Explanatory Notes to Proposed Legislation Relating to Saving for Retirement

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Canada

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Department of Finance Canada
Ministère des Finances Canada

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Income from an Office or Employment

Clause 1

ITA
6(1)(g)(iii)

Subsection 6(1) of the Act specifies certain amounts that must be included in computing a taxpayer's income for a taxation year from an office or employment. Paragraph 6(1)(g) requires the inclusion of all amounts received by a taxpayer in the year out of an employee benefit plan or from the disposition of an interest in such a plan, other than certain amounts specifically excluded. Subparagraph 6(1)(g)(iii) specifically excludes pension benefits attributable to services rendered by a person while the person was not resident in Canada. This subparagraph is amended, applicable to the 1988 and subsequent taxation years, to change "a period during which" to read "a period throughout which". The amendment is made for the purpose of clarifying that the exclusion is limited to those pension benefits attributable to periods of services throughout which the recipient was not resident in Canada. Pension benefits so excluded from employment income are nevertheless required to be included in the income of a recipient who is resident in Canada as income from other sources under paragraph 56(1)(a).

Deductions in Computing Income from an Office or Employment

Clause 2

ITA
8

Section 8 of the Act permits an employee to deduct certain employment-related expenses in computing income from an office or employment.

Subclause 2(1)

ITA
8(1)(m)

Existing paragraph 8(1)(m) of the Act provides for the deduction of employee contributions to a registered pension plan (RPP), within specified limits. Under the existing rules, contributions made to an RPP by a taxpayer in a year are deductible under each subparagraph as follows:

- 8(1)(m)(i) – contributions to the plan in respect of services rendered by the taxpayer in the year, subject to a maximum of $3,500;
- 8(1)(m)(ii) – contributions in the year of up to $3,500 in respect of services rendered by the taxpayer in prior years in which the taxpayer was not a contributor to the plan, subject to an overall limit of $3,500 with respect to each year in which the taxpayer was not a contributor to the plan; and

- 8(1)(m)(iii) – contributions in the year in respect of services rendered by the taxpayer in prior years in which the taxpayer was a contributor to the plan, subject to a maximum of $3,500 minus the total of amounts deducted in the year under subparagraphs (i) and (ii).

The amendment to paragraph 8(1)(m) eliminates all deductions in respect of additional voluntary contributions (AVCs) made by employees to RPPs in respect of past services. AVCs, as defined in subsection 248(1), are contributions made by an employee on an optional basis to an RPP and that will be used to provide additional benefits on a money purchase basis. Past service AVCs made after October 8, 1986 – the date on which the new rules relating to the tax treatment of retirement savings were announced by the Minister of Finance – are not deductible and those made on or before that date are not deductible after the 1986 taxation year. (Note that provision is made in new section 60.2 for the tax-free withdrawal from a pension plan of undeducted past service AVCs made before October 9, 1986, provided such amounts are withdrawn on or before December 31, 1990. Where such contributions have been transferred to a registered retirement savings plan or a registered retirement income fund, they may be withdrawn tax-free from such plans or funds.)

A related amendment is also being made to subsection 8(8), and new subsection 8(1.1) is being introduced to allow a taxpayer to determine the portion of AVCs made prior to October 9, 1986 that will be treated as past service AVCs and as such qualify for a deduction under subparagraph 8(1)(m)(ii) or (iii) in computing income for the 1986 taxation year.

For the 1991 and subsequent taxation years, paragraph 8(1)(m) is being amended to provide that employee contributions to a registered pension plan are deductible in computing income from an office or employment only to the extent allowed by new subsection 147.2(4). This amendment is consequential on the introduction of new section 147.2, which provides a set of rules regarding the deductibility of employee and employer RPP contributions.

Subclause 2(2)

ITA
8(1)(m.1)

Existing paragraph 8(1)(m.1) of the Act provides a deduction in respect of required employee current service contributions to a registered pension plan (RPP) that exceed the $3,500 maximum deductible in respect of such contributions under subparagraph 8(1)(m)(i). The deduction under this paragraph is available in respect of contributions made to fund defined benefits (pension benefits that are determined in accordance with a formula) but does not apply with respect to contributions used to provide money purchase benefits (pension benefits that depend on the amount of money accumulated to fund the benefits). Existing paragraph 8(1)(m.1) is being repealed for the 1991 and subsequent taxation years as a consequence of the amendment to paragraph 8(1)(m) and the introduction of new subsection 147.2(4) which sets out, for the 1991 and subsequent taxation years, the rules regarding the deductibility of employee RPP contributions.

Subclause 2(3)

ITA 8(1)(m.2)

New paragraph 8(1)(m.2) of the Act is being introduced to provide a deduction in respect of certain employee contributions to a retirement compensation arrangement (RCA). The expression "retirement compensation arrangement" is defined in subsection 248(1) as a plan or arrangement under which an employer makes payments to a custodian in order that benefits may be paid to an employee or any other person after the employee retires or otherwise severs employment. Numerous arrangements, including RPPs, are specifically excluded from the definition of an RCA. Employee contributions to an RCA are currently not deductible.

New paragraph 8(1)(m.2) will allow, for the 1989 and subsequent taxation years, a deduction in respect of qualifying employee contributions made to a pension plan that is an RCA, where the custodian of the RCA is resident in Canada. Qualifying contributions consist of contributions that the employee is required by the terms of his or her office or employment to make. However, no deduction is available if the employee's contributions to the plan in the year exceed the employer contributions in respect of the employee.

Qualifying contributions also include, in the case of a pension plan the registration of which has been revoked, amounts contributed in accordance with the terms of the plan as last registered. As an exception, employee contributions will not be deductible under paragraph 8(1)(m.2) where they are made to a pension plan the registration of which was revoked as of the original effective date of the registration, unless they are qualifying contributions as described in the previous paragraph.

Subclause 2(4)

ITA 8(1.1)

New subsection 8(1.1) of the Act, applicable to the 1986 taxation year, is a transitional measure which is consequential on the amendment to existing paragraph 8(1)(m) to eliminate the deductibility of past service additional voluntary contributions (AVCs). Past service AVCs made after October 8, 1986 are not deductible and those made before October 9, 1986 are not deductible after the 1986 taxation year. As defined in subsection 248(1), an AVC is a voluntary contribution made to a registered pension plan by a member of the plan to be used to provide additional benefits on a money purchase basis.

New subsection 8(1.1) permits a taxpayer to designate, in the tax return of the taxpayer for 1986, that all or any part of an additional voluntary contribution made in 1986 and before October 9, 1986 be treated as a past service AVC. This provides a taxpayer who intended to make both current and past service AVCs in 1986 with an opportunity to treat pre-October 9, 1986

AVCs as past service contributions, the deductibility of which is governed by the limits under the existing law.

Subclause 2(5)

ITA
8(6) and (7)

Existing subsection 8(6) of the Act establishes a limit of $3,500 for the amount that may be deducted by a taxpayer in a taxation year under subparagraph 8(1)(m)(i) in respect of current service contributions to a registered pension plan (RPP) and a limit of $3,500 for the amount that may be deducted under subparagraph 8(1)(m)(ii) in respect of past service contributions to an RPP in respect of services rendered while the taxpayer was not a contributor to the plan. Subsection 8(6) is being repealed for the 1991 and subsequent taxation years as a consequence of the amendment to existing paragraph 8(1)(m) and the introduction of new subsection 147.2(4) which sets out, for the 1991 and subsequent taxation years, the rules regarding the deductibility of employee contributions to RPPs. For a description of the limits under the new system, reference should be made to the commentary under new subsection 147.2(4).

Existing subsection 8(7) of the Act modifies, for teachers, the deduction provided by existing subparagraph 8(1)(m)(ii) of the Act. Generally, a past service contribution made by a taxpayer to an RPP is deductible under existing subparagraph 8(1)(m)(ii) only if the contribution is in respect of services rendered by the taxpayer while the taxpayer was not a contributor to the plan. Subsection 8(7) eliminates this condition if a taxpayer makes a past service contribution while the taxpayer is a teacher employed by Her Majesty or by a tax-exempt employer, so that the deductibility of all past service contributions made by such a taxpayer is determined in accordance with subparagraph 8(1)(m)(ii). Subsection 8(7) is being repealed for the 1991 and subsequent taxation years, as a consequence of the amendment to existing paragraph 8(1)(m) and the introduction of new subsection 147.2(5), which continues, for the 1991 to 1994 taxation years, the special treatment extended to teachers under existing subsection 8(7).

Subclause 2(6)

ITA
8(8)

Existing subparagraphs 8(1)(m)(ii) and (iii) of the Act permit a taxpayer to deduct past service contributions to a registered pension plan (RPP). Contributions are deductible under these subparagraphs in computing income for a taxation year only if the contributions are made in the year, and only to the extent that the contributions do not exceed specified limits. Existing subsection 8(8) allows a taxpayer to carry forward the non-deductible portion of past service contributions and to claim a deduction under subparagraph 8(1)(m)(ii) or (iii) in respect of such contributions in subsequent taxation years as if the amount carried forward were contributed in the subsequent years. Revenue Canada administers subsection 8(8) to also allow the carry forward of undeducted required current service defined benefit contributions.

Subsection 8(8) is amended, for the 1987 to 1990 taxation years, to exclude additional voluntary contributions (AVCs) from the contributions that may be carried forward and deducted in subsequent years. This amendment, in conjunction with the amendment to subparagraphs 8(1)(m)(ii) and (iii) of the Act, implements the elimination of all deductions in respect of past service AVCs.

Subsection 8(8) is repealed for the 1991 and subsequent taxation years. This repeal is consequential on the amendment to paragraph 8(1)(m) and the introduction of subsection 147.2(4) which sets out, for the 1991 and subsequent taxation years, the rules regarding the deductibility of employee contributions to RPPs. New subsection 147.2(4) includes the rules currently found in subsection 8(8).

Subclauses 2(7) to (11)

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

Deductions Prohibited – Business and Property Income

ITA
18(11)(c) and (e)

Clause 3

Paragraphs 20(1)(c), (d) and (e) of the Act permit a deduction for interest and other financing expenses. Subsection 18(11) prohibits the deduction of such expenses that relate to indebtedness incurred for certain purposes. Paragraph 18(11)(c) denies the deduction where the funds are borrowed for the purposes of making a contribution to a registered pension plan (RPP) or a deferred profit sharing plan (DPSP) after November 12, 1981. Subparagraph 18(11)(c)(i) provides an exception to this rule if the contribution is a past service contribution to an RPP made by an employee pursuant to an obligation entered into prior to November 13, 1981. Subparagraph 18(11)(c)(i) is amended, applicable to the 1991 and subsequent taxation years, to refer to subparagraphs 8(1)(m)(ii) and (iii) as they read in their application to the 1990 taxation year. This amendment is strictly consequential on the repeal of those subparagraphs.

Subparagraph 18(11)(c)(ii) provides another exception to the general rule in paragraph 18(11)(c) in the case of interest on indebtedness to fund employer contributions to RPPs and DPSPs which are deductible under paragraphs 20(1)(q), (s) or (y). This subparagraph is amended for the 1992 and subsequent taxation years to delete the reference to paragraph 20(1)(s). This amendment is strictly consequential on the repeal of paragraph 20(1)(s).

New paragraph 18(11)(e) prohibits the deduction of interest that relates to indebtedness incurred for the purposes of making an employee contribution to a retirement compensation arrangement, where the contribution was deductible by the taxpayer under new paragraph 8(1)(m.2). This amendment, consequential on the introduction of paragraph 8(1)(m.2), is applicable to the 1989 and subsequent taxation years.

Deductions Permitted – Business and Property Income

Clause 4

ITA
20

Section 20 of the Act sets out rules providing specifically for the deduction of certain outlays, expenses and other costs in computing a taxpayer's income from a business or property.

Subclause 4(1)

ITA
20(1)(q)

Existing paragraph 20(1)(q) of the Act permits an employer to deduct contributions made to a registered pension plan (RPP) in respect of current services of the employer's employees, subject to specified limits. This paragraph is being amended to provide that employer contributions to an RPP are deductible in computing income from a business or property to the extent allowed by new subsection 147.2(1). This amendment is consequential on the introduction of new section 147.2, which provides a set of rules regarding the deductibility of contributions to RPPs. For details with respect to the deductibility of employer RPP contributions under the new system, reference should be made to the commentary under subsections 147.2(1) and (2).

The amendment to paragraph 20(1)(q) is applicable to the 1991 and subsequent taxation years, except that if an employer's 1991 taxation year commences in 1990, the existing provisions regarding the deductibility of employer contributions to an RPP will be applicable to contributions made in 1990, while the new provisions will be applicable to contributions made in 1991.

Subclause 4(2)

ITA
20(1)(s)

Existing paragraph 20(1)(s) of the Act provides a deduction for employer contributions to a registered pension plan (RPP) made in respect of past services of employees. It also provides a special deduction for certain current service contributions that are not deductible under existing paragraph 20(1)(q) of the Act. Contributions are deductible under paragraph 20(1)(s) only to the extent they are made on the recommendation of an actuary and are approved by the Minister of National Revenue. Paragraph 20(1)(s) is being repealed as a consequence of the amendment to paragraph 20(1)(q) and the introduction of new subsections 147.2(1) and (2) which set out the new rules regarding the deductibility of employer contributions to RPPs.

The repeal of paragraph 20(1)(s) is effective for the 1991 and subsequent taxation years with respect to contributions made after 1990. However, by virtue of subsection 147.2(2) and draft subsection 8514(3) of the *Income Tax Regulations*, where the Minister has given approval under paragraph 20(1)(s) to the contributions to be made by an employer, the contributions will continue to be deductible as if paragraph 20(1)(s) had continued in force.

Subclause 4(3)

ITA
20(22) and (23)

Existing subsections 20(22) and (23) of the Act limit the amounts that may be deducted under paragraphs 20(1)(q) and (s) by a related group of employers who contribute to one or more registered pension plans (RPPs) on behalf of an employee. These provisions have the effect of treating a related group of employers as a single employer for the purpose of determining the amount of RPP contributions that is deductible in respect of any particular employee.

Subsections 20(22) and (23) are being repealed as a consequence of the introduction of new subsections 147.1(8) and (9) which, in conjunction with new paragraph 147.1(11)(c), permit the Minister of National Revenue to deregister an RPP if the total pension adjustment of a member of the plan in respect of related employers exceeds a specified limit. New subsections 147.1(8) and (9) achieve, in an indirect manner, the same result as do existing subsections 20(22) and (23).

The repeal of subsections 20(22) and (23) is effective for the 1991 and subsequent taxation years, except that if an employer's 1991 taxation year commences in 1990, the subsections will continue to apply for contributions made in 1990.

Subclause 4(4)

This sets out the effective date for the amendments to section 20.

Deductions in Computing Income

Clause 5

ITA
60

Section 60 of the Act provides for various deductions in computing income, including deductions in respect of:

- certain payments to registered retirement savings plans, registered pension plans and deferred profit sharing plans,
- benefits paid out of retirement compensation arrangements,
- proceeds from the disposition of interests in retirement compensation arrangements, and
- certain contributions under the Saskatchewan Pension Plan.

Subclause 5(1)

ITA
60(j)

Existing paragraph 60(j) of the Act allows a taxpayer a special deduction in respect of amounts paid, in a taxation year or within 60 days after the end of the year, to registered pension plans (RPPs) and to registered retirement savings plans (RRSPs) under which the taxpayer is the annuitant. The deduction in any year is limited to the total of the following amounts received by the taxpayer and included in the income of the taxpayer for the year:

- pension benefits out of RPPs,
- pension benefits attributable to services rendered by a person while the person was not resident in Canada,
- payments under the *Old Age Security Act*,
- payments under the *Canada Pension Plan* or the *Quebec Pension Plan*, and
- amounts received out of deferred profit sharing plans (DPSPs).

Paragraph 60(j) permits, in effect, a tax-free transfer of these amounts to RPPs and RRSPs. It should be noted, however, that tax may be withheld from such amounts when they are paid to a taxpayer; any amount withheld will be taken into account in determining the tax owed by the taxpayer for the year or the refund to which the taxpayer is entitled.

The amendments to paragraph 60(j) narrow the classes of receipts that can be transferred to RPPs and RRSPs on a tax-free basis. These amendments, including the transitional rules as set out in the coming-into-force provision, are described below.

For the 1986 and 1987 taxation years, paragraph 60(j) is amended to exclude a deduction with respect to any payment in respect of which the taxpayer claims a deduction under new subsection 60.2(1). New subsection 60.2(1) allows a taxpayer a deduction in respect of amounts received by the taxpayer and included in the taxpayer's income, where the amounts are derived from additional voluntary contributions (AVCs) made by the taxpayer to an RPP in respect of past service and not deducted in computing the income of the taxpayer for any year. Paragraph 60(j) is also amended for the 1986 and 1987 taxation years to exclude, for the purpose of determining the amount that may be deducted under that paragraph, contributions made to an RPP that are deductible under paragraph 8(1)(m.1). This amendment is consequential on the introduction of paragraph 8(1)(m.1) commencing with the 1986 taxation year. In all other respects, the maximum deduction under paragraph 60(j) is determined for the 1986 and 1987 taxation years in the same manner as under the existing paragraph.

For the 1988 taxation year, the same amendments are made to paragraph 60(j) as for the 1986 and 1987 taxation years. The paragraph is also amended to exclude a deduction with respect to any payment made in respect of an actuarial surplus under a defined benefit provision of an RPP. (A special transition rule is provided in new paragraph 60(j.01) to deal with transfers of the actuarial surplus of a pension plan to another RPP or an RRSP in

1988. In addition, direct transfers of surplus are accommodated in the circumstances described in the commentary to subsections 147.3(3) and (8).)

Paragraph 60(j) is also amended for the 1988 taxation year to include, in determining the maximum deduction thereunder, eligible amounts under amended subsection 104(27). In conjunction with subsection 104(27), paragraph 60(j) permits a beneficiary of a testamentary trust to transfer to an RPP or an RRSP on a tax-free basis certain pension benefits received by the trust and distributed to the beneficiary. The amendments to paragraph 60(j) and subsection 104(27) alter the existing mechanism for implementing such tax-free transfers and are made as a consequence of the other changes being made to the rules relating to transfers. Reference should be made to the commentary under subsection 104(27) for further details.

For the 1989 taxation year, the same amendments are made to paragraph 60(j) as for the 1988 taxation year. In addition, the paragraph is amended so that in determining the maximum deduction which a taxpayer may claim under the paragraph in the year, lump sum payments out of RPPs and DPSPs are excluded. The elimination of the tax-free rollover of lump sum payments received from RPPs and DPSPs is consequential on the introduction of new section 147.3, which provides rules regarding the transfer of amounts from RPPs to RRSPs and other RPPs, and new subsections 147(19) to (22), which provide rules regarding the transfer of amounts from DPSPs to registered plans generally. Reference should be made to the commentary under those new provisions for details regarding inter-plan transfers after 1988.

Paragraph 60(j) is also amended for the 1989 taxation year to include eligible amounts under new subsection 104(27.1) and paragraph 147(10.2)(d) in determining the maximum deduction under paragraph 60(j). The inclusion of amounts that are eligible amounts pursuant to subsection 104(27.1) enables a beneficiary of a testamentary trust to transfer to an RPP or an RRSP on a tax-free basis certain DPSP benefits received by the trust and distributed to the beneficiary. An eligible amount is determined under paragraph 147(10.2)(d) when shares of an employer who participates in a DPSP are distributed to a beneficiary and the beneficiary has made an election under subsection 147(10.1) in respect of that distribution. Paragraph 60(j), when combined with new paragraph 147(10.2)(d), enables a beneficiary of a DPSP to deduct a contribution to an RPP or RRSP equal to the amount included in the beneficiary's income as a result of such a distribution of shares. Reference should be made to the commentary under subsection 104(27.1) and paragraph 147(10.2)(d) for further details.

Paragraph 60(j) is further amended for the 1989 taxation year to include a prescribed amount in determining the maximum deduction under the paragraph. It is not intended at this time to prescribe any amounts for this purpose.

For the 1990 and subsequent taxation years, paragraph 60(j) is amended to limit the deduction which a taxpayer may claim under the paragraph in a year to the total of

- amounts which are eligible amounts pursuant to amended subsection 104(27), new subsection 104(27.1) or new paragraph 147(10.2)(d) (as discussed above), and
- those lump sum payments received by the taxpayer in the year from non-registered pension plans that are attributable to services rendered while the taxpayer was not resident in Canada and that the taxpayer does not deduct under subparagraph 110(1)(f)(i) (deduction for amounts exempt from income tax by virtue of tax treaties).

Thus, after 1989 only such amounts will be eligible for a tax-free rollover, under paragraph 60(j), to RRSPs and RPPs. Other inter-plan transfers are governed by the new rules in sections 147 and 147.3.

Subclause 5(2)

ITA 60(j.01)

New paragraph 60(j.01) of the Act provides a special transitional rule for 1988 to permit a deduction where a taxpayer receives a payment in respect of the actuarial surplus under a registered pension plan (RPP) and pays a corresponding amount as a contribution to an RPP or as a premium under a registered retirement savings plan (RRSP). The deduction is available only if the taxpayer receives the payment before March 28, 1988 and pays the contribution to the RPP or the premium under the RRSP on or before March 1, 1989.

Paragraph 60(j.01) is a grandfathering provision consequential on the amendment to paragraph 60(j) to eliminate the tax-free transfer of actuarial surpluses under that paragraph. Paragraph 60(j.01) ensures that the elimination of the tax-free rollover will be effective commencing on March 28, 1988, the date on which the elimination of the tax-free transfer of the actuarial surplus in an RPP was announced. Direct transfers of actuarial surplus are accommodated in the circumstances described in the commentary to subsections 147.3(3) and (8).

Subclause 5(3)

ITA 60(j.1)

Paragraph 60(j.1) of the Act allows a deduction to a taxpayer who transfers a retiring allowance to a registered pension plan (RPP) or to a registered retirement savings plan (RRSP). This deduction in effect permits a tax-free transfer of the retiring allowance to an RPP or an RRSP. The existing deduction is limited to $2,000 for each year the taxpayer was employed by the employer who paid the retiring allowance (or who contributed to the retirement compensation arrangement under which the allowance was paid) or by a person related to the employer. An additional deduction of $1,500 is provided for each such year in respect of which no employer contributions to a pension plan or deferred profit sharing plan have vested in the taxpayer.

Paragraph 60(j.1) is being amended to replace the existing limit by a single limit of $2,000 for each year of service after 1988. For years of service prior to 1989, the existing limits will continue to apply.

The amendment to paragraph 60(j.1) is applicable to the 1989 and subsequent taxation years.

Subclause 5(4)

ITA
60(j.2)

New paragraph 60(j.2) of the Act allows a married taxpayer a deduction in respect of periodic payments received out of a registered pension plan (RPP) or a deferred profit sharing plan (DPSP) and paid to a registered retirement savings plan (RRSP) under which the taxpayer's spouse is the annuitant. In effect, paragraph 60(j.2) permits a tax-free transfer of such periodic amounts to a spousal RRSP. The deduction is limited in each year to a maximum of $6,000. For example, if the taxpayer receives $10,000 of pension income in 1989 from an RPP and transfers $2,500 of this income to his or her own RRSP pursuant to paragraph 60(j), then the taxpayer may transfer up to $6,000 of this income on a tax-free basis to a spousal RRSP. If the taxpayer were to transfer $7,000 to his or her own RRSP, the remaining $3,000 could be transferred to a spousal RRSP.

New paragraph 60(j.2) is a transitional measure applicable to the 1989 to 1994 taxation years. It is intended to provide taxpayers who are retired or are nearing retirement (especially, but not limited to, those whose pension plans do not provide survivor benefits) with an opportunity to set aside untaxed pension income for the benefit of their spouses. For the 1990 to 1994 taxation years, the rollover under paragraph 60(j.2) replaces the rollovers of periodic RPP and DPSP payments under paragraphs 60(j) and (k), which are being eliminated after 1989.

Subclause 5(5)

ITA
60(k)

Existing paragraph 60(k) provides a deduction to a taxpayer with respect to an amount received from a deferred profit sharing plan (DPSP) and transferred to another DPSP.

Paragraph 60(k) is amended for the 1989 taxation year to restrict the tax-free transfer available under the paragraph to periodic payments received from DPSPs. This change corresponds to a similar change to paragraph 60(j) for the 1989 taxation year, and is consequential on the introduction of new rules in subsections 147(19) to (22) relating to the transfer of amounts from a DPSP to another registered plan. Reference may be made to the commentary under those new subsections for details regarding the tax-free transfer of lump sum amounts after 1988.

Paragraph 60(k) is further amended for the 1989 taxation year to include a prescribed amount in determining the maximum deduction under the paragraph. It is not intended at this time to prescribe any amounts for this purpose.

Paragraph 60(k) is repealed for the 1990 and subsequent taxation years. Thus, a taxpayer will not be permitted to transfer periodic amounts on a tax-free basis from one DPSP to another after 1989.

Subclauses 5(6) and (7)

ITA 60(l)

Paragraph 60(l) of the Act allows a deduction to an individual who receives a refund of premiums out of a registered retirement savings plan (RRSP) on the death of an annuitant who was the individual's spouse (or a person on whom the individual was dependent by reason of infirmity), and transfers the refund to another RRSP, to a registered retirement income fund (RRIF), or to an eligible annuity. The deduction is also available where the commuted value of the retirement income under an individual's RRSP, or payments under a RRIF in excess of the minimum required payments, are directly transferred to any of the permitted investments. Eligible annuities include

- a single life annuity,
- a joint and last survivor annuity with the individual's spouse as the joint annuitant, and
- an annuity for a fixed number of years equal to the number of years until the individual, or the individual's spouse, attains 90 years of age.

Paragraph 60(l) is amended to provide a deduction to a common-law spouse (as defined in new subsection 146(1.1)) who transfers a refund of premiums to an RRSP or any of the other investments permitted under this provision. (Note that by virtue of a change to section 146, an amount paid to a common-law spouse on the death of an annuitant will be regarded as a refund of premiums.) The paragraph is also amended so that, for the purposes of the annuities described above, a common-law spouse is treated the same as a legally married spouse. These amendments to paragraph 60(l) are effective for the 1988 and subsequent taxation years.

Paragraph 60(l) is amended for the 1989 and subsequent taxation years to provide a deduction to a child who receives a lump sum payment out of an RRSP that qualifies as a refund of premiums (as defined in paragraph 146(1)(h)) or a lump sum payment (other than a payment that relates to an actuarial surplus) out of a registered pension plan (RPP) as a consequence of the death of a parent or grandparent and who uses the proceeds to acquire an annuity for a fixed number of years not exceeding 18 minus his or her age at the time when the annuity is acquired. The annuity must be acquired in the same year as the year in which the lump sum is included in the child's income, or within 60 days after the end of that year. This amendment enables such lump sum receipts to be brought into income over a number of years.

In certain circumstances, the lump sum may be received and retained by the deceased's legal representative but included in the child's income. This would happen where an election is made under subsection 146(8.1) in respect of a receipt from an RRSP, or where subsection 104(18) applies with respect to a receipt from an RPP that has vested in the child but cannot be paid to the child while the child is a minor. In these circumstances, the amendment to paragraph 60(l) (in conjunction with paragraph 104(27)(e), in the case of a receipt from an RPP, and subsection 146(8.1), in the case of a receipt from an RRSP) permits the child to deduct the cost of an annuity of the type described above where the annuity is purchased by the legal representative, if the child is the only person with a beneficial interest in the payments under the annuity.

Paragraph 104(27)(e) and subsection 146(8.1) also preserve the character of a lump sum where the legal representative distributes the lump sum to the child (and, in the case of a receipt from an RRSP, the lump sum would qualify as a refund of premiums if paid directly to the child). Thus, if the child uses the amount distributed to him or her to acquire a qualifying annuity, the child may claim a deduction under amended paragraph 60(l) as if he or she had received the lump sum directly.

Subclause 5(8)

ITA
60(t)(ii)(A)

Paragraph 60(t) of the Act provides a special deduction to an individual who is required by paragraph 56(1)(x) or (z) or subsection 70(2) to include benefits paid out of a retirement compensation arrangement (RCA) in computing income. Under existing clause 60(t)(ii)(A), an individual may effectively recover contributions to an RCA before any benefits received by the individual out of the arrangement are taxable.

Clause 60(t)(ii)(A) is amended to exclude a recovery of those contributions made by an individual to an RCA that are deductible under new paragraph 8(1)(m.2). That paragraph permits a deduction for certain employee contributions to a pension plan that is an RCA. This amendment, which is consequential on the introduction of paragraph 8(1)(m.2), is applicable to the 1989 and subsequent taxation years.

Subclause 5(9)

ITA
60(u)(ii)(A)

Paragraph 60(u) of the Act provides a special deduction to an individual who disposes of an interest in a retirement compensation arrangement (RCA) and is required by paragraph 56(1)(y) to include the proceeds in computing income. Under existing clause 60(u)(ii)(A), an individual may effectively recover contributions to an RCA before any proceeds of disposition are taxable.

Clause 60(u)(ii)(A) is amended to deny the deduction for the recovery of those contributions to an RCA that are deductible under new paragraph 8(1)(m.2). This amendment, which is analogous to the amendment to clause 60(t)(ii)(A), is consequential on the introduction of paragraph 8(1)(m.2), and is applicable to the 1989 and subsequent taxation years.

Subclause 5(10)

ITA
60(v)

Paragraph 60(v) of the Act provides a deduction in respect of contributions by a taxpayer to a prescribed provincial pension plan. Under subsection 7800(1) of the *Income Tax Regulations*, the only prescribed provincial pension plan is the Saskatchewan Pension Plan. The deduction in any year is the least of the following amounts:

- the aggregate of amounts contributed by the taxpayer under the plan in the year or within 60 days after the end of the year, to the extent that the amounts have not previously been deducted in computing income,
- the prescribed amount for the year in relation to the plan ($600 for 1988 and subsequent years in relation to the Saskatchewan Pension Plan), and
- the amount by which the taxpayer's available room to make deductible RRSP contributions for the year exceeds the RRSP contributions actually deducted by the taxpayer for the year under subsections 146(5) and 146(5.1).

Paragraph 60(v) is amended so that subparagraph (iii) thereof refers to the taxpayer's "RRSP deduction limit" as the measure of the taxpayer's available room to make deductible RRSP contributions. This amendment is strictly consequential on the introduction of the new system of comprehensive limits for tax assisted retirement saving.

The amendment to paragraph 60(v) is applicable to the 1991 and subsequent taxation years.

Subclauses 5(11) to (15)

These set out the effective dates for the amendments to section 60.

Undeducted Past Service AVCs

Clause 6

ITA
60.2

Changes are being made to the Act dealing with the deductibility of additional voluntary contributions (AVCs) paid to registered pension plans (RPPs) in respect of past service. Past service AVCs made after October 8, 1986 are no longer deductible and past service AVCs made before October 9, 1986 are not deductible after 1986.

New section 60.2 is added to the Act, applicable to the 1986 and subsequent taxation years, to provide taxpayers who made past service AVCs before October 9, 1986, which they were unable to deduct before 1987, with a deduction on the withdrawal of such AVCs before 1991.

New paragraph 60.2(1)(a) provides a taxpayer with a deduction in respect of each amount received by the taxpayer on or before December 31, 1990 from an RPP, a registered retirement savings plan (RRSP) or a registered retirement income fund (RRIF) to the extent that the amount represents a refund of undeducted past service AVCs made by the taxpayer to an RPP before October 9, 1986. The deduction may be claimed in the year that the refund is included in income or in a subsequent year ending before 1991.

New paragraph 60.2(1)(b) provides a deduction relating to undeducted past service AVCs that have been used before October 9, 1986 to acquire an annuity or have been transferred before October 9, 1986 to a RRIF (referred to in that paragraph as "annuitized voluntary contributions"). A taxpayer may deduct an amount equal to such annuitized voluntary contributions for the 1987 and subsequent taxation years subject to a maximum deduction each year equal to the lesser of $3,500 and the amount received by the taxpayer in the year from RPPs, RRSPs, RRIFs and annuities acquired with RRSP funds. This paragraph complements new paragraph 60.2(1)(a), and provides relief to taxpayers who are not able to take advantage of the deduction provided therein because their undeducted past service AVCs have been used to fund an annuity or have been transferred to a RRIF.

New subsection 60.2(2) defines the expression "balance of the annuitized voluntary contributions" of a taxpayer at the end of a taxation year for the purposes of the deduction under paragraph 60.2(1)(b). This is the amount that remains to be deducted by a taxpayer under paragraph 60.2(1)(b). It is equal to the total of the past service AVCs made by a taxpayer to RPPs and either used before October 9, 1986 to acquire an annuity or transferred before October 9, 1986 to a RRIF, minus the portion of the total that has been deducted in computing the taxpayer's income for a prior year or that is deducted under a provision other than paragraph 60.2(1)(b) in computing the taxpayer's income for the current year.

Definitions

Clause 7

ITA
70(10)

Subsection 70(10) of the Act provides the definitions of "child", "share of the capital stock of a family farm corporation" and "interest in a family farm partnership" for the purposes of several provisions in the Act, including section 146. These definitions were made applicable for the purposes of section 146 when subsections 146(5.3) and (5.4) were added to the Act. Those subsections were added to provide an additional deduction in respect of premiums paid to a registered retirement savings plan where a taxpayer had a capital gain from a disposition of qualified farm property. They have since been replaced by the capital gains exemption introduced in 1985 and are therefore restricted to dispositions of farm property in 1984. Subsection 70(10) is being amended to replace the reference to subsection 146 with a reference to subsections 146(5.3) and (5.4). This amendment, which is effective after 1988, is made to clarify that the definition of "child" does not apply generally for the purposes of section 146.

Amalgamations

Clause 8

ITA
87(2)(q)

Section 87 of the Act deals with the tax treatment of the amalgamation of two or more taxable Canadian corporations. New paragraph 87(2)(q) is added as a consequence of the addition to the Act and the *Income Tax Regulations* of the rules relating to registered pension plans. The new paragraph treats an amalgamated corporation as a continuation of its predecessors for the purposes of these rules. New paragraph 87(2)(q) is applicable after 1988, and applies in the case of all amalgamations, whether before or after the effective date of the paragraph. Paragraph 88(1)(e.2) of the Act provides that paragraph 87(2)(q) also applies on the winding-up of a subsidiary into its parent corporation.

Trusts

Clause 9

ITA
104(27)

Subsection 104(27) of the Act allows the flow-through to a beneficiary of a testamentary trust that is resident in Canada of the character of certain pension benefits received by the trust and included in the beneficiary's income. This flow-through is provided for the purposes of the pension income tax credit in subsection 118(3), but only where the beneficiary was the spouse of the individual as a consequence of whose death the trust arose, and for the purposes of the tax-free transfer of pension benefits to a registered pension plan (RPP) or a registered retirement savings plan (RRSP) under paragraph 60(j).

Subsection 104(27) is being amended for the 1988 and subsequent taxation years so that the flow-through will also apply for the purposes of subsection 118(3) where the beneficiary was a common-law spouse of the settlor of the trust (the individual as a consequence of whose death the trust arose). The definition of common-law spouse for this purpose is provided in new subsection 146(1.1).

Subsection 104(27) is also being amended for the 1988 and subsequent taxation years as a consequence of the amendments to paragraph 60(j), which narrow the categories of receipts that can be transferred to RPPs and RRSPs on a tax-free basis, and the introduction of new section 147.3 which provides rules regarding the transfer of lump sum amounts from RPPs to RRSPs and other RPPs. The existing mechanism that enables a beneficiary to take advantage of the paragraph 60(j) rollover when certain pension benefits are received by the trust and distributed to the beneficiary is being changed so that certain amounts distributed to a beneficiary and designated by the trust in respect of the beneficiary are declared, by paragraph 104(27)(d), to be eligible amounts in respect of the beneficiary for the purposes of paragraph 60(j). Under amended paragraph 60(j), such eligible amounts qualify for the tax-free transfer provided by that paragraph.

Pursuant to subparagraph 104(27)(d)(i), a beneficiary's share of a lump sum amount paid by an RPP to a trust is an eligible amount if the beneficiary was a spouse (including a common-law spouse) of the settlor of the trust. Thus, the beneficiary is able to transfer his or her share of the lump sum amount to an RRSP or RPP. This provides an exception to the new rules relating to tax-free transfers in section 147.3 which require the direct transfer of funds from one RPP to another RPP or to an RRSP.

Pursuant to subparagraph 104(27)(d)(ii), a beneficiary's share of a pension benefit received by a trust is an eligible amount where the beneficiary could have transferred the benefit on a tax-free basis pursuant to paragraph 60(j) if the beneficiary, instead of the trust, had received the benefit. This ensures that the rules in paragraph 60(j) applicable in the calendar year in which the trust receives a benefit will apply, rather than the rules applicable in the year in which the beneficiary's share in respect of the pension benefit is included in the beneficiary's income. For example, if a testamentary trust that has a taxation year of June 1 to May 31 receives periodic payments from an RPP in the period from June 1, 1989 to December 31, 1989 and distributes these payments to a beneficiary throughout that period, the beneficiary is entitled to transfer these payments on a tax-free basis to an RRSP or RPP in 1990, even though paragraph 60(j) does not generally provide for the transfer of periodic amounts after 1989. (It should be noted, in this regard, that trust income is included in computing a beneficiary's income for the beneficiary's taxation year in which the trust's taxation year ends.)

For the 1988 and 1989 taxation years, a beneficiary's share of a pension benefit received by a trust is also an eligible amount pursuant to subparagraph 104(27)(d)(ii) where the benefit could have been transferred on a tax-free basis pursuant to new paragraph 60(j.01) if the beneficiary, instead of the trust, had received the payment. This enables payments in respect of an actuarial surplus that are received by a testamentary trust before March 28, 1988 and distributed to a beneficiary to be transferred on a tax-free basis by the beneficiary, even though the payments are not included in the beneficiary's income until 1989.

A further amendment to subsection 104(27), effective for the 1989 and subsequent taxation years, adds a rule for the purpose of the new rollover in paragraph 60(l). That rollover enables a child to defer tax on certain lump sum receipts from RRSPs and RPPs as a consequence of the death of a parent or grandparent where the child uses the proceeds to acquire an annuity for a fixed number of years not exceeding 18 minus his or her age at the time when the annuity is acquired. By virtue of new paragraph 104(27)(e), the rollover is also available where the lump sum is paid by an RPP to a testamentary trust and is included in the child's income (whether or not it is distributed to the child). For further details, see the commentary on paragraph 60(l). A similar rule is provided by existing subsection 146(8.1) in the case of payments from an RRSP.

ITA
104(27.1)

New subsection 104(27.1) of the Act provides that certain amounts received by a testamentary trust from a deferred profit sharing plan (DPSP) and included in computing the income of a beneficiary who was a spouse of the settlor of the trust are eligible amounts for the purpose of paragraph 60(j). Consequently, the beneficiary is able to transfer such amounts on a tax-free basis to an RPP or an RRSP. Subsection 104(27.1), together with paragraph 60(j), provides an exception to the new rules in subsections 147(19) to (22) that provide for the tax-free transfer of funds from a DPSP to another registered plan only where the funds are transferred on a direct basis.

New subsection 104(27.1) applies where a testamentary trust that is resident in Canada receives a lump sum payment from a DPSP as a consequence of the death of the settlor of the trust, but only where the settlor was an employee of an employer who participated in the DPSP. The portion of the lump sum that is required by subsection 147(10) to be included in the trust's income and that is payable to (and therefore included in the income of) a beneficiary who was a spouse of the settlor at the time of the settlor's death is declared, by subsection 104(27.1), to be an eligible amount for the purposes of paragraph 60(j) if the portion is designated in respect of the beneficiary in the trust's tax return. The definition of spouse in new subsection 146(1.1) applies for this purpose, so that the rule is applicable in the case of a beneficiary who was a common-law spouse of the settlor.

Where subsection 104(27.1) applies, and the trust's taxation year ends in the calendar year subsequent to the calendar year in which the trust receives the payment from the DPSP, the corresponding eligible amount is an eligible amount for that subsequent year. Thus, if the beneficiary wants to take advantage of the opportunity to make a contribution on a rollover basis to an RRSP or an RPP, the contribution must be made in that subsequent year or within 60 days thereafter.

Subsection 104(27.1) is applicable in respect of DPSP payments made to testamentary trusts after 1988.

Personal Tax Credits

Clause 10

ITA
118(7)(b)

Section 118 of the Act provides for a number of credits that are deductible in computing the tax payable by an individual, including the pension credit in subsection 118(3). The pension credit available to a taxpayer who is under 65 years of age is based on the taxpayer's qualified pension income, as defined in paragraph 118(7)(b). Qualified pension income includes certain amounts, such as annuity payments under a registered retirement savings plan, received by the taxpayer as a consequence of the death of the taxpayer's spouse. Paragraph 118(7)(b) is amended, for the 1988 and subsequent taxation years, to expand the meaning of spouse for this purpose to include a common-law spouse (as defined in new subsection 146(1.1)).

Minimum Tax

Clause 11

ITA
127.52(1)(a)

Subsection 127.52(1) of the Act provides the rules for the computation of an individual's adjusted taxable income, which is relevant in determining the individual's liability for minimum tax under Division E.1 of the Act. Paragraph 127.52(1)(a) provides that, in computing the adjusted taxable income of an individual, no deduction may be claimed in respect of contributions to registered pension plans (RPPs), registered retirement savings plans (RRSPs) or deferred profit sharing plans (DPSPs), except to the extent of the amount included in the individual's income in respect of certain lump sum amounts received from pension plans and DPSPs. Paragraph 127.52(1)(a) is amended to eliminate the reference to paragraph 60(k) for the 1990 and subsequent taxation years as a consequence of the repeal of that paragraph. For the 1991 and subsequent taxation years, paragraph 127.52(1)(a) is amended to eliminate the reference to paragraph 8(1)(m.1) as a consequence of the repeal of that paragraph. Paragraph 127.52(1)(a) is also amended for the 1991 and subsequent taxation years so that premiums paid to an RRSP that are deductible under new subsection 146(6.1) are also deductible in computing adjusted taxable income. Subsection 146(6.1) provides a special deduction for RRSP premiums paid by an individual where the individual has previously withdrawn an amount from an RRSP in connection with past service benefits credited under an RPP.

Bankruptcies

Clause 12

ITA
128(2)

Subsection 128(2) of the Act contains a number of special rules applicable where an individual becomes a bankrupt. Paragraph 128(2)(d) divides the calendar year in which the individual becomes a bankrupt into two taxation years: one taxation year that runs from January 1 to the day before the bankruptcy and the other that commences on the day of bankruptcy and runs to the end of the calendar year.

Paragraph 128(2)(d) is amended so as not to apply for the purposes of the definitions in subsection 146(1) relating to registered retirement savings plans (RRSPs) and the rules in Part X.1 of the Act regarding the computation of penalty tax on excess contributions to RRSPs. This change is being made so that the RRSP deduction limit and unused RRSP deduction room of a bankrupt individual and the RRSP excess contribution tax payable by such an individual, will be determined as if the individual had not become a bankrupt.

New paragraph 128(2)(d.1) applies where an individual becomes bankrupt in a calendar year and thus has two taxation years ending in that year. Paragraph 128(2)(d.1) modifies the maximum deductions that may be claimed by the individual under subsections 146(5) and (5.1) in respect of RRSP contributions so that the limits applicable in the second taxation year are reduced by contributions deducted in the first taxation year.

New paragraph 128(2)(d.2) provides that where a bankrupt individual has two taxation years in a calendar year, amounts deducted by the individual in each of the two years in respect of contributions to RRSPs are to be treated, for the purpose of computing the individual's unused RRSP deduction room and the excess contributions tax, as if they were deducted in a single taxation year that is the calendar year. This paragraph is added for the same reason as the change that is made to paragraph 128(2)(d).

The amendments to subsection 128(2) are applicable for 1991 and subsequent taxation years.

Registered Retiremant Savings Plans

Clause 13

Section 146 of the Act deals with registered retirement savings plans (RRSPs). Major amendments are being made to this section to implement the comprehensive limits for tax assistance to retirement saving announced on October 9, 1986, as subsequently modified. Amendments are also being made: to alter the definition of "earned income"; to allow a deduction in respect of certain amounts recontributed to an RRSP; to expand the circumstances in which a deduction is available under subsection 146(8.2) in respect of undeducted RRSP premiums that are withdrawn; to expand the category of premiums paid to a spousal RRSP that are included for the purposes of the special attribution rules in subsection 146(8.3); to restrict the rollover provided by subsection 146(16) for transfers of funds from an RRSP to another registered plan to transfers prior to the maturity of an RRSP; and to extend the meaning of the term "spouse" to include certain common-law spouses for the purpose of certain RRSP provisions.

"earned income"

Subclause 13(1)

ITA
146(1)(c)

Paragraph 146(1)(c) of the Act defines "earned income", which is relevant in determining the maximum deduction in respect of premiums under an RRSP. Under the existing definition, earned income is the aggregate of:

- income from offices and employment (as computed in accordance with sections 5 to 8 of the Act but without the deduction of contributions to registered pension plans),
- superannuation or pension benefits,
- retiring allowances,

- death benefits,
- royalties in respect of a work or invention of which the taxpayer was the author or inventor,
- alimony and maintenance payments received from the taxpayer's spouse or former spouse,
- amounts included in income in respect of an RRSP,
- amounts received from a supplementary unemployment benefit plan,
- taxable payments from a deferred profit sharing plan or a revoked plan,
- income from carrying on a business either alone or as a partner actively engaged in the business, and
- rental income from real property

minus

- losses from carrying on a business,
- losses from the rental of real property,
- transfers of retiring allowances and certain amounts from registered plans that are deductible under paragraphs 60(j), (j.1), (l) or (m), and
- amounts relating to property of an RRSP that are deductible under subsection 146(6) or (7).

Amendments to paragraph 146(1)(c) for the 1988 and subsequent taxation years make the following changes in the computation of earned income:

(a) earned income is to include support payments received by a common-law spouse that are required by paragraph 56(1)(c.1) to be included in the spouse's income;

(b) earned income is to include research grants net of certain related expenses; and

(c) earned income is to be reduced by alimony and maintenance payments deductible under paragraphs 60(b), (c) and (c.1).

It should be noted that, as a consequence of tax reform, an indirect change has also been made to the computation of earned income for the 1988 and subsequent taxation years. Tax reform replaced the deduction under paragraph 8(1)(k) in respect of unemployment insurance premiums by a tax credit. Accordingly, commencing with the 1988 taxation year, the amount of income from offices and employment that is included in earned income is no longer reduced by such premiums.

Paragraph 146(1)(c) is also amended for the 1988 and 1989 taxation years to reduce earned income by amounts deductible under paragraph 60(k). This is a rule which effectively provides for the tax-free transfer of taxable payments from a deferred profit sharing plan (DPSP) to another DPSP. This amendment is appropriate because such payments are included in earned income for the 1988 and 1989 taxation years.

Paragraph 146(1)(c) is also amended, applicable for the 1988 taxation year only, to reduce earned income by amounts deductible under new paragraph 60(j.01), which is a transitional rule providing for the tax-free transfer of an actuarial surplus under a registered pension plan (RPP) to another RPP or an RRSP. This amendment is consequential on the introduction of new paragraph 60(j.01) for 1988.

Paragraph 146(1)(c) is also being amended for the 1989 and subsequent taxation years so that the amount of employment income that is to be included in earned income is determined

(a) without deducting employee contributions to a retirement compensation arrangement, where such contributions are deductible by virtue of new paragraph 8(1)(m.2); and

(b) in the case of a taxpayer who is a member of the clergy, without the special deduction under paragraph 8(1)(c) in respect of the value of the taxpayer's residence.

Paragraph 146(1)(c) is further amended, for the 1989 taxation year only, as follows: First, amounts received from a registered retirement income fund (RRIF) are to be included in earned income. This is consistent with the inclusion of pension income and RRSP benefits in earned income before 1990. Second, earned income is reduced by amounts deductible under new paragraph 60(j.2). That paragraph provides for the tax-free transfer, from 1989 to 1994, of up to $6,000 per year of periodic RPP or DPSP income to a spousal RRSP.

Paragraph 146(1)(c) is being amended for the 1990 and subsequent taxation years in three respects. First, the following amounts will no longer be included in earned income:

- superannuation or pension benefits (including CPP/QPP and OAS benefits),
- retiring allowances,
- death benefits,
- amounts received from an RRSP, and
- taxable payments from a DPSP or a revoked plan.

Second, and as a consequence of the exclusion of such amounts from earned income, amounts deductible under paragraphs 60(j), (j.1), (l) and (m) and under subsections 146(6) and (7) of the Act will no longer reduce earned income.

Third, paragraph 146(1)(c) is being amended for the 1990 and subsequent taxation years to exclude from the computation of earned income any income (and losses) of a taxpayer for a period during which the taxpayer was not a resident of Canada. This change is necessitated by the new carry-forward provisions for unused RRSP deduction room. It would be inappropriate to allow a taxpayer to obtain RRSP deduction room based on income earned while not residing in Canada.

"net past service pension adjustment"

ITA 146(1)(d.1)

Subclause 13(2)

New paragraph 146(1)(d.1) of the Act adds a definition of "net past service pension adjustment" (net PSPA) to section 146 of the Act, effective in relation to the 1991 and subsequent taxation years.

In the new system of comprehensive limits for tax-assisted retirement saving, net PSPA provides one of the links between the benefits to which a taxpayer is, or may become, entitled under a registered pension plan (RPP) and the tax-deductible contributions that the taxpayer is entitled to make to RRSPs. A taxpayer's net PSPA for a year is the amount by which both the taxpayer's RRSP deduction limit for the year and unused RRSP deduction room at the end of the year are reduced on account of an improvement to the taxpayer's benefits under an RPP in respect of service in prior years.

New paragraph 146(1)(d.1) defines a taxpayer's net PSPA for a year as the total of the taxpayer's past service pension adjustments (PSPAs) for the year minus both the taxpayer's PSPA transfers for the year and PSPA withdrawals for the year. These latter two amounts are determined in accordance with prescribed rules, and are explained in the commentary on draft subsections 8307(7) and (10) of the *Income Tax Regulations*. The manner in which these amounts are calculated always results in a net PSPA that is nil or positive.

In the simplest case, where a taxpayer's past service benefits under an RPP are upgraded and the taxpayer has sufficient RRSP deduction room to accommodate the upgrade, net PSPA will frequently equal the taxpayer's PSPA associated with the upgrade. PSPA is, in general terms, the additional pension adjustments that would have been determined for the prior years if the RPP had provided for the upgraded benefits at the time each pension adjustment was first required to be determined. PSPA is described more fully in the commentary on draft section 8303 of the *Income Tax Regulations*.

In some cases, a taxpayer may transfer an amount from his or her RRSP to an RPP in order to partially or fully fund the additional past service benefits with which the taxpayer is credited under the RPP. Such transferred amounts, as well as amounts transferred from deferred profit sharing plans and certain amounts transferred from other pension plans, are included, subject to limits, in a taxpayer's PSPA transfers. The amount of a taxpayer's PSPA transfers is deducted in the computation of the taxpayer's net PSPA, in recognition of the fact that money that is already tax-sheltered is being used to provide the benefits which give rise to the PSPA.

If the taxpayer has insufficient room for a past service benefit improvement after taking into account transfers from other registered plans, money may be withdrawn from the taxpayer's RRSP in order to open up further room. Such withdrawals as are designated by a taxpayer by filing a prescribed form with Revenue Canada are included, subject to limits, in the taxpayer's PSPA withdrawals for the year, which is deducted in the computation of the taxpayer's net PSPA for the year.

"RRSP deduction limit"

Subclause 13(3)

ITA
146(1)(g.1)

New paragraph 146(1)(g.1) of the Act adds a definition of "RRSP deduction limit" to section 146 of the Act, effective in relation to the 1991 and subsequent taxation years.

A taxpayer's "RRSP deduction limit" will, commencing in 1991, be relevant in determining the maximum tax-deductible contributions that the taxpayer may make in a year to RRSPs, replacing the limit currently provided in subsection 146(5) of the Act. The current limit (described in the commentary on subsection 146(5)) integrates, in a simple way, a taxpayer's deductible RRSP contributions with contributions to other tax-assisted retirement savings plans of which the taxpayer is a member. The new RRSP deduction limit depends more precisely on the extent to which a taxpayer benefits from the other tax-assisted vehicles for retirement saving – registered pension plans (RPPs) and deferred profit sharing plans (DPSPs) – and also provides a carryover of RRSP deduction room that was not used in prior years.

New paragraph 146(1)(g.1) defines a taxpayer's RRSP deduction limit for a year as being equal to:

- the taxpayer's unused RRSP deduction room carried forward from the end of the preceding year,
- ***plus*** the amount, if positive, by which

  the lesser of the RRSP dollar limit for the year and 18 per cent of the taxpayer's earned income for the preceding year

  exceeds

  the total of the taxpayer's pension adjustments (PAs) for the preceding year in respect of all employers,
- ***plus*** the aggregate of the taxpayer's pension adjustment reversals (PARs) for the year,

- *plus* any amounts prescribed for the year in respect of the taxpayer,
- *minus* the taxpayer's net past service pension adjustment for the year.

The RRSP deduction limit of a taxpayer who is not a member of an RPP or a DPSP is, for each year, equal to the lesser of the RRSP dollar limit for the year and 18 per cent of the taxpayer's earned income for the prior year, plus the taxpayer's unused RRSP deduction room at the end of the prior year. ("RRSP dollar limit" and "unused RRSP deduction room" are described in the commentary on paragraphs 146(1)(g.2) and (l), respectively.) This is similar to the limit currently applicable to such taxpayers, except that the limit depends on earned income for the prior year (rather than the current year), the dollar limit increases from year to year and the taxpayer's unused deduction room from prior years is carried forward. As an example, a taxpayer who has earned income of $70,000 in 1991 and $5,000 of unused deduction room at the end of that year would be able to deduct $17,500 of RRSP contributions in 1992, computed as follows:

Lesser of	(i) .18 × $70,000 = $12,600	)	
	(ii) RRSP dollar limit for 1992	)	$12,500
	= $12,500	)	
plus unused RRSP deduction room at the end of 1991			$ 5,000
equals RRSP deduction limit for 1992			$17,500

In the case of a taxpayer who is a member of an RPP or a DPSP, the additional deduction room which becomes available in a year is reduced to reflect the extent to which the taxpayer has been credited with benefits under RPPs and DPSPs in the previous year. PA is the measure which converts such benefits to the appropriate amount to be subtracted in determining the RRSP deduction limit. (PA is described more fully in the commentary on draft section 8301 of the *Income Tax Regulations*.)

Continuing the above example, if the taxpayer's total PA for 1991 were $6,300, the taxpayer would be able to deduct $11,200 of RRSP contributions in 1992, computed as follows:

Lesser of	(i) .18 × $70,000 = $12,600	)	
	(ii) RRSP dollar limit for 1991	)	$12,500
	= $12,500	)	
minus PA			($6,300)
			$6,200
plus unused RRSP deduction room at the end of 1991			$5,000
equals RRSP deduction limit for 1992			$11,200

PAR is determined for a taxpayer in respect of an employer when the taxpayer terminates his or her membership in all RPPs and DPSPs of the employer. In general terms, PAR is a measure of the extent to which a taxpayer's RRSP deduction room has previously been reduced in respect of RPP and DPSP benefits which now will not be received. Accordingly, it is appropriate to add a taxpayer's PARs in determining the RRSP deduction limit. (PAR is more fully described in the commentary on draft section 8304 of the *Income Tax Regulations.*)

The RRSP deduction limit of a taxpayer also includes a prescribed amount. Amounts are prescribed for this purpose by draft subsection 8307(12) of the *Income Tax Regulations*. Prescribed amounts arise only in special circumstances where a taxpayer transfers from one RPP to another and is credited with past service benefits under the second RPP. In some cases, final payments from the first plan on behalf of the taxpayer cannot be made until after the Minister of National Revenue has certified that the taxpayer has sufficient room for the past service benefits. This delays the computation of the taxpayer's PAR associated with the termination from the first plan until after the certification. In these circumstances, the regulations permit an estimate of PAR (the provisional PAR) to be used for the purpose of determining whether the taxpayer has sufficient room for the past service benefits. It is this provisional PAR that is prescribed for the purpose of the RRSP deduction limit, so that it offsets the reduction in the limit resulting from the PSPA associated with the past service benefits. However, the provisional PAR is not prescribed if the actual PAR is determined in the same year (which would normally happen where the certification occurs before the last few months of a year). For further details regarding provisional PARs, see the commentary on draft subsections 8307(3), (4) and (12) of the *Income Tax Regulations.*

Finally, a taxpayer's RRSP deduction limit for a year is reduced by the taxpayer's net past service pension adjustment (net PSPA) for the year. Net PSPA is a measure of the deduction room that is used as a consequence of an improvement in the taxpayer's past service benefits under an RPP, and is explained more fully in the commentary on new paragraph 146(1)(d.1).

"RRSP dollar limit"
ITA
146(1)(g.2)

New paragraph 146(1)(g.2) of the Act adds a definition of "RRSP dollar limit". This amount is relevant in the calculation of a taxpayer's RRSP deduction limit for the 1991 and subsequent taxation years.

The RRSP dollar limit for a year is the maximum additional RRSP deduction room which can become available to a taxpayer in the year (other than by virtue of pension adjustment reversals). The actual deduction room which becomes available to a taxpayer in a year is equal to the amount, if positive, by which

(a) the lesser of the RRSP dollar limit for the year and 18% of the taxpayer's earned income for the preceding year exceeds

(b) the total of the taxpayer's pension adjustments for the preceding year in respect of all employers.

The RRSP dollar limit for a calendar year is defined as the money purchase limit (as defined in new subsection 147.1(1)) for the immediately preceding year. The "money purchase limit" for the 1991 and subsequent years is the dollar limit that applies to the pension adjustment of a taxpayer for the year in respect of an employer. The RRSP dollar limit is as follows for 1991 to 1995:

Taxation year	RRSP dollar limit
1991	$11,500
1992	$12,500
1993	$13,500
1994	$14,500
1995	$15,500

The money purchase limit after 1994 is equal to $15,500 indexed to take into account the growth after 1994 in the Industrial Aggregate (a measure of the average wages and salaries in Canada, published by Statistics Canada). Thus, the RRSP dollar limit is similarly determined after 1995.

"refund of premiums"

Subclause 13(4)

ITA
146(1)(h)

Paragraph 146(1)(h) of the Act defines "refund of premiums", which is relevant in determining the amount that, on the death of an annuitant under an RRSP, is included in a beneficiary's income rather than the annuitant's income. In certain circumstances, a beneficiary is entitled, pursuant to paragraph 60(l), to transfer a refund of premiums to an eligible annuity, an RRSP or a registered retirement income fund. If an annuitant has a spouse at the time of his or her death, a refund of premiums is an amount paid to the spouse, as a consequence of the death of the annuitant prior to the maturity of the RRSP. If the annuitant has no spouse at the date of death, a refund of premiums is an amount paid out of the RRSP to the annuitant's financially dependent child or grandchild, to the extent that the amount does not exceed $5,000 for each year that the dependant is under 26 years of age. This limitation does not apply in cases of dependence by reason of physical or mental infirmity.

Paragraph 146(1)(h) is amended for the 1989 and subsequent years to remove the limit on the amount paid to a child that is considered to be a refund of premiums.

"spousal plan"

Subclause 13(5)

ITA
146(1)(k)

New paragraph 146(1)(k) of the Act introduces a definition of "spousal plan". The definition is relevant for the purposes of the special attribution rules in subsections 146(8.3) and 146.3(5.1) that require a taxpayer to include in income certain amounts otherwise included in the income of the taxpayer's spouse in respect of an RRSP or a registered retirement income fund (RRIF).

A "spousal plan" in relation to a taxpayer is, in general terms, an RRSP or RRIF of the taxpayer's spouse that has been funded directly or indirectly (either in whole or in part) through RRSP premiums paid by the taxpayer. More specifically, an RRSP of the spouse of a taxpayer is a spousal plan in relation to the taxpayer if it has received premiums from the taxpayer or if an amount has been transferred to the plan from an RRSP or RRIF that was a spousal plan. Similarly, a RRIF of the spouse is a spousal plan if an amount has been transferred to the plan from an RRSP or RRIF that was a spousal plan. The definition, which is applicable after 1988, is relevant to the 1991 and subsequent taxation years.

This definition replaces the rules in subsections 146(8.4) and 146.3(5.2) and the descriptions in subsections 146(8.3) and 146.3(5.1). The combined effect of these rules was to identify a class of RRSPs and RRIFs similar to the class of spousal plans in relation to a taxpayer.

"unused RRSP deduction room"
ITA
146(1)(l)

New paragraph 146(1)(l) of the Act adds a definition of "unused RRSP deduction room" to section 146 of the Act. While the definition is applicable after 1988, it is relevant to the 1991 and subsequent taxation years. This amount is a key element of the new system of comprehensive limits for tax assistance to retirement saving.

"Unused RRSP deduction room" measures the amount of RRSP deduction room that may be carried forward to future years, to be used for three related purposes. First, the unused room enters into the determination of the amount of RRSP premiums that may be deducted in a year, allowing a taxpayer to defer the payment of premiums to RRSPs without losing the benefit of the RRSP deduction. Second, it is used in limiting the improvements that may be made to the past service benefits of a taxpayer under a registered pension plan (RPP). In this role, unused RRSP deduction room provides a mechanism for integrating benefits provided under RPPs with premiums paid to RRSPs, thereby ensuring that a taxpayer's total tax-assisted saving for retirement does not exceed the overall limits on such saving. (For further details on this aspect of the new system, reference may be made to the commentary on draft subsection 8307(2) of the *Income Tax Regulations.*) Third, unused RRSP deduction room is used in determining whether a taxpayer has made excess contributions to RRSPs and, as a consequence, is liable to pay the special tax on excess contributions under Part X.1 of the Act.

In general terms, a taxpayer's unused RRSP deduction room at the end of a year is the taxpayer's unused deduction room carried forward from the previous year, plus any additional deduction room that becomes available in the year (including room that is created by pension adjustment reversals), minus any deduction room used in the year by the taxpayer by paying premiums to the taxpayer's RRSP (or the RRSP of his or her spouse), or used as a consequence of past service improvements to the taxpayer's benefits under an RPP or as a consequence of contributions to the Saskatchewan Pension Plan. This calculation is subject to a limit which restricts the unused contribution room that may be carried forward indefinitely.

Paragraph 146(1)(l) sets out a formula for the calculation of a taxpayer's unused RRSP deduction room at the end of 1991 and subsequent years. The formula includes a number of factors which are common to the formula for the calculation of a taxpayer's RRSP deduction limit, and are described in the commentary on new paragraph 146(1)(g.1). A taxpayer's unused RRSP deduction room at the end of a taxation year, expressed in terms of the taxpayer's RRSP deduction limit, is equal to the lesser of:

(a) the taxpayer's RRSP deduction limit for the year (which, for this purpose, may be negative and which is determined without including any prescribed amounts), minus amounts deducted for the year under subsections 146(5) and (5.1) in respect of premiums paid by the taxpayer to RRSPs or under paragraph 60(v) in respect of contributions to the Saskatchewan Pension Plan, and

(b) the greater of

(i) the sum, for the year and the six immediately preceding years (but only years after 1990), of the amount for each year that is equal to the lesser of the RRSP dollar limit for the year and 18 per cent of the taxpayer's earned income for the previous year, and

(ii) $\frac{7}{2}$ of the RRSP dollar limit for the year.

While a taxpayer's unused RRSP deduction room will normally be positive or zero, it can also be negative. A negative amount may result where an improvement to the taxpayer's past service benefits under an RPP results in a past service pension adjustment that is greater than the available deduction room.

Unused RRSP deduction room must first be determined at the end of 1990 for the purposes of the new system of limits. Its value at that time will equal a taxpayer's pension adjustment reversals for 1990. Thus, for most taxpayers, unused RRSP deduction room will initially be nil.

Subclause 13(6)

ITA
146(1.1)

New subsection 146(1.1) of the Act adds a definition of "spouse" for the purposes of certain provisions relating to RRSPs. A "spouse" of an individual is defined to be a person of the opposite sex to whom the individual is married or with whom the individual is cohabitating in a conjugal relationship. In the latter case, the two individuals must have cohabitated for a period of at least a year or must be the natural or adoptive parents of a child. The extended definition of spouse is applicable to:

- the definition of "annuitant",
- the definition of "refund of premiums",
- the definition of "retirement income",
- the condition of registration which allows retirement income to be reduced after the death of an annuitant's spouse,
- the provision which deems an annuitant to have received, immediately before death, an amount equal to the fair market value of the property in the annuitant's plan, other than any portion receivable by the annuitant's spouse,
- the provision which deems an amount receivable by the legal representative of a deceased annuitant for the benefit of the annuitant's spouse to be an amount receivable by the spouse where the annuitant dies after the maturity of an RRSP, and
- the provision which permits the tax-free transfer of funds from an individual's RRSP to an RRSP or RRIF of the individual's spouse on the breakdown of their marriage or similar relationship.

It should be noted that subsection 252(3) further expands the meaning of "spouse" and "former spouse" for the purposes of the tax-free transfer rule in subsection 146(16).

New subsection 146(1.1) is effective after 1987.

Subclause 13(7)

ITA
146(2)(c.1)

Subsection 146(2) sets out the conditions that must be satisfied to register a retirement savings plan. Existing paragraph 146(2)(c.1) requires that an RRSP provide for the withdrawal of non-deductible contributions paid to it. The paragraph is being amended as a consequence of the change in the way in which excess contributions are determined for the purpose of the penalty tax under Part X.1. As amended, paragraph 146(2)(c.1) requires an RRSP to permit the withdrawal of amounts to reduce the amount of tax payable by a taxpayer under Part X.1. This amendment is effective after 1990.

Subclause 13(8)

ITA
146(5) and (5.1)

Subsection 146(5) of the Act sets out the rules governing the deductibility of premiums paid by a taxpayer to RRSPs under which the taxpayer is the annuitant. Under the existing rules, premiums paid in a year or within 60 days after the end of the year (other than amounts transferred to RRSPs on a tax-free basis) are deductible for the year, subject to limits on the amount that may be deducted. The maximum deduction that may be claimed for a year by a taxpayer who is or may become entitled to benefits under a registered pension plan (RPP) as a consequence of his or her employment in the year, or who makes contributions, or on whose behalf contributions are made, to a deferred profit sharing plan (DPSP) in the year, is the lesser of $3,500 and 20 per cent of the taxpayer's earned income for the year, minus the taxpayer's contributions to RPPs in the year. In all other cases, the maximum deduction that may be claimed in a year is the lesser of $7,500 and 20 per cent of the taxpayer's earned income for the year.

Subsection 146(5) is amended to clarify that the maximum deduction under the subsection applies to the total premiums paid by a taxpayer to all RRSPs. Subsection 146(5) is also amended to clarify that the $3,500 ceiling for RRSP contributions in a year applies for each year in which a taxpayer becomes entitled to benefits under a pension plan in respect of employment in the year, even though the taxpayer's employer may not have to make contributions to the plan in respect of the year. As an example, benefits may accrue without employer funding where a plan is in a surplus position. In this regard, it is not intended that benefits be considered to accrue in respect of a year under a defined benefit plan where previously accrued benefits increase as a result of an increase in the taxpayer's level of pay, but no part of the year is pensionable service. These amendments apply to the 1987 to 1990 taxation years.

Subsection 146(5) is also amended for the 1987 to 1990 taxation years to add a reference to new paragraph 60(j.01). This change is consequential on the introduction of paragraph 60(j.01), which is a transitional rule providing for the tax-free transfer of a taxpayer's interest in an actuarial surplus under an RPP to an RRSP or to another RPP.

Subsection 146(5) is amended for the 1991 and subsequent taxation years to implement the new deduction rules for premiums paid after 1990 by a taxpayer to RRSPs under which the taxpayer is the annuitant. Under the new rules, post-1990 premiums that are not deducted for the year in which they are paid (or, in the case of premiums paid in the first 60 days of a year, in the immediately preceding year) may be deducted for subsequent years, subject to available RRSP deduction room. The current limits on the amount of premiums deductible by a taxpayer each year are replaced by a single limit equal to the taxpayer's "RRSP deduction limit" for the year. Reference may be made to the commentary on new paragraph 146(1)(g.1) for a description of this limit.

Certain premiums paid after 1990 are not deductible under subsection 146(5) as amended for the 1991 and subsequent taxation years. Premiums deductible under new subsection 146(6.1) are excluded, so as to preclude two deductions in respect of the same premiums. Subsection 146(6.1) provides a special deduction that is available only in respect of contributions prescribed by regulation. For further details, reference may be made to the commentary on that subsection. Premiums in respect of which a taxpayer has received a payment that he or she has deducted under subsection 146(8.2) are also excluded. By virtue of subsection 146(8.2), undeducted premiums may be withdrawn on a tax-free basis. Accordingly, it would be inappropriate for the taxpayer to be entitled to a deduction in a subsequent year in respect of such withdrawn premiums.

Subsection 146(5) currently provides that the amount otherwise deductible by a taxpayer under that subsection is reduced by the amount deductible by the taxpayer under subsection 146(6) of the Act. Subsection 146(6) provides a taxpayer with a special deduction when a trust governed by the taxpayer's RRSP disposes of a property that was a non-qualified investment when acquired. This reduction in respect of amounts deductible under subsection 146(6) is eliminated by the amendments made to subsection 146(5) for the 1991 and subsequent taxation years.

Subsection 146(5.1) sets out the rules governing the deductibility of premiums paid by a taxpayer to an RRSP under which the taxpayer's spouse is the annuitant. Under the existing rules, the maximum amount that may be deducted by a taxpayer under this subsection for a year is the additional amount that the taxpayer could have deducted under subsection 146(5) if the premiums had been paid to an RRSP under which the taxpayer was the annuitant.

The amendments to subsection 146(5.1) parallel the amendments to subsection 146(5) described above. For the 1987 to 1990 taxation years, an amendment is made to subsection 146(5.1) to clarify that the maximum deduction applies to the total premiums paid to all RRSPs under which a taxpayer's spouse is the annuitant. Commencing with the 1989 taxation year, subsection 146(5.1) is amended to exclude premiums designated for the purposes of new paragraph 60(j.2). This change is consequential on the introduction of new paragraph 60(j.2), which permits a taxpayer to transfer to an RRSP under which the taxpayer's spouse is the annuitant, on a tax-free basis, periodic payments that the taxpayer receives from an RPP or a DPSP. The change is made to ensure that two deductions may not be claimed in respect of the same premium.

Subsection 146(5.1) is amended for the 1991 and subsequent taxation years to introduce three changes. The first change implements the new deduction rules for premiums paid by a taxpayer to RRSPs, including the carry-forward of undeducted premiums. The second change excludes premiums in respect of which a taxpayer (or the taxpayer's spouse) has received a payment that the taxpayer has deducted under subsection 146(8.2). The third change eliminates the special reduction in respect of amounts deductible under subsection 146(6) when an RRSP disposes of a non-qualified investment.

Subclause 13(9)

ITA
146(5.2)

Subsection 146(5.2) of the Act provides that, for the purposes of the limitation of RRSP contributions in paragraph 146(5)(a) for persons who are members of a pension fund or plan, "pension fund or plan" does not include the Canada or Quebec Pension Plans, or any similar plan of a foreign country. Thus, the fact that a taxpayer's employer contributes to such plans on behalf of the taxpayer does not, of itself, result in the taxpayer's deductible RRSP contributions being limited to $3,500 under paragraph 146(5)(a) rather than the larger limit of $7,500 in paragraph 146(5)(b).

With the introduction of the new rules governing the deductibility of RRSP premiums, subsection 146(5.2) is no longer relevant and is therefore repealed for the 1991 and subsequent taxation years.

Subclause 13(10)

ITA
146(5.21)

New subsection 146(5.21) of the Act is an anti-avoidance rule applicable to the 1990 taxation year, designed to discourage certain actions which might otherwise be taken to artificially increase a taxpayer's RRSP deduction room.

With the transition to the new system of limits on tax-deductible contributions, it is possible to create additional deduction room for a taxpayer in both 1990 and 1991 through the termination, suspension or delay of RPP membership, RPP or DPSP contributions or RPP benefit accruals. Steps taken with the objective of creating such deduction room are inappropriate. Where one of the main reasons for such a termination, suspension or delay is to reduce a taxpayer's pension adjustment for 1990 in respect of an employer, and thereby create additional deduction room in both 1990 and 1991, new subsection 146(5.21) provides that the maximum RRSP deduction for 1990 will be limited to the amount that would have been deductible for that year if such termination, suspension or delay had not occurred.

Subclause 13(11)

ITA
146(6.1)

New subsection 146(6.1) of the Act, which is applicable to the 1991 and subsequent taxation years, provides a special deduction in respect of prescribed premiums paid to an RRSP (except to the extent that the premiums are designated for the purposes of paragraph 60(j), (j.1) or (l)). Draft subsection 8307(13) of the *Income Tax Regulations* prescribes premiums for this purpose.

In general terms, subsection 146(6.1) is intended to allow a taxpayer to recontribute, in certain circumstances, amounts withdrawn by the taxpayer from an RRSP in order to create enough room for past service benefits under an RPP. Recontribution is permitted where the amount withdrawn was larger than necessary as a consequence of a reasonable error or because registration of a new plan was ultimately refused by the Minister. For further details, see the commentary on draft subsection 8307(13) of the *Income Tax Regulations.*

The deduction in respect of a recontribution is available for the year in which the corresponding withdrawal was made, thereby offsetting the inclusion of the withdrawn amount in income. Subsection 152(6) is being amended to give a taxpayer the right to amend a previously filed return in order to claim the deduction.

Subclause 13(12)

ITA 146(8.2)

Subsection 146(8.2) of the Act is a relieving measure which provides a deduction for RRSP or RRIF distributions included in computing a taxpayer's income that are in respect of non-deductible RRSP premiums paid by the taxpayer to his or her own RRSP or to a spousal RRSP. This allows RRSP overcontributions to be withdrawn on a tax-free basis. To qualify for the deduction, the excess premium must be withdrawn in the calendar year in which the taxpayer receives a notice of assessment for the year in which the excess was contributed, or withdrawn in the following calendar year.

Subsection 146(8.2) is being amended so that the availability of the deduction is consistent with the carry-forward of RRSP premiums for deduction in years subsequent to the year in which the premiums are paid. A deduction will be available under the subsection only where the payment is received in respect of RRSP premiums which have not been deducted in any year.

Subsection 146(8.2) is also being amended to provide a deduction where a distribution is received in the year in which the corresponding premiums were paid, or in the following year. Thus, where a taxpayer realizes in a year that he or she has made excess contributions to an RRSP, it will not be necessary to wait until the following year (in which the original notice of assessment for the year of contribution would normally be received) in order to withdraw the excess on a tax-free basis.

In order to prevent taxpayers from deliberately making excess contributions to an RRSP with the intention of withdrawing the contributions on a tax-free basis (particularly where the contributions and withdrawals are timed to avoid the Part X.1 tax on excess contributions), an anti-avoidance rule is being included in subsection 146(8.2). By virtue of paragraphs 146(8.2)(e) and (f), a deduction is not available under subsection 146(8.2) in respect of a distribution where it is reasonable to consider that

- the taxpayer did not reasonably expect to be able to deduct the corresponding premiums in the year in which the premiums were paid or in the preceding year, and
- the taxpayer paid all or part of the corresponding premiums with the intent of subsequently withdrawing them.

A further amendment to subsection 146(8.2) provides that a distribution that is a prescribed withdrawal may not be deducted thereunder. Draft subsection 8307(11) of the *Income Tax Regulations* prescribes, for this purpose, an amount withdrawn by a taxpayer from an RRSP in order to create room for past service benefits under an RPP. For further details, reference may be made to the commentary on draft subsection 8307(11).

The amendments to subsection 146(8.2) are applicable with respect to premiums paid to RRSPs after 1990.

ITA
146(8.21)

New subsection 146(8.21) contains a rule that applies where a taxpayer has deducted an amount under subsection 146(8.2) in respect of a distribution received by the taxpayer, or the taxpayer's spouse, from an RRSP or a RRIF. The subsection provides that the undeducted RRSP premiums corresponding to the distribution are considered, for certain purposes, not to have been premiums paid by the taxpayer to an RRSP. Subsection 146(8.21) replaces a similar rule currently in subsection 146(17).

Subsection 146(8.21) applies for the purpose of determining the taxpayer's deductions under subsections 146(5) and (5.1) in respect of RRSP premiums. It ensures that once a deduction has been claimed under subsection 146(8.21) in respect of a distribution of undeducted premiums, the taxpayer cannot then claim a deduction under subsection 146(5) or (5.1) for an earlier year in respect of those premiums. For example, assume that RRSP premiums paid by a taxpayer were not deducted in the year paid because the taxpayer had insufficient income, and so the taxpayer withdrew the undeducted premiums in the next year, claiming a deduction under subsection 146(8.2) in respect of the withdrawal. Then, as a result of a reassessment, the taxpayer's income for the first year is increased, so that the taxpayer has sufficient income against which to deduct the RRSP premiums. In this case, subsection 146(8.21) would prevent the taxpayer from obtaining a deduction in respect of the premiums.

Subsection 146(8.21) also applies for the purpose of the special attribution rules in subsections 146(8.3) and 146.3(5.1). Those rules require certain payments made to a taxpayer's spouse from RRSPs or RRIFs of the spouse to be included in the taxpayer's income, to the extent that the taxpayer has made contributions to spousal RRSPs in the last three years. By virtue of subsection 146(8.21), where excess contributions made by the taxpayer to spousal RRSPs are subsequently withdrawn and received by the taxpayer and deducted under subsection 146(8.2), the contributions are thereafter disregarded for the purpose of the attribution rules. (In the case of payments made to the spouse, subsection 146(8.6) applies with a similar result, so that once premiums paid by a taxpayer to a spousal RRSP have been included in the taxpayer's income they are disregarded for the purpose of the attribution rules.)

Subsection 146(8.21) is applicable with respect to premiums paid to RRSPs after 1990.

Subclause 13(13)

ITA 146(8.3)

Subsection 146(8.3) of the Act is a special attribution rule designed to discourage the short-term use of a spousal RRSP as a means of income splitting. The existing rule requires a taxpayer to include in income any benefit (other than the payment of a retirement income) received in a year by his or her spouse out of an RRSP, to the extent that the taxpayer has made contributions to the spousal RRSP that were deductible by the taxpayer under subsection 146(5.1) in that year or in the preceding two years. Exceptions are provided in the case of benefits received after marriage breakdown and in the case of commutation payments that are applied as provided in paragraph 60(l).

Subsection 146(8.3) is amended for the 1989 and subsequent taxation years so that it applies with respect to contributions deductible by a taxpayer under new paragraph 60(j.2) that have been made by the taxpayer to spousal RRSPs in the three-year period, and not just contributions deductible under subsection 146(5.1). Paragraph 60(j.2) permits the transfer to a spousal RRSP on a tax-free basis of up to $6,000 of periodic payments received by a taxpayer from an RPP or a deferred profit sharing plan.

Subsection 146(8.3) is further amended for the 1991 and subsequent taxation years so that it applies with respect to all contributions made by a taxpayer in the three-year period. This change is made as a consequence of the introduction of the carry-forward for contributions. Because of this carry-forward, a taxpayer might not deduct a contribution made to a spousal RRSP until after the withdrawal of an amount by the spouse from the RRSP. Such undeducted contributions should be taken into account for purposes of the attribution rule.

Subsection 146(8.3) is also amended for the 1991 and subsequent taxation years to use the definition of a "spousal plan", in new paragraph 146(1)(k), which replaces the rules in subsections 146(8.3) and 146(8.4) for identifying the plans in respect of which the attribution rule applies.

Subclause 13(14)

ITA 146(8.4)

Subsection 146(8.4) of the Act ensures that the special attribution rule in subsection 146(8.3) will apply where funds have been transferred through successive RRSPs and registered retirement income funds. Subsection

146(8.4) of the Act is repealed for the 1991 and subsequent taxation years as a consequence of the introduction of the definition of a "spousal plan" in paragraph 146(1)(k). That definition includes the rules currently in subsection 146(8.4).

Subclause 13(15)

ITA 146(8.6)

Subsection 146(8.6) of the Act provides that, to the extent an RRSP premium is required by the special attribution rules in subsections 146(8.3) and 146.3(5.1) to be included in computing the income of a taxpayer at any time, that premium is considered, for the purposes of those subsections after that time, not to have been deductible under subsection 146(5.1). The purpose of this rule is to ensure that the special attribution rules in subsections 146(8.3) and 146.3(5.1) do not apply more than once in respect of the same premium. Subsection 146(8.6) also avoids double taxation by allowing the taxpayer's spouse a deduction for amounts included in the taxpayer's income.

Paragraph 146(8.6)(a) is being amended to provide that RRSP premiums to which the subsection applies are considered not to have been paid to a spousal RRSP (rather than not to have been deductible under subsection 146(5.1)). This change is made as a consequence of the amendments to subsections 146(8.3) and 146.3(5.1).

Subsections 146(8.6) is further amended so that it applies only with respect to premiums to which the attribution rule in subsection 146(8.3) has applied, and not with respect to premiums to which subsection 146.3(5.1) has applied. These latter premiums are subject to the rules in subsection 146.3(5.4), which correspond to the rules in subsection 146(8.6).

The amendments to subsection 146(8.6) are applicable to the 1991 and subsequent taxation years.

Subclause 13(16)

ITA 146(8.7)

Subsection 146(8.7) of the Act provides a number of exceptions to the application of the special attribution rule in subsection 146(8.3). The provision is amended for the 1988 and subsequent taxation years so that amounts included in the income of a deceased individual by virtue of subsection 146(8.8) will not result in the attribution of income to the deceased individual's spouse.

Subclause 13(17)

ITA 146(16)

Subsection 146(16) of the Act allows a taxpayer to transfer the funds in his or her RRSP to another RRSP or a registered retirement income fund (RRIF) under which the taxpayer is the annuitant, or to a registered pension plan (RPP). The subsection also permits a transfer from a taxpayer's RRSP to an RRSP or RRIF of his or her spouse or former spouse pursuant to a court order or written separation agreement on a marriage breakdown. Subsection 146(16) is amended for 1988 and subsequent years so that it refers to other conjugal relationships in addition to marriage. As a result of this change and the change to the meaning of spouse introduced by new subsection 146(1.1), a transfer may be made under subsection 146(16) to an RRSP or RRIF of a common-law spouse on the breakdown of the relationship. For the purpose of this subsection, the expansion of the definition of spouse in subsection 252(3) also applies.

Subsection 146(16) is also amended so that it prohibits transfers after the maturity of an RRSP. Accordingly, annuitants will not be able to transfer their retirement income under an RRSP to another RRSP, an RPP or a RRIF on a tax-free basis, nor will they be able to transfer such income to an RRSP or RRIF of a spouse on the breakdown of a marriage or similar relationship. This amendment is applicable after 1989, except that it does not apply with respect to transfers of retirement income to an RRSP or RRIF of an annuitant's spouse where the annuitant's RRSP was amended before 1990 to provide for the transfer.

Subclause 13(18)

ITA
146(17)

Subsection 146(17) of the Act applies where apparently excess RRSP contributions are withdrawn and the withdrawal is deducted under subsection 146(8.2). If it is subsequently determined that the contributions, or a portion of them, were deductible – for example, where earned income increases as a result of a reassessment – subsection 146(17) prevents a deduction from being claimed under subsection 146(5) or (5.1). Subsection 146(17) is repealed with respect to premiums paid after 1990 and replaced by new subsection 146(8.21).

Subclauses 13(19) to (29)

These set out the effective dates for the amendments to section 146.

Registered Retirement Income Funds

Clause 14

ITA
146.3

Section 146.3 of the Act provides the rules for registered retirement income funds (RRIFs). Amendments are being made to this section to expand the category of premiums paid to a spousal RRSP that are included for the purposes of the special attribution rules in subsection 146.3(5.1) and to extend the meaning of "spouse" for the purposes of certain RRIF provisions.

Subclause 14(1)

ITA
146.3(1.1)

New subsection 146.3(1.1) of the Act provides that the extended definition of spouse in new subsection 146(1.1) of the Act applies, after 1987, for the purposes of certain of the RRIF rules. In particular, the new definition is applicable to:

- the definition of "minimum amount",
- the definition of "retirement income fund",
- the condition of registration that requires the carrier of a RRIF to distribute the property of the RRIF on the death of the annuitant, except where the annuitant's spouse becomes the annuitant under the RRIF,
- the condition of registration that permits a RRIF to receive property from an RRSP or RRIF of the annuitant's spouse on the breakdown of their marriage or similar relationship,
- the provision that deems an annuitant to have received, immediately before death, an amount equal to the fair market value of the property of the RRIF, other than any portion receivable by the annuitant's spouse, and
- the provision that enables amounts to be transferred tax-free from an individual's RRIF to an RRSP or RRIF of his or her spouse on the breakdown of their marriage or similar relationship.

It should be noted that subsection 252(3) further expands the meaning of "spouse" and "former spouse" for purposes of the rules in subparagraph 146.3(2)(f)(iv) and paragraph 146.3(14)(b) relating to the transfer of funds on marriage breakdown.

Subclause 14(2)

ITA
146.3(2)(f)(iv)

Subsection 146.3(2) of the Act sets out the conditions that must be satisfied by a retirement income fund for it to be registered. Paragraph 146.3(2)(f) prohibits a RRIF from receiving property other than certain property listed in that paragraph. Subparagraph 146.3(2)(f)(iv) permits a RRIF to receive property from an RRSP or RRIF of the annuitant's spouse pursuant to a court order or written separation agreement on a marriage breakdown. The expansion of the definition of "spouse" in subsection 252(3) is being made applicable after 1987 for the purpose of that subparagraph. Subparagraph 146.3(2)(f)(iv) is amended for 1988 and subsequent years to permit the receipt of transfers from an RRSP or RRIF of the annuitant's common-law spouse (as defined in subsection 146(1.1)) on the breakdown of the relationship.

Subclause 14(3)

ITA
146.3(5.1)

Subsection 146.3(5.1) of the Act is a special attribution rule designed, in conjunction with subsection 146(8.3), to discourage the short-term use of a spousal RRSP as a means of income splitting. The existing rule requires a taxpayer to include in income amounts received in a year by his or her spouse out of a RRIF that has received a transfer from a spousal RRSP, to the extent that the amounts exceed the minimum amount for the year and to the extent that the taxpayer has made contributions to a spousal RRSP that were deductible by the taxpayer under subsection 146(5.1) for that year or for either of the two preceding years. Exceptions are provided in the case of amounts received after marriage breakdown and in the case of certain amounts that are applied as provided in paragraph 60(l).

Subsection 146.3(5.1) is amended for the 1989 and subsequent taxation years so that it applies with respect to contributions deductible by a taxpayer under new paragraph 60(j.2) that have been made by the taxpayer in the three-year period. This change is made for the same reason as the corresponding change to subsection 146(8.3).

Subsection 146.3(5.1) is further amended for the 1991 and subsequent taxation years so that it applies with respect to all contributions made by a taxpayer to spousal RRSPs in the three-year period, and not just contributions deductible under subsection 146(5.1). This change is also made for the same reason as the corresponding change to subsection 146(8.3).

Subsection 146.3(5.1) is also amended for the 1991 and subsequent taxation years to use the definition of a "spousal plan", in new paragraph 146(1)(k), which replaces the rules in subsections 146(8.4), 146.3(5.1) and 146.3(5.2) for identifying the RRIFs in respect of which the attribution rule applies.

A further amendment to subsection 146.3(5.1) for the 1991 and subsequent taxation years clarifies that a taxpayer is not required to include in income amounts received by the taxpayer's spouse out of a RRIF that are less than the minimum amount for the year under the RRIF.

Subclause 14(4)

ITA
146.3(5.2)

Subsection 146.3(5.2) of the Act ensures that the special attribution rule in subsection 146.3(5.1) will apply where funds have been transferred through successive RRIFs. Subsection 146.3(5.2) is being repealed for the 1991 and subsequent taxation years as a consequence of the introduction of the definition of a "spousal plan" in paragraph 146(1)(k). That definition includes the rule currently in subsection 146.3(5.2).

Subclause 14(5)

ITA
146.3(5.4)

Subsection 146.3(5.4) of the Act provides that, to the extent an RRSP premium is required by the special attribution rules in subsections 146(8.3) and 146.3(5.1) to be included in computing the income of a taxpayer at any time, that premium is considered, for the purposes of those subsections after that time, not to have been deductible under subsection 146(5.1). The purpose of this rule is to ensure that the special attribution rules in subsections 146(8.3) and 146.3(5.1) do not apply more than once in respect of the same premium. Subsection 146.3(5.4) also avoids double taxation by allowing the taxpayer's spouse a deduction for amounts included in the taxpayer's income.

Paragraph 146.3(5.4)(a) is being amended to provide that RRSP premiums to which the subsection applies are considered not to have been paid to a spousal RRSP (rather than not to have been deductible under subsection 146(5.1)). This change is made as a consequence of the amendments to subsections 146(8.3) and 146.3(5.1).

Subsection 146.3(5.4) is further amended so that it applies only with respect to premiums to which the attribution rule in subsection 146.3(5.1) has applied, and not with respect to premiums to which subsection 146(8.3) has applied. The latter premiums are subject to the rules in subsection 146(8.6), which correspond to the rules in subsection 146.3(5.4).

The amendments to subsection 146.3(5.4) are applicable to the 1991 and subsequent taxation years.

Subclause 14(6)

ITA
146.3(5.5)(d)

Subsection 146.3(5.5) of the Act provides a number of exceptions to the application of the special attribution rule in subsection 146.3(5.1). The provision is amended for the 1988 and subsequent taxation years so that amounts included in the income of a deceased individual by virtue of subsection 146.3(6) will not result in the attribution of income to the deceased individual's spouse.

Subclause 14(7)

ITA
146.3(14)(b)

Subsection 146.3(14) of the Act provides that amounts transferred from one RRIF of an annuitant to another RRIF, or from an annuitant's RRIF to an RRSP or RRIF of the annuitant's spouse or former spouse pursuant to a court order or written separation agreement on marriage breakdown are considered not to be received by the annuitant. This enables such amounts to be transferred on a tax-free basis. The expansion of the definition of "spouse" in subsection 252(3) is being made applicable after 1987 for the purpose of this transfer. Paragraph 146.3(14)(b) is amended for 1988 and subsequent years to refer to other conjugal relationships in addition to marriage. As a result of this change and the change to the meaning of spouse introduced by new subsection 146.3(1.1), a tax-free transfer may be made to an RRSP or RRIF of a common-law spouse on the breakdown of the relationship.

Subclauses 14(8) to (11)

These set out the effective dates for the amendments to section 146.3.

Deferred Profit Sharing Plans

Clause 15

ITA
147

Section 147 of the Act contains the rules relating to deferred profit sharing plans (DPSPs). Significant amendments are being made to this section: to increase the dollar limit on deductible employer contributions; to add new contribution limits as part of the comprehensive limits for tax assistance to retirement saving; to prohibit employee contributions; to require that contributions vest immediately if an employee has belonged to a DPSP for at least two years; to require that forfeited amounts be returned to employers or reallocated within a specified time to employees; and to implement a new system of direct tax-free transfers from DPSPs to other registered plans.

Subclause 15(1)

ITA
147(1)

Subsection 147(1) of the Act defines terms used in the provisions relating to deferred profit sharing plans (DPSPs). This subsection is amended, applicable after 1990, to modify the definition of "profit sharing plan" and to add the definition of "forfeited amount".

"deferred profit sharing plan"

The definition of "deferred profit sharing plan" is unchanged. A DPSP is a profit sharing plan that complies with the conditions for registration contained in section 147 of the Act and that has been accepted for registration by the Minister of National Revenue. By virtue of subsection 248(1), this definition is applicable throughout the Act.

"forfeited amount"

A "forfeited amount" under a deferred profit sharing plan (or a plan the registration of which has been revoked) is an amount to which a beneficiary under the plan has ceased to have any rights, other than the portion of that amount that is payable to another person as a consequence of the beneficiary's death. A forfeited amount would normally arise where a beneficiary terminates his or her employment before the beneficiary's entitlement to employer contributions has vested. This definition is relevant for the purposes of the new rules in paragraph 147(2)(i.1) and subsection 147(2.2) requiring the distribution or reallocation of forfeited amounts, and for the purposes of amended subsection 147(10.3), under which reallocated forfeitures are included in the income of certain beneficiaries.

"profit sharing plan"

The definition of "profit sharing plan" is amended to exclude an arrangement under which an employer makes contributions for the benefit of employees of any other employer. Thus, after 1990, a profit sharing plan will be restricted to an arrangement under which an employer makes payments, computed by reference either to its profits or to its profits and those of non-arm's length corporations, to a trustee for the benefit of the employer's employees. By virtue of subsection 248(1), this definition is applicable throughout the Act.

Subclause 15(2)

ITA
147(2)(a.1)

Subsection 147(2) of the Act sets out the conditions that a profit sharing plan must satisfy in order to be registered as a DPSP. This subsection is amended, applicable after 1990, to add a new condition relating to contributions that may be made to a DPSP.

New paragraph 147(2)(a.1) requires a DPSP to include a stipulation stating that no contribution may be made to the plan other than a contribution made by an employer, in accordance with the terms of the plan, for the benefit of the employer's employees, or an amount transferred to the plan on a tax-free basis in accordance with the rollover rule in new subsection 147(19). As a consequence of this condition, DPSPs will not be able to accept employee contributions or non-deductible employer contributions after 1990. By virtue of new paragraph 147(14)(c.2), existing DPSPs will be required to be amended by 1991 to include the stipulation.

Subclause 15(3)

ITA
147(2)(i) and (i.1)

Paragraph 147(2)(i) of the Act now requires, as a condition of registration, that a DPSP provide that all amounts allocated or reallocated by a trustee to a beneficiary vest in the beneficiary within five years after the end of the year in which the amounts are so allocated or reallocated. This paragraph is amended, effective after 1990, to require amounts allocated to a beneficiary after 1990 to vest in the beneficiary immediately, if the individual has been a beneficiary under the plan (or predecessor plans) for two years, or in any other case, on the date on which the individual completes a period of two years as a beneficiary. Allocations and reallocations before 1991 continue to be subject to the existing five-year vesting rule.

New paragraph 147(2)(i.1) requires, as a condition of registration after 1990, that a DPSP provide that each forfeited amount under the plan (as well as earnings related to the forfeited amount) be paid to employers participating in the plan or reallocated to beneficiaries under the plan before the end of the calendar year following the calendar year in which the amount was forfeited. (Forfeited amounts arising before 1990 are to be allocated no later than December 31, 1991.) However, pursuant to new subsection 147(2.2), the time period for the reallocation of a forfeited amount may be extended at the discretion of the Minister of National Revenue.

Forfeited amounts reallocated to beneficiaries may be retained in the plan or paid to the beneficiaries. Forfeited amounts reallocated to a beneficiary are included in computing the pension credit of the beneficiary under the plan (which enters into the calculation of the beneficiary's PA), with the exception of an amount that was forfeited before 1990 and reallocated in 1990 or an amount that is paid to a beneficiary (and not transferred on the beneficiary's behalf to a registered pension plan, registered retirement savings plan or DPSP) in the year in which it is reallocated to the beneficiary.

By virtue of new paragraph 147(14)(c.2) of the Act, existing DPSPs are required to comply with the conditions in amended paragraph 147(2)(i) and new paragraph 147(2)(i.1). Thus, such plans will have to be amended by 1991 to incorporate the new provisions.

Subclause 15(4)

ITA 147(2.1)

New subsection 147(5.1) of the Act has the effect of imposing certain limits relating to the amount of employer contributions that may be made to a DPSP and to the amount of forfeitures that may be reallocated to beneficiaries. If such contributions and reallocations do not comply with the limits, the Minister of National Revenue may, under new paragraph 147(14)(c.4), revoke the registration of the plan. New subsection 147(2.1) is introduced to allow the Minister to refuse, after 1990, to register a profit sharing plan where the terms are not adequate to ensure that the requirements of subsection 147(5.1) will be satisfied.

ITA 147(2.2)

New subsection 147(2.2), which is effective after 1990, allows the Minister, on written application, to extend the time limit imposed by virtue of paragraph 147(2)(i.l) for the reallocation of forfeited amounts under a DPSP. An extension may be granted only where the amount of forfeitures is greater than normal because of unusual circumstances and the DPSP provides for a reallocation on a reasonable basis to a majority of the beneficiaries. It is expected that the Minister will grant an extension, for example, where an employer lays off a large group of employees whose rights to employer contributions have not fully vested. Subsection 147(2.2) is not intended to allow for the indefinite retention in a DPSP of forfeited amounts which cannot be reallocated because beneficiaries have reached their limits with respect to tax-assisted retirement saving.

Subclause 15(5)

ITA 147(5.1)

Under the new system of comprehensive limits for tax assistance to retirement saving, the aggregate of employer DPSP contributions in respect of an individual and forfeitures reallocated to the individual must comply with a number of limits each year. These limits are contained in new subsection 147(5.1) of the Act, which is applicable after 1990. Where any of the limits is violated, new paragraph 147(14)(c.4) permits the Minister of National Revenue to revoke the registration of a DPSP. Moreover, new subsection

147(2.1) allows the Minister to refuse to register a profit sharing plan where the terms of the plan are not adequate to ensure that the limits will be respected.

New paragraph 147(5.1)(a) requires that the total of an individual's pension credits for a year under one or more DPSPs in respect of an employer not exceed the lesser of:

(a) one-half of the money purchase limit for the year, and

(b) 18 per cent of the individual's compensation (as defined in new subsection 147.1(1), except that any amounts prescribed for the purpose of that definition are not included) for the year from the employer.

The money purchase limit for each year is defined in new subsection 147.1(1). One-half of that limit will, for 1991 to 1994, be as follows:

Year	One-half of money purchase limit
	(in dollars)
1991	6,250
1992	6,750
1993	7,250
1994	7,750

After 1994, the money purchase limit is indexed in accordance with the growth in average wages and salaries in Canada.

Draft subsection 8301(2) of the *Income Tax Regulations* defines the pension credit of an individual for a year in respect of an employer under a DPSP to be the aggregate of:

(a) contributions made in the year to the plan by the employer in respect of the individual, and

(b) forfeited amounts reallocated under the plan to the individual in the year (other than amounts reallocated in 1990 that relate to pre-1990 forfeitures or amounts that are paid to the individual in the year in which they are reallocated).

In this connection, draft subsection 8301(8) of the *Income Tax Regulations* provides that a contribution made on or before the last day of February, if made in respect of services rendered by the individual in the preceding year, is considered to have been made at the end of that year.

New paragraph 147(5.1)(b) requires that the total pension credits of an individual under DPSPs for a year in respect of an employer and non-arm's length employers not exceed one-half of the money purchase limit for the year.

New paragraph 147(5.1)(c) requires, in the case of each beneficiary of a DPSP, that the total of the beneficiary's pension adjustments (PAs) for the year in respect of a group of non-arm's length employers not exceed the lesser of:

(a) the money purchase limit for the year, and

(b) 18 per cent of the beneficiary's total compensation (as defined in new subsection 147.1(1)) for the year from the employers.

An individual's PA for a year in respect of an employer is calculated, in general terms, as the sum of the following amounts:

- contributions made in the year by the employer to DPSPs on behalf of the individual,
- contributions made in the year by the individual, and by the employer on the individual's behalf, to money purchase registered pension plans (RPPs),
- certain other amounts allocated in the year to the individual under DPSPs and under money purchase RPPs, and
- the lump sum equivalent (using a factor of 9) of the benefits which the individual accrues under defined benefit RPPs in respect of service in the year with the employer.

By imposing a limit which must be satisfied by the total of an individual's PAs, new paragraph 147(5.1)(c) indirectly restricts the employer contributions that may be made to DPSPs on behalf of the individual and the forfeitures that may be reallocated to the individual. For further details regarding PAs, reference may be made to the commentary on draft section 8301 of the *Income Tax Regulations*.

Where an employer participates in both a DPSP and a registered pension plan for the benefit of an individual, the provisions of the plans may have to be coordinated to ensure that the individual's PA in respect of the employer does not exceed the limit in new paragraph 147(5.1)(c). Such coordination will also be necessary in the less common case where an individual is employed by two or more employers who do not deal with each other at arm's length, each of whom participates in a DPSP or RPP (or both) for the benefit of the individual.

The limits in new subsection 147(5.1) are applicable after 1990 with respect to all DPSPs, including existing plans. As a result, it may be necessary to modify the contribution and reallocation of forfeiture provisions in existing plans to ensure that the limits will be respected.

Subclause 15(6)

ITA
147(8) and (9)

Existing subsection 147(8) of the Act provides for the deduction by an employer, within specified limits, of amounts contributed by the employer to a DPSP on behalf of the employer's employees. The maximum deduction in respect of a particular employee is limited under the existing rules to the least of three amounts: the amount contributed by the employer in respect of the employee; $3,500 minus the amount that the employer or a person related to the employer is required to contribute in respect of the employee to a registered pension plan; and 20 per cent of the salary or wages paid in the year to the employee by the employer.

Subsection 147(8) is amended to eliminate the limits and to provide instead that contributions to a DPSP are deductible (subject to subsection 147(9)) to the extent that they are paid in accordance with the terms of the plan. This amendment is consequential on the introduction of subsection 147(5.1), which has the effect of imposing a number of limits on contributions to DPSPs. In order to comply with subsection 147(5.1), a DPSP will have to include terms restricting the contributions which may be made to it. Contributions that are not made in accordance with those terms will not be deductible under amended subsection 147(8).

Existing subsection 147(9) provides that only one employer within a non-arm's length group may deduct a DPSP contribution in respect of the same individual. The restrictions on the amount of employer contributions that may be made to a DPSP, imposed by new subsection 147(5.1), make this rule unnecessary.

A new rule is introduced in amended subsection 147(9) that provides that where an employer has made contributions to a DPSP in a calendar year in which the limits in subsection 147(5.1) are not respected, the employer is not entitled to deduct the contributions except to the extent permitted by the Minister of National Revenue. This rule will prevent the deduction of employer DPSP contributions where the contributions are made in accordance with the terms of the plan, but those terms are not adequate to ensure that the limits in subsection 147(5.1) will be respected. For the purpose of this rule, contributions made in the first two months of a calendar year but in respect of the previous year are considered to have been made in the previous year. (This parallels the rule in draft subsection 8301(8) of the *Income Tax Regulations* that applies for the purpose of determining pension adjustments.)

The amendments to subsections 147(8) and (9) are applicable to the 1991 and subsequent taxation years, except that if an employer's 1991 taxation year commences in 1990, the existing rules regarding the deductibility of employer contributions to a DPSP will apply to contributions made in 1990, while the new rules will apply to contributions made in 1991.

Subclause 15(7)

ITA
147(10.2)

Subsection 147(10) includes in the income of a beneficiary under a DPSP amounts received by the beneficiary from the plan, with certain exceptions. Where the beneficiary receives a single payment that includes shares of an employer who participates in the plan and the beneficiary makes an election under subsection 147(10.1), subsection 147(10) excludes from the beneficiary's income the excess of the fair market value of the shares over their cost to the plan. Pursuant to subsection 147(10.4) this excess is included in the beneficiary's income at the time of disposition of the shares. Paragraph 110(1)(d.3) provides for a deduction that results in the excess being included in income at the capital gains inclusion rate. Subsection 147(10.2) provides further rules that apply where an election has been made under subsection 147(10.1).

Under the existing rules, amounts included in a beneficiary's income by virtue of subsection 147(10) increase the potential deduction available to the beneficiary under paragraph 60(j) in respect of contributions to registered retirement savings plans (RRSPs) and registered pension plans (RPPs). In particular, where the beneficiary has received shares from a DPSP and has made a subsection 147(10.1) election in respect of the shares, the room created for RRSP and RPP contributions equals the cost of the shares. With the change to the direct transfer rules commencing in 1989, this opportunity to make RRSP or RPP contributions equal to the cost of shares distributed by a DPSP would not exist, in the absence of a special rule. Accordingly, paragraph 147(10.2)(d) is added, effective after 1988, so that such contributions can continue to be made. This provision declares the cost to a beneficiary of shares distributed by a DPSP to be an eligible amount for the purpose of paragraph 60(j) where the beneficiary has made a subsection 147(10.1) election with respect to the shares. Under paragraph 60(j), eligible amounts are included in the determination of the maximum deduction available in respect of RRSP and RPP contributions.

Subclause 15(8)

ITA
147(10.3)

Subsection 147(10.3) of the Act requires that a beneficiary described in paragraph 147(2)(k.2) (in general terms, a person related to an employer or a specified shareholder of the employer) include in income all amounts allocated or reallocated to the beneficiary under a DPSP in respect of employer contributions to the plan and amounts forfeited in the plan. For this purpose, an "amount forfeited" has the meaning assigned by subsection 201(3). The reference to "amount forfeited" is being replaced by a reference to "forfeited amount", as defined in amended subsection 147(1). This amendment, which is applicable after 1990, is strictly consequential on the repeal of subsection 201(3) and the introduction of the definition of "forfeited amount".

Subclauses 15(9) to (11)

ITA
147(14)

Subsection 147(14) of the Act provides that the Minister of National Revenue may revoke the registration of a DPSP on the occurrence of certain events, and specifies the date on which the revocation may be effective. Several amendments are being made to this subsection. Except as otherwise noted, these amendments are applicable after 1990.

Paragraph 147(14)(c) was introduced as part of the extensive modifications made in 1966 to the rules governing DPSPs, and required compliance with those new rules by January 1, 1968. Subparagraph 147(14)(c)(i) is amended, as a consequence of the changes being made to subsection 147(2), so that it refers to the rules which were applicable before 1991.

Subsection 147(14) is also amended to add additional grounds of revocation. These additional grounds of revocation are set out in new paragraphs 147(14)(c.1) to (c.5).

Paragraph 147(14)(c.1) allows the Minister to revoke the registration of a plan that has become a revocable plan pursuant to new subsection 147(21). Subsection 147(21) provides that a DPSP becomes a revocable plan where an amount is transferred from the plan to another registered plan otherwise than in accordance with subsection 147(19), unless the amount transferred is deductible under paragraph 60(j), (j.2) or (k). Under new paragraph 147(14)(g), the revocation may be effective on or after the date on which the plan becomes a revocable plan. Paragraphs 147(14)(c.1) and (g) are applicable after 1988.

New paragraph 147(14)(c.2) provides as a ground of revocation the failure to comply with the conditions for registration as set out in paragraphs 147(2)(a) to (k) and (l). New paragraph 147(14)(c.3) specifies the failure of a plan that became registered after March, 1983 to comply with paragraphs 147(2)(k.1) and (k.2). Both of these paragraphs are added so that if a plan is ever inadvertently registered when it fails to comply with any of the conditions for registration, the conditions are nonetheless applicable. Where the registration of a DPSP is revoked pursuant to paragraph 147(14)(c.2) or (c.3), new paragraph 147(14)(h) provides that the revocation may be effective on or after the date on which the plan does not comply with the conditions for registration but not before January 1991.

New paragraph 147(14)(c.4) provides that the registration of a DPSP may be revoked if the requirements in new subsection 147(5.1) (which sets out several limits that must be complied with each year) are not satisfied. Under new paragraph 147(14)(i), the revocation may be effective at the end of the year for which the requirements are not satisfied, or on any subsequent date.

The last new ground of revocation, set out in paragraph 147(14)(c.5), is the failure an employer who participates in a DPSP to report the pension adjustment of a member of the plan. New paragraph 147(14)(j) provides that revocation for this reason may be effective on or after the date by which the information return is required to be filed.

Subclause 15(12)

ITA
147(15)

Subsection 147(15) of the Act contains rules that are applicable where the registration of a DPSP is revoked. Paragraph 147(15)(e) currently provides that a revoked DPSP shall not be considered to be an employees profit sharing plan. Paragraph 147(15)(e) is being amended to also provide that a revoked DPSP shall not be considered to be a retirement compensation arrangement.

This amendment is effective as of October 9, 1986 – the date on which the retirement compensation arrangement rules were announced.

Subclause 15(13)

ITA
147(18)

Subsection 147(18) of the Act provides rules that apply where a trust governed by a DPSP disposes of property to a taxpayer for consideration that is below the fair market value of the property or acquires property from a taxpayer for consideration in excess of the fair market value. Paragraph 147(18)(c) provides that the difference between the fair market value and the consideration is an amount received out of the DPSP by the taxpayer. Paragraph 147(18)(d) provides that the difference is an amount forfeited in the trust and reallocated to the taxpayer for the purpose of the special 50 per cent tax on DPSP forfeitures in section 201.

The special tax on DPSP forfeitures is being eliminated after 1990 and is being replaced by a 50-per-cent tax applicable only with respect to amounts determined under subsection 147(18). As part of this change, paragraph 147(18)(d) is amended, effective after 1990, to provide that differences determined under subsection 147(18) are amounts taxable under amended section 201.

Subclause 15(14)

ITA
147(19) to (22)

A new set of rules is being introduced to regulate the transfer of funds between registered plans after 1988. The rules regarding the transfer of amounts from DPSPs to registered plans are in new subsections 147(19) to (22) of the Act, and the rules regarding the transfer of amounts from registered pension plans (RPPs) to registered retirement savings plans (RRSPs) and other RPPs are in new section 147.3. In general, these new rules permit the direct transfer of amounts between plans on a tax-free basis where the amounts satisfy certain conditions, and they prohibit the direct transfer of all other amounts. The deductions currently provided under paragraphs 60(j) and (k) in respect of amounts received from RPPs and DPSPs and recontributed by a taxpayer to other registered plans are being substantially eliminated. As a consequence, indirect tax-free rollovers – an amount received by an individual and included in income under subparagraph 56(1)(a)(i) or subsection 147(10) and a subsequent contribution that qualifies as a deduction under paragraph 60(j) or (k) – will generally not be available. For a discussion of the limited circumstances in which indirect rollovers will still be available with respect to amounts received from DPSPs, reference may be made to the commentary on new subsection 104(27.1) and new paragraph 147(10.2)(d).

New subsection 147(19) provides for the direct transfer on behalf of an individual of a lump sum amount from a DPSP to an RPP, an RRSP or another DPSP for the individual's benefit. A transfer may be made on behalf of an individual only if the individual was an employee of an employer who participated in the plan or was a spouse or common-law spouse (as defined in new subsection 146(1.1)) of a deceased employee. Only amounts that would be included in the individual's income, if they were paid directly to the individual, may be transferred under subsection 147(19). In the case of a transfer between DPSPs, the recipient DPSP must reasonably be expected to have at least five beneficiaries throughout the year in which the transfer is made – a condition which is similar to the condition currently in paragraph 60(k).

New subsection 147(20) provides that an individual is not required to include in income an amount transferred from a DPSP to a registered plan in accordance with subsection 147(19). It also provides that no taxpayer may claim a deduction in respect of any such transfer.

New subsection 147(21) provides that a DPSP becomes a revocable plan where an amount is transferred from the plan to another registered plan otherwise than in accordance with subsection 147(19). An exception is made for amounts that are deductible under paragraph 60(j), (j.2) or (k) by the individual on whose behalf the transfer is made. Thus, such amounts need not be paid out before being contributed to another plan. Where a DPSP becomes a revocable plan, subsection 147(14) permits the Minister of National Revenue to revoke the registration of the plan.

New subsection 147(22) applies where an amount is transferred from a DPSP on behalf of a beneficiary in a year for which the limits in subsection 147(5.1) are not satisfied in respect of the beneficiary. In these circumstances, the amount, to the extent that it derives from amounts allocated or reallocated to the beneficiary in the year (or from related earnings), is considered not to have been transferred in accordance with subsection 147(19). The Minister may, however, exempt all or a portion of an amount from the application of this rule.

Subsection 147(22) is primarily an anti-avoidance rule intended to prevent the transfer of funds from a DPSP to another registered plan where the transfer would otherwise enable amounts to remain tax-sheltered after the limits in subsection 147(5.1) have been violated. Where any of these limits is violated, the registration of a DPSP may be revoked as of the end of the year to which these limits apply. Without subsection 147(22), the effect of the revocation could be avoided by transferring funds from the DPSP before the effective date of the revocation.

New subsections 147(19) to (21) are applicable in respect of amounts transferred after 1988. New subsection 147(22) is applicable in respect of amounts transferred after 1990.

Subclauses 15(15) to (20)

These set out the effective dates for the amendments to section 147.

Registered Pension Plans

Clause 16

New subsections 147.1 to 147.3 of the Act set out the rules applicable to registered pension plans (RPPs). These rules include: rules relating to the registration and deregistration of pension plans (section 147.1), rules with respect to the deductibility of RPP contributions (section 147.2) and rules governing the transfer of funds between plans (section 147.3).

Subclause 16(1)

ITA
147.1

New section 147.1 of the Act sets out rules relating to the registration, amendment and administration of pension plans as well as the conditions and procedure for the revocation of an RPP's registration. The section also contains the pension adjustment limits and the restriction on the payment of past service benefits, which are central elements of the new system for restricting tax-assisted retirement saving. Section 147.1 is effective for 1989 and subsequent years, except as discussed below.

Definitions
ITA
147.1(1)

Subsection 147.1(1) of the Act defines those terms that are relevant for the purposes of the provisions of the Act in new sections 147.1 to 147.3 relating to registered pension plans.

"actuary"

An "actuary" is defined as a Fellow of the Canadian Institute of Actuaries.

"administrator"

An "administrator" of a pension plan is the person or body of persons ultimately responsible for the administration of the plan. Subsection 147.1(6) of the Act requires that there be an administrator of an RPP. Subsection 147.1(7) sets out certain obligations applicable to administrators for purposes of the Act.

"average wage"

The "average wage" for a calendar year is defined as 1/12th of the aggregate of the wage measures for each month in the 12-month period ending on June 30th of the immediately preceding calendar year. For this purpose, the wage measure for a month is the average weekly wages and salaries of the Industrial Aggregate in Canada for that month as published by Statistics Canada. The average wage is relevant for the purposes of:

- determining the money purchase limit for 1995 and subsequent calendar years;
- applying the maximum pension rule in draft subsection 8503(4) of the *Income Tax Regulations*, which is based on compensation adjusted to reflect increases in the average wage; and
- determining, in certain cases, the portion of a benefit increase that is relevant in the calculation of a past service pension adjustment (PSPA).

"compensation"

The "compensation" of an individual from an employer for a calendar year is, except as described below, the salary, wages and other amounts in respect of the individual's employment with the employer that the individual is required by sections 5 and 6 of the Act to include in income for the year. Where the individual is not a resident of Canada for a period in the year, "compensation" does not include remuneration in respect of the period except to the extent acceptable to the Minister.

"Compensation" also includes prescribed amounts. The rules prescribing amounts for this purpose are set out in draft section 8510 of the *Income Tax Regulations*. In general terms, those rules prescribe amounts in respect of periods when an individual's remuneration is less than normal because of disability, leave of absence and similar causes.

The compensation of an individual for a year in respect of an employer is relevant for the purposes of the PA limits in subsections 147.1(8) and (9), the condition of registration relating to employee contributions in draft paragraph 8503(10)(a) of the *Income Tax Regulations* and the maximum pension rule in draft subsection 8503(4) of the *Income Tax Regulations*. It is also relevant for the purpose of the PA limits in subsection 147(5.1), relating to deferred profit sharing plans.

"defined benefit provision"

A "defined benefit provision" of a pension plan consists of terms of the plan under which benefits are determined in any way other than as described in the definition of "money purchase provision". Generally speaking, under a defined benefit provision a member of the plan is promised a certain level of retirement benefits regardless of the cost of providing such benefits. While the member's contributions (if any) under the provision are predetermined, the member's employer is obligated to contribute whatever is required to ensure that the member will be provided with the promised retirement benefits. Actuarial valuations are prepared on a periodic basis as a means of estimating the employer's financial obligation in respect of the provision.

Under a typical defined benefit provision, each member is entitled to annual retirement benefits equal to a fixed percentage of average annual earnings over a period of employment multiplied by the number of years of the member's service. For example, under a 1.5-per-cent plan with benefits based on earnings in the last three years of service, a member retiring with 20 years of service would be entitled to an annual pension of 30 per cent of the member's final three-year average earnings.

A defined benefit provision includes not only the terms of a plan that specify the amount of lifetime retirement benefits payable, but also the terms providing for related benefits such as benefits after the death of a member. Generally, a pension plan will have at most one defined benefit provision, although it is possible for a plan to have two or more such provisions. Each provision is treated separately for the purposes of the registration requirements.

The definition of "defined benefit provision" is applicable after 1987.

"member"

A "member" of a pension plan is a person who has a right to receive benefits under the plan, other than an individual who has such a right only by virtue of the participation of another individual in the plan. This right may be to an immediate benefit, as in the case of a member who has retired and is in receipt of retirement benefits, or to a future benefit, as in the case of an active member or a member who has terminated employment and is entitled only to a deferred pension. The right may also be contingent, as in the case of a member who must remain in a plan for a minimum of two years before accrued benefits under the plan vest, or absolute, as in the case of a member whose interest is immediately vested.

A person need not be an active member of a plan to be considered a member; a person who has accrued benefits in respect of prior years is considered to be a member in a year despite the fact that no further benefits accrue under the plan to the member in respect of the year.

This definition of "member" may not coincide with the definition used in a particular plan. Thus, a reference in sections 147.1 to 147.3 to a member of a plan may include individuals who are not referred to by the plan as members.

The definition of "member" does not include a person whose right to benefits under a plan exists by virtue of the pensionable service of another person. For example, a surviving spouse is not considered to be a member.

"money purchase limit"

The "money purchase limit" for each calendar year up to 1994 is defined to be the amount set out as follows:

Year	Money purchase limit
	(in dollars)
before 1990	nil
1990	11,500
1991	12,500
1992	13,500
1993	14,500
1994	15,500

For 1995 and subsequent years, the money purchase limit will be $15,500 multiplied by the ratio of the average wage for the year to the average wage for 1994 and rounded to the nearest ten dollars. ("Average wage" is also defined in subsection 147.1(1).) Should the average wage decline from one year to the next, the money purchase limit would remain at its value for the immediately preceding year.

The money purchase limit is relevant for a number of provisions. Subsection 147.1(8) provides that the pension adjustment (PA) of a plan member in respect of an employer (plus the member's PAs in respect of non-arm's length employers) for a year after 1990 may not exceed the money purchase limit for the year. In addition, the money purchase limit provides the basis for three other dollar limits:

- the limit on contributions to and reallocation of forfeitures under deferred profit sharing plans for 1991 and subsequent years;
- the limit on deductible RRSP contributions for 1991 and subsequent years; and
- the limit on lifetime retirement benefits payable under a defined benefit provision of a registered pension plan, where the benefits commence to be paid in 1995 or subsequent years.

"money purchase provision"

A "money purchase provision" of a pension plan consists of terms of the plan under which an account is maintained for each member and the only benefits payable in respect of a member are those that can be provided by the amount in the member's account. A member's account is credited with contributions made by or on behalf of the member and any other amounts (including investment earnings) allocated to the member and is charged with payments made in respect of the member. A money purchase provision differs from a defined benefit provision in at least two important respects: there is no promise that a certain level of retirement benefits will be provided, and there is no uncertainty regarding the employer's financial obligation to the plan.

A typical example of a money purchase provision is one that provides for annual employer and employee contributions each equal to 5 per cent of the member's remuneration. The contributions are allocated to the member and earn interest until the member retires, at which time the total contributions plus accumulated interest are used to purchase an annuity.

The definition of "money purchase provision" is applicable after 1985.

"multi-employer plan"

"Multi-employer plan" is defined to have the meaning assigned by regulation. Draft subsection 8500(1) of the *Income Tax Regulations* defines "multi-employer plan" for this purpose. In general terms, a pension plan is a multi-employer plan if no more than 95 per cent of the members are employed by a single employer or by a group of non-arm's length employers.

Special treatment is provided to multi-employer plans under draft subsection 8506(4) of the *Income Tax Regulations* (modifications of registration requirements) and under subsection 147.1(9) of the Act (pension adjustment limits). Multi-employer plans are also subject to special provisions relating to the determination of pension adjustment reversal (PAR) amounts under draft section 8304 of the *Income Tax Regulations.*

"participating employer"

A "participating employer" in relation to a pension plan means an employer who has made, or is required to make, contributions to the plan or payments under the plan in respect of the employer's employees or former employees. A "participating employer" in relation to a pension plan will therefore include a public sector employer that does not make contributions to the plan but makes payments to its employees pursuant to the terms of the plan. A "participating employer" also includes an employer prescribed under draft subsection 8308(7) of the *Income Tax Regulations*, which is relevant in certain cases where an employee is "loaned" to an employer.

"past service event"

"Past service event" is defined to have the meaning assigned by regulation. Draft subsection 8300(1) of the *Income Tax Regulations*, in conjunction with draft subsection 8300(2), defines "past service event" for this purpose. In general terms, a past service event is any transaction, event or circumstance that occurs after 1990 and that results in an alteration of past service benefits under a defined benefit provision of a pension plan. This definition is relevant for the purpose of new subsection 147.1(10) (restrictions on payment and funding of past service benefits).

"single amount"

A "single amount" is defined as an amount that is not part of a series of periodic payments. The definition applies after 1987.

"specified multi-employer plan"

"Specified multi-employer plan" is defined to have the meaning assigned by regulation. Draft subsection 8506(1) of the *Income Tax Regulations* defines "specified multi-employer plan" for this purpose. In general terms, a pension plan will be a specified multi-employer plan if the plan is established pursuant to a collective bargaining agreement, arm's length employers participate in the plan, employer contributions are made pursuant to a negotiated contribution formula and the plan is administered by a board of trustees that is not controlled by employers. Typically, such a plan will be a plan established for persons employed in a particular industry or trade where there is frequent movement of employees among employers.

The pension adjustments (PAs) of the members of a specified multi-employer plan are reported as though the plan contained only money purchase provisions; that is, the PAs are determined on the basis of contributions to the plan. However, pursuant to draft Part LXXXV of the *Income Tax Regulations*, the plan must comply with the registration requirements for plans containing defined benefit provisions except where specific exemptions are provided from those requirements by draft section 8506 of the *Income Tax Regulations*. The pension adjustment limits in new subsections 147.1(8) and (9) of the Act do not apply with respect to a specified multi-employer plan.

"spouse"

A "spouse" of an individual is defined to have the meaning assigned by new subsection 146(1.1) of the Act. That subsection defines "spouse" to include a common-law spouse where certain conditions are satisfied. The definition is relevant for the purposes of subsections 147.3(5) and (7) of the Act (tax-free transfer on marriage breakdown and tax free transfer of lump sum death benefit).

"wage measure"

The "wage measure" for a month is defined as the average weekly wages and salaries of the Industrial Aggregate in Canada for the month as published by Statistics Canada. The wage measure is used in determining the average wage for a calendar year, which is also defined in subsection 147.1(1).

Registration of Plan

ITA
147.1(2)

Subsection 147.1(2) of the Act contains the rules that apply with respect to the registration of a pension plan.

Paragraph 147.1(2)(a) provides that the Minister of National Revenue shall not register a plan unless application is made in prescribed manner by the plan administrator and the plan complies with prescribed conditions for registration. In addition, where the plan is subject to pension benefits legislation, application must have been made for registration under such legislation.

Draft subsection 8508(1) of the *Income Tax Regulations* prescribes the manner in which an application for registration is to be made, including a requirement that the application be made by registered mail. The prescribed conditions for registration are also in draft Part LXXXV of the *Income Tax Regulations*, and most of the conditions are cross-referenced in draft subsection 8501(1).

Paragraph 147.1(2)(b) provides that, where a plan is submitted for registration before January 1, 1991, the registration is effective from the day specified in writing by the Minister of National Revenue.

Paragraph 147.1(2)(c) provides that, where a plan is submitted for registration after December 31, 1990, the registration is effective from January 1 of the year in which the application is made or, if later, the plan's date of commencement.

Deemed Registration

ITA
147.1(3)

Subsection 147.1(3) of the Act contains rules that apply with respect to the period between the time that application is made for the registration of a pension plan and the time that a final determination is made as to whether the plan will be registered. In general terms, a plan is considered to be registered during this period except that if the final determination is a refusal to register the plan, the plan is then considered never to have been registered.

Paragraph 147.1(3)(a) provides that, except for certain purposes, a pension plan is considered to be registered from January 1 of the year in which application is made for registration (or, if later, the plan's date of commencement). However, this rule does not apply before 1989. One of the main consequences of the deemed registration is that the retirement compensation arrangement rules (and particularly the refundable tax payable under Part XI.3 of the Act) do not apply before it is known whether the plan will be registered by the Minister of National Revenue. Also, pension adjustments (PAs), pension adjustment reversal (PARs) and past service pension adjustments (PSPAs) will have to be determined and reported while the actual registration is pending.

Paragraph 147.1(3)(a) does not apply for the purpose of paragraph 60(j) (transfer of superannuation benefits), paragraph 60(j.2) (transfer of periodic payments to spousal RRSP) and section 147.3 (transfers from RPPs). Thus, tax-free transfers cannot be made from a pension plan until it is actually registered by the Minister.

Paragraph 147.1(3)(b) is a special rule that applies in the unusual situation in which the final determination with respect to an application for the registration of a pension plan is a refusal to register the plan. The final determination would be the decision made by the Minister unless that decision is appealed (pursuant to subsection 172(3)), in which case the final determination would be the outcome of the appeal. Where paragraph 147.1(3)(b) is applicable, the Act applies after the date of the final determination as if the plan had never been considered to be a registered pension plan. As a consequence, contributions made to the plan before that date would generally be regarded as contributions to a retirement compensation arrangement (RCA) and any investment earnings of a trust established in connection with the plan would be earnings of an RCA trust. Thus, the obligations to withhold amounts in respect of employer contributions and to pay the special tax under Part XI.3 would be considered to have arisen as if the plan had always been an RCA.

Paragraph 147.1(3)(b) modifies certain rules as they apply with respect to RCAs, as follows:

- information returns under Part XI.3 of the Act are not required to be filed until 90 days after the final determination, where they would otherwise have been required to be filed earlier,

- the penalty under subsection 227(8) for a failure to withhold does not apply with respect to contributions made to the plan before the final determination, and

- the liability under subsection 227(8.2) that arises on a failure to withhold from an RCA contribution does not apply with respect to contributions made before the final determination.

However, the liability under subsection 227(8.3) to pay interest in respect of an amount that should have been withheld will apply with respect to employer contributions to the plan before the final determination.

Where paragraph 147.1(3)(b) applies, steps will have to be taken to reverse all PAs, PSPAs and PARs reported before the final determination.

Acceptance of Amendments

ITA
147.1(4)

Subsection 147.1(4) of the Act provides that, for an amendment to an RPP to be accepted by the Minister of National Revenue, an application for acceptance of the amendment must be made in prescribed manner by the plan administrator, the plan as amended must comply with the prescribed conditions for the registration of pension plans and the amendment itself must comply with prescribed conditions.

Draft subsection 8508(3) of the *Income Tax Regulations* prescribes the manner in which an application for the acceptance of an amendment is to be made. A substantial portion of draft Part LXXXV of the *Income Tax Regulations* prescribes the conditions for registration (most of which are cross-referenced in draft subsection 8501(1)). Draft subsection 8507(1) of the *Income Tax Regulations* prescribes conditions applicable with respect to amendments to RPPs.

It should be noted that draft subsection 8508(2) of the *Income Tax Regulations* imposes a requirement for the filing of an amendment to an RPP (or to a funding arrangement) with the Minister within 60 days of the amendment.

For other provisions relating to RPP amendments, reference should be made to subsections 147.1(10) and (15) of the Act.

Additional Conditions

ITA
147.1(5)

In order to ensure that the objects of the Act with respect to tax assistance for retirement savings are achieved, subsection 147.1(5) of the Act authorizes the Minister of National Revenue to impose reasonable conditions applicable with respect to registered pension plans, a class of such plans or a particular registered pension plan.

This recognizes that it is impractical to set out detailed rules regulating all tax-related aspects of every pension plan. Where important issues arise, however, it is anticipated that additional regulations will be enacted to deal with them without undue reliance on Ministerial discretion.

Administrator

ITA
147.1(6)

Subsection 147.1(6) of the Act requires that there be a person or body of persons that has ultimate responsibility for the overall operation of an RPP. Furthermore, it requires that the administrator (or the majority of persons who constitute the body that is the administrator) be resident in Canada, unless otherwise permitted by the Minister of National Revenue. The administrator of an RPP may, for example, be an employer who participates in the plan or a board of trustees of the plan. Where the actual day-to-day administration of a plan is performed by an agent employed for that purpose, or such responsibility is assigned to an employee, that agent or employee is not the administrator. The administrator is the person (or body) with the ultimate responsibility for administering the plan.

Obligations of Administrator

ITA
147.1(7)

Subsection 147.1(7) of the Act imposes several requirements on the administrator of an RPP. Certain other obligations, including filing requirements, are imposed by draft Parts LXXXIII to LXXXV of the *Income Tax Regulations.* Failure to comply with these obligations is an offence under amended subsection 238(1) of the Act. Where the administrator is a body, new subsection 147.1(16) subjects every person who is a member of that body to the obligations.

Paragraph 147.1(7)(a) requires the administrator of an RPP to administer the plan in accordance with the terms of the plan as registered. (New subsection 147.1(15) provides a meaning for the expression "pension plan as registered".) However, where a plan fails to comply with the prescribed conditions for registration or any other requirement of the Act or the *Income Tax Regulations*, paragraph 147.1(7)(a) allows the plan to be administered as if it were amended to so comply.

Paragraph 147.1(7)(b) requires the administrator of an RPP to notify the Minister as to the name and address of the administrator or of each person that constitutes the body that is the administrator. This notification must be given within 30 days of appointment of the administrator, except that where an administrator is appointed after 1988 and before June 1, 1990 or was an administrator on January 1, 1989, the notification must be given by June 30, 1990.

Where any name or address provided to the Minister changes, paragraph 147.1(7)(c) requires the administrator to inform the Minister in writing of the new information within 60 days after the change.

Pension Adjustment Limits

ITA
147.1(8)

Subsection 147.1(8) of the Act is one of the provisions imposing the comprehensive limits on tax-assisted retirement saving through employer-sponsored RPPs and deferred profit sharing plans (DPSPs). By limiting PAs, the subsection effectively limits both the money purchase contributions that can be made by or on behalf of a plan member and the retirement benefits that can accrue to a member on a defined benefit basis.

An RPP (other than a multi-employer plan) is, by virtue of subsection 147.1(8), subject to deregistration if the PAs of a member do not comply with the limits in the subsection. A corresponding provision in paragraph 147(5.1)(c), together with subsection 147(14), enables the Minister to deregister a DPSP if the PAs of a beneficiary under the plan are excessive. A further rule in subsection 147.1(9) renders an RPP that is a multi-employer plan subject to deregistration where limits that relate solely to the plan are not satisfied.

Subsection 147.1(8) provides that an RPP (other than a multi-employer plan) becomes a revocable plan at the end of any calendar year after 1990 where:

(a) the PA of a member in respect of a participating employer exceeds the money purchase limit for the year ($12,500 for 1991) or 18 per cent of the compensation (as defined in subsection 147.1(1)) of the member for the year from the employer, or

(b) the PA of a member in respect of a participating employer plus the member's PAs in respect of all other employers who do not deal at arm's length with the employer exceeds the money purchase limit for the year.

Where an RPP becomes a revocable plan, subsections 147.1(11) to (13) permit the Minister of National Revenue to revoke the registration of the plan.

Subsection 147.1(8) applies commencing with PAs for 1991. However, the subsection does not apply where its application is excluded by regulation. Draft subsection 8505(6) of the *Income Tax Regulations* provides that subsection 147.1(8) does not apply until 1992 in the case of certain RPPs to which no money purchase contributions are made. For further details regarding this transitional rule, reference may be made to the commentary on subsection 8505(6).

Pension Adjustment Limits – Multi-Employer Plans

ITA
147.1(9)

Subsection 147.1(9) of the Act provides that an RPP that is a multi-employer plan (MEP) becomes a revocable plan where

(a) the aggregate of the pension credits of a member under the benefit provisions of the plan determined in respect of the member and a particular employer exceeds the money purchase limit for the year or 18 per cent of the compensation (as defined in subsection 147.1(1)) of the member for the year from the employer, or

(b) the aggregate of the pension credits of a member under the benefit provisions of the plan exceeds the money purchase limit for the year.

The pension credits of a member are determined, for the purpose of subsection 147.1(9), pursuant to the regulations. In this regard, draft section 8301 of the *Income Tax Regulations* sets out the rules for determining pension credits under defined benefit and money purchase provisions of RPPs. The pension credit of a member under a benefit provision of a plan in respect of an employer is the amount determined in respect of the provision for inclusion in the member's pension adjustment in respect of the employer. In general terms, a pension credit under a money purchase provision is a measure of the contributions made by or on behalf of a member, plus any other amounts allocated to the member. A pension credit under a defined benefit provision is a lump sum measure of the benefits accruing to the member under the provision. For further details, reference may be made to the commentary on section 8301.

The limit in paragraph 147.1(9)(a) applies with respect to the total of the pension credits of a member for a year in respect of a single employer. The limit in paragraph 147.1(9)(b) applies with respect to the total of the pension credits of a member for a year in respect of all employers who participate in the plan. In the most common case where a MEP contains a single benefit provision and a member is employed by only one employer in a year, there will be a single pension credit that must comply with the limit.

Where an RPP becomes a revocable plan, subsections 147.1(11) to (13) permit the Minister of National Revenue to revoke the registration of the plan.

Subsection 147.1(9) applies commencing with pension credits for 1991. However, the subsection does not apply where its application is excluded by regulation. Draft subsection 8505(6) of the *Income Tax Regulations* provides that subsection 147.1(9) does not apply until 1992 in the case of certain RPPs to which no money purchase contributions are made. For further details regarding this transitional rule, reference may be made to the commentary on subsection 8505(6).

Subsection 147.1(9) does not apply with respect to RPPs that are specified multi-employer plans, except in the special circumstances noted below.

The difference between subsections 147.1(8) and (9) is that compliance with the limits in the former subsection may require the terms of two or more RPPs (as well as the terms of any deferred profit sharing plans) to be coordinated. Compliance with the limits in the latter subsection depends solely on the terms of the particular multi-employer plan in respect of which the subsection is applied. Consequently, where an individual participates in a MEP as well as in an RPP that is not a MEP, only the non-MEP is subject to deregistration if the individual's PA is excessive but would not be excessive if the individual participated in one or other of the plans, but not in both. The result is that the terms of a MEP need not depend on the terms of any other plan, but the terms of other plans must be designed having regard to the terms of any MEP in which members may also participate.

Subsection 147.1(14) contains an anti-avoidance rule that provides, in certain circumstances, for two or more MEPs to be treated as a single plan for the purposes of the application of subsection 147.1(9). For further details, reference may be made to the commentary on subsection 147.1(14).

Past Service Benefits

ITA
147.1(10)

Subsection 147.1(10) of the Act is one of the provisions imposing the comprehensive limits on tax-assisted retirement saving. Subsections 147.1(8) and (9) result in restrictions on money purchase contributions and on currently accruing defined benefits, while subsection 147.1(10) restricts defined benefits provided on a past service basis.

Subsection 147.1(10) applies where benefits have become provided under a defined benefit provision of an RPP in respect of a member as a consequence of a past service event. A "past service event" (as defined in draft subsection 8300(1) of the *Income Tax Regulations*) is, in general terms, any transaction, event or circumstance that occurs after 1990 and that results in defined benefits becoming provided in respect of a period before the time when the transaction, event or circumstance occurs. Typically, a past service event will be an amendment to an RPP or will consist of the crediting of service that was pensionable service under another RPP, pursuant to a reciprocal agreement between the plans. For a more detailed discussion of past service events, reference may be made to the commentary on the definition of "past service event" in subsection 8300(1).

Subsection 147.1(10) prohibits the payment of past service benefits, to the extent that the benefits are in respect of periods after 1989 and before the year in which the corresponding past service event occurs, unless specified conditions are satisfied. This prohibition applies to benefits payable to the beneficiaries of deceased members, as well as to benefits payable to members themselves. Subsection 147.1(10) also prohibits the funding of such benefits until certain conditions are satisfied.

In the case of past service benefits payable to a member (including a retired or deferred vested member), paragraph 147.1(10)(a) imposes the condition that the Minister of National Revenue have certified that prescribed conditions are satisfied. The only condition prescribed for this purpose is in draft subsection 8307(2) of the *Income Tax Regulations* which generally requires that the member have sufficient unused RRSP deduction room to accommodate the past service benefits. The value of past service benefits is measured, for the purpose of this test, by the provisional past service pension adjustment (provisional PSPA). Provisional PSPA is determined pursuant to rules in draft section 8303 of the *Income Tax Regulations*. Draft subsection 8307(1) of the *Income Tax Regulations* requires that an application for certification be made in prescribed form by the plan administrator. For further details, reference may be made to the commentary on those provisions.

The condition in paragraph 147.1(10)(a) applies with respect to both the payment and the funding of past service benefits. However, an additional rule in subsection 147.1(10) permits past service benefits to be funded while an application for the Minister's certification is pending. If the Minister refuses to issue the certification, then the funding of the past service benefits would have to cease.

The condition in paragraph 147.1(10)(a) does not apply where the regulations exclude its application. Draft section 8306 of the *Income Tax Regulations* provides an exclusion for past service benefits where the associated provisional PSPA is nil. It also exempts past service benefits resulting from certain broad-based benefit upgrades. For further details, reference may be made to the commentary on section 8306.

The conditions in paragraphs 147.1(10)(b) and (c) apply with respect to the payment and funding of post-1989 benefits provided as a result of a past service event to the beneficiaries of a deceased member. Paragraph 147.1(10)(b) is applicable if the past service event has occurred before the death of the member; otherwise, paragraph 147.1(10)(c) is applicable. The condition in paragraph 147.1(10)(b) is satisfied if, immediately before the member's death, subsection 147.1(10) did not require that the past service event be disregarded in determining benefits payable to the member, or if the additional past service benefits provided to each beneficiary of the member as a consequence of the past service event are acceptable to the Minister. Where the past service event occurs after the death of the member, paragraph 147.1(10)(c) requires that the additional past service benefits provided to each beneficiary of the deceased member be acceptable to the Minister. It is expected that most broad-based increases in survivor benefits will be acceptable, whereas an increase (other than an inflation-justified increase) confined to selected survivors will, in many cases, not be permitted. An increase may also be unacceptable where it appears that the increase was postponed until after the death of a member because the member did not have sufficient unused RRSP deduction room for his or her benefits to be increased.

A further condition, in paragraph 147.1(10)(d), applies regardless of whether the past service benefits are first payable to a member or to a beneficiary of a deceased member. By virtue of this condition, a past service event is required to be disregarded if any previous past service event is required by subsection 147.1(10) to be disregarded. For example, where two past service events affect the benefits provided to a member, and a certification of the Minister is required with respect to the first event but not the second, past service benefits resulting from the second event cannot be paid until the certification has been obtained. The situations in which a past service event will have to be disregarded by reason of paragraph 147.1(10)(d) will probably be rare.

Past service benefits in respect of pre-1990 service are not subject to subsection 147.1(10) since the new system of comprehensive limits, and in particular the linkage between RRSP deduction room and benefit accruals under RPPs, depends only on benefit accruals for 1990 and subsequent years. However, by virtue of the registration rules in draft paragraphs 8503(3)(e) and 8505(1)(d) of the *Income Tax Regulations*, pre-1991 benefits are subject to the Minister's approval.

It should be noted that the conditions in subsection 147.1(10) are in addition to any registration and similar conditions imposed by draft Part LXXXV of the *Income Tax Regulations*. Thus, where an RPP is amended to increase past service benefits, the Minister's acceptance of the amendment will be required (and subsection 147.1(4) will apply) as well as any certifications for the purposes of subsection 147.1(10).

Revocation of Registration – Notice of Intention

ITA
147.1(11)

Subsection 147.1(11) of the Act provides that the registration of a pension plan can be revoked if:

- the plan does not comply with the prescribed conditions for registration,
- the plan is not administered in accordance with its terms as registered,
- the plan becomes a revocable plan,
- past service benefits are paid by the plan, or contributions are made to the plan in respect of past service benefits, contrary to subsection 147.1(10),
- a condition imposed by the Minister of National Revenue is not complied with,

- a requirement under subsection 147.1(6) (requirement for administrator) or 147.1(7) (obligations of administrator) is not satisfied,
- the plan administrator or a participating employer fails to file an information return relating to the plan or to a member of the plan as and when required by regulation,
- the plan administrator fails to file an actuarial report relating to the plan as and when required by regulation, or
- the registration of the plan under the applicable pension benefits legislation is refused or revoked.

An RPP becomes a revocable plan, and thus a plan referred to in paragraph 147.1(11)(c), where it is declared to be such by a provision of the Act or the regulations. The provisions declaring a plan to be a revocable plan are subsections 147.1(8) and (9) (pension adjustment limits), subsection 147.3(12) (restriction on transfers) and certain provisions in draft Parts LXXXIII, LXXXIV and LXXXV of the *Income Tax Regulations*, including in particular draft subsection 8501(2).

As a first step in revoking the registration of a pension plan, the Minister of National Revenue must notify the plan administrator by registered mail of the Minister's intent to revoke the plan's registration as of a specified date. The date can be the date of the failure or event that entitles the Minister to give the notice of intent, or any subsequent date. Upon receipt of such a notice, the plan administrator or a participating employer may, under amended subsection 172(3), appeal to the Federal Court of Appeal.

Notice of Revocation

ITA
147.1(12)

Subsection 147.1(12) of the Act provides that, after the Minister of National Revenue has given a notice of intention to revoke the registration of a pension plan, the Minister may give a further notice that the registration of the plan is revoked as of a specified date, which date may be no earlier than the date stated in the notice of intent. The notice of revocation cannot be given until 30 days after the notice of intent was given. Subsection 147.1(12) also allows the Minister to give a notice of revocation where a plan administrator applies for the revocation of the registration of the plan.

Revocation of Registration

ITA
147.1(13)

Subsection 147.1(13) of the Act provides that the registration of a pension plan is revoked as of the date specified in the Minister's notice of revocation given under subsection 147.1(12) unless, in the course of an appeal pursuant to subsection 172(3), the Federal Court of Appeal orders otherwise.

Anti-Avoidance – Multi-Employer Plans

ITA
147.1(14)

Subsection 147.1(14) of the Act applies, on notice from the Minister of National Revenue to the administrators of two or more multi-employer plans (MEPs), to modify the application of subsection 147.1(9) (multi-employer plan limits) with respect to the plans. Subsection 147.1(14) is an anti-avoidance rule intended to prevent MEPs from taking advantage of the fact that the limits in subsection 147.1(9) do not apply across plans and that those limits do not apply with respect to specified multi-employer plans (SMEPs).

Where subsection 147.1(14) is invoked by the Minister, the limits in paragraphs 147.1(9)(a) and (b) apply as if the MEPs to which notice has been given were a single MEP. Thus, the aggregate pension credits of a member under benefit provisions of all the plans will be subject to the limits. Moreover, a SMEP to which notice has been given is subject to subsection 147.1(9) as if it were not a SMEP (except that pension credits are determined in the regular way for the SMEP).

It is anticipated that the Minister would invoke subsection 147.1(14) where, for example, there is a significant degree of common membership between two MEPs and it is reasonable to consider that advantage is being taken of the fact that the limits in subsection 147.1(9) do not apply across plans. Another example would be the establishment of a money purchase MEP in conjunction with a SMEP to circumvent the restriction in draft subsection 8506(2) of the *Income Tax Regulations* that a SMEP not contain a money purchase provision.

Plan as Registered

ITA
147.1(15)

Subsection 147.1(15) of the Act provides that any reference to a pension plan *as registered* means the terms of the plan on the basis of which the Minister of National Revenue has registered the plan and as amended by

- amendments that have been accepted by the Minister, and
- amendments that have been submitted for acceptance but have not been accepted or rejected, if it is reasonable to expect the Minister to accept the amendment.

The expression also includes terms not contained in documents constituting the plan that are terms of the plan by virtue of the *Pension Benefits Standards Act, 1985* or a similar law of a province.

This subsection is relevant for the purpose of paragraph 147.1(7)(a), which requires the administrator of a plan to administer the plan in accordance with its terms as registered (except in certain special circumstances). In particular, it permits the administrator to take into account amendments that have been submitted for acceptance by the Minister and that can reasonably be expected to be accepted. For example, where the contribution rate under a money purchase plan is increased, the additional contributions could normally be made as soon as the amendment is submitted to the Minister, assuming that it is reasonable to expect that the PA limits in subsections 147.1(8) and (9) will be respected. (The requirement that there be such an expectation is a prescribed condition for registration, by virtue of draft paragraph 8501(1)(e) of the *Income Tax Regulations.*)

Subsection 147.1(15) is also relevant for the purposes of subsection 147.1(11), which provides that the registration of an RPP may be revoked if it is not administered in accordance with its terms as registered, and section 147.2, which contains rules regarding the deductibility of employer and employee contributions to RPPs.

Separate Liability for Obligations

ITA 147.1(16)

Subsection 147.1(16) of the Act applies where the administrator of an RPP is a body of persons, and provides that each person who is a member of the body is subject to the obligations imposed on the administrator of the plan. Consequently, where the administrator fails to comply with an obligation, each such person is liable for any penalties imposed by the Act in respect of the failure. This subsection is applicable as of Royal Assent.

Superintendent of Financial Institutions

ITA 147.1(17)

Subsection 147.1(17) of the Act allows the Minister of National Revenue to seek advice from the Superintendent of Financial Institutions with respect to any matter relating to pension plans. This subsection is applicable as of Royal Assent.

Regulations

ITA 147.1(18)

Subsection 147.1(18) of the Act allows the Governor in Council to make regulations

- prescribing conditions for the registration of pension plans and enabling the Minister of National Revenue to impose additional conditions and to waive any prescribed conditions (paragraph 147.1(18)(a));
- prescribing circumstances under which a registered pension plan becomes a revocable plan (paragraph 147.1(18)(b));
- specifying the manner of determining (or enabling the Minister to determine) how benefits under an RPP are to be associated with periods of service (paragraph 147.1(18)(c));
- requiring administrators to make determinations in connection with the computation of PAs, PSPAs and PARs (paragraph 147.1(18)(d));
- giving discretion to the Minister with respect to the methods of calculating PAs, PSPAs and PARs (paragraphs 147.1(18)(e) and (f));
- requiring the provision of information to a person who needs the information in order to calculate PAs, PSPAs or PARs (paragraph 147.1(18)(g));
- permitting the Minister to obtain information regarding the methods used to determine PAs, PSPAs and PARs (paragraph 147.1(18)(h));
- with respect to applications for (and exemptions from) certifications in respect of past service benefits and reporting relating thereto (paragraphs 147.1(18)(i) to (n));
- requiring the submission of information concerning plan amendments, and the submission of reports and information returns (paragraphs 147.1(18)(o), (p), (r) and (s));
- enabling the Minister to require any person to provide information so that the Minister can determine whether the registration of an RPP may be revoked (paragraph 147.1(18)(q));

- defining a number of expressions used in the Act (paragraph 147.1(18)(t)); and

- generally to carry out the purposes and provisions of the Act relating to RPPs and the determination and reporting of PAs, PSPAs and PARs (paragraph 147.1(18)(u)).

Subsection 147.1(18) is applicable as of Royal Assent.

Deductibility of Registered Pension Plan Contributions

ITA
147.2

New section 147.2 of the Act provides the rules that govern the deductibility of employer and employee contributions to registered pension plans (RPPs). It replaces the existing rules in paragraphs 8(1)(m) and (m.1) (employee contributions) and paragraphs 20(1)(q) and (s) (employer contributions). The new rules are applicable to the 1991 and subsequent taxation years.

Employer Contributions

ITA
147.2(1)

Subsection 147.2(1) provides an employer with a deduction in respect of the employer's contributions to an RPP. This subsection replaces existing provisions relating to the deductibility of employer contributions in paragraphs 20(1)(q) and 20(1)(s). As amended, paragraph 20(1)(q) provides that employer contributions to an RPP may be deducted in computing income from a business or property to the extent that they are deductible under subsection 147.2(1).

Under subsection 147.2(1), an employer contribution to an RPP is deductible in computing the employer's income for a taxation year if the contribution is made in the year or within 120 days after the end of the year, it was not deducted in the previous year and it satisfies certain other conditions that depend on whether the contribution is made under a money purchase or defined benefit provision of the plan and on whether the plan is a specified multi-employer plan (SMEP).

In the case of a contribution under a money purchase provision or a contribution to a SMEP, the additional conditions are that the contribution be made in accordance with the plan as registered and that the contribution relate to the taxation year for which the deduction is claimed or to previous years. By virtue of this latter condition, contributions made within 120 days after the end of a taxation year in respect of services rendered by employees after that year are not deductible in computing income for that year.

The additional conditions that apply in the case of a contribution under a defined benefit provision (other than a contribution made to a SMEP) are that the contribution be an eligible contribution (as defined in subsection 147.2(2)), that the contribution be made to fund benefits provided in respect of periods before the end of the taxation year for which the deduction is claimed and that the contribution comply with subsection 147.1(10). Subsection 147.1(10) prohibits the funding of past service benefits except where conditions specified in that subsection are satisfied.

Although subsection 147.1(1) is applicable commencing with an employer's 1991 taxation year, it does not apply to contributions made before 1991. Where the 1991 taxation year starts in 1990, the existing provisions in paragraphs 20(1)(q) and (s) apply to determine the deductibility of contributions made in 1990.

By providing a deduction only in respect of eligible contributions or contributions made in accordance with the terms of a plan as registered, subsection 147.2(1) effectively limits the amount of employer contributions that can be deducted in a year. Several provisions are relevant in this regard.

(a) Subsection 147.2(2), which defines "eligible contributions" in relation to a defined benefit plan: In general terms, a contribution is an eligible contribution only if it is required to fund promised benefits, it is calculated in accordance with specified conditions and it is made pursuant to an actuarial recommendation that has been approved by the Minister of National Revenue.

(b) Subsections 147.1(8) and (9), which require that the pension adjustment (PA) of each member of an RPP satisfy certain limits: A member's PA depends on contributions made in respect of the member to fund money purchase benefits and on the amount of defined benefits that accrue to the member (and also on contributions on the member's behalf to deferred profit sharing plans as well as on certain other amounts). Thus, a plan must suitably define and restrict such contributions and benefits so that the limits in subsections 147.1(8) and (9) are not violated. Failure to comply with such limits can result in the revocation of a plan's registration.

(c) The various new provisions that limit benefits, including in particular those in draft section 8503 of the *Income Tax Regulations*: Since a contribution is an eligible contribution (as defined in subsection 147.2(2)) only if it is made to fund benefits, a limit on benefits effectively places a limit on contributions.

Employer Contributions – Defined Benefit Provisions

ITA
147.2(2)

Subsection 147.2(2) of the Act defines eligible contributions for the purpose of subsection 147.2(1), which provides for the deduction of employer contributions to RPPs. Eligible contributions are also referred to in draft paragraph 8502(b) of the *Income Tax Regulations* which restricts the contributions that can be made to an RPP. Subsection 147.2(2) is derived from existing paragraph 20(1)(s), but also includes conditions not in that paragraph.

An employer contribution to an RPP in respect of defined benefits is an eligible contribution where it is made on the recommendation of an actuary in whose opinion the contribution is required so that the plan will have sufficient assets to provide benefits in accordance with its terms as registered. The recommendation must have been approved in writing by the Minister of National Revenue and it must be based on an actuarial valuation prepared as of a date that is not more than 4 years before the day on which the contribution is made. The valuation must also satisfy the conditions described below.

Subparagraph 147.2(2)(a)(ii) requires that the valuation be based on an actuarial funding method that produces a reasonable matching of contributions with accruing benefits. This condition is intended to preclude the use of methods that may result in excessive advance funding of benefits or that do not generate an actuarial liability that is based, in a reasonable way, on accrued benefits. However, it is not intended to prohibit the use of methods such as the entry age method. Valuing a plan's liabilities on the assumption that the plan will be wound-up, and the accelerated funding of any deficiency revealed by such valuation, would also generally be acceptable.

Subparagraph 147.2(2)(a)(iii) requires that the valuation be based on assumptions that are reasonable both at the time the valuation is prepared and at the time of payment of the particular contribution. Assumptions which are unduly conservative, for example, would not be regarded as reasonable. To be reasonable, assumptions would have to be consistent and appropriate to the funding method used. For example, economic assumptions used in connection with solvency deficiency funding would be expected to differ at times from those used for funding on a going-concern basis. In particular, since solvency deficiency funding is based on the assumption of an immediate wind-up of the plan, the assumed return on plan investments would generally be closer to current market rates of return than in the case of going-concern funding. Where assumptions which are initially reasonable become unreasonable, a revised valuation will have to be prepared.

Subparagraph 147.2(2)(a)(iv) requires that the valuation be prepared in accordance with generally accepted actuarial principles.

Subparagraph 147.2(2)(a)(v) requires that the valuation comply with prescribed conditions. Where the prescribed conditions are inconsistent with the requirement that assumptions be reasonable or that generally accepted actuarial principles be used, the prescribed conditions prevail. Draft section 8513 of the *Income Tax Regulations* sets out additional conditions for the purpose of subparagraph 147.2(2)(a)(v). The conditions are applicable only in the case of contributions made to plans referred to as designated plans. Plans in which more than 50 per cent of the active members are either connected with participating employers or earn more than 2½ times the Year's Maximum Pensionable Earnings (YMPE) are designated plans. A plan in which less than 50 per cent of the active members are either connected or earn more than 2½ times the YMPE is also a designated plan if there are less than 10 active members and the Minister has not exempted the plan from being a designated plan. The conditions require the use of the accrued benefit method for determining actuarial liabilities and current service costs, restrict the assumptions that may be used and impose a number of other constraints. For further details, reference may be made to the commentary on section 8513.

Subparagraph 147.2(2)(a)(vi) applies where more than one employer participates in a plan, and requires that the assets and actuarial liabilities be allocated in a reasonable manner among the employers. This requirement is intended to serve two purposes: first, to ensure that the unfunded liability associated with an employer, and thus the employer's contributions in respect of that liability, are not excessive; and second, to require a reasonable determination of each employer's actuarial surplus for the purpose of the rule in paragraph 147.2(2)(d) described below. As a consequence of the allocation, there may be an unfunded liability in respect of the employees of one employer at the same time there is an actuarial surplus in respect of the employees of another employer who participates in the same plan.

It is not intended that the allocation require a separate accounting in respect of each employer, as if each employer had established its own plan. Contribution requirements may be determined on an average basis, where this would not be unreasonable. It is expected that the allocation methods currently employed by most, if not all, plans in which more than one employer participates would be acceptable. On the other hand, subparagraph 147.2(2)(a)(vi) permits a separate accounting if the participating employers choose to follow that approach.

Paragraphs 147.2(2)(c) and (d) set out rules that apply for the purposes of subsection 147.2(2).

Paragraph 147.2(2)(c) allows for the pre-funding of inflation adjustments and similar adjustments where the plan terms do not provide for such adjustments to be made automatically but it is reasonable to expect that they will be made on an ad hoc basis.

Paragraph 147.2(2)(d) permits all or a portion of an actuarial surplus to be disregarded in determining the contribution requirements. In the absence of that paragraph, current service contributions made while a plan is in a surplus position would not be eligible contributions (since they would not be required to be made so that the plan has sufficient assets to pay benefits), and thus could not be deducted. Paragraph 147.2(2)(d) permits an actuarial surplus to be ignored for the purpose of determining contribution requirements, to the extent that the surplus does not exceed the lesser of (i) 20 per cent of actuarial liabilities, and (ii) the greater of twice the combined employer and employee current service cost for the first year following the effective date of a valuation and 10 per cent of actuarial liabilities. Consequently, deductible current service contributions may be made while an RPP has a moderate amount of surplus. Where the surplus exceeds the amount that may be ignored, the excess must be applied to satisfy the employer's contribution obligations before deductible contributions may be made by the employer. This rule is analogous to the existing rule in paragraph 39 of Information Circular 72-13R8.

In addition to contributions that are eligible contributions pursuant to the rules described above, subsection 147.2(2) provides that an employer contribution to an RPP in respect of defined benefits is an eligible contribution where it is a prescribed contribution. Contributions are prescribed for this purpose by draft section 8514 of the *Income Tax Regulations*. By virtue of that section, the following transitional rules apply:

- contributions in respect of which Revenue Canada has given approval under paragraph 20(1)(s) of the Act are eligible contributions;
- certain contributions made in 1991 pursuant to a negotiated or statutory formula or which are otherwise required to be paid are eligible contributions; and
- an actuarial surplus in excess of the amount that may be disregarded pursuant to the rule in paragraph 147.2(2)(d) may be applied uniformly to the end of 1993 to satisfy employer contribution obligations.

For further details regarding draft section 8514, reference may be made to the commentary on that section.

Filing of Actuarial Report

ITA
147.2(3)

Subsection 147.2(3) of the Act requires that an actuarial report be filed with the Minister of National Revenue whenever the Minister's approval of a contribution recommendation is sought. The report must be prepared by an actuary and contain information required by the Minister. It is expected that the Minister will require information similar to that currently required by paragraph 26 of Information Circular 72-13R8.

Employee Contributions

ITA
147.2(4)

Subsection 147.2(4) of the Act provides a deduction in respect of employee contributions to an RPP, and is applicable to the 1991 and subsequent taxation years. This subsection replaces existing paragraphs 8(1)(m) and (m.1) and subsections 8(6) and (8). As amended, paragraph 8(1)(m) provides that employee contributions to an RPP may be deducted in computing income from an office or employment to the extent that they are deductible under subsection 147.2(4).

Subsection 147.2(4) provides separate rules for the deductibility of:

(a) current service contributions made after 1990 and past service contributions made after 1990 in respect of years after 1989;

(b) past service contributions made in respect of years before 1990 in which an employee was not a contributor to an RPP; and

(c) contributions made in respect of years before 1990 in which an employee was a contributor to an RPP.

Paragraphs 147.2(4)(a) to (c) exclude prescribed contributions, and thus such contributions are not deductible. Draft subsection 8307(14) of the *Income Tax Regulations* prescribes, for this purpose, certain contributions that are derived from retiring allowances. For further detail, reference may be made to the commentary on subsection 8307(14).

Paragraph 147.2(4)(a) provides that an employee contribution made after 1990 under a money purchase provision of an RPP or under a defined benefit provision of an RPP in respect of pensionable service after 1989 is deductible in computing income to the extent that it is made in accordance with the terms of the plan as registered. This rule applies whether a contribution is a current service or a past service contribution, and whether it is a required or an optional contribution.

The condition in paragraph 147.2(4)(a) that contributions be made in accordance with the terms of a plan as registered effectively limits the amount of contributions that can be deducted in a year, since the terms of a plan will reflect the limits imposed by several new provisions, including:

(a) Draft paragraph 8503(10)(a) of the *Income Tax Regulations*, which provides, as a condition of registration, that the amount of employee contributions in respect of defined benefits which can be required by a plan may not exceed specified limits.

(b) Subsections 147.1(8) and (9), which require that the pension adjustment of each member of an RPP satisfy certain limits: A plan must suitably define and restrict contributions and benefits so that these limits are respected.

(c) The various new provisions that limit benefits, including in particular those in draft section 8503 of the *Income Tax Regulations*: Since the amount of contributions which a plan can require an employee to make depends upon the benefits to be provided, a limit on benefits results in an effective limit on contributions.

Paragraph 147.2(4)(b) allows an individual to deduct RPP contributions made by him in respect of years of service prior to 1990 in which the individual was not a contributor to an RPP. The deduction is similar to the deduction currently available under subparagraph 8(1)(m)(ii) (in conjunction with subsection 8(8)). An individual's deduction under paragraph 147.2(4)(b) in a year is limited to the least of

(a) the amount of such contributions, other than additional voluntary contributions (AVCs) and prescribed contributions, made by the individual in the year or a previous year, minus deductions previously claimed in respect of those contributions,

(b) $3,500, and

(c) $3,500 for each year before 1990 in which the individual was not a contributor to any RPP where all or part of the year is eligible service of the individual under an RPP to which the individual has made a contribution of the type to which paragraph 147.2(4)(b) applies, minus deductions previously claimed in respect of those contributions and minus deductions claimed under existing subparagraph 8(1)(m)(ii) in respect of AVCs.

AVCs (as defined by a new definition in subsection 248(1)) are contributions made by an employee to an RPP on an optional basis and that will be used to provide money purchase benefits.

Existing subparagraph 8(1)(m)(ii) applies on a plan by plan basis, in the case of an individual who was a member of two or more plans. Thus, an individual who makes past service contributions to a plan in respect of a year in which the individual was not a contributor to the plan can deduct the contributions under subparagraph 8(1)(m)(ii) even though the individual was a contributor to another plan. New paragraph 147.2(4)(b) introduces a change in this regard. In order for a past service contribution to be deductible by an individual under paragraph 147.2(4)(b), the individual cannot have been a contributor to any RPP in the year in respect of which the contribution was made. Grandfather treatment is provided for past service contributions made to RPPs before March 28, 1988, or made on or after that date pursuant to a written agreement entered into before that date. The present plan-by- plan test of whether an individual was a contributor will continue to apply in determining whether such contributions are deductible under new paragraph 147.2(4)(b).

Paragraph 147.2(4)(c) permits an individual to deduct RPP contributions made by the individual in respect of years of service prior to 1990 in which the individual was a contributor to an RPP. The deduction is similar to the deduction currently available under subparagraph 8(1)(m)(iii) (in conjunction with subsection 8(8)).

The maximum deduction which an individual may claim under paragraph 147.2(4)(c) in a year is equal to the lesser of

(a) the amount of contributions (other than AVCs, prescribed contributions and contributions eligible for deduction under paragraph 147.2(4)(b)) made by the individual in the year or a previous year in respect of years of service prior to 1990, minus deductions previously claimed in respect of those contributions, and

(b) $3,500 minus the total of amounts deducted by reason of new paragraphs 147.2(4)(a) and (b) in computing the individual's income for the year.

Teachers

ITA 147.2(5)

Subsection 147.2(5) of the Act provides a special rule applicable to teachers, and replaces a similar rule in existing subsection 8(7). A teacher (employed by Her Majesty or a tax-exempt employer) who makes or has made contributions to an RPP in respect of years of service before 1990 may deduct these contributions, to the extent they have not previously been deducted, in accordance with the rules in new paragraph 147.2(4)(b) even though the teacher was a contributor to the plan in the years in respect of which the contributions were made. This enables a teacher to take advantage of the additional annual $3,500 deduction provided by paragraph 147.2(4)(b), instead of the generally more restrictive deduction provided by paragraph 147.2(4)(c).

The special rule in subsection 147.2(5) is applicable to the 1991 to 1994 taxation years, after which it will cease to apply.

Inter-Plan Transfers

ITA
147.3

Section 147.3 of the Act provides a new set of rules governing the transfer of funds from RPPs to RRSPs and other RPPs after 1988 (or after 1987, in the case of transfers to which subsection 147.3(3) applies). Parallel rules applying to transfers from DPSPs to various registered plans are provided in new subsections 147(19) to (22). The new rules in section 147.3 permit the direct transfer of lump sum amounts between plans on a tax-free basis only where the amounts satisfy certain conditions. If a lump sum amount is transferred from an RPP directly to an RRSP or another RPP in any other circumstances, the registration of the transferor plan may generally be revoked.

The deductions currently provided under paragraphs 60(j) and (k) of the Act in respect of amounts received from RPPs and DPSPs and recontributed to registered plans are being substantially eliminated, so that indirect tax-free rollovers – an amount received by a taxpayer and included in income under subparagraph 56(1)(a)(i) or subsection 147(10) and a subsequent contribution that qualifies as a deduction under paragraph 60(j) or (k) – will generally not be available. Deductions under paragraphs 60(j) and (k) will continue to be available in 1989 in respect of periodic payments from RPPs or DPSPs which are transferred to RPPs or RRSPs. Also, a deduction under paragraph 60(j) will continue to be provided after 1988 in respect of a lump sum payment from a non-registered pension plan, where the payment is attributable to services rendered while the taxpayer was not resident in Canada. Paragraph 60(j) will also provide a deduction after 1988 in respect of certain RPP and DPSP amounts received through a testamentary trust and contributed to an RRSP or RPP. Moreover, for the years 1989 to 1994 inclusive, new paragraph 60(j.2) will provide a deduction of up to $6,000 per year in respect of periodic payments received from an RPP or DPSP and transferred to an RRSP of a taxpayer's spouse.

The purpose of the new transfer provisions in section 147.3 is to accommodate the portability of retirement savings between different plans. However, under certain circumstances inter-plan transfers can provide a means of obtaining tax deferral advantages in excess of the intended limits. For this reason, it is necessary to deal separately with various types of transfers and to set limits on the amount of funds that can be transferred in particular situations. Four general types of transfer are recognized:

(a) a transfer from a money purchase provision of an RPP to another money purchase RPP provision or to an RRSP;

(b) a transfer from a money purchase provision of an RPP to a defined benefit provision of an RPP;

(c) a transfer between defined benefit provisions of RPPs; and

(d) a transfer from a defined benefit provision of an RPP to a money purchase RPP provision or to an RRSP.

Provision is also made for transfers in special circumstances: marriage breakdown, a return of pre-1991 employee contributions, and the death of a plan member.

By virtue of subsection 147.3(14), a transfer between plans may be considered to take place even though there is not a physical transfer of funds. For example, a transfer would include a situation where the trust pursuant to which funds are held in connection with a plan is amended so that all or part of the funds can be used to pay benefits under another plan.

An amendment to an RPP to replace a money purchase provision by a defined benefit provision, or vice versa, also results in a transfer of funds from one type of benefit provision to another. Pursuant to draft paragraph 8502(k) of the *Income Tax Regulations*, such "transfers", and any other "transfers" within a plan, will be required to respect the limits in section 147.3 as if the amounts were transferred from one plan to another.

Transfer – Money Purchase to Money Purchase or RRSP

ITA
147.3(1)

Subsection 147.3(1) of the Act permits a direct transfer on behalf of an individual of a lump sum amount from a money purchase provision of an RPP to a money purchase provision of another RPP or to an RRSP for the benefit of the individual. There is no limit to the amount that may be transferred between plans in accordance with this subsection.

Transfer – Money Purchase to Defined Benefit

ITA
147.3(2)

Subsection 147.3(2) of the Act permits a direct transfer on behalf of an individual of a lump sum amount from a money purchase provision of an RPP to a defined benefit provision of another RPP to fund benefits to be provided to the individual under the defined benefit provision.

In general, a transfer in accordance with subsection 147.3(2) will be made to fund benefits in respect of past service. Thus, it will often be necessary to obtain a certification of the Minister of National Revenue in respect of the benefits, pursuant to new subsection 147.1(10). Transfers in accordance with subsection 147.3(2) generally serve to increase the amount of PSPA that is certifiable by the Minister. Where the benefits will require certification by the Minister, it may be necessary for the transfer to be made on a conditional basis, so as to increase the room for PSPA, with all or a portion of the amount being returned to the original plan or paid to the individual in the event that the certification is not obtained. Alternatively, the transfer may be postponed until after the certification. By virtue of draft subsection 8307(6) of the *Income Tax Regulations*, if the individual on whose behalf the transfer is to be made gives an irrevocable direction to transfer the funds once the Minister's certification has been obtained, the transfer will be considered to have occurred for the purpose of determining if the individual has sufficient room to accommodate the PSPA.

Transfer – Defined Benefit to Defined Benefit

ITA
147.3(3)

Subsection 147.3(3) of the Act permits a direct transfer of a lump sum amount from a defined benefit provision of one RPP to a defined benefit provision of another RPP, where the amount is transferred as a consequence of benefits becoming provided under the second plan to one or more individuals who were members of the first plan. Since subsection 147.3(3) applies only where an amount is transferred to be held in connection with a defined benefit provision of an RPP, the recipient plan cannot promise benefits of a money purchase nature based on the transferred amount. The amount transferred may include all or a portion of any actuarial surplus under the transferor plan.

Subsection 147.3(3) is intended, in particular, to accommodate transfers in two situations, although it is not confined to such transfers. The first is a transfer of funds between plans where an employee terminates employment with one employer and, on becoming employed by a subsequent employer, is provided with defined benefits under an RPP of the second employer, subject to the transfer of funds from the RPP of the first employer. Such transfers are generally provided for by reciprocal or portability arrangements. The second situation involves the reorganization of one or more RPPs, such as the splitting of one plan into two or more plans, the transfer of a group of members from one plan to another or the amalgamation of two plans.

As in the case of a transfer in accordance with subsection 147.3(2), a transfer in accordance with subsection 147.3(3) will generally be made to fund benefits in respect of past service. Such past service benefits (to the extent that they are in respect of post-1989 service) will often be subject to Ministerial certification before they can be paid. Transfers in accordance with this subsection, unlike those from money purchase provisions, do not serve to offset the PSPA associated with the past service benefits under the new defined benefit provision. On the other hand, such transferred amounts are generally not subtracted in determining the pension adjustment reversal relating to the termination of membership in the first plan.

Although in general the transfer rules apply beginning in 1989, subsection 147.3(3), and subsection 147.3(9) to the extent that it relates to transfers made in accordance with subsection 147.3(3), apply beginning in 1988. This is to accommodate certain transfers of actuarial surplus between defined benefit provisions in 1988 and after March 27, 1988, where the transfer is structured in such a way that there would otherwise be an income inclusion to plan members.

Transfer – Defined Benefit to Money Purchase

ITA
147.3(4)

Subsection 147.3(4) of the Act permits a direct transfer on behalf of an individual of a lump sum amount from a defined benefit provision of an RPP to a money purchase provision of another RPP or to an RRSP, subject to a prescribed limit on the amount that may be so transferred. A limit is prescribed for this purpose by draft section 8515 of the *Income Tax Regulations* which, in general terms, establishes a limit equal to the lifetime retirement benefits forgone as a result of the transfer multiplied by a present value factor. For further details, reference may be made to the commentary on draft section 8515. Subsection 147.3(4) does not permit a plan member's share of an actuarial surplus under a defined benefit provision to be transferred to another plan.

It should be noted that the registration rules also have the effect of restricting the amount that may be transferred, since they limit the benefits that may be paid under a defined benefit provision in respect of a member. In particular, draft paragraph 8503(2)(m) of the *Income Tax Regulations* limits the lump sum amount that may be paid in satisfaction of a member's entitlement to other benefits under a defined benefit provision to the present value of the other benefits. However, draft paragraph 8503(2)(h) of the *Income Tax Regulations* allows the payment of a termination benefit equal to employee contributions plus interest (or, in some cases, two times employee contributions plus interest).

Transfer to RPP or RRSP for Spouse on Marriage Breakdown

ITA
147.3(5)

Subsection 147.3(5) of the Act permits the direct transfer of a lump sum amount from one RPP to another or to an RRSP for the benefit of the spouse or former spouse of a plan member, where the amount is transferred pursuant to a court order or written agreement relating to a division of property on marriage breakdown. For the purpose of this subsection, the extended definition of spouse in subsection 146(1.1) applies, as does the expansion of the definition in subsection 252(3).

Transfer – Return of Pre-1991 Contributions

ITA
147.3(6)

Subsection 147.3(6) of the Act permits the direct transfer on behalf of an individual of a lump sum amount from a defined benefit provision of an RPP to an RRSP or another RPP where the amount constitutes a return of employee contributions (with associated interest) that were paid prior to 1991. This subsection is intended to allow the transfer of such contributions (and interest) when a defined benefit RPP is amended to retroactively reduce or eliminate the requirement for members to make contributions. (Member contributions that are refunded on a termination of employment would normally be transferrable to an RRSP or another RPP pursuant to subsection 147.3(4).)

Subsection 147.3(6) is confined to contributions made before 1991 since such contributions generally reduced RRSP room otherwise available. It is not appropriate to permit post-1990 employee contributions made under a defined benefit provision to be used to provide money purchase benefits that are additional to the defined benefits, as such a transfer would provide a way for additional tax-assisted saving to be realized without being taken into account through PAs.

Transfer – Lump Sum Benefits on Death

ITA
147.3(7)

Subsection 147.3(7) of the Act permits the direct transfer on behalf of the spouse of an RPP member of a lump sum (other than an amount in respect of an actuarial surplus in the plan) to which the spouse is entitled as a consequence of the death of the member. The transfer may be made to an RPP or to an RRSP for the spouse's benefit. For the purpose of this subsection, the extended definition of spouse in subsection 146(1.1) applies. Amounts to which beneficiaries other than a spouse are entitled are not eligible for a direct tax-free transfer to an RPP or RRSP.

In addition to the direct rollover provided by virtue of subsection 147.3(7), amended subsection 104(27), in conjunction with amended paragraph 60(j), enables the spouse of a deceased member who receives a lump sum through the estate of the deceased to transfer the amount on a tax-free basis to an RRSP or RPP. Further details are provided in the commentary on subsection 104(27).

By virtue of an amendment made to paragraph 60(l), certain lump sum amounts paid by an RPP to a child on the death of a parent or grandparent may be rolled over to an annuity for a fixed term not exceeding 18 minus the age of the child at the time the annuity is acquired. This rollover is described more fully in the commentary on paragraph 60(l).

Transfer Where Money Purchase Plan Replaces Defined Benefit Plan

ITA
147.3(8)

Subsection 147.3(8) permits, in certain circumstances, the direct transfer of property from a defined benefit provision of an RPP to a money purchase provision of another RPP. This provision is intended to apply where a defined benefit plan is replaced by a money purchase plan and not all of the defined benefit assets are credited to members' money purchase accounts, for example where there is an actuarial surplus under the defined benefit plan. The following conditions must be satisfied in order for the subsection to apply with respect to the transfer of an amount:

- the recipient plan must provide that the transferred amount is to be used to satisfy the obligation of employers to make contributions in respect of the money purchase provision,
- the amount must be transferred in conjunction with the transfer of amounts on behalf of all or a significant number of members of the transferor plan whose defined benefits are being replaced by money purchase benefits, and
- the transfer must be approved in writing by the Minister of National Revenue.

Taxation of Amount Transferred

ITA
147.3(9) and (10)

Subsection 147.3(9) of the Act provides that an individual is not required to include in income an amount transferred from an RPP to another RPP or an RRSP in accordance with any of subsections 147.3(1) to (8). It also provides that no taxpayer may claim a deduction in respect of any such transfer. Subsection 147.3(9) applies beginning in 1988 in the case of transfers made in accordance with subsection 147.3(3). For all other transfers, it applies beginning in 1989.

Subsection 147.3(10) provides rules that apply where an amount is transferred on behalf of an individual from an RPP to an RRSP or to another RPP otherwise than in accordance with subsections 147.3(1) to (7). In this case, the amount so transferred is deemed to have been paid from the RPP directly to the individual and to have been contributed by the individual to the RRSP or other RPP. As a consequence, the amount is included in the individual's income (to the extent it would not otherwise have been) and the rules with respect to the deductibility of contributions to RPPs and RRSPs will apply. In addition, the special tax under Part X.1 on excess contributions to an RRSP may be payable.

Division of Transferred Amount

ITA 147.3(11)

Subsection 147.3(11) of the Act provides that where a lump sum amount is transferred from an RPP to an RRSP or another RPP and part, but not all, of the amount is transferred in accordance with subsections 147.3(1) to (8), subsection 147.3(9) will apply with respect to the portion of the amount so transferred while subsection 147.3(10) will apply with respect to the remainder. For example, if a lump sum amount is transferred on behalf of an individual from a defined benefit plan to an RRSP and the amount exceeds the limit prescribed for the purpose of subsection 147.3(4), only the excess will be included in the individual's income.

Restriction on Transfers

ITA 147.3(12)

Subsection 147.3(12) of the Act provides that a registered pension plan becomes a revocable plan where an amount is transferred from the plan to an RRSP or to another RPP otherwise than in accordance with any of subsections 147.3(1) to (8). However, an exception is made where the amount is transferred on behalf of an individual and the amount is deductible by the individual under paragraph 60(j) or (j.2) or the amount is prohibited from being paid directly to the individual by the pension benefits legislation governing the plan. When an RPP becomes a revocable plan, subsections 147.1(11) to (13) permit the Minister of National Revenue to revoke the registration of the plan.

Subsection 147.3(12) does not apply with respect to a recipient RPP. However, draft paragraph 8502(b) of the *Income Tax Regulations*, in conjunction with draft subsection 8501(2), restricts the contributions that may be made to an RPP. By virtue of those provisions, an RPP that receives an amount from another RPP where the transfer is not in accordance with any of subsections 147.3(1) to (8) will become a revocable plan.

Excess Transfer

ITA 147.3(13)

Subsection 147.1(13) applies where an amount is transferred from a money purchase RPP on behalf of a plan member in a year for which the pension adjustment limits in subsection 147.1(8) or (9) are not satisfied in respect of the member. In these circumstances, the amount, to the extent that it derives from amounts allocated or reallocated to the member in the year (or from related earnings), is considered not to have been transferred in accordance with subsection 147.3(1) or (2). The Minister of National Revenue may, however, exempt all or a portion of an amount from the application of this rule.

Subsection 147.3(13) is primarily an anti-avoidance rule intended to prevent the transfer of funds from a money purchase RPP to an RRSP or another RPP where the transfer would otherwise enable amounts to remain tax-sheltered after the pension adjustment limits in subsection 147.1(8) or (9) have been violated. Where any of these limits is violated, the registration of an RPP may be revoked as of the end of the year to which these limits apply. Without subsection 147.3(13), the effect of the revocation could be avoided by transferring funds from the plan before the effective date of the revocation.

Where subsection 147.3(13) applies with respect to an amount transferred on behalf of an individual, the amount is considered, by virtue of subsection 147.3(10), to be a contribution made by the individual to the recipient RRSP or RPP. Thus, it will be subject to the normal rules for deductibility and, in the case of a transfer to an RRSP, to the excess contributions tax in Part X.1.

Deemed Transfers

ITA
147.3(14)

Subsection 147.3(14) gives a broad meaning to "transfer" for the purposes of section 147.3 and the regulations. By virtue of this subsection, property is treated as having been transferred from one pension plan to another where property held in connection with the first plan is made available to pay benefits under the second plan. For example, a transfer would be considered to have occurred where the trust pursuant to which funds are held in connection with a plan is amended so that all or part of the funds can be used to pay benefits under another plan.

Subclauses 16(2) and (3)

These set out the effective dates for new sections 147.1 to 147.3.

Reassessment

Clause 17

ITA
152(6)

Subsection 152(6) of the Act provides for the reassessment of the tax payable by a taxpayer for a taxation year where the taxpayer has claimed a deduction or credit as the result of a carryback from a subsequent taxation year. The subsection is amended for the 1991 and subsequent taxation years to give a taxpayer the right to amend a return in order to claim a deduction under new subsection 146(6.1). Subsection 146(6.1) provides a deduction for premiums paid to registered retirement savings plans in special circumstances. In some cases, the deduction in respect of a premium will be available for an earlier year than the year in which the premium is paid.

Appeals

Clause 18

Subclause 18(1)

ITA
172(3)(f), (f.1) and (g)

Subsection 172(3) of the Act provides for appeals to the Federal Court of Appeal where there are disputes regarding the status of certain organizations or plans. New paragraphs 172(3)(f) and (f.1) are added to permit appeals where the Minister of National Revenue refuses to register a pension plan, gives a notice of intent to revoke the registration of a registered pension plan or refuses to accept an amendment to such a plan. The closing words of the subsection are amended to provide that an appeal under new paragraph (f) or (f.1) may be made by the administrator of a plan or by a participating employer.

Existing paragraph 172(3)(g), which deals with retirement income funds, is amended to delete the reference to the revocation of the registration of such a fund. This amendment is strictly consequential on a previous amendment to subsection 146.3(11).

The amendments to subsection 172(3) are applicable after 1988.

Subclause 18(2)

ITA
172(5)

New subsection 172(5) provides that where an application is made for the registration of a pension plan, or for the acceptance of an amendment to a registered pension plan, the Minister of National Revenue will be considered to have refused the application if the applicant is not notified of the Minister's decision within one year of the application. This rule enables the applicant to institute an appeal to the Federal Court of Appeal under subsection 172(3) where the Minister does not make a decision with respect to an application within one year. This amendment, which is consequential on the amendments to subsection 172(3), is applicable after 1988.

Subclause 18(3)

This sets out the effective date for the amendments to section 172.

Appeals to Federal Court of Appeal

Clause 19

ITA
180(1)

Subsection 180(1) of the Act provides that an appeal to the Federal Court of Appeal pursuant to subsection 172(3) must be commenced within 30 days from the time that the Minister of National Revenue's decision or notice was mailed, unless this time limit is extended by the Court. Paragraph 180(1)(a) is amended so that a decision of the Minister need not be served by registered mail, but need only be in writing. Paragraphs 180(1)(c) and (d) are added to allow an appeal to the Court where the Minister gives a notice of intent to revoke the registration of a registered pension plan or refuses to accept an amendment to such a plan. The latter amendment is consequential on the amendments to subsection 172(3).

These amendments are applicable after 1988.

Part X Tax on Forfeitures

Clause 20

ITA
201

Section 201 of the Act imposes a special tax with respect to amounts forfeited by the beneficiaries of a deferred profit sharing plan (DPSP). The tax for each year is 50 per cent of the amount by which the forfeitures in the year exceed the sum of

- payments in the year from the DPSP to participating employers, and
- the portion of the forfeitures reallocated in the year (or within 90 days after the end of the year) to other beneficiaries, subject to a limit on the amount of such reallocations that may be taken into account.

Section 201 is intended to prevent the retention of forfeited amounts in a DPSP on an unallocated basis, and to prevent an inappropriate amount of forfeitures being reallocated to any one beneficiary.

By virtue of subsection 147(18), the tax under section 201 may also apply where a trust governed by a DPSP disposes of property to a taxpayer, or acquires property from a taxpayer, for consideration other than the fair market value of the property. Existing paragraph 147(18)(d) deems the difference to be an amount forfeited in the trust and an amount reallocated to the taxpayer, for the purposes of section 201.

The tax with respect to forfeitures is being repealed, effective after 1990, as a consequence of the introduction of new rules that effectively control forfeitures. By virtue of new paragraph 147(2)(i.1), forfeitures must be reallocated to beneficiaries or paid out to employers within a specified period of time. Pursuant to draft subsection 8301(2) of the *Income Tax Regulations*, forfeitures that are reallocated to a beneficiary are, with certain exceptions, included in the beneficiary's pension adjustment (PA). Thus, the reallocated forfeitures are taken into account in the comprehensive system of limits on tax-assisted retirement saving.

Section 201 is amended so that the 50 per cent tax will apply after 1990 only in respect of amounts determined under subsection 147(18) – that is, the difference between the consideration for property acquired or disposed of by a trust governed by a DPSP and the fair market value of the property. Corresponding changes are being made to subsection 147(18).

Part X.1 – Tax in Respect of Over-Contributions to Deferred Income Plans

Clauses 21 and 22

Part X.1 of the Act (sections 204.1 to 204.3) imposes a special tax on excess contributions to registered retirement savings plans (RRSPs) and deferred profit sharing plans. This tax is intended to discourage such contributions from being made to take advantage of the exemption from tax available to such plans in respect of their investment earnings.

At present, the tax as it relates to RRSPs is determined as follows. The amount of excess contributions paid by an individual to an RRSP is calculated separately for each year, under subsection 204.2(1). Subsection 204.1(1) aggregates the excess contributions paid in each year, deducts any contributions that have been returned to the individual, and applies the 1 per cent tax to the result. The tax is payable in respect of each month that an individual has excess contributions for any year, and is calculated as of the end of the month. However, it is not payable until 90 days after the end of the year that includes the month.

The method for determining the amount of tax payable in respect of excess contributions to RRSPs is being modified to conform to the new system of RRSP deduction limits. A single amount – the cumulative excess amount of an individual in respect of RRSPs – will be used in place of the current excess amounts for each year, and will be net of any excess contributions that have been returned to the individual and, unless the individual is a minor, a threshold margin of $8,000. The tax payable by an individual in respect of a month will equal 1 per cent of his or her cumulative excess amount at the end of the month.

The new method for determining Part X.1 tax in respect of excess contributions to RRSPs is applicable for contributions paid after 1990. Excess contributions paid in 1990 or earlier years will continue to be taxed under the existing rules.

Subclause 21(1)

ITA
204.1(2.1)

New subsection 204.1(2.1) of the Act levies a special 1 per cent tax in respect of excess contributions made to RRSPs after 1990. The tax payable by an individual in respect of any month is equal to 1 per cent of the individual's cumulative excess amount at the end of the month. The new rules for determining an individual's cumulative excess amount are in subsection 204.2(1.1) and are discussed below.

Subclause 21(2)

ITA
204.1(4)

New subsection 204.1(4) of the Act provides that the Minister of National Revenue may waive Part X.1 tax, as it relates to RRSPs, where excess contributions were made because of a reasonable error and reasonable steps are being taken to remove the excess contributions. This provision is applicable as of Royal Assent.

Subclause 21(3)

This sets out the effective date for new subsection 204.1(2.1).

Subclause 22(1)

ITA
204.2(1)

Existing subsection 204.2(1) of the Act defines the "excess amount for a year in respect of registered retirement savings plans" of an individual for the purpose of the special tax on excess contributions imposed by subsection 204.1(1). In general terms, an individual's excess amount for a year is the amount by which the individual's contributions in the year to registered retirement savings plans (RRSPs) exceed the amount the individual is entitled to deduct for the year in respect of the contributions (or $5,500, if greater) plus the amount the individual was entitled to deduct for the preceding year in respect of the contributions. Excluded from such contributions are amounts transferred on a tax-free basis to an RRSP under paragraph 60(j) (transfer of superannuation benefits), paragraph 60(j.1) (transfer of retiring allowances), paragraph 60(l) (transfer of RRSP refunds of premiums and certain other RRSP and registered retirement income fund amounts), or subsection 146(16) (transfer of funds from one RRSP to another).

Subsection 204.2(1) is amended to define an individual's excess amount for years after 1990 to be nil. This amendment is made as a consequence of the introduction of new provisions applicable with respect to excess contributions made to RRSPs after 1990. Such contributions will be subject to tax under new subsection 204.1(2.1). Subsection 204.2(1) is also amended to exclude from an individual's excess amount for a year RRSP contributions to which new paragraph 60(j.01) (transfer of actuarial surplus), paragraph 60(j.2) (transfer of periodic income to spousal RRSP), subsection 147(19) (direct transfer from deferred profit sharing plan) or section 147.3 (direct transfers from registered pension plans) applies. This amendment is strictly consequential on the introduction of those new provisions. The amendments to subsection 204.2(1) are applicable after 1987, except that the references to paragraph 60(j.2), subsection 147(19) and section 147.3 are applicable with respect to payments made after 1988.

Subclause 22(2)

ITA
204.2(1.1)

New subsection 204.2(1.1) of the Act sets out the method for determining an individual's cumulative excess amount in respect of RRSPs for the purposes of the subsection 204.1(2.1) tax on excess RRSP contributions made after 1990. In general terms, the cumulative excess amount of an individual in respect of RRSPs at any time in a year is equal to the premiums the individual has paid to RRSPs after 1990 and has not deducted, less the aggregate of the RRSP deduction room available to the individual and, except if the individual is under the age of 18 at any time in the year, $8,000.

The undeducted RRSP premiums of an individual are determined in the manner set out in new subsection 204.2(1.2). In general terms, this amount is equal, at any time, to the premiums paid by the individual to RRSPs after 1990 and before that time (other than premiums paid on a rollover basis or deductible under new subsection 146(6.1)) less such premiums that have been deducted by the individual before the year that includes that time and less amounts that have been paid to the individual after 1990 and before that time out of RRSPs and registered retirement income funds (RRIFs).

The RRSP deduction room available to an individual at any time in a year is determined pursuant to a formula contained in paragraph 204.2(1.1)(b). (The formula also incorporates the $8,000 margin, where applicable.) This amount is computed in the same way as the individual's RRSP deduction limit for the year, except that the amount of net past service pension adjustment ("net PSPA") which reduces the deduction room depends on the time as of which the individual's deduction room is computed. Net PSPA is determined in accordance with new subsection 204.2(1.3). Reference may be made to the commentary on new paragraph 146(1)(g.1) for details regarding the computation of an individual's RRSP deduction limit.

The $8,000 margin which is added to the deduction room reduces the likelihood of the Part X.1 tax being applied where earnings fluctuate and RRSP contributions are made on the basis of a fixed percentage of current earnings. It also ensures consistency with the $8,000 margin provided for the purpose of the certification of past service benefits (as described in the commentary on draft subsection 8307(2) of the *Income Tax Regulations*) and provides a margin of error for RRSP contributors which should help to smooth the transition to the new system of limits. In order to discourage non-deductible contributions being made to RRSPs of children, the $8,000 margin does not apply in the case of an individual who is under 18 years of age at any time in the year for which Part X.1 tax is calculated.

The following example illustrates the calculation of an adult individual's cumulative excess amount in respect of RRSPs.

Assume the following facts in respect of the individual:

(a) The amount of undeducted RRSP premiums at the end of 1991, less deductions claimed in 1991, is $50,000.

(b) An RRSP contribution is made on May 1, 1992 in the amount of $5,000 (on a non-rollover basis).

(c) The individual withdraws $35,000 from the RRSP on December 1, 1992.

(d) The net PSPA is nil throughout 1992, and the individual's available RRSP deduction room for 1992 is $10,000.

In this example, the cumulative excess amount at the end of each month of 1992, and the tax payable under subsection 204.1(2.1) in respect of each month, are calculated as follows:

	January to April	May to November	December
		(in dollars)	
Undeducted RRSP premiums carried forward	50,000	50,000	50,000
Add: RRSP contributions made before the end of the month	–	5,000	5,000
Deduct: RRSP withdrawals made before the end of the month	–	–	(35,000)
Undeducted RRSP premiums at the end of the month	50,000	55,000	20,000
Deduct: available RRSP deduction room	(10,000)	(10,000)	(10,000)
Deduct: $8,000	(8,000)	(8,000)	(8,000)
Cumulative excess amount at the end of the month	32,000	37,000	2,000
Tax payable under subsection 204.1(2.1) in respect of each month	320	370	20

If the individual claims a $10,000 deduction in respect of RRSP premiums in computing income for 1992, the amount of undeducted premiums carried forward to 1993 is $10,000 – undeducted premiums at the end of 1992 of $20,000 less the $10,000 deduction which was claimed.

ITA
204.2(1.2)

New subsection 204.2(1.2) of the Act contains the formula for determining the amount of undeducted RRSP premiums of an individual at any time. This amount is one factor in the computation, under new subsection 204.2(1.1), of an individual's cumulative excess amount in respect of RRSPs.

In general terms, the amount of an individual's undeducted RRSP premiums at any time in a year is the premiums paid by the individual to RRSPs after 1990 and before that time (other than premiums paid on a rollover basis or premiums deductible under new subsection 146(6.1)) that were not deducted for prior years, less amounts paid to the individual after 1990 and before that time out of RRSPs and RRIFs. More specifically, the amount of an individual's undeducted RRSP premiums at any time in a year is calculated as follows:

(a) Determine the individual's undeducted RRSP premiums at the end of the preceding taxation year. This amount is nil if the preceding year is 1990.

(b) Where the year is after 1991, subtract amounts that were deducted by the individual under subsection 146(5) or (5.1) in computing the individual's income for the preceding year in respect of RRSP premiums paid in that preceding year or in earlier years.

(c) Add contributions made to RRSPs by the individual in the year and before the time as of which the calculation is made other than

- amounts paid in the first 60 days of the year and deducted in the preceding year,
- amounts transferred on a tax-free basis under paragraph 60(j) (transfer of pension benefits), 60(j.1) (transfer of retiring allowances), 60(j.2) (transfer of periodic income to spousal RRSP) or 60(l) (transfer of RRSP refunds of premiums and certain other RRSP and RRIF amounts),
- amounts deductible for the year or a preceding taxation year under new subsection 146(6.1), which provides a special deduction in respect of the recontribution of an amount previously withdrawn from an RRSP in specified circumstances, and
- amounts transferred in accordance with the direct transfer rules.

(d) Add the amounts of any gifts that are made in the year and before the time as of which the calculation is made to the individual's RRSPs by persons other than the individual's spouse.

(e) Subtract those amounts received out of RRSPs and RRIFs by the individual in the year and before the time as of which the calculation is made that are included in computing the individual's income (other than such portion of each amount that results in a reduction of the tax payable under subsection 204.1(1) in respect of pre-1991 excess contributions), but only to the extent that the amounts received exceed the deduction claimed by the individual for the year under paragraph 60(l).

Under paragraphs 212(1)(h), (j.1), (l) and (m) and amended paragraph 212(1)(q) of the Act, a non-resident who receives certain amounts may transfer the amounts to an RRSP (or, in some cases, to an RPP or RRIF) and thereby avoid the payment of non-resident withholding tax in respect of the receipts. Such transfers are also excluded from the contributions that are referred to in paragraph (c) above.

ITA
204.2(1.3)

New subsection 204.2(1.3) of the Act sets out the method for computing an individual's net past service pension adjustment (net PSPA) for the purpose of new subsection 204.2(1.1).

Net PSPA enters into the calculation of the cumulative excess amount of an individual in respect of RRSPs, and measures the extent to which the individual's available RRSP deduction room is used up by improvements to past service benefits under a registered pension plan. The calculation of net PSPA is similar to the calculation of this amount as set out in new paragraph 146(1)(d.1) except that, for the purposes of subsection 204.2(1.1), net PSPA is calculated as of a particular time in a year based on PSPAs associated with certifications made in the year and prior to that time and on PSPAs associated with those past service events occurring in the year and before that time in respect of which no certification is required. Reference may be made to the commentary on new paragraph 146(1)(d.1) for a more detailed discussion of net PSPA.

ITA
204.2(1.4)

New subsection 204.2(1.4) of the Act is similar to existing subsection 204.1(2), except that subsection 204.1(2) applies with respect to RRIFs as well as RRSPs. Subsection 204.2(1.4) provides that, for the purpose of determining the amount of an individual's undeducted RRSP premiums, an amount included in the individual's income as the result of the deregistration of an RRSP or RRIF is to be treated as if it were an amount received from an RRSP or RRIF. Thus, such amounts will reduce an individual's undeducted RRSP premiums, and consequently the individual's cumulative excess amount. By virtue of subsection 204.2(1.2), to the extent that such an amount is taken into account in determining Part X.1 tax payable in respect of pre-1991 excess contributions, it will not also result in a reduction in an individual's cumulative excess amount.

Subclause 22(3)

ITA
204.2(3)

Existing subsection 204.2(3) of the Act applies for the purpose of determining an individual's excess amount for each year in respect of RRSPs. It deems a retirement savings plan that has been accepted by the Minister of National Revenue for registration to have been an RRSP from the day the plan came into existence, or from May 25, 1976 if later. This has two consequences. First, payments made to a retirement savings plan before it is accepted for registration are included in determining an individual's excess amount. Second, payments made to a retirement savings plan (whether registered at the time of payment or not) before May 25, 1976 – the date that Part X.1 was first announced – are excluded.

Subsection 204.2(3) is amended so that it also applies for the purpose of determining the amount of an individual's undeducted RRSP premiums under new subsection 204.2(1.2). This amendment is consequential on the introduction of the new mechanism for taxing excess contributions made to RRSPs after 1990.

Subclause 22(4)

ITA
204.2(4)(a)

Subsection 204.1(3) of the Act imposes a special tax when a trust governed by a deferred profit sharing plan (DPSP) has an excess amount at the end of any month. The tax for each month is equal to 1 per cent of the excess amount at the end of the month.

Subsection 204.2(4) defines the "excess amount" for a trust governed by a DPSP. In general terms, the excess amount is equal to the amount by which each employee's contributions to the DPSP each year (other than contributions transferred to the DPSP on a tax-free basis pursuant to paragraph 60(k)) exceed $5,500, minus any contributions returned to the employee.

Paragraph 204.2(4)(a) is amended, applicable after 1988, to exclude contributions which are transferred to a DPSP on a tax-free basis in accordance with new subsection 147(19), and to provide that all contributions made by employees after 1990, and not just the portion of such contributions in excess of $5,500, are to be taken into account in determining the excess amount.

It should be noted that, as a condition of registration after 1990, a DPSP will not be permitted to accept employee contributions (other than contributions transferred in accordance with new subsection 147(19)). On a breach of this condition, the registration of a DPSP may be revoked.

Subclauses 22(5) and (6)

These set out the effective dates for the amendments to section 204.2.

Non-Resident Withholding Tax

Clause 23

Section 212 of the Act imposes a tax of 25 per cent (reduced by many treaties) on certain amounts paid or credited to non-residents by residents of Canada. Pursuant to section 215, this tax must be withheld by the resident payer. Paragraphs 212(1)(h), (l), (m) and (q) include, as amounts subject to the withholding tax, payments to non-residents from registered pension plans (RPPs), registered retirement savings plans (RRSPs), registered retirement income funds (RRIFs) and deferred profit sharing plans (DPSPs). However, except for paragraph 212(1)(q), those paragraphs exempt certain payments made on a direct basis to other registered plans, thereby providing non-residents with the opportunity to make tax-free transfers. The paragraphs are being amended so that the tax-free rollovers more closely parallel the rollovers provided to residents, and to make changes consequential on the introduction of the direct transfer rules for residents.

Subclause 23(1)

ITA 212(1)(h)(iii.1)

Paragraph 212(1)(h) of the Act provides for withholding tax in respect of the payment of pension benefits to non-residents, with certain exemptions. Existing subparagraph 212(1)(h)(iii.1) exempts a payment made directly to an RRSP or RPP for the benefit of the non-resident person where the transfer is made pursuant to an authorization in prescribed form. This subparagraph is being amended to ensure that a non-resident will be entitled to transfer pension benefits to an RRSP or an RPP without the payment of withholding tax only where the transfer of the benefits is in accordance with any of subsections 147.3(1) to (7) (the direct transfer rules for residents) or where the non-resident would be entitled to a deduction under paragraph 60(j) (transfer of pension benefits) or 60(j.2) (transfer of periodic income to spousal RRSP) in respect of the transferred amount if the non-resident were a resident. The amendment to subparagraph 212(1)(h)(iii.1) is applicable with respect to payments made after Royal Assent.

Subclause 23(2)

ITA 212(1)(l)(i)

Paragraph 212(1)(l) of the Act provides for withholding tax in respect of those RRSP distributions to non-residents that would be taxable if received by a resident person. An exemption is provided for an amount that is transferred, pursuant to an authorization in prescribed form, directly to an RRSP or to acquire an annuity described in subparagraph 60(l)(ii), where the amount would be deductible under paragraph 60(l) if the non-resident had been resident in Canada. This exemption would apply, for example, where a refund of premiums received on the death of an RRSP annuitant is so transferred. Subparagraph 212(1)(l)(i) is amended, effective with respect to payments made after Royal Assent, so that the exemption is also available where an amount is transferred to a RRIF. The exempt amounts referred to in paragraph 212(1)(l) do not include amounts transferred from one RRSP of an annuitant to another RRSP or to a RRIF of an annuitant. By virtue of subsection 146(16), such amounts would not be included in the income of a resident annuitant. Thus, they are not subject to withholding tax under paragraph 212(1)(l).

Subclause 23(3)

ITA 212(1)(m)

Paragraph 212(1)(m) of the Act provides for withholding tax in respect of DPSP distributions to non-residents. An exemption is provided for an amount that is transferred, pursuant to an authorization in prescribed form, directly to an RRSP or an RPP, where the amount would be deductible under paragraph 60(j) if the non-resident had been resident in Canada. This exemption is being amended in three respects. First, as a consequence of the introduction of the direct transfer rules for residents, paragraph 212(1)(m) will provide a rollover after 1988 where the transfer to an RRSP or RPP is in accordance with subsection 147(19). Second, the rollover of amounts where a deduction would be available under paragraph 60(j) if the non-resident were a resident in Canada is being eliminated after 1989, consequential on the amendments to that paragraph. Third, a rollover will be available to non-residents where an amount would be deductible under paragraph 60(j.2) (transfer of periodic income to spousal RRSP) if the non-resident were a resident. This last change is effective with respect to payments made after Royal Assent.

Subclause 23(4)

ITA
212(1)(q)

Paragraph 212(1)(q) of the Act provides for withholding tax in respect of those RRIF distributions to non-residents that would be included in income if received by a resident. At present, paragraph 212(1)(q) does not provide non-residents with a tax-free rollover corresponding to the paragraph 60(l) rollover that is available to a resident on whose behalf an amount is transferred from a RRIF to an RRSP or another RRIF or to acquire an annuity described in subparagraph 60(l)(ii). (The rollover is available only to the extent that the payment from the RRIF exceeds the minimum amount required to be paid under the RRIF for a year.) However, an amount can be transferred from a RRIF of a non-resident directly to another RRIF without the payment of withholding tax. This is so because subsection 146.3(14) provides that an amount that is directly transferred between RRIFs is not included in income, and paragraph 212(1)(q) only applies if a RRIF payment would be required to be included in income if the non-resident were a resident.

Paragraph 212(1)(q) is amended, effective with respect to payments made after Royal Assent, to introduce a rollover that parallels the paragraph 60(l) rollover for residents. The rollover for non-residents is available only where an amount is transferred pursuant to an authorization in prescribed form and is transferred directly to the recipient RRSP, RRIF or issuer of the annuity.

Subclauses 23(5) and (6)

These set out the effective dates for the amendments to section 212.

Rules Relating to Non-Resident Withholding Tax

Clause 24

ITA
214(3)(i)

Under subsection 214(3) of the Act, certain amounts that would, if a non-resident person were resident in Canada, be required to be included in the person's income are treated, for the purpose of the non-resident withholding tax, as payments to the person. Paragraph 214(3)(i) applies with respect to amounts that are deemed by section 146.3 to be received from a registered retirement income fund.

Paragraph 214(3)(i) is amended, effective after 1988, to replace a reference to subsection 146.3(12) with a reference to subsection 146.3(11). This amendment is consequential on the 1986 amendments to subsections 146.3(11) and (12).

Offences

Clause 25

ITA
238(1)

Subsection 238(1) of the Act makes it an offence for a person to fail to comply with a number of provisions in the Act and the regulations. An offender is liable to a fine of not less than $1,000 and to imprisonment for up to 12 months. This subsection is amended, as a consequence of the introduction of new obligations in respect of registered pension plans (RPPs), to make it an offence to fail to comply with new subsection 147.1(7), which requires the administrator of an RPP to administer the plan in accordance with the terms of the plan as registered, or to fail to comply with regulations made under new subsection 147.1(18), which provides the authority for regulations relating to RPPs.

Subsection 238(1) is also amended to delete the reference to subsection 227(5). This reference is no longer relevant as a result of an amendment made previously to subsection 227(5).

The amendments to subsection 238(1) are applicable as of Royal Assent.

Communication of Information

Clause 26

ITA
241(4)

Subsection 241(1) of the Act prohibits the communication and use by government officials of information obtained for the purposes of the Act, except as authorized by section 241. Subsection 241(4) authorizes the communication of information in specified circumstances.

Subclause 26(1)

ITA
241(4)(e.1)

New paragraph 241(4)(e.1) of the Act authorizes the communication of a certification made by the Minister of National Revenue for the purposes of new subsection 147.1(10) of the Act, or a refusal to make a certification, to the person who sought the certification. Subsection 147.1(10) requires a certification to be obtained before benefits may be paid as a result of certain improvements to past service benefits under a registered pension plan. Paragraph 241(4)(e.1) is applicable after 1988.

Subclause 26(2)

ITA
241(4)(f)(vi)

Paragraph 241(4)(f) of the Act authorizes the communication of information to government officials outside Revenue Canada, Taxation, for limited purposes. New subparagraph 241(4)(f)(vi), applicable after 1988, permits information to be communicated to officials of the Office of the Superintendent of Financial Institutions to be used for the purpose of providing advice to the

Minister of National Revenue with respect to matters relating to pension plans.

Subclause 26(3)

ITA
241(4)(j)

New paragraph 241(4)(j) of the Act authorizes the communication of specified information to federal officials responsible for administering the *Pension Benefits Standards Act, 1985* and to provincial officials responsible for administering similar provincial legislation. The information that may be communicated includes the identity of pension plans, of those responsible for the administration of pension plans and of employers who participate in pension plans. It also includes information regarding the terms of pension plans and related funding arrangements and the registration status of pension plans. Paragraph 241(4)(j) is applicable after 1988.

Subclause 26(4)

ITA
241(10)(a)

Paragraph 241(10)(a) of the Act sets out the definition of "official" for the purposes of section 241. The definition is amended, effective after 1988, to include a person employed in the service of a provincial pension commission or similar authority engaged in administering pension benefits legislation. This change is relevant for the application of paragraph 241(4)(a), which allows the communication, in the course of administering or enforcing the Act, of confidential information to an official, and new paragraph 241(4)(j), which allows certain information to be communicated to an official to be used by the official for the purpose of administering pension benefits legislation.

Subclause 26(5)

This sets out the effective date for the amendments to section 241.

Definitions

Clause 27

ITA
248(1)

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

Subclause 27(1)

"registered pension fund or plan"

The definition of "registered pension fund or plan" is repealed after 1985. This definition is being replaced by a definition of "registered pension plan".

Subclause 27(2)

"registered pension plan"

A definition of "registered pension plan" is being added to subsection 248(1), applicable after 1985. This definition replaces the existing definition of "registered pension fund or plan" in subsection 248(1). Until 1989, the new definition is identical to the existing definition. Commencing in 1989, a "registered pension plan" is defined to be a pension plan registered by the Minister of National Revenue for the purposes of the Act. A pension plan, the registration of which has been revoked, is excluded from the definition.

Subclause 27(3)

"additional voluntary contribution"

Subsection 248(1) is amended to add a definition of "additional voluntary contribution" (AVC). An AVC is a contribution, other than a required contribution, made to a registered pension plan by a member of the plan where the contribution will be used to provide additional benefits on a money purchase basis. This definition is relevant for a number of provisions that provide special treatment for AVCs, including amended paragraph 8(1)(m), new subsections 8(1.1) and 147.2(4), amended subsection 8(8) and new section 60.2. The definition of AVC is applicable after 1985.

"past service pension adjustment"
"pension adjustment"
"total pension adjustment reversal"

Subsection 248(1) is amended, applicable after 1988, to add definitions of "past service pension adjustment", "pension adjustment" and "total pension adjustment reversal". These expressions are defined, for the purposes of the Act, to have the meanings prescribed by regulation. Draft sections 8301, 8303 and 8304 of the *Income Tax Regulations* provide the rules for determining these amounts. Pension adjustments, past service pension adjustments and total pension adjustment reversals are fundamental amounts in the new system of comprehensive limits for tax assistance to retirement saving, linking the amount of such saving by means of registered pension plans and deferred profit sharing plans with the amount of such saving by means of registered retirement savings plans.

Subsection 248(1) is also amended to add definitions of several expressions that are defined elsewhere in the Act, to ensure that the expressions have general application throughout the Act. This amendment is applicable after 1988. These expressions are as follows:

- "money purchase limit", which is defined in new subsection 147.1(1),
- "profit sharing plan", which is defined in subsection 147(1), and
- "RRSP deduction limit", "RRSP dollar limit" and "unused RRSP deduction room" which are defined in new paragraphs 146(1)(g.1), (g.2) and (l) respectively.

Subclauses 27(4) and (5)

These set out the effective dates for the amendments to subsection 248(1).

Meaning of "spouse" and "former spouse"

ITA 252(3)

Clause 28

Subsection 252(3) of the Act provides that, for the purposes of specified provisions of the Act, a "spouse" or "former spouse" includes a party to a void or voidable marriage. This subsection is amended, applicable after 1987, to replace the reference to paragraph 146(16)(a) with a reference to subsection 146(16). This amendment is consequential on an amendment to subsection 146(16). It is also amended, applicable after 1987, to add a reference to subparagraph 146.3(2)(f)(iv) and paragraph 146.3(14)(b), which contain rules relating to the transfer of funds to, or from, a RRIF on marriage breakdown. Subsection 252(3) is amended, applicable after 1988, to add a reference to new subsection 147.3(5).

Schedule I – "Registered Pension Plan"

Clause 29

The Act is amended so as to replace the expression "registered pension fund or plan" by the expression "registered pension plan" everywhere that the former expression appears in the Act. Schedule I lists the provisions that are affected by this amendment. Corresponding changes are being made to the French version of the Act. This amendment is applicable after 1985.

Schedule II – French Version Changes

Clause 30

This clause amends the French version of the Act as indicated in Schedule II to provide more appropriate terminology and to make the wording of various provisions of the Act consistent with the wording in the amendments to the Act.

These amendments are effective as of Royal Assent.

Income Tax Application Rules, 1971

17(8)

Clause 31

Subsection 17(8) of the *Income Tax Application Rules, 1971* provides that a reference in the Act to a registered pension fund or plan includes a plan that was an approved superannuation or pension fund or plan. Subsection 17(8) is amended, applicable after 1985, to replace the reference to "registered pension fund or plan" with a reference to "registered pension plan". This amendment is strictly consequential on the same amendment which is being made to the Act.

Bill C-28

12(1) and (3)

Clause 32

Bill C-28 implements the measures announced in the April 1989 Budget, including a deduction for certain legal expenses paid to collect or establish a right to pension benefits or a retiring allowance. The deduction is limited so that it cannot exceed the amount by which such pension income or retirement allowance exceeds the portion thereof transferred to a registered pension plan or registered retirement savings plan pursuant to paragraph 60(j) or (j.1) of the Act.

Clauses 12(1) and (3) of Bill C-28 are amended, strictly as a consequence of the introduction of paragraphs 60(j.01) and (j.2) of the Act, to provide that transfers of pension income or retiring allowances under those new paragraphs are treated in the same way as transfers under paragraph 60(j) and (j.1) for the purposes of determining the new legal expense deduction.

This amendment is applicable to the 1986 and subsequent taxation years.