(a) of the Act. This amendment ensures that the indexing of the accumulated averaging amount at the end of a given calendar year is computed by reference to the increase in the Consumer Price Index for the 12 month period ending on September 30 of that calendar year. Under the existing provision, reference is made to the 12 month period ending on September 30 of the preceding year. However, the amendment also provides that the accumulated averaging amount of an individual is not indexed at the end of the year in which he dies. These changes apply to the 1982 and subsequent taxation years.

Subclauses 33(6) to (8)

These set out the effective dates for the amendments to section 110.4 of the Act relating to forward averaging.

Loss carryovers

Clause 34

Subclause 34(1)

ITA
111(1)(a),
(b) and (c)

Under subsection 111(1) of the Act a taxpayer may carry over losses of a taxation year to be deducted in computing taxable income of other taxation years. Under the existing provisions, non-capital losses and restricted farm losses may be carried back one year and forward for five years. Non-capital losses are deductible against any type of income but restricted farm losses may be claimed only against farming income. In addition, net capital losses may be carried back one year and forward indefinitely and are deductible only from capital gains except that, where the taxpayer is an individual, $2,000 per year is deductible from other income. Loss carryovers are deductible in the following order: restricted farm losses, non-capital losses and net capital losses.

The amendment to paragraph 111(1)(a) provides that non-capital losses for the 1983 and subsequent taxation years may be carried back three years and forward seven years. The amendment to paragraph 111(1)(b) provides that net capital losses are available for a two-year carryback from the 1984 taxation year and a three-year carryback subsequently. The amendment to paragraph 111(1)(c) provides that restricted farm losses incurred in the 1983 and later taxation years may be carried back three years and forward ten years. A "farm loss", which is a taxpayer's net loss from farming and fishing businesses as defined under new paragraph 111(8)(b.1), may be carried back three years and forward 10 years effective from the 1983 taxation year. However, where the taxpayer is not an individual (other than a trust) or a corporation eligible for the small business deduction, its non-capital losses, farm losses and restricted farm losses may be carried back only two years from the 1983 taxation year. In addition, the ordering of deductions under section 111 is removed so that taxpayers may choose which type or types of loss to deduct in computing taxable income, subject to the restrictions applicable to the deduction of net capital losses and restricted farm losses.

Subclause 34(2)

ITA
111(2)

Subsection 111(2) of the Act provides that, in computing the taxable income of a taxpayer for the taxation year in which he died and the immediately preceding taxation year, his net capital loss carryover is deductible from all sources of income in those years. The amendment to subsection 111(2) is strictly consequential on the changes to paragraph 111(1)(b). The changes are applicable to deaths occurring after 1983.

ITA
111(3)

Paragraph 111(3)(a) of the Act provides that a loss carryover must be claimed first in the earliest taxation year in which it may be deducted. This provision is amended to provide for the deduction of "farm losses" as defined under new paragraph 111(8)(b.1) and to permit a taxpayer to choose not to claim all or part of a loss carryover in computing taxable income for a taxation year but rather to carry such losses forward to be deducted in later years in the carryover period. Paragraph 111(3)(b) provides that losses of each type – non-capital, net capital, and so on – must be utilized in the order in which they were incurred. Thus, for example, 1983 net capital losses must be applied before 1984 net capital losses. This rule is retained but expanded to include a reference to farm losses.

These amendments are applicable to the deduction of losses determined for the 1983 and subsequent taxation years and to the carryforward of losses to the 1983 and subsequent taxation years.

ITA
111(4)

Subsection 111(4) of the Act provides that where control of a corporation is acquired, the corporation's net capital losses for taxation years preceding the acquisition of control may not be carried forward. The amendment to subsection 111(4) adds a further rule which provides that a corporation's net capital loss for a taxation year following acquisition of control of the corporation may not be carried back to taxation years commencing before the acquisition. This amendment applies, subject to certain transitional provisions, to acquisitions of control occurring in the 1982 and subsequent taxation years.

The transitional rule provides that where control is acquired before April 20, 1983, or before April 20, 1984 and pursuant to written arrangements before April 20, 1983, net capital losses may continue to be carried back for one taxation year following the change of control.

ITA
111(5)

Subsection 111(5) of the Act now provides that, where control of a corporation has been acquired, its non-capital losses incurred in carrying on a business in a taxation year ending before the acquisition of control are deductible by it in later years only if certain conditions are met. The amendment to subsection 111(5) provides that the same conditions must be met for the carryforward of farm losses following a change of control. In addition, similar limitations are introduced on the carryback of both non-capital losses and farm losses, so that such losses for a taxation year commencing after the date of the acquisition of control are deductible in a taxation year commencing before that date only where the business in which the loss was sustained is carried on throughout the loss year and in the year in which the loss is to be claimed, and then only to the extent of the corporation's income from the loss business or a similar business. The amendment to subsection 111(5) is applicable, subject to certain transitional provisions, to acquisitions of control occurring in the 1980 and subsequent taxation years. The transitional rules permit a one year carryback of losses following a change of control occurring before April 20, 1983 or before April 20, 1984 in the case of an acquisition of control pursuant to an agreement evidenced in writing before April 20, 1983.

Subclauses 34(3) and (4)

ITA
111(5.1)(b)
and (5.2)(b)

Subsections 111(5.1) and (5.2) of the Act extend the loss carryforward rules to encompass certain unrealized losses. Subsection 111(5.1) provides that, where control of a corporation has been acquired in a taxation year, the excess of the undepreciated capital cost of all its depreciable property of a prescribed class over its fair market value is treated as having been claimed by the corporation as capital cost allowance in previous taxation years. This amount is treated as a non-capital loss of the corporation for the taxation year immediately preceding the year in which control was acquired. Subsection 111(5.2) provides analogous treatment in respect of a corporation's eligible capital property.

The amendments to these provisions are strictly consequential on the introduction of the farm loss carryover in paragraph 111(1)(d) which provides an extended period over which losses incurred in farming and fishing businesses may be claimed. As a result of these amendments, an amount deemed to have been

claimed as capital cost allowance or as an allowance in respect of cumulative eligible capital under subsection 111(5.1) or (5.2) in respect of a fishing or farming business will be treated as a farm loss of the corporation for its taxation year preceding the year of acquisition of control.

These amendments apply to acquisitions of control occurring in the 1983 and subsequent taxation years.

Subclauses 34(5) and (6)

ITA
111(8)

Paragraph 111(8)(b) of the Act defines the "non-capital loss" of a taxpayer for a taxation year. In general terms, a non-capital loss is the excess of the taxpayer's losses for the year from employment, business and property, his allowable business investment loss for the year and amounts deductible in computing taxable income for the year in respect of intercorporate dividends over the amount by which his income from all sources exceeds the deductions he is permitted under sections 60 to 66.4 of the Act.

Section 56 of the Act requires certain categories of non-taxable income, such as workmen's compensation and social assistance payments, to be included in computing the recipient's income, but only for the purpose of determining his status as a dependent. Non-taxation is achieved by allowing a corresponding deduction under paragraph 110(1)(f) for these amounts in calculating the recipient's taxable income. Because section 56 income is netted out in the determination of the recipient's non-capital loss, an unintended effect is that the deductions under paragraph 110(1)(f) effectively reduce or eliminate his non-capital loss for the year. To correct this problem, the amendment to subparagraph 111(8)(b)(i) provides for the addition to taxpayer's non-capital loss of amounts deductible by him under paragraph 110(1)(f). This correction is retroactive to the 1982 and subsequent taxation years when paragraph 110(1)(f) was made effective.

As described in the commentary on the amendment to subsection 110.4(2) of the Act, non-capital losses are applied to reduce any amounts brought into taxable income under the forward averaging provisions. New subparagraph 111(8)(b)(iii) provides that the portion of a non-capital loss which has been applied under subsection 110.4(2) is to be deducted in determining the amount of non-capital loss available to be carried over to other taxation years.

New paragraph 111(8)(b.1) of the Act defines "farm loss" for purposes of the extended farm loss carryover under paragraph 111(1)(d). A farm loss of a taxpayer for a taxation year is the amount which would otherwise be included in his non-capital loss for the year in respect of his net loss from farming and fishing businesses. In order to avert a double deduction, the amount of a taxpayer's farm loss is deducted in computing his non-capital loss under subparagraph 111(8)(b)(iv). In addition, under subparagraph 111(8)(b.1)(iii) the amount of a taxpayer's farm loss is reduced by any portion thereof applied under subsection 110.4(2) of the Act against forward averaged amounts brought into taxable income.

Sections 2 and 115 of the Act provide that non-residents are subject to Canadian income tax only on income from sources in Canada. Accordingly, new paragraph 111(8)(d) provides that only income and losses from Canadian sources will be

included in determining a taxpayer's loss carryover incurred while he was not a resident of Canada. This new paragraph is applicable with respect to the computation of taxable income for the 1983 and subsequent taxation years and with respect to the determination of losses for those years.

Subclauses 34(7) to (14)

These set out the effective dates for the amendments to section 111 of the Act relating to loss carryovers.

Ordering

Clause 35

ITA
111.1

Section 111.1 of the Act sets out the order in which the various deductions in computing taxable income are to be applied. The amendment to this section provides that the first adjustment in computing taxable income is the addition of accumulated forward averaged income under subsection 110.4(2). This ensures that all other deductions in the determination of taxable income may be claimed against these amounts. The amendment also provides that the deductions in calculating taxable income are to be claimed in the following order:

- personal exemptions under section 109;
- the $1,000 investment income exclusion under section 110.1;
- the $1,000 pension income deduction under section 110.2;
- charitable contributions, medical expenses and other deductions provided under section 110;
- unused deductions transferred from a spouse under section 110.3;
- losses under section 111; and
- amounts elected in respect of forward averaging under subsection 110.4(1).

The new provision applies to the 1983 and subsequent taxation years.

Individual Resident in Canada During Part of the Year

ITA
114

Clause 36

Section 114 of the Act provides for specific rules in computing the taxable income of an individual who was resident in Canada during part of a taxation year. This amendment, applicable to the 1983 and subsequent taxation years, clarifies that section 114 applies to a part-year resident notwithstanding the general definition of taxable income in subsection 2(2) of the Act.

Special Table

Clause 37

ITA
117(6)

To facilitate the computation of the tax payable by most individuals, a table is prepared and included in the annual personal tax return package showing the amount of tax payable for given levels of taxable income. Subsection 117(6) of the Act provides the authority for this tax table. The amendments to subsection 117(6), effective for the 1982 and subsequent taxation years, clarify that the amount determined in the tax table represents tax payable exclusive of the special deduction for the unused portion of the $200 federal tax reduction of the taxpayer's spouse and of any tax adjustment made under the forward averaging provisions and without regard to various tax credits such as the investment tax credit and the new share-purchase tax credit.

Annual Adjustment

Clause 38

ITA
117.1

Section 117.1 of the Act provides for the annual indexing of individual income tax brackets, personal exemptions and the child tax credit.

Paragraph 117.1(1)(b) of the Act is repealed and subsection 117.1(3) of the Act is amended to eliminate any further indexing of the current $710 personal exemption for a dependant under 18 years of age. Subsections 117.1(1.1) and (6) of the Act are also amended to provide a new $343 base for indexing the child tax credit after 1983 and to deny any further indexing of the threshold amount of income beyond which the credit is reduced. In addition, as a consequence of the repeal of the $100 optional standard deduction, various adjustments are being made to subsections 117.1(2) to (5). These amendments are effective for the 1984 and subsequent taxation years.

Block averaging

Clause 39

Section 119 of the Act permits what is generally referred to as five-year "block averaging" for determining taxes payable by farmers and fishermen.

Subclause 39(1)

ITA
119(1)(a)

Block averaging generally permits a farmer or fisherman to elect to calculate his tax on the basis of his average taxable income over a five year period. Under existing paragraph 119(1)(a) of the Act no amount is deductible in making the average taxable income calculation in respect of a loss for the year following the year of averaging. The amended section 111 of the Act provides for a three year carryback of losses in computing taxable income. The amendment to paragraph 119(1)(a) is strictly consequential on the extension of the carryback period. It excludes from the calculation losses carried back from the three years following the year of averaging. To give this effect with respect to losses carried back from 1983, the change is effective for the 1980 and subsequent taxation years.

Subclauses 39(2), (3), (4) and (6)

ITA
119(1)(d) to (h)
119(2)(b), (c) and (d)
119(9) and (10)

Section 119 of the Act deals with block averaging for farmers and fishermen. Block averaging provides for the averaging of income for such taxpayers over a five year period where they so elect. The section is amended as a consequence of the new rules governing the investment tax credit. The amendments provide that in calculating the average tax of a taxpayer for the averaging period only the amount of credit actually claimed for the preceding years in that period is to be taken into account. The amendment provides for an adjustment to the investment tax credit pool where the total credits actually claimed for those years exceed the aggregate of the average taxes for those years. Under the amendments proposed any excess will be added back to the investment tax credit pool of the taxpayer and be eligible for a seven year carryforward from the year in which it is added back. These amendments are applicable to the 1983 and subsequent taxation years.

Subclause 39(5)

ITA
119(8)

Subsection 119(8) of the Act provides that loss carryovers deducted in the block-averaging calculation under subsection 119(1) are not available to be carried over and deducted in other taxation years. Under the amended section 111 a taxpayer has the option of deducting a loss carryover in any taxation year in the carryover period to the extent that it has not previously been deducted. Consequently, subsection 119(8) of the Act is amended to deem an amount in respect of a loss included in the block-averaging calculation under subparagraph 119(1)(b)(ii) of the Act to have been "deducted" rather than "deductible" for the purpose of computing taxable income for taxation years following the year of averaging. This applies to the 1983 and subsequent taxation years.

Subclauses 39(7) and (8)

These set out the effective dates for the amendments to section 119 of the Act.

Federal Tax Reduction

Clause 40

Subclause 40(1)

ITA
120(3.1)

In computing tax payable for the 1983 taxation year, an individual is permitted a special federal tax credit of up to $200. The amendments to subsection 120(3.1) of the Act provide that starting with the 1984 taxation year, this special federal tax credit will be reduced by 10 per cent of the amount by which the individual's basic federal tax exceeds $6,000. The amendments also limit the maximum amount of the credit to $100 for 1985 and $50 thereafter.

Addition to Tax

Subclause 40(2)

ITA
120(4)(c)

Paragraph 120(4)(c) of the Act defines the expression "tax otherwise payable under this Part" and is relevant in determining the amount of additional tax that is payable by an individual in respect of income that was not earned in a province. Effectively, subsection 120(1) provides for federal taxes on income that is not attributed to a province. The expression is also relevant in determining the special Quebec abatement and the $200 federal tax reduction. The amendment to paragraph 120(4)(c) excludes from the definition any deduction from tax for the share-purchase tax credit under section 127.2 of the Act. This amendment is applicable to the 1983 and subsequent taxation years.

Subclauses 40(3) and (4)

These set out the effective dates for the amendments to section 120 of the Act.

Clause 41

ITA
120.1(1) and (2)

Section 120.1 of the Act provides for a tax adjustment where a forward averaging election is made. Subsection 120.1(1) allows a deduction from tax where an amount previously forward averaged is brought back into taxable income whereas subsection 120.1(2) provides for an addition to tax where an individual forward averaged an amount or where an individual has an accumulated averaging amount at the time of his death.

To prevent any duplication of these tax adjustments, the amendments to subsections 120.1(1) and (2) ensure that no addition or deduction under the forward averaging provisions is made in computing the tax payable with respect to a return of income that is not the regular annual return of the taxpayer for the year. They also ensure that a deceased individual will obtain a tax credit with respect to his accumulated averaging amount provided he was resident in Canada at the time of his death.

Subsection 120.1(1) provides that where an individual elects to bring an amount back into income under the forward averaging provisions he may claim a tax credit equal to the product obtained when the top federal marginal rate for the year of inclusion is multiplied by the amount included in taxable income. The amendment to subsection 110.4(2) of the Act provides for a deduction of any non-capital loss and farm loss for the year from a forward averaged amount otherwise included in taxable income. To ensure a full tax credit in these cases, subsection 120.1(1) is amended to allow an individual a tax credit determined by reference to the full amount specified in his election under subsection 110.4(2) rather than the lower amount included in his taxable income. This amendment is applicable to the 1982 and subsequent taxation years.

ITA
120.1(2)

Paragraph 120.1(2)(b) of the Act sets out the rules that apply when an individual dies at a time when he has an accumulated averaging amount which has not been brought back into taxable income. This amount will be taxed in the year of death as if one third thereof were added to the individual's taxable income in each of the three years preceding the year in which he died. A tax credit against this tax is provided under subsection 120.1(1) equal to the product obtained when his accumulated averaging amount is multiplied by the top federal marginal tax rate. This amendment ensures that the tax payable pursuant to paragraph 120.1(2)(b) is based on the amounts which would otherwise have been included in taxable income in the three years preceding death minus any of the individual's non-capital losses and farm losses for those years.

Other amendments to subsection 120.1(2) of the Act simplify the calculation of the tax payable on the accumulated averaging amount upon death. These amendments ensure that, in recomputing the tax payable for the three years preceding death, it will not be necessary to take into account the various additions required or deductions allowed in computing the tax payable for those years nor will it be necessary to take into account the tax adjustments under the forward averaging provisions.

The amendments to section 120.1 of the Act are effective for the 1982 and subsequent taxation years.

Tax Rate of Mutual Fund Trust

Clause 42

ITA
122(3)(a)(i)

Paragraph 122(3)(a) of the Act establishes the tax rate for a mutual fund trust on its net taxable capital gains. The amendments to subsection 111(3) of the Act provide that a taxpayer is no longer required to claim a net capital loss carryover under paragraph 111(1)(b) in the earliest year in which it is deductible. A taxpayer may now defer the deduction of all or any part of a net capital loss from one year to any subsequent taxation year. The amendment to subparagraph 122(3)(a)(i) is consequential on this change. It provides that the net taxable capital gains of a mutual fund trust are to be determined by reference to net capital losses "deducted" rather than "deductible" under paragraph 111(1)(b). This is applicable for losses determined for the 1983 and subsequent taxation years.

Clause 43

Subclause 43(1)

ITA
122.2(1)

Subsection 122.2(1) of the Act provides for an indexed child tax credit in respect of children under 18 years of age at the end of the year. The amendments establish that the amount of the tax credit for each eligible child is equal to $343 for 1983. This amount will be indexed in subsequent years. In addition, subsection 122.2(1) of the Act is amended to ensure that in computing the amount of the credit, the income of an individual who has an eligible child and that of any supporting person of an eligible child of that individual is to be taken into account. Another amendment fixes the threshold amount of income beyond which the credit is reduced at $26,330 for the 1983 taxation year. This threshold amount is not to be indexed for future years.

Subclause 43(2)

ITA
122.2(2)(b)

The amendment to subsection 122.2(2) of the Act deals with the income threshold rules relating to the child tax credit. Where the credit is claimed by a married person living with a spouse at the end of the year, the incomes of both spouses are aggregated (as at present). In addition, of both parents of the eligible child are living together at the end of the year, the incomes of the parents are aggregated. Finally, the income of any person claiming a personal exemption in respect of the child must be aggregated with that of the person claiming the credit. This change is effective for 1983 and subsequent taxation years.

Subclause 43(3)

This sets out the effective dates for the amendments to section 122.2 of the Act relating to the child tax credit.

Overseas Employment Tax Credit

Clause 44

ITA
122.3

Effective for the 1984 and subsequent taxation years, the overseas employment tax credit under new section 122.3 replaces the overseas employment deduction that was previously provided under subsections 8(10) and (11) of the Act. This amendment introduces the overseas employment tax credit available to individuals resident in Canada working abroad for six consecutive months or longer for a specified employer in connection with a resource, construction, installation, agricultural or engineering project. Under new section 122.3, the amount of the credit is, generally speaking, equal to that proportion of the amount that would, but for this credit, be the employee's Canadian tax payable for the year that the lesser of $80,000 and 80 per cent of his net overseas income taxable in Canada is of his total income for the year. The $80,000 is prorated where the employee is abroad in qualifying circumstances for less than a full year. Circumstances under which an employee may qualify for the new credit are similar to those under the existing provisions relating to the overseas employment deduction. However, income from employment under a prescribed international development assistance program will not qualify for the overseas employment tax credit.

Clauses 45 and 46

ITA
123.4(a)
123.5(a)

Section 123.4 of the Act imposes a 5 per cent corporate surtax for the 1982 calendar year and section 123.5 imposes a 2½ per cent corporate surtax for 1983. Paragraph 123.4(a) and 123.5(a) are amended to provide that the amount of the surtax is calculated by reference to a corporation's federal tax otherwise payable before any deduction of share-purchase tax credits to which it is entitled. The amendments to sections 123.4 and 123.5 are applicable to the 1983 and subsequent taxation years.

Small Business Deduction

Clause 47

Subclause 47(1)

ITA
125(2) to (5)

Subsection 125(2) of the Act defines the "business limit" and the "total business limit" of a corporation for the purpose of calculating the corporation's small business deduction. Under the rules in subsections 125(2) to (5) the limits are apportioned among Canadian-controlled private corporations that are associated. Associated corporations may allocate the business limit and total business limit among themselves by filing a prescribed agreement under subsection 125(3) of the Act or, if such an agreement is not filed, the Minister of National Revenue will make the allocation under subsection 125(4) of the Act. Subsection 125(5) of the Act addresses certain limited cases where a Canadian-controlled private corporation that has two taxation years ending in the same calendar year is associated in each of those taxation years with another Canadian-controlled private corporation that has only one taxation year ending in the calendar year. The subsection prevents the corporation from obtaining a small business deduction in its second taxation year by deeming its business limit for that year to be nil.

Subsections 125(2) to (5) of the Act are amended, effective for the 1983 and subsequent taxation years, to expand the group of associated corporations that must share the small business deduction so as to include, in addition to Canadian-controlled private corporations, any corporation that ceased to be a Canadian-controlled private corporation after July, 1983. This expanded group, referred to as an "associated group", is defined in new paragraph 125(6)(m) of the Act. These amendments ensure that associated Canadian-controlled private corporations cannot increase their small business deductions simply by having one or more members of the group cease to maintain Canadian-controlled private corporation status. Without these amendments, the increased small business deductions would arise as a result of the ability to ignore the cumulative deduction account of the corporation whose status after July 1983 had changed, for example, by obtaining articles of continuance in a foreign jurisdiction or by becoming a public corporation.

Subclauses 47(2) to (4)

Paragraph 125(6)(b) of the Act provides rules for calculating the cumulative deduction account of a corporation to determine its eligibility for the small business deduction. A corporation or an associated group of corporations may no longer claim the small business deduction where its cumulative deduction account is $1,000,000 or more at the end of the preceding taxation year.

ITA
125(6)(b)(i)

The amendment to subparagraph 125(6)(b)(i) is consequential on the revision of subsection 125(8.1) and ensures that additions to the cumulative deduction account under revised subsection 125(8.1), which are to be made on an annual basis as required, will not continue to affect a corporation's cumulative deduction account where the reason for the addition no longer exists.

ITA
125(6)(b)(iii.2)

Existing subparagraph 125(6)(b)(iii.2) of the Act provides that the cumulative deduction account of a corporation includes any additions made to this account pursuant to subsections 125(8.1) and (8.4). As such, these additions, once made, become permanent components of a corporation's cumulative deduction account.

This amendment deletes the reference to subsection 125(8.1). It is consequential on the amendment which provides that an amount added to the cumulative deduction account for any year under subsection 125(8.1) adjusts the account for that year only and does not give rise to a permanent addition to the account.

ITA
125(6)(b)(iv)

Existing subparagraph 125(6)(b)(iv) of the Act provides that a corporation's cumulative deduction account is reduced in respect of dividends that it pays out of its business income to another corporation with which it is associated.

Such dividends, called "qualifying taxable dividends", are defined in subparagraph 125(6)(c)(iii) so as to exclude the portion paid out of investment income. Since both of these provisions exclude the portion of dividends paid out of investment income, an unintended effect is that the adjustment to exclude dividends paid out of investment income is made twice, thereby understating the intended deduction for dividends paid out of business income. The amendment to subparagraph 125(6)(b)(iv) corrects this problem and is effective for the 1982 and subsequent taxation years.

ITA
125(6)(b)(iv.2)

The proposed amendment deleting existing subparagraph 125(6)(b)(iv.2) of the Act is strictly consequential on the repeal of existing subsections 125(8.5) and (8.6).

The introduction of new subparagraph 125(6)(b)(iv.2) is consequential on the introduction of new subsection 125(8.5). Subsection 125(8.5) provides for a reduction of a corporation's cumulative deduction account in respect of dividends it has received from an associated corporation whose cumulative deduction account is effectively in a negative balance. New subparagraph 125(6)(b)(iv.2) ensures that the reduction is reflected in the definition of "cumulative deduction account" and is effective for the 1980 and subsequent taxation years.

Subclause 47(5)

ITA
125(6)(c)

Paragraph 125(6)(c) defines "qualifying taxable dividends paid" for the purpose of calculating a corporation's cumulative deduction account. The amendments to this paragraph limit these dividends, effective for the 1983 and subsequent taxation years, to those paid out of business income by one corporation that is a member of an "associated group", as defined in new paragraph 125(6)(m), to another member of that group. Certain of the amendments to paragraph 125(6)(c) are strictly consequential on the amendments to subsections 125(2) to (5) which provide that the small business deduction must be shared by the members of an associated group. These consequential amendments simply pick up the appropriate references to "associated group" effective for the 1983 and subsequent taxation years.

"Qualifying taxable dividends paid" exclude dividends on which the recipient corporation is required to pay Part IV tax, since such dividends are considered to be paid by the payer corporation out of its investment income. An amendment extends this exclusion to dividends to which the Part IV tax does not apply as a result of the application of non-capital losses by the recipient corporation to reduce or eliminate its Part IV tax liability. This amendment is applicable to taxation years commencing after March, 1983.

Subclause 47 (6)

ITA
125(6)(m)

The amended subsections 125(2) to (5) of the Act require the members of an "associated group" in a taxation year to share the small business deduction by allocating the business limit and total business limit among the members. Revised subsection 125(8.5) also refers to an "associated group" and provides rules for circumstances where there is a negative cumulative deduction account.

An "associated group" in a taxation year is defined in new paragraph 125(6)(m) as a group of associated corporations each member of which is either a Canadian-controlled private corporation or a corporation that was, at any time after July, 1983 and before the end of the taxation year, a Canadian-controlled private corporation. This new definition broadens the concept of associated corporations for the purpose of the small business deduction to include corporations that were Canadian-controlled private corporations but that have changed their status after July 1983 – for example, corporations that have been "exported" to foreign jurisdictions or corporations that have become public.

New paragraph 125(6)(m) is applicable for the 1983 and subsequent taxation years and, for the purposes of new subsection 125(8.5), it is applicable in a modified form for the 1980 to 1982 taxation years. In its modified form, an associated group in a taxation year will include only Canadian-controlled private corporations that are associated with each other in the year.

Subclause 47 (7)

ITA
125(6.1)

Subsection 125(6.1) of the Act provides rules for the purpose of computing the cumulative deduction account of a corporation where it has paid or received a dividend as part of a "butterfly" reorganization under paragraph 55(3)(b) of the Act or as part of certain share transactions or business transfers to which existing subsection 125(8.1) applies. In these cases, the dividends and related Part IV tax and dividend refunds are to be ignored in computing the cumulative deduction account. The amendments to subsection 125(6.1) are strictly consequential on the amendments to subsections 125(8.1) and (8.4) of the Act.

Existing paragraph 125(6.1)(a) does not apply to dividends between non-arm's length parties on a butterfly reorganization. The amendments extend the application of this paragraph to include such dividends since the amended subsection 125(8.4) will apply to both arm's length and non-arm's length butterfly reorganizations. The amendments also repeal existing paragraph 125(6.1)(b), which is no longer required as a result of the amendments to subsection 125(8.1).

These amendments apply in computing the cumulative deduction account for the 1982 and subsequent taxation years.

Subclause 47(8)

ITA
125(6.2)(b)

Subsection 125(6.2) of the Act provides rules for computing the cumulative deduction account of a corporation where dividends are paid between associated corporations one of which carries on a non-qualifying business while the other carries on an active business. These rules ensure that the amount included in the recipient's cumulative deduction account in respect of a dividend in these circumstances is equal to the amount deducted from the payer's account. As a result, the total cumulative deduction account of the group is not affected by such dividends. The amendment to paragraph 125(6.2)(b) simply changes a cross-reference as a consequence of the amendment to clause 125(6)(b)(iv)(A).

Subclause 47(9)

ITA
125(6.3)

Subsection 125(6.3) of the Act provides rules for computing the cumulative deduction accounts with respect to dividends between associated corporations where their taxation years end in different calendar years. The amendment to the subsection ensures that the adjustments to the cumulative deduction accounts of both the payer and recipient corporations are made in the same taxation year. This prevents potential understatements and overstatements of the group's cumulative deduction account at the end of a taxation year. Subsection 125(6.3) has also been expanded to cover the situation where the recipient corporation may have been wound up in order to avoid the effective application of these rules.

The amendments are applicable in computing cumulative deduction accounts for the 1982 and subsequent taxation years.

Subclause 47(10)

ITA
125(8.1) and (8.2)

Existing subsections 125(8.1) and (8.2) of the Act set out detailed rules designed to ensure that the small business deduction is not increased as a result of certain business transfers or share transactions. These amendments replace those detailed rules with general anti-avoidance provisions.

New subsection 125(8.1) provides that where one of the main reasons for a transaction or event or series of transactions or events is to effect an increase in the amount of the claim for the small business deduction of any corporation, adjustments to the corporation's cumulative deduction account are to be made to eliminate the increased claim.

Where more than one corporation could benefit from such an increased claim, the corporations may agree to eliminate the increase in any manner they choose by adjusting their respective cumulative deduction accounts. Where they fail to do so, subsection 125(8.2) empowers the Minister to make such adjustments.

Although new subsection 125(8.1) applies to both arm's length and non-arm's length transactions, it will apply only where one of the main reasons for a transaction is to increase the claim for the small business deduction. Accordingly, the subsection will not apply where the claim has been increased as a result of certain transactions such as a bona fide arm's length takeover of a business or a corporation, even where the takeover is preceded by the payment of a dividend to an associated corporation. Nor is it intended that these provisions apply where shares or a business of a corporation are transferred from a parent to an adult child where the child is actively involved in the management of the business. Revenue Canada, Taxation, has agreed to administer these provisions and rule on proposed transactions in accordance with these policy guidelines.

New subsections 125(8.1) and (8.2) are applicable to transactions or events or a series of transactions or events commencing after April 5, 1983, when they were first published. However, the repeal of existing subsections 125(8.1) and (8.2) as well as that of existing subsections (8.3) to (8.6) is applicable for the 1982 and subsequent taxation years.

ITA 125(8.3)

Subsection 125(8.3) of the Act expands on those circumstances that are considered to be business transfers for the purposes of the rules provided in subsection 125(8.1). The existing provision applies only to non-arm's length transfers. This amendment broadens the scope of subsection 125(8.3) to include arm's length transfers and is consequential on the corresponding change to subsection 125(8.1).

ITA 125(8.4)

Subsection 125(8.4) of the Act provides rules for allocating the cumulative deduction account of a corporation among its corporate shareholders in proportion to the value of the property that each shareholder receives as part of an arm's length "butterfly" reorganization commencing after December 1, 1982. This amendment extends the application of the subsection to non-arm's length butterfly reorganizations, and a transitional rule ensures that the subsection will not apply to such reorganizations commencing before April 6, 1983 where the parties so agree.

ITA 125(8.5)

As amended, subsection 125(8.5) introduces a new rule, effective for the 1980 and subsequent taxation years, to provide relief where the cumulative deduction account goes negative. In cases where the cumulative deduction account of a payer corporation is negative – that is, where it is not large enough to cover the deduction allowed under subparagraph 125(6)(b)(iv) in respect of a qualifying taxable dividend paid by it – subsection 125(8.5) as amended requires each recipient corporation to deduct, in computing its cumulative deduction account for its taxation year in which the dividend was paid, an amount equal to its share of the payer corporation's negative cumulative deduction account based on its proportionate share of the dividend. In the absence of this rule, qualifying taxable dividends paid by a member of a group of associated corporations to another member of the group in these circumstances would impair the group's eligibility for the small business deduction.

With the extension of the loss carryback rules to three years and the resulting retroactive reductions in cumulative deduction account balances, the potential incidence of negative accounts will increase. Subsection 125(8.5) allows loss carrybacks without impairing overall access to the small business deduction by members of an associated group.

Subclause 47(11)

ITA
125(6)(b)(iv)
Transitional
Rule

Under paragraph 125(6)(b) of the Act, dividends paid by a corporation before 1982 out of its business income will generally reduce the payer corporation's cumulative deduction account. An exception is provided for dividends paid to a private corporation which is connected but not associated with it and on which no Part IV tax is paid. After 1981, only dividends paid out of business income to an associated Canadian-controlled private corporation on which no Part IV tax is paid will reduce the payer corporation's cumulative deduction account. Since the cumulative deduction account is determined on the basis of complete taxation years, this change to the definition of "qualifying taxable dividends paid", effective January 1, 1982, necessitates a transitional rule for taxation years that straddle that date.

This amendment provides that any dividends paid by a corporation in its 1982 straddle year will, to the fullest extent possible, be treated as paid out of its business income. The transitional rule also assumes that where the recipient is a private corporation that is connected but not associated with the payer corporation, and the recipient has elected to pay Part IV tax on dividends, the election will be considered to be in respect of 1981 dividends before 1982 dividends. These assumptions ensure that dividends will generally reduce a corporation's cumulative deduction account to the same extent as they would have done had the corporation's taxation year ended on December 31, 1981.

Subclauses 47(12) to (18)

These set out the effective dates for the amendments to section 125 of the Act.

Manufacturing and Processing Tax Credit

Clause 48

ITA
125.1(1)(a)(ii)(D)

Section 125.1 of the Act provides a reduced rate of corporate tax for Canadian manufacturing and processing income. The rate reduction takes the form of a special credit of 6 per cent (5 per cent in the case of business profits eligible for the small business deduction) of such income against the federal corporate tax otherwise payable. The amount on which the 6 per cent credit is based may not exceed the corporation's taxable income that did not qualify for the small business deduction under subsection 125(1) of the Act and that does not represent either business income that was taxed in a foreign jurisdiction or investment income. For this purpose, the corporation's investment income is to be reduced by its net capital loss carryover that is deductible in the year. As a result of the amendment to subsection 111(3), a net capital loss carryover need no longer be claimed in the earliest year in which it is deductible, but it may instead be preserved to be applied in computing taxable income in later years. Accordingly, the determination of a corporation's net investment income under clause 125.1(1)(a)(ii)(D) of the Act is changed to refer to net capital losses "deducted" rather than those "deductible" under paragraph 111(1)(b). This change is applicable to losses determined in the 1983 and subsequent taxation years.

Clause 49

Section 126 of the Act permits a taxpayer to claim a foreign tax credit. Subsection 126(1) sets out the rules for claiming the credit in respect of foreign non-business-income tax – that is, the foreign taxes imposed on investment income and other categories of foreign source non-business income. A credit in respect of foreign taxes on business income is provided under subsection 126(2). Neither credit may exceed the Canadian tax otherwise payable in respect of the foreign source income. Canadian tax otherwise payable on foreign source income is determined by reference to the ratio of the foreign source income to total income.

Subclauses 49(1) and (4)

ITA
126(1)(b)(i)(E)
and 126(7)(c)

An individual's foreign employment income which qualifies for the overseas employment tax credit under new section 122.3 of the Act is effectively free from Canadian tax. Consequently, new subclause 126(1)(b)(i)(E)(II) provides that such amounts are not to be included in foreign source income for purposes of the foreign tax credit calculation. Similarly, foreign taxes on income eligible for the overseas employment tax credit under section 122.3 are excluded from the definition of "non-business income tax" under paragraph 126(7)(c) and are thereby excluded from the foreign tax credit calculation. These provisions apply with the introduction of the overseas employment tax credit in 1984.

Subclauses 49(2) and (3)

ITA
126(1)(b)(ii) and
126(2.1)(a)(ii)

The inclusion of forward-averaged amounts in taxable income under subsection 110.4(2) of the Act will in most circumstances result in an increase of an individual's Canadian tax otherwise payable. This increased tax and the addition to taxable income should be taken into account in determining the foreign tax credit limitation. Under the existing rules only the increased tax is brought into the formula. The amendments to clauses 126(1)(b)(ii)(A) and (2.1)(a)(ii)(A) ensure that the amounts added to taxable income under subsection 110.4(2) are included in total income for the purpose of the foreign tax credit calculation. These changes are effective for the 1983 and subsequent taxation years.

Total income under the present foreign tax credit limitation is reduced by a taxpayer's deductible net capital losses carried over from other taxation years. The amendment to subsection 111(3) of the Act provides that a net capital loss carryover need not be claimed under paragraph 111(1)(b) in the earliest year in which it is deductible, but may instead be preserved to be applied in computing taxable income in later years. Accordingly, these amendments also provide that total income, which is determined under subparagraph 126(1)(b)(ii) for the non-business income foreign tax credit and under subparagraph 126(2.1)(a)(ii) for the business income foreign tax credit, is to be reduced by net capital loss carryovers that are "deducted" rather than those that are "deductible" under paragraph 111(1)(b). This applies for losses determined in the 1983 and subsequent taxation years.

Subclause 49(5)

ITA
126(7)(d)

Paragraph 126(7)(d) of the Act defines Canadian tax otherwise payable for purposes of the formula for determining the foreign tax credit limitation. Subparagraphs (i) to (iii) are amended as a result of the new overseas employment tax credit and share-purchase tax credit in sections 122.3 and 127.2 respectively. The effect is to ignore these credits in determining the Canadian tax otherwise payable in paragraph 126(7)(d). These changes are applicable to the 1983 and subsequent taxation years.

Subclauses 49(6) and (7)

These set out the effective dates of the amendments to section 126 of the Act relating to the foreign tax credit.

Tax Credits

Clause 50

Subclause 50(1)

ITA
127(4.1)

Subsection 127(4.1) of the Act defines an "amount contributed" for the purposes of the calculation of a taxpayer's tax credit in respect of political contributions. Where a taxpayer makes a contribution, to a registered political party or officially nominated candidate subsection 127(3) allows a tax credit of up to $500 depending upon the amount of contribution. The amendment ensures that a tax credit is not available for contributions in respect of which the taxpayer has received or is entitled to receive any other financial benefit, other than a prescribed benefit, from a government or other public authority. Thus a contribution that qualifies for a grant, subsidy, deduction from tax (other than deduction under subsection 127(3)) or provincial credit will not qualify for the credit from tax. This rule applies for contributions made after April 19, 1983.

Investment Tax Credit

Subclause 50(2)

ITA
127(5)

Subsection 127(5) of the Act sets out the limits on the deduction of investment tax credit from federal tax payable. Under the existing provision, where the federal tax for a year exceeds $15,000, only half of the excess may be eliminated by investment tax credits. The amendment to subsection 127(5) of the Act allows investment tax credits earned after April 19, 1983 to be fully deducted from federal tax payable, without regard to the limitation on taxes in excess of $15,000. Thus investment tax credits earned on and after April 20, 1983 are fully deducted against any federal tax remaining after the deduction of investment tax credits earned before that date. This change, taken together with the amendments to subsection 127(9), will also allow a full offset against federal tax for any years in the carryback period to which the new credits may be applied. (Note that investment tax credits earned before April 20, 1983 continue to be subject to the 50 per cent limitation.)

Subclause 50(3)

ITA
127(9)(a)

Subsection 127(9) of the Act provides the formula for the computation of the investment tax credit of a taxpayer at the end of a year. Paragraph 127(9)(a) is amended to extend the 7 per cent credit to qualified construction equipment acquired after April 19, 1983. The expression "qualified construction equipment" is defined in paragraph 127(10.1)(f) of the Act.

Subclauses 50(4) to (7)

ITA
127(9)(b), (b.1),
(b.2), (d),
(d.2), (e)
and (f)

The amendments to paragraphs 127(9)(b), (b.1), (b.2), (d), (d.2), (e) and (f) are for the purpose of extending the carry-over period for the investment tax credit. Credits earned after April 19, 1983 may be carried back for 3 taxation years (but in no event to a taxation year before 1981) and may be carried forward for 7 taxation years. The extended carry-over period applies only in respect of investment

tax credits earned on and after April 20, 1983. Investment tax credits earned before that date may not be carried back and will continue to qualify for a five year carry-forward.

ITA
127(9)(d.3)

Paragraph 127(9)(d.3) has been added to the Act to provide for a special addition to the investment tax credit pool of a farmer or fisherman who has taken advantage of block averaging under section 119. This special addition is described in the notes on the amendments to that section.

ITA
127(9)(g)

Paragraph 127(9)(g) is added to the Act as a consequence of the introduction of the refundable Part VII tax in respect of the new share purchase tax credit. A corporation is liable under Part VII of the Act for an amount of tax equal to the amount of the special credit that is flowed-out to investors through an issue of shares under the Share Purchase Tax Credit program. Paragraph 127(9)(g) reduces a corporation's investment tax credit pool by the amount of investment tax credit used by it to offset its liability for the Part VII tax.

Subclause 50(8)

ITA
127(10.1)(f)

Paragraph 127(10.1)(f) of the Act provides a definition of qualified construction equipment. The 7 per cent investment tax credit was extended to such equipment acquired after April 19, 1983. The type of equipment eligible for the tax credit will be prescribed in the Income Tax Regulations. It must be new equipment acquired for construction in Canada in a business. Prescribed equipment will include property in class 22 and certain other heavy equipment such as cranes and pile-drivers.

Subclause 50(9)

ITA
127(11.1)(a)

The amendment to paragraph 127(11.1)(a) adds a reference to qualified construction equipment for the purposes of establishing the appropriate rate of tax credit applicable thereto. For such equipment acquired after April 19, 1983 the rate is 7 per cent.

Subclause 50(10)

ITA
127(11.1)(b)(i)

Subparagraph 127(11.1)(b)(i) is amended to change the reference to subsection 125(1) to a reference to section 125. This extends the special 25 per cent investment tax credit for scientific research to research in a year carried on by any Canadian-controlled private corporation that qualifies for the small business deduction. Under the existing provision this special credit is not available in a year if the corporation has income in the year from a non-qualifying business. This amendment is applicable in respect of expenditures made after April 19, 1983.

Subclause 50(11)

ITA
127(12.2)

Subsection 127(12.2) is added to the Act as a consequence of the introduction of the three-year carrying-back for investment tax credits earned after April 19, 1983. The subsection applies where the investment tax credit earned in a year is

carried back against taxes payable for a previous year. The effect of this provision is to ensure that the amount of the credit reduces the adjusted cost base of property in the year when the investment tax credit was earned and not in the earlier year in which the credit was claimed.

Subclauses 50(12) to (15)

These set out the effective dates for the amendments to section 127 of the Act dealing with tax credits.

Refundable Investment Tax Credit

Clause 51

ITA 127.1

Section 127.1 is added to the Act to provide for the refundability of a portion of investment tax credits earned in the period commencing April 20, 1983 and ending April 30, 1986. The section provides for a refund for a taxation year of a stipulated percentage of the unused amount of such investment tax credit earned in the year.

For most Canadian-controlled private corporations, individuals and certain trusts, the stipulated percentage that will qualify for a refund is 40 per cent. For all other taxpayers the stipulated percentage is 20 per cent. The amount refundable for a year is deemed to have been paid by the taxpayer on account of tax on the day on which his return of income is filed. Since the amount is deemed to have been paid by the taxpayer, it will offset any other liability he may have under the Act and be refunded to him to the extent of any excess. Subsection 127.1(2) provides the formula for determining the amount of the investment tax credit earned in a year that will qualify for the refund. The purpose of subsection 127.1(3) is to ensure that the amount of the refund for a year will reduce the investment tax credit pool that may be deducted by the taxpayer in subsequent years.

A prescribed form is required to be filed with respect to the refundable investment tax credit for a taxation year. This form is generally required to be filed with the tax return for the year but a special coming into force provision allows the form to be filed within 90 days following Royal Assent to the enacting Bill.

Special Recovery Share-Purchase Tax Credit

ITA 127.2

New section 127.2 of the Act, taken together with the new Part VII, provides the mechanism proposed in the April, 1983 budget to enable a corporation to "flow out" its investment tax credit to purchasers of qualifying new equity shares of the corporation. In effect, the investment tax credit of a corporation earned after April 19, 1983 becomes available to these shareholders in the form of a special share-purchase tax credit. This credit is then either deductible by the shareholders in calculating their liability for federal tax or refundable to them in the case of certain tax-exempt persons. To be eligible for the share-purchase tax credit, the qualifying shares must be issued after June 30, 1983 and before January 1, 1987.

ITA 127.2(1)

New subsection 127.2(1) of the Act permits a taxable person to deduct a share-purchase tax credit from his Part I tax otherwise payable for the year. The amount of the credit is determined under subsection 127.2(6).

ITA 127.2(2)

New subsection 127.2(2) sets out the rules for tax-exempt persons described in paragraphs 149(1)(e) to (y) of the Act such as registered pension funds, charities and certain other organizations. Because such persons are not taxable under Part I of the Act, the normal tax credit mechanism would not enable them to take advantage of their share-purchase tax credits. To overcome this difficulty, subsection 127.2(2) provides that, where any such person files the relevant prescribed form with its income tax return for the year, that person will be deemed to have paid, on the day the return is filed, an amount on account of Part I tax equal to its

share-purchase tax credit. This ensures refundability of the share-purchase tax credit for these enumerated tax-exempt persons. The prescribed form described above is generally required to be filed with the tax return for the year but a special coming into force provision allows the form to be filed within 90 days following Royal Assent to the enacting Bill.

ITA 127.2(3)

New subsection 127.2(3) permits a trustee to allocate its share-purchase tax credit to its beneficiaries rather than requiring the trust to claim the credit itself. The rules for this allocation are similar to the existing rules in subsection 127(7) for the allocation by a trust of its investment tax credit to beneficiaries. The allocation of the share-purchase tax credit among beneficiaries must be reasonable and the allocated amounts will qualify as share-purchase tax credits to the beneficiaries and will reduce the amount of the credit that the trust may itself claim. Where the taxation years of the trust and its beneficiaries do not coincide, the allocation is made as at the end of the trust's taxation year and the beneficiary obtains the credit for his taxation year then in progress.

ITA 127.2(4)

New subsection 127.2(4) deals with the share-purchase tax credit of partnerships. Since a partnership is not itself taxable, a mechanism is required to allocate its credits to the partners. Under this subsection, a partner will include in his share-purchase tax credit for a taxation year the appropriate portion of the partnership's credit for its fiscal period that ends in the partner's taxation year.

ITA 127.2(5)

New subsection 127.2(5) deals with the share-purchase tax credit of co-operative corporations. Often these corporations have little or no taxable income because they have distributed or allocated their income by way of patronage dividends to members. To ensure that these corporations benefit from the share-purchase tax credit, this subsection permits a co-operative corporation to apply its share-purchase tax credit, as at the date of the payment of patronage dividends, against its 15 per cent withholding tax liability in respect of these dividends under subsection 135(3) of the Act. This special rule is similar to the existing rule for co-operatives in subsection 127(6) of the Act which permits the offset of investment tax credits against the withholding tax liability on patronage dividends. Any balance of the credit that is not applied against the withholding tax liability may be claimed by the co-operative corporation in the normal fashion as a tax credit against its Part I income tax liability.

ITA 127.2(6)

New subsection 127.2(6) defines a taxpayer's "share-purchase tax credit" for a taxation year. A taxpayer's credit consists of the sum of the amounts designated as credits under new subsection 192(4) of the Act by an issuing corporation in respect of each share acquired in the year by the taxpayer as the first registered holder thereof. (Note that an exception from the first registered holder requirement is made so as to qualify new shares purchased from a broker acting as principal. Where the broker or dealer in securities is the first registered holder, the credit attaches to the first non-broker registered holder.) The share-purchase tax credit of a taxpayer also includes the credit allocated to the taxpayer as a beneficiary of a trust that acquired qualifying shares and his portion of the credit of any partnership of which he is a member. Any allocation of the share-purchase tax credits of a trust or partnership to beneficiaries or partners will reduce the amount of credits of the trust or partnership. As well, in the case of a cooperative corporation, the share-purchase tax credit must be reduced to the extent that the corporation has applied its credit against its withholding tax liability.

ITA
127.2(7)

New subsection 127.2(7) ensures that, although a partnership is not a person, its share-purchase tax credit and the adjusted cost base of a qualifying share owned by the partnership will be determined in the same manner as though the partnership were a person.

Subclause 51(2)

This sets out the effective dates for new sections 127.1 and 127.2 relating to refundable investment tax credits and the share-purchase tax credit. The coming-into-force provides that the prescribed forms as required by subsection 127.1(1) or 127.2(2) may be filed within ninety days after these subsections come into force.

Dividend Refund to Private Corporations

Clause 52

Subclause 52(1)

ITA 129(1)(b)

The investment income of a corporation is generally taxed at the full corporate tax rate. A portion of this tax (referred to as "refundable dividend tax on hand") is refundable to Canadian-controlled private corporations upon payment of taxable dividends to their shareholders. This refundable tax mechanism is an integral part of what is generally referred to as "integration" for investment income which seeks to ensure that the tax paid by an individual on investment income and capital gains flowed through a Canadian-controlled private corporation approximates the tax that would have been payable if the income were received directly. Ordinarily the refund with respect to dividends paid in a year is made when the corporation's income for the year is assessed. Where the refund is not made at that time, under subsection 129(1) the corporation must make application therefor within four years from the end of the year to which it relates. The amendments to subsection 129(1) extend the four-year application period for refunds to seven years in certain circumstances and make the rules for dividend refunds consistent with the general rules in subsection 164(1) of the Act relating to ordinary tax refunds. The amendments to subsection 129(1) and 164(1) make the period within which tax refunds may be claimed consistent with the reassessment period provided in section 152 and are consequential on the amendments to that section. Under paragraph 129(1)(b) as amended, the normal four-year period for dividend refund application is extended to seven years in circumstances where the corporation claims a deduction in a year in respect of a loss incurred or investment tax credit earned in a subsequent year.

This amendment also provides that the periods in which a refund application for a year may be made commence with the day on which the notice of assessment for the year was mailed. Under the existing provision the four-year period runs from the last day of the year.

The amendments to paragraph 129(1)(b) are applicable after April 19, 1983.

Subclauses 52(2) to (4)

ITA 129(3)(a)

Paragraph 129(3)(a) of the Act defines the "refundable dividend tax on hand" of a private corporation. This represents the portion of tax on net investment income which is refunded to a private corporation on payment by it of dividends. Under the existing definition, net investment income is reduced by a taxpayer's deductible net capital losses carried over from other taxation years. The amendment to subsection 111(3) of the Act provides that a net capital loss carryover need no longer be claimed in the earliest year in which it is deductible, but may instead be preserved to be applied in computing taxable income in later years. The amendments to paragraph 129(3)(a) are consequential on this change. They provide that net investment income as determined under subclause 129(3)(a)(i)(B)(I) and subparagraph 129(3)(a)(ii) of the Act for purposes of calculating refundable dividend tax on hand is to be reduced by those net capital loss carryovers that are "deducted" rather than those "deductible" under paragraph 111(1)(b). This applies to losses determined for the 1983 and subsequent taxation years.

Subclauses 52(5) and (6)

ITA
129(4)(a)(i)

Subparagraph 129(4)(a)(i) of the Act excludes from the calculation of a corporation's refundable dividend tax on hand the portion of any capital gain or loss which accrued while the property disposed of was held by a corporation, other than a Canadian-controlled private corporation (CCPC). This rule would commonly apply where a CCPC disposes of capital property which it owned during a period of time when it was not a CCPC or which it acquired from another corporation, other than a CCPC, on a tax-deferred "rollover" basis. These amendments provide that the amount of such gains or losses which accrued while the property disposed of was owned by an investment corporation, a mortgage investment corporation or a mutual fund corporation, as well as a CCPC, will be included in the computation of refundable dividend tax on hand. This amendment applies in respect of property disposed of after November 12, 1981, except where such property is exempt from these rules by virtue of transitional rules.

Subclause 52(7)

ITA
129(4.3)

Subsection 129(4.3) of the Act is a special transitional rule which provides in effect that the tax payable by a corporation on the gain from a disposition of "designated property", including any portion of the gain which accrued while the property was owned by a corporation other than a Canadian-controlled private corporation (CCPC), will continue to be included in the computation of its refundable dividend tax on hand. Under the existing provision designated property is defined as property acquired before November 13, 1981 by a corporation that last became a CCPC before that date. This amendment deletes the reference to "Canadian-controlled" so that, effective after November 12, 1981, designated property includes any property acquired by a corporation on or before that date if it last became a private corporation on or before that date. For this purpose, the expression "private corporation" has the meaning set out in paragraph 89(1)(f) of the Act.

Subclauses 52(8) to (11)

These set out the effective dates for the proposed amendments to section 129 of the Act.

Clause 53

ITA
130(3)(b)(i)

The Income Tax Act provides a mechanism to avoid an extra level of tax on income and capital gains earned by certain investment intermediaries on behalf of investors. The avoidance of the double tax, or integration, in respect of the tax on capital gains of investment corporations, mutual fund corporations and mutual fund trusts, taxable under sections 130, 131 and 132 of the Act respectively, is achieved by refunding the tax paid by them on their net taxable capital gains at such time as the gains are distributed to their investors. Section 130.1 achieves integration for the capital gains of a mortgage investment corporation by permitting a deduction from income equal to the amount of net taxable capital gains distributed by way of dividends to shareholders. Net taxable capital gains, which for the purposes of these sections are defined as "taxed capital gains" in paragraph 130(3)(b) of the Act, is reduced by deductible net capital losses carried over from other taxation years. The amendment to subsection 111(3) of the Act provides that a net capital loss carryover need no longer be claimed under paragraph 111(1)(b) in the earliest year in which it is deductible, but may instead be preserved to be applied in computing taxable income in later years. The amendment to subparagraph 130(3)(b)(i) is consequential on this change. It provides that taxed capital gains shall be reduced by those net capital loss carryovers that are "deducted" rather than those that are "deductible" under paragraph 111(1)(b). This applies to losses determined for the 1983 and subsequent taxation years.

Clause 54

ITA
133(2)(c)

A non-resident-owned investment corporation is subject to tax which approximates that which would have been payable if its non-resident shareholders had invested in Canada directly rather than through the corporation. Paragraph 133(2)(c) of the Act provides for the deduction of net capital loss carryovers in computing the taxable income of a non-resident-owned investment corporation. Under the amended subsection 111(1) of the Act, a taxpayer is permitted a deduction in computing taxable income for a taxation year of his net capital losses for the three following years. Under the existing provision a net capital loss can be carried back for only one taxation year. The amendment to paragraph 133(2)(c) is strictly consequential on this change and deletes the reference to the period over which net capital losses may be deducted. For the 1982 and subsequent years the reference in this paragraph is to the net capital losses as provided in section 111.

Segregated Funds

Clause 55

ITA
138.1(1)(k) and (l)

Subsection 138.1(1) of the Act provides the rules relating to segregated fund trusts established by insurance companies. The amendments to this provision are strictly consequential on the new provisions relating to share-purchase tax credits. New paragraph 138.1(1)(l) ensures that where an insurer acquires a share for the benefit of a segregated fund trust, the trust and not the insurer will qualify for the share-purchase tax credit even though the share would normally be registered under the insurer's name. The amendment to paragraph 138.1(1)(k) simply adds a reference to the provisions relating to the share-purchase tax credits of trusts.

Cross Reference

ITA
146
146.2
146.3
147

The coming into force provision governing the restriction of certain ancillary benefits of deferred income plans are amended by clauses 81 to 84 (see commentary thereunder).

Registered Home Ownership Savings Plan

Clause 56

Subclause 56(1)

ITA 146.2(1)(c)

Paragraph 146.2(1)(c) of the Act provides the definition of "home furnishings" for the purposes of the registered home ownership savings plan program. This definition has had no application since 1977, when it ceased to be permissible to withdraw funds on a tax-free basis to purchase home furnishings. However, to implement the April 19, 1983 budget proposal permitting withdrawals for the purchase of certain new home furnishings, a special definition of "new home furnishing" is substituted for that in paragraph 146.2(1)(c) by virtue of the special transitional rule in subclause 56(7). This special definition applies only for the 1983 and 1984 taxation years, after which paragraph 146.2(1)(c) will be repealed.

Subclause 56(2)

ITA 146.2(2)(f)

An individual who has been a beneficiary under a registered home ownership savings plan is not permitted by virtue of paragraph 146.2(2)(f) of the Act to open another plan. This rule is extended to an individual who has never been a beneficiary under such a plan but has claimed the new top-up deduction, provided under amended subsection 146.2(4) since it is not necessary to open a plan in order to take advantage of this special deduction.

Subclause 56(3)

ITA 146.2(4)

Subsection 146.2(4) of the Act permits a maximum annual deduction of $1,000 in respect of contributions made to a registered home ownership savings plan with an overall contribution limit of $10,000. It is now proposed that a beneficiary under a registered home ownership plan be permitted a special "top-up" deduction in 1983 or 1984 for the unused portion of his $10,000 contribution limit. This special "top-up" deduction is available in those circumstances where the taxpayer uses the funds in his plan in the year (or within 60 days after the end of the year) to acquire or build a new housing unit provided that neither he nor his spouse previously owned a dwelling after 1981, no other person claims a similar deduction in respect of the same housing unit and no grant is payable under the National Housing Act in respect of that housing unit. In order to benefit from the top-up deduction, an individual who is not already a beneficiary under such a plan does not have to open a plan – it is sufficient that he establish he was eligible to open such a plan.

Subclauses 56(4) and (5)

ITA 146.2(6)(a)

Paragraph 146.2(6)(a) of the Act enables a beneficiary under a plan to receive tax-free amounts from his plan to the extent they are used to acquire an owner-occupied home. Under the amendments this tax-free treatment will be extended to amounts received after April 19, 1983 and before 1984 by an individual who was, on April 19, 1983, a beneficiary under a registered home ownership plan to the

extent that amounts equivalent to the amounts withdrawn are used by him no later than February 29, 1984 to purchase new home furnishings for his own use in Canada. Receipts must be filed in support of the purchase and the exempt amounts reduce the amount of any deductible contribution made by the taxpayer in 1983 and after April 19 to the plan. The definition of "new home furnishings" is provided in paragraph 146.2(1)(c) as set out in subclause 56(7) of the bill.

Subclause 56(6)

ITA
146.2(21)

The existing rules relating to registered home ownership savings plans do not allow for partial withdrawals of funds from a plan. Such withdrawals would normally cause the revocation of the plan. This rule is changed in order to enable an individual who was, on April 19, 1983, a beneficiary under a plan to withdraw tax-free, after that date and before 1984 part or all of the funds from the plan in order to purchase qualifying new home furnishings without causing its revocation.

Subclauses 56(7) and (8)

These set out the effective dates for the amendments made to section 146.2 of the Act relating to registered home ownership savings plans.

Clause 57

Subclause 57 (1)

ITA
149(1)(o.2)(iv)

Paragraph 149(1)(o.2) of the Act exempts from tax certain types of corporations involved with pension fund administration and investments if all the shares and rights to acquire shares of the corporation are owned by, or in certain cases held exclusively for the benefit of, one or more registered pension plans. The paragraph is amended by adding clause (iv)(D) to provide that a corporation may also qualify for tax exempt status when its shares are held by one or more prescribed persons. This will allow for regulations to be made to accommodate different forms of ownership of such corporations where they are nonetheless established for the exclusive benefit of registered pension plans. This amendment is applicable to taxation years commencing after 1978.

Subclause 57 (2)

ITA
149(5)(f)(ii)

Subsection 149(5) of the Act sets out specific rules for the taxation of certain clubs, societies and associations. This provision denies them the $100 optional standard deduction under paragraph 110(1)(d). The amendment to subparagraph 149(5)(f)(ii) removes the reference to paragraph 110(1)(d) and is strictly consequential on the repeal of that deduction. This amendment applies to the 1984 and subsequent taxation years.

Subclause 57 (3)

ITA
149(5)

Subsection 149(5) of the Act subjects to tax the investment income of certain clubs providing dining, recreational or sporting facilities. Effective on Royal Assent to the enacting bill, subsection 149(5) is amended to repeal paragraph 149(5)(h). This paragraph dealt with the former Part VII of the Act relating to dividends paid out of designated surplus which was repealed in 1977, and this amendment simply removes a reference to a provision that no longer exists.

Subclauses 57 (4) and (5)

These set out the effective dates for the amendments to section 149 of the Act.

Clause 58

Assessments

Subclause 58(1)

ITA
152(1)(b)

Paragraph 152(1)(b) of the Act requires the Minister of National Revenue, in assessing tax for a year, to take into account the amount of tax which has been deemed to have been paid by a taxpayer under certain provisions of the Act. The amendment to paragraph 152(1)(b) adds a reference to new subsections 127.1(1) and 127.2(2) and is consequential on the addition of these provisions to the Act. Subsection 127.1(1) relates to the refundable portion of the investment tax credit and subsection 127.2(2) relates to the new share-purchase tax credit earned by non-taxable entities such as pension plans. This amendment applies to the 1983 and subsequent taxation years.

Subclause 58(2)

ITA
152(1.1) to (1.3)

Subsections 152(1.1) to (1.3) of the Act set out rules which apply where the Minister of National Revenue does not agree with the amount of a non-capital loss, net capital loss or restricted farm loss reported by a taxpayer. The Minister is required, at the taxpayer's request, to make a determination of the amount of the loss. This determination is subject to the taxpayer's rights of objection and appeal. The amendments to subsections 152(1.1) to (1.3) are consequential on the introduction of the new provisions in section 111 relating to farm losses. For the 1983 and subsequent taxation years, the rules in these provisions are extended to farm losses as defined in new paragraph 111(8)(b.1).

Subclause 58(3)

ITA
152(4)

Existing subsection 152(4) of the Act provides that in the absence of fraud or misrepresentation the Minister of National Revenue may not assess or reassess tax, interest or penalties after four years from the day of mailing the original notice of assessment. This amendment extends the four-year reassessment period to seven years in certain circumstances. The need for the extension arises out of the extension of the carryback period for losses and investment tax credits.

Paragraph 152(4)(b) of the Act is amended to permit the Minister to assess or reassess tax within seven years where the assessment or reassessment for a year requires an adjustment described in subsection 152(6) (see below), such as the carryback of a loss or an investment tax credit from a subsequent year. Thus, for example, if a non-capital loss for 1984 is claimed by a taxpayer in 1981 and, within seven years from the date of mailing the original notice of assessment for 1981 it is determined that the actual amount of that loss is less than the amount claimed, the Minister may reassess the 1981 year to the extent that the reassessment relates to the adjustment of the loss carryback. Under subparagraph 152(4)(b)(ii) the Minister is also permitted to assess or reassess a taxpayer whose tax position is affected by the loss of another taxpayer. For example, an adjustment to the amount of a corporation's loss carryover could alter its liability for tax under Part II of the Act or the amount of its dividend refund. This, in turn, could

change the tax position of certain corporate shareholders. Any reassessment of the corporate shareholder under the seven year rule is confined to matters that relate to a deduction described in subsection 152(6) of the Act. The amendments to subsection 152(4) of the Act are applicable after April 19, 1983.

Subclause 58(4)

ITA
152(6)

Subsection 152(6) of the Act provides for the reassessment of a taxation year where a taxpayer files a prescribed form claiming a deduction for a loss of the subsequent taxation year. The amendments to this provision are made necessary by the extension of the loss carryback period and the introduction of a three-year carry-back for investment tax credits. Subsection 152(6) is amended to provide that where a taxpayer has filed a prescribed form claiming a deduction in respect of a loss, gift or investment tax credit of a subsequent taxation year, the Minister of National Revenue shall reassess all relevant taxation years of the taxpayer to give effect to the deduction claimed. The provision requires that the prescribed form claiming the carryback be filed by the due date for the taxpayer's return of income for the year from which the carryback is made. (Note that there is no longer an obligation on the taxpayer to claim a loss carryback or to claim the full amount to which he is entitled. To the extent that a loss carryover is not claimed by a taxpayer in one year it may be claimed in any other year in the carryover period. The rules relating to the carryover of losses and investment tax credits are discussed in the notes on clauses 34 and 50 respectively.) The amendments to subsection 152(6) are applicable after April 19, 1983.

Subclauses 58(5) and (6)

These set out the effective dates for the amendments to section 152 of the Act and provide for an extension of the time for filing the prescribed forms required by subsection 152(6) where a taxation year ends before these amendments are enacted.

Overpayment of Certain Tax Credits

Clause 59

ITA
160.1

Section 160.1 of the Act ensures that the Minister of National Revenue can recover any excess child tax credits refunded to a taxpayer for a taxation year. The taxpayer is also liable for interest on the excess calculated from the later of the day on which the taxpayer filed his tax return for the year and the day that is the earlier of November 30 of the following year and the day the Minister determined that too much had been refunded.

The amendments to subsection 160.1(1) extend its scope to permit the Minister to recover any over refund made as a result of an excess credit claimed by a taxpayer under the provisions relating to the Quebec tax abatement, the new refundable investment tax credit and the new share-purchase tax credit. In addition, the amendments provide that interest on the excess refund is to be calculated at the prescribed rate for the period beginning on the day on which the overpayment was made and ending on the day the excess is recovered.

The amendment to subsection 160.1(2) is consequential on the changes made to the child tax credit in section 122.2 of the Act. As amended, subsection 160.1(2) provides that where an individual with a child eligible for the credit resides with a supporting person of that child, both the individual and the supporting person will be jointly and severally liable for any excess credit that has been refunded together with the interest payable thereon.

Subsection 160.1(3) provides the authority for the Minister to make an assessment to recover excess credits and the interest thereon. The amendments to this provision are strictly consequential on the amendments to extend the scope of subsection 160.1(1).

Interest on Unpaid Taxes

Clause 60

Section 161 of the Act relates to interest on unpaid taxes and on late or deficient tax instalments.

Subclause 60(1)

ITA
161(1)

Subsection 161(1) of the Act provides that interest is payable by a taxpayer on the excess of his tax payable for a taxation year over the amount paid for the year. However, this subsection, as presently worded, does not require interest where taxes have been paid, some portion thereof has been refunded and in a subsequent assessment it is determined that the refund was excessive having regard to the taxpayer's final liability for tax. The amendment to subsection 161(1) corrects this deficiency. That subsection now ensures that interest at the prescribed rate will be payable where a refund is later determined to have been in excess of the amount to which the taxpayer was entitled. The interest will be calculated only for the period after April 19, 1983.

Subclause 60(2)

ITA
161(7)

The amendments to subsection 161(7) of the Act are consequential on the changes to the provisions relating to the carryback of losses and investment tax credits. Under the existing provision, where the tax payable for a year is reduced because of the carryback of a loss for a subsequent year, the interest on unpaid tax is calculated, without regard to the loss carryback, for the period to the end of the year in which the loss was incurred. Subsection 161(7) as amended applies where a deduction in respect of a gift, an exclusion from income in consequence of the exercise of an option, a loss or an investment tax credit, is carried back from a subsequent taxation year to reduce the tax payable for a taxation year. It provides that in calculating any interest due on unpaid tax for that year, the tax reduction resulting from the carryback is deemed to be made on the later of day on or before which the tax return for the subsequent year is required to be filed and the day on which the return is actually filed. This amendment is applicable where an amount is carried back from the 1983 or a subsequent taxation year. Where the later year in which an amount arose ended before April 20, 1983, however, interest on unpaid tax for a year to which the amount is carried back will be calculated only to the end of the later year.

Subclauses 60(3) and (4)

These set out the effective dates for the amendments to section 161 of the Act relating to the computation of interest.

Penalties

Clause 61

ITA
163(2)(b), (c) and (d)

Subsection 163(2) of the Act provides that any person who has knowingly, or under circumstances amounting to gross negligence, participated in the making of a false statement in a tax return which would, if accepted, result in the reduction of tax payable is liable to a penalty of 25 per cent of the amount of the reduction.

Where false information has been filed which overstates a claim for the child tax credit paragraph 163(2)(b) provides that both the individual making the claim and his spouse may be subject to the penalty. The amendment to paragraph (b) thereof is consequential on the changes in section 122.2 of the Act relating to the child tax credit.

The amendment provides that both the individual and any person residing with him who is a supporting person of an eligible child of the individual (within the meaning assigned by amended subsection 122.2(2) of the Act) are subject to the penalty with respect to an improper claim for the child tax credit.

New paragraphs 163(2)(c) and (d) have been added to extend the penalty provisions to false statements made in respect of the refundable investment tax credit and the refundable share-purchase tax credit in subsections 127.1(1) and 127.2(2) respectively. These amendments are applicable to the 1983 and subsequent taxation years.

Refunds

Clause 62

Subclause 62(1)

ITA
164(1)(b)

Section 164 of the Act relates to tax refunds. Subsection 164(1) provides that the Minister of National Revenue may refund an overpayment of tax for a year upon mailing the notice of assessment for the year. Where a refund has not been made in this manner a taxpayer may make application therefor within four years from the end of the year. The amendments to this subsection make the period within which tax refunds may be claimed consistent with the assessment period provided in section 152. The amendments to subsection 152(4) extend the reassessment period from four to seven years where the tax liability is affected because of a claim for losses incurred or investment tax credits earned in a subsequent year. A corresponding change is made to paragraph 164(1)(b) so that the normal four year period for refund applications is extended to seven years in circumstances where the taxpayer claims a deduction in respect of a subsequent year's loss or investment tax credit.

This amendment also provides that the normal four year period in which a refund application may be made for a year commences on the day on which the original notice of assessment for the year was mailed. Under the existing provision the period for claiming a refund runs from the last day of the year. In addition, paragraph 164(1)(b) as amended places an obligation on the Minister of National Revenue to pay a refund for which application has been made within a reasonable time.

The amendments to paragraph 164(1)(b) of the Act are applicable after April 19, 1983.

Subclause 62(2)

ITA
164(3.1)

Subsection 164(3) of the Act provides that interest at the prescribed rate will be paid to a taxpayer on the amount of an overpayment of his Part I tax liability. It provides also that, instead of being paid, the interest may be applied against another tax liability of the taxpayer. New subsection 164(3.1) applies wherever interest has been paid or applied after April 19, 1983 on the refund of an overpayment of tax and it is subsequently determined that the overpayment was in excess of the amount to which the taxpayer was entitled. Paragraph 164(3.1)(a) provides for the recovery of interest from the taxpayer to the extent that the amount of interest paid exceeds the amount of interest payable on the refund to which he is entitled. Paragraph 164(3.1)(b) provides for the payment by the taxpayer of interest on any excess interest that had previously been paid to him or applied against another of his tax liabilities.

Subclause 62(3)

ITA
164(5)

The amendments to subsection 164(5) of the Act are consequential on the extension of the loss carryback period and the introduction of the investment tax credit carryback. Under the existing provision, to the extent that an overpayment of tax

results from a loss carryback, the interest payable on the overpayment is calculated for the period commencing immediately after the taxation year in which the loss arose. Subsection 164(5) as amended applies where a deduction in respect of a gift, an exclusion from income in consequence of the exercise of an option, a loss or an investment tax credit is carried back from a subsequent taxation year to reduce the tax payable for a previous taxation year. It provides that in calculating any interest payable on an overpayment of taxes, the tax reduction resulting from the carryback is deemed to be made on the later of the day on or before which the tax return for the subsequent taxation year is required to be filed and the day on which the return is actually filed. This amendment is applicable where an amount is carried back from the 1983 or a subsequent taxation year. Where the later year in which an amount arose ended before April 20, 1983, however, interest payable on any resulting overpayment of tax will be calculated from the end of the later year.

Subclause 62(4)

ITA
164(6)

Subsection 164(6) of the Act sets out special rules for the situation where the estate of a deceased person realizes a capital loss or terminal loss from the disposition of property in its first taxation year. In these circumstances the legal representative of the deceased person may elect to ignore all or any portion of the capital loss (to the extent that the estate's capital losses exceed its capital gains for that year) and all or any portion of the terminal loss (to the extent of the estate's non-capital loss for that year). In this case, these losses are not treated as losses of the estate, in which event the estate is credited on account of its taxes payable with the amount by which the deceased taxpayer's tax would have been reduced if such amounts had been deductible by him in the year of his death. The amendments to subsection 164(6) are strictly consequential on the introduction of the new rules in section 111 relating to farm losses. Subsection 164(6) as amended provides that for the 1983 and subsequent taxation years, the amount of a terminal loss in respect of which an election can be made cannot exceed the aggregate of the estate's non-capital loss and farm loss for its first taxation year. Since farm losses have been excluded from non-capital losses, the result is merely to continue the existing rule.

Subclause 62(5)

ITA
164(7)

Subsection 164(7) of the Act defines "overpayment" for the purpose of determining the amount of the refund of taxes to which a taxpayer is entitled and the interest thereon. Subsection 164(7) is amended for the 1983 and subsequent taxation years to clarify that an overpayment is calculated on a year-by-year basis and with respect to taxes payable under Part I of the Act.

Subclauses 62(6) to (9)

These set out the effective dates for the amendments to section 164 of the Act relating to refunds.

Reference to Federal Court

Clause 63

ITA
173(2)(a)

Under subsection 173(1) of the Act the Minister of National Revenue and a taxpayer may agree to refer a question of law, fact or mixed law and fact arising under the Act to the Federal Court. The amendment to this section is strictly consequential on the extension of the reassessment period to seven years where the tax liability for a year of a taxpayer is affected by the carryback of losses or investment tax credits of subsequent years. Paragraph 173(2)(a) of the existing Act provides that the period of time during which any question is being considered by the Court shall not be included in computing the four-year period provided for reassessment of tax under subsection 152(4). The amendment, applicable after April 19, 1983, simply adds a reference to the new seven-year period for reassessments provided under the amendments to subsection 152(4).

Reference of Common Questions

Clause 64

ITA
174(5)(c)

Section 174 of the Act permits the Minister of National Revenue to refer a question of law, fact or mixed law and fact that is common to the assessments of two or more taxpayers to the Tax Court of Canada or, with the concurrence of the taxpayers involved, to the Federal Court of Canada – Trial Division for a determination. Paragraph 174(5)(c) removes the period during which the question is being determined from the computation of the four-year period referred to in subsection 152(4) during which a reassessment of tax may be made. The amendment to paragraph 174(5)(c) is strictly consequential on the extension of the reassessment period to seven years where the tax liability for a year of a taxpayer is affected by the carryback of a loss or investment tax credit of a subsequent year. The amendment, applicable after April 19, 1983, simply adds a reference to the new seven year period for reassessments provided in the amendments to subsection 152(4).

Clause 65

The purpose of the 25 per cent tax imposed under Part IV of the Act on dividends received by private corporations and certain non-private "subject corporations" is to prevent an individual from benefitting from the deferral of tax that would otherwise be possible if, instead of receiving dividends directly, he arranged for his investment in shares to be held by a corporation. Because dividends are generally permitted to pass between corporations on a tax-free basis, the interposition of a corporation would, in the absence of the tax under Part IV, allow dividends on the shareholdings to be received free of tax. This tax is fully refunded to the corporation upon the payment of taxable dividends to its shareholders.

Subclause 65(1)

ITA
186(1)(c) and (d)

Paragraph 186(1)(c) of the Act permits a corporation to deduct the amount of its non-capital loss incurred in a taxation year from its Part IV tax base for that year. This provision is amended to provide for the deduction under Part IV of a corporation's farm loss for a taxation year as defined in new paragraph 111(8)(b.1) of the Act.

Under existing paragraph 186(1)(d), a corporation may elect to reduce its Part IV tax base by the amount of its non-capital losses for the 5 taxation years immediately preceding and the taxation year immediately following the year in which the losses are claimed. Non-capital losses may be deducted under Part IV only to the extent that they cannot be absorbed in computing taxable income under Part I and only if the corporation was a private corporation or subject corporation during the year in which the loss was incurred.

The amendment to paragraph 186(1)(d) provides that a corporation's farm losses will be available for deduction under Part IV and that the extended carryover periods provided in amended subsection 111(1) will apply equally for the purposes of paragraph 186(1)(d). This amendment also provides that a corporation's non-capital losses and farm losses for a taxation year during which it was neither a private corporation nor a subject corporation may be carried over to be applied under Part IV and that losses need no longer be deducted first in computing taxable income under Part I of the Act, but rather may be used, where it is to the corporation's advantage, to reduce its Part IV tax liability.

Subparagraph 111(3)(a)(ii) of the Act provides that non-capital losses and farm losses applied under paragraphs 186(1)(c) and (d) are not available to be carried over to be deducted in computing taxable income for other taxation years.

Subclause 65(2)

ITA
186(4)(a)

The purpose of the 25 per cent tax imposed under Part IV of the Act on portfolio dividends received by a private corporation and other closely-held corporations is to prevent an individual from sheltering dividend income from the personal tax – that is, to prevent the deferral of tax that would otherwise occur if portfolio investments in shares were held by a corporation. Because dividends are generally

permitted to pass between corporations on a tax-free basis, the use of a corporation would, in the absence of the Part IV tax allow dividends on the shareholdings to accumulate within the corporation free of tax. The Part IV tax under section 186 is a special refundable tax of 25 per cent on portfolio dividends received by a private corporation and other closely-held corporations. The tax is fully refunded to the corporation upon the payment of taxable dividends to its shareholders.

When a corporation in receipt of a dividend controls the corporation paying the dividend, the Part IV tax may not apply. A special definition of control is provided for this purpose in subsection 186(2) of the Act such that the holder of a right to acquire shares may qualify as a controller. The amendment to paragraph 186(4)(a) provides that, for the purpose of the Part IV tax, whether a payer corporation is controlled by another corporation is to be determined by reference to the actual ownership of shares and without regard to any right referred to in paragraph 251(5)(b) to acquire shares. This amendment prevents the avoidance of Part IV tax by arranging for non-controlling shareholders to obtain rights to purchase shares. This change is effective with respect to dividends declared and paid after April 19, 1983.

Subclauses 65(3) and (4)

These set out the effective dates for the amendments to section 186 relating to the Part IV tax.

Corporations Exempt From Part IV Tax

Clause 66

ITA
186.1(b)

Section 186.1 of the Act exempts certain corporations from the 25 per cent refundable tax payable under Part IV. The amendment to paragraph 186.1(b) expands the number of corporations that are exempted from the Part IV tax.

A number of the recently established foreign-controlled banks qualify as private corporations and, as a consequence, would be inappropriately subjected to the tax under Part IV under the existing rules. The existing exemption for certain financial institutions (trust companies, insurance corporations, prescribed venture capital corporations and prescribed investment contract corporations) is expanded to exclude all banks from the scope of the Part IV tax.

Under the existing provisions, a non-resident-owned investment corporation is liable to a 25 per cent refundable tax on its dividend income under section 133 of the Act. Where such a corporation is controlled by an individual or a related group of individuals it would also be liable to Part IV tax on the same income. In order to prevent this double taxation, the amendment also exempts non-resident-owned investment corporations from the Part IV tax. The amendments to section 186.1 are generally applicable to taxation years commencing after November 12, 1981.

Tax on Corporation Issuing Qualifying Shares

Clause 67

Part VII

New Part VII of the Act, taken together with new section 127.2, provides the mechanism announced in the April 1983 budget to enable a corporation to "flow out" its investment tax credit to purchasers of qualifying new equity shares of the corporation. New Part VII, consisting of sections 192 and 193, provides for a refundable tax payable annually by corporations that flow out these credits, called "share-purchase tax credits", to the purchasers of new shares. The refundable tax payable by a corporation is designed to fund the share-purchase tax credit that it allocates to persons who acquire the shares. Thus, the aggregate credit allocated by the corporation is included in the computation of its Part VII refundable tax liability for the year. In turn, however, this Part VII tax liability may be offset by a refund equivalent to any unclaimed investment tax credit earned by the corporation after April 19, 1983 and before the end of the year. Thus the corporation may issue shares that carry the share-purchase tax credit even though it has not at the time of issue made the necessary expenditures that earn the investment tax credit. In addition, the corporation may offset its Part VII tax liability by any unclaimed share-purchase tax credit that has been designated to it in respect of any qualifying shares of another corporation that it has purchased in the year. After application of these offsets or refunds, the corporation is required to pay the balance of the Part VII tax. However, any balance so paid is refundable in subsequent taxation years when investment tax or share-purchase tax credits are earned.

ITA
192(1)

New subsection 192(1) of the Act imposes the Part VII tax liability on a corporation which has issued shares in respect of which the purchaser is entitled to the share-purchase tax credit. The corporation's liability for the Part VII tax in a year is equal to the amounts designated by it under new subsection 192(4) in respect of shares issued by it in the year. However, the Part VII tax payable in a year by a corporation may be refunded to the extent of the sum of any unclaimed investment tax credit on expenditures made or property acquired by the corporation after April 19, 1983 and before the end of the year and any unclaimed share-purchase tax credit on shares of another corporation acquired in the year. Any balance of the Part VII tax for a year must be paid but may be refunded in a subsequent taxation year to the extent of such unclaimed share-purchase and investment tax credits at the end of that subsequent year.

ITA
192(2)

New subsection 192(2) of the Act defines the "Part VII refund". Technically the Part VII refund is the lesser of two amounts:

The first amount is the sum of:

- the corporation's share-purchase tax credit for the year that was not deducted from its Part I tax (or, in the case of a tax-exempt corporation, was not deemed to have been paid on account of its Part I tax), and
- such amount as the corporation chooses to claim of its investment tax credit at the end of the year in respect of an expenditure made or property acquired after April 19, 1983 and before the end of the year.

The second amount is the corporation's "refundable Part VII tax on hand" at the end of the year as defined in subsection 192(3).

ITA
192(3)

New subsection 192(3) of the Act defines a corporation's "refundable Part VII tax on hand" at the end of a taxation year. This amount represents the maximum refund of the Part VII tax to which a corporation is entitled in a year. It consists of the total of the Part VII taxes payable by the corporation in the year and in all preceding years minus the sum of its Part VII refunds for all preceding years and any Part VII tax payable in respect of a share that was not, at the time of issuance, a qualifying share as defined in new subsection 192(6). In other words, the "refundable Part VII tax on hand" represents the unrefunded Part VII tax paid minus any Part VII tax paid in respect of a subsection 192(4) designation made on a share that was not a qualifying new equity share. This prevents refunds from being granted with respect to the issuance of such non-qualifying shares.

ITA
192(4)

A corporation that wishes to flow out share-purchase tax credits on the issue of a share is required under new subsection 192(4) of the Act to designate the amount of the credit in respect of the share. The amount so designated cannot exceed 25 per cent of the value of the consideration for which the corporation issued the share and the corporation must make the designation by filing certain prescribed information before the end of the month following the month in which the share is issued or within 90 days following Royal Assent to the enacting bill.

ITA
192(5)

New subsection 192(5) of the Act provides that a corporation's Part VII refund for a taxation year will be considered to have been paid as an amount on account of its Part VII tax liability on the last day of the second month following the end of the year. The treatment of this amount as a tax instalment effectively ensures its recovery by taxpayers.

ITA
192(6)

New subsection 192(6) defines the term "qualifying share". A qualifying share is defined as a share of a taxable Canadian corporation that is issued after June 30, 1983 and before 1987 and which meets certain qualifications. These qualifications are generally intended to ensure that the share carries no significant preferences over common stock and that the share was issued as consideration for a new infusion of capital that will remain in the corporation for a reasonable period of time. As a general rule, all new issues of common stock will qualify.

A share issued by a corporation for consideration that includes another share of the capital stock of the same corporation will not be a qualifying share, nor will a flow-through share issued under circumstances referred to in section 66.3 of the Act. Since the cost of a flow-through share is fully deductible, the share-purchase tax credit will not be available on the purchase of such shares.

A share will not be a qualifying share if the dividend entitlement and the liquidation entitlement thereon are limited by way of a formula or otherwise to a maximum amount. For example, a preferred share generally carries a fixed dividend rate and will not be a qualifying share. However, some shares may carry a relatively small fixed dividend rate while all or substantially all of their yield is based on their participation in the earnings of the corporation along with other shares. Subsection 192(7) provides exceptions to the general rules to ensure that such shares are treated as qualifying shares.

A qualifying share may not be subject to a right or obligation, absolute or contingent, on the part of the issuing corporation or certain other persons to redeem, acquire or cancel the share or convert it into another security except for an amount that approximates its fair market value at that time – determined without

regard to the value of the right or obligation. In addition, a share will not qualify if the issuing corporation has the right to reduce its paid-up capital.

As well, a share of a corporation will not qualify if the corporation or certain other persons can reasonably be expected to reduce its paid-up capital or, within two years from the date of its issue, redeem, acquire or cancel the share or convert it into another security (unless that security would itself be a qualifying share). New paragraph 192(6)(d) also authorizes the issuance of regulations to extend the definition of a qualifying share.

ITA 192(7)

New subsection 192(7) provides that, for the purposes of the definition "qualifying share", neither the dividend entitlement nor the liquidation entitlement of a share of a corporation will be treated as limited to a maximum amount if it is reasonable to consider that substantially all of the entitlement is determinable by reference to the entitlement of another qualifying share of the corporation.

Subsection 192(7) further provides that a share issued as a result of a merger or amalgamation will be considered to be the same as the original share and that the resulting new corporation will be considered to be the same corporation as its predecessor corporations.

ITA 192(8)

New subsection 192(8) permits a corporation to designate an amount in respect of a share for the purpose of the share-purchase tax credit even though the designation has not been made within the time period specified in subsection 192(4). A late designation may be made if it is reasonable to consider that the corporation had intended to make the designation and if a penalty, as determined by new subsection 192(9), is paid no later than 90 days after the corporation is notified that the required designation was not made.

ITA 192(9)

New subsection 192(9) determines the amount of the penalty which must be paid under new subsection 192(8) in order to file a late designation in respect of a share. The penalty is normally equal to 1 per cent of the amount designated in respect of the share for each month or part thereof in the period beginning on the last day of the month following the month in which the share was issued and ending on the day the late designation is made. Under subsection 192(4) the commencement of this period is postponed to the day that is 90 days after the implementing legislation is enacted. The maximum penalty in respect of all shares issued in a month is $500.

ITA 192(10)

New subsection 192(10) provides that the amount of a corporation's investment tax credit that is used to generate a Part VII refund will be considered to have been deducted by the corporation from its Part I tax as investment tax credit claimed under subsection 127(5). The purpose of this provision is to ensure that the cost of the property or the amount of the expenditure that earned the investment tax credit will be reduced to the extent that the credit is utilized to generate a Part VII refund, in the same manner that the cost basis of the property or expenditure will be reduced where subsection 13(7.1), paragraphs 53(2)(k) and 37(1)(e) of the Act normally apply as a consequence of the taxpayer claiming the investment tax credit against his Part I tax liability.

ITA 193(1)

New subsection 193(1) requires a corporation liable for Part VII tax to file a return under that Part by the date on which it is required to file its annual corporate tax return under Part I of the Act. The requirements relating to annual tax returns are

contained in section 150 of the Act. For corporations, a return is required to be filed within six months from the end of its taxation year.

ITA
193(2)

New subsection 193(2) requires a corporation, which has designated an amount under new subsection 192(4) in respect of shares issued by it, to pay that amount – that is, its liability for the Part VII tax – by the end of the month following the month in which the shares are issued. The tax equals the amount of share-purchase tax credit that will flow out on the issue of the shares.

ITA
193(3) and (4)

New subsection 193(3) provides that corporations which do not pay their Part VII tax on a timely basis as required under subsection 193(2) must pay interest from the date on which payment should have been made. However, subsection 193(4) provides that, in determining the interest which must be paid, the amount of Part VII tax payable is reduced by any Part VII refund to which the corporation is entitled for the year. This refund, as defined in new subsection 192(2), generally consists of the corporation's unclaimed share-purchase tax credits and post-April 19, 1983 investment tax credits as at the end of the year. Thus the investment tax credit that enters into a corporation's Part VII refund for a year may be used to reduce the amount of Part VII tax for the year on which interest is charged. In determining the tax liability at the end of a month on which interest is calculated, the amount of the corporation's Part VII tax for the year minus its Part VII refund for the year is multiplied by a fraction that has as its numerator the total of the amounts designated in respect of shares issued in the preceding month and as its denominator the total of the amounts designated in respect of all shares issued in the year. In effect, therefore, a corporation may use its investment tax credits and share-purchase tax credits earned in a year to reduce its liability for the ordinary corporate tax for the year or a preceding year, to offset its liability for the Part VII tax for the year or to obtain a refund of its Part VII tax paid in previous years.

ITA
193(5)

New subsection 193(5) denies a share-purchase tax credit to a shareholder in circumstances where he acquired shares when he knew or ought to have known that the issuing corporation would evade or attempt to evade payment of its Part VII tax liability.

ITA
193(6)

New subsection 193(6) is an anti-avoidance provision designed to preclude a corporation from avoiding interest on Part VII tax through the acquisition of shares of a corporation that it controls. Where it is reasonable to consider that one of the main purposes for the acquisition of a share was to avoid the payment of interest on Part VII tax for a period, the share shall be deemed not to have been acquired or issued until after the end of the period for the purposes of calculating the corporation's share-purchase tax credit and its Part VII refund.

For example, A Co. has a December 31 year-end and owes Part VII tax. On December 31, it buys shares of a subsidiary with a November 30 year-end for the express purpose of generating sufficient share-purchase tax credits to offset its Part VII tax liability. Subsection 193(6) is designed to counter this method of tax avoidance that could otherwise be used with relatively little difficulty to defer the Part VII tax indefinitely. Subsection 193(6) will not generally apply where shares are acquired in order to "flow out" the investment tax credit of a subsidiary to its parent or the shareholders of the parent.

ITA
193(7)

New subsection 193(7) sets out the rules relating to the payment of tax and various other procedural and administrative matters with respect to the Part VII tax.

Interest on Overpayments of Part X Tax

Clause 68

ITA
202(4)

Existing subsection 202(4) of the Act ensures that the rules contained in subsections 164(3) and (4) regarding interest on overpayments of tax under Part I are applicable to overpayments of the special tax imposed under Part X with respect to non-qualified investments of deferred profit sharing plans. Subsection 202(4) is amended, with respect to interest paid or applied after April 19, 1983, to make the rules in new subsection 164(3.1) of the Act applicable for the purposes of the Part X tax.

Non-Resident Withholding Tax

Clause 69

Section 212 is the principal provision of the Act dealing with the non-resident withholding tax. It enumerates the various payments to non-residents that are subject to this tax.

ITA
212(1)(f)

The amendment to paragraph 212(1)(f) is consequential on certain amendments made in Bill C-139 which extended the rules for the deduction and taxation of qualifying maintenance allowances so that they apply to common-law spouses recognized by provincial law as qualifying for support obligations. The payor of the maintenance allowance is entitled to a deduction for the amount paid and the recipient must bring the receipt into income. This amendment ensures that the non-resident withholding tax, which applies where the recipient is the spouse or former spouse of the person making the payment, will also apply to maintenance payments to common-law spouses where the payment is deductible. This amendment will come into force upon Royal Assent to the enacting Bill.

Clause 70

ITA
227(10)

Subsection 227(10) of the Act permits the Minister of National Revenue to assess a person for a penalty payable under section 234.1 with respect to the failure to file a prescribed fuel certificate relating to aviation turbine fuel used on international flights. Section 234.1 is repealed and the amendment to subsection 227(10) deletes the reference to it. The amendment is effective with respect to purchases of aviation turbine fuel after April 30, 1983.

Clause 71

Liability of Directors

ITA
227.1

Section 227.1 of the Act relates to the liability of the directors of a corporation for the withholding tax obligations imposed on the corporation under sections 135, 153 and 215 of the Act. The liability is imposed on persons who were directors at the time the corporation failed to deduct or withhold or remit the required tax. The liability also extends to any related interest or penalty. This amendment to subsection 227.1(1) extends the liability where the corporation has failed to pay its Part VII tax liability, related to the special share-purchase tax credit, for a taxation year. This amendment is applicable to the 1983 and subsequent taxation years.

Aviation Turbine Fuel

Clause 72

ITA
234.1

Section 234.1 of the Act requires an air carrier resident in Canada who purchases aviation fuel and uses it on international flight to complete and deliver a fuel certificate specifying the amount of fuel used on an international flight, and imposes a penalty on an air carrier who fails to do so. This clause repeals section 234.1 effective with respect to purchases of aviation turbine fuel after April 30, 1983.

General Definitions

Clause 73

ITA
248(1)

Subsection 248(1) of the Act defines many of the terms used in the Act.

Subclause 73(1)

"Farm Loss"

The addition of the definition "farm loss" is consequential on the introduction of the new rules relating to farm loss carryovers in section 111 of the Act. This amendment ensures that the definition as set out in subsection 111(8) applies wherever the expression "farm loss" is used in the Act.

Subclause 73(3)

This sets out the effective dates for the amendments to subsection 248(1) of the Act.

Acquisition of Control

Clause 74

ITA
256(8)(a)

Subsection 256(8) of the Act is an anti-avoidance provision. It applies where a taxpayer has an option to acquire shares of a corporation or to control the voting rights of shares and one of the main purposes in acquiring the option was to avoid the limitations on the deduction of net capital or non-capital losses under section 111 or on the deduction of exploration and development expenses under section 66 or to avoid the application of subsection 111(5.1) or (5.2) where there has been a change of control of the corporation. In these circumstances the taxpayer is deemed to have acquired the shares to which the option relates.

Paragraph 256(8)(a) of the Act is amended, effective for the 1983 and subsequent taxation years, to add a reference to "farm loss". This amendment is consequential on the introduction of the new provisions relating to farm loss carryovers in section 111 of the Act.

Adjustment to Cost Base of Interest in Partnership

Clause 75

Subsection 26(9.4) of the Income Tax Application Rules, 1971 provides rules for the purpose of computing a taxpayer's adjusted cost base of a partnership interest where he was a member of the partnership on December 31, 1971 and throughout the subsequent period ending at the particular time the adjusted cost base is to be calculated.

ITAR, 1971
26(9.4)(b)

Paragraph 26(9.4)(b) is amended to delete the reference to paragraph 69(7.1)(b) of the Income Tax Act as a consequence of the repeal of the provisions in subsection 69(7.1) of the Act relating to the sale of aviation turbine fuel used on international flights. This amendment is effective after the enacting bill receives Royal Assent.

Clause 76

ITAR, 1971
29(25) and (29)

Subsections 29(25) and (29) of the Income Tax Application Rules, 1971 provide successor rules that allow exploration or development expenses incurred by a corporation before 1972 and not deductible by it to continue to be deducted by a "successor" corporation which acquires all or substantially all the assets used by the first corporation in its resource business. The expenses may similarly be passed on from the successor corporation to a second successor corporation. The expenses that are passed onto a successor corporation or second successor corporation may be deducted only against resource income from assets acquired from the first corporation.

The amendments to these provisions expand the existing successor rules by dropping the requirement that the transferor be a corporation. As a result, the successor rules will now also be available in the case where an individual or other person transfers all or substantially all of his resource assets to a corporation.

The amendments are applicable with respect to acquisitions of property by a successor corporation from a predecessor after April 19, 1983.

Deductions Prohibited – Business and Property Income

ITA
18(1)(m)(v)

Clause 77

Clause 77 of the bill changes the effective date of application of the amendment to 18(1)(m)(v) of the Income Tax Act that was contained in Bill C-139 dealing with the non-deductibility of Crown resource taxes and royalties. Under Bill C-139, the amendment was applicable for taxation years commencing after 1982. Under clause 77 of the bill, the amendment to paragraph 18(1)(m)(v) is made applicable in respect of amounts paid or that became payable after December 31, 1982 in respect of the period after that date.

Gain on the Settlement of a Debt Obligation

Clause 78

ITA 80(3)

Where a debt is settled or extinguished for less than its principal amount, subsection 80(1) of the Act applies to reduce the debtor's loss carryovers and the tax cost of his capital property. Subsection 80(3), introduced in 1983 with respect to winding-ups occurring after November 12, 1981, permits a parent corporation in certain circumstances to elect to treat a debt of its subsidiary settled or extinguished on winding-up as having been settled for its tax cost. This election is required to be filed within six months of the end of the taxation year in which the debt was settled. The amendment to subsection 43(5) of the Act to Amend The Statute Law Relating to Income Tax (No. 2) 1980-81-82-83 c. 140 extends the time for filing the election to the end of 1983.

Employee and Shareholder Loans

Clause 79

ITA
80.4

Subsection 80.4(1) of the Act deals with employee loans. It provides that where any person received a loan on favourable terms by virtue of an individual's employment or by virtue of the performance of services by a corporation that carries on a personal services business, the individual or corporation will be treated as having received a taxable benefit. Subsection 80.4(2) deals with shareholder loans. It provides that a person who received a loan from a corporation on favourable terms by virtue of a shareholding is deemed to have received a benefit.

Clause 79 corrects two matters with respect to the coming-into-force rules for these provisions. Under the June 28, 1982 draft legislation, subsection 80.4(2) did not apply to debt between corporations that dealt with each other at arm's length. However, under Bill C-139, the exclusion for inter-company loans was restricted to loans made to corporations resident in Canada. Clause 79 provides a transitional rule in respect of non-arm's length loans to non-resident corporations so that subsection 80.4(2) only applies for the period after June 1983 in respect of any such loan made on or before December 7, 1982, the date on which Bill C-139 was tabled.

Another amendment in Clause 79 ensures that the new section 80.4 provisions only apply with respect to the measurement of interest benefits after December 31, 1981. Under Bill C-139, these new provisions were made applicable to taxation years ending after 1981. The amendment ensures that no benefit under the new rules will be attributed to the portion of a person's 1982 taxation year that falls within 1981.

Deemed Interest Expense

Clause 80

ITA 80.5

Under section 80.4 of the Act, where an employee directs his employer to make a loan to a related person, the employee may be treated as having received a benefit from his employment. However, under section 80.5, only the debtor is allowed to treat the amount of the benefit as an interest expense.

A special transitional amendment is provided in clause 80 to address those cases where the employee is not the debtor. It enables the employee who has a benefit included in his income under section 80.4 to obtain a deduction that would under section 80.5 (and paragraph 20(1)(c)) otherwise be available only to the debtor. The deduction is available to the employee only where the debtor does not claim the interest expense. This rule applies only to the 1982 taxation year to address the concern of those employees who were unable in that year to rearrange their affairs in light of the changes to the provisions of the Act relating to employee loans. The change is accomplished through a change to the implementation provisions rather than by way of an amendment to the Income Tax Act itself.

Deferred Income Plans

Clauses 81, 82, 83 and 84

ITA
146(1)(c.1)
146(2)(c.4)
146.2(2)(h.1)
146.3(2)(f.1)
147(2)(k.1)

Clauses 81 through 84 of the Bill change the effective dates of application of the amendments to the provisions of the Income Tax Act that were contained in Bill C-139 relating to deferred income plans – registered retirement savings plans, registered home ownership savings plans, registered retirement income funds and deferred profit sharing plans. These amendments require every deferred income plan registered after November 12, 1981 to contain a prohibition against certain kinds of ancillary or supplementary benefits other than those provided for under the plan itself. Many plans have been registered since that date which do not contain this prohibition. Clauses 81 through 84 change the effective date of this requirement from November 12, 1981 to April 1, 1983 so that plans registered before April 1, 1983 need not be revised. Although no plans registered after November 12, 1981 may provide such benefits, only new plans issued after March 1983 are required to contain an express prohibition against such benefits.