Amendments to the Income Tax Act and Related Statutes

Draft Legislation and Explanatory Notes

Issued by
The Honourable Don Mazankowski
Minister of Finance

December 1991

Canada

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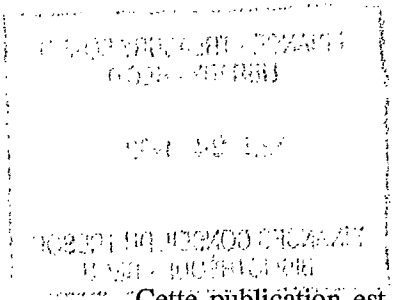
Department of Finance Canada
Ministère des Finances Canada



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Draft Legislation to Amend the Income Tax Act and Related Statutes

DRAFT LEGISLATION

TO AMEND THE INCOME TAX ACT

AND RELATED STATUTES

PART I

INCOME TAX ACT

1. (1) Subparagraph 6(1)(*e*.1)(i) of the English version of the *Income Tax Act* is repealed and the following substituted therefor:

(i) an amount that would be required under paragraph (*a*) or (*e*) to be included in computing the income of the taxpayer for the year in respect of a supply (other than a zero-rated supply or an exempt supply within the meanings assigned by Part IX of the *Excise Tax Act*), of property or a service if no amount were paid to the employer or a person related to the employer in respect of the amount so required to be included

(2) Section 6 of the said Act is further amended by adding thereto, immediately after subsection (4) thereof, the following subsection:

Benefits deemed to be life insurance

(4.1) For the purposes of subsection (4), where the terms of a group term life insurance policy or group sickness or accident policy provide that an amount (other than an amount described in paragraph (1)(*f*) or an amount payable as a consequence of the death or dismemberment of the taxpayer who is insured under the policy) may become payable in respect of a taxpayer, that amount shall be deemed (except to the extent it reduces any death benefit otherwise payable under the policy) to be an amount of life insurance in effect on the life of the taxpayer under a group term life insurance policy.

(3) Subsections (1) and (2) are applicable to the 1992 and subsequent taxation years.

2. (1) Subparagraph 8(1)(*m*.2)(iii) of the said Act is amended by striking out the word "or" at the end of clause (A) thereof, by adding the word "or" at the end of clause (B) thereof and by adding thereto the following clause:

(C) the plan is a prescribed plan or arrangement;

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

3. (1) Paragraph 12(1)(*p*) of the said Act is repealed and the following substituted therefor:

Certain payments made to farmers

(*p*) any amount received by the taxpayer in the year as a stabilization payment, or as a refund of a levy, under the *Western Grain Stabilization Act* or as a payment, or a refund of a premium, in respect of the gross revenue insurance program established under the *Farm Income Protection Act*;

(2) Subsection 12(1) of the said Act is further amended by striking out the word "and" at the end of paragraph (*x*) thereof, by adding the word "and" at the end of paragraph (*y*) thereof and by adding thereto the following paragraph:

Amateur athlete trust payments

(*z*) any amount in respect of an amateur athlete trust required by section 143.1 to be included in computing the taxpayer's income for the year.

(3) Subsection 12(3) of the said Act is repealed and the following substituted therefor:

Interest income

(3) Notwithstanding paragraph (1)(*c*), in computing the income for a taxation year of a corporation, partnership, unit trust, or any trust of which a corporation or a partnership is a beneficiary, there shall be included any interest on a debt obligation

(other than interest in respect of an income bond, an income debenture, a small business development bond, a small business bond, or a net income stabilization account) that accrued to it to the end of the year, or became receivable or was received by it before the end of the year, to the extent that the interest was not included in computing its income for a preceding taxation year.

(4) Section 12 of the said Act is further amended by adding thereto, immediately after subsection (10.1) thereof, the following subsections:

NISA receipts

(10.2) There shall be included in computing the income of a taxpayer for a taxation year from a property the total of all amounts each of which is the amount, if any, by which

(*a*) an amount paid at a particular time in the year out of the taxpayer's NISA Fund No. 2

exceeds

(*b*) the amount, if any, by which

(i) the total of all amounts each of which was deemed by subsection 104(5.1) or (14.1) to have been paid out of the taxpayer's NISA Fund No. 2 before the particular time, or was deemed by subsection 70(5.4) or 73(5) to have been paid out of another person's NISA Fund No. 2 on being transferred to the taxpayer's NISA Fund No. 2 before the particular time,

exceeds

(ii) the total of all amounts each of which is the amount by which an amount otherwise determined under this subsection in respect of a payment out of the taxpayer's NISA Fund No. 2 before the particular time was reduced by reason of this paragraph.

Amount credited or added deemed not included in income

(10.3) Notwithstanding any other provision of this Act, an amount credited or added to a taxpayer's NISA Fund No. 2 shall not be included in computing the taxpayer's income by reason only of such crediting or adding.

(5) Paragraph 12(11)(*a*) of the said Act is amended by striking out the word "or" at the end of subparagraph (ix) thereof and by repealing subparagraph (x) thereof and substituting the following therefor:

(x) an obligation in respect of a net income stabilization account, and

(xi) a prescribed contract;

(6) Subsections (1) and (3) to (5) are applicable to the 1991 and subsequent taxation years.

(7) Subsection (2) is applicable to the 1988 and subsequent taxation years.

4. (1) All that portion of subsection 15(1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Benefit Conferred on Shareholder

15. (1) Where, at any time in a taxation year, a benefit has been conferred on a shareholder, or on a person in contemplation of the person becoming a shareholder, by a corporation otherwise than by

(2) Paragraph 15(1)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) conferring, on all owners of common shares of the capital stock of the corporation at that time, a right in respect of each common share, that is identical to every other right conferred at that time in respect of each other such share, to acquire additional shares of the capital stock of the corporation, and for this purpose, rights will not

be considered identical if the cost of acquiring the rights differs, or

(3) Subsection 15(1.4) of the said Act is repealed and the following substituted therefor:

Idem

(1.4) Where the amount or value of a benefit is required under subsection (1) to be included in computing the income of a taxpayer for a taxation year (in this subsection referred to as the "benefit amount"), the total of all amounts, each of which is 7% of the amount, if any, by which

(a) an amount that would be required under subsection (1) to be included in computing the income of the taxpayer for the year in respect of a supply, other than a zero-rated supply or an exempt supply (within the meanings assigned by part IX of the *Excise Tax Act*), of property or a service, if no amount were paid to the corporation or a person related to the corporation in respect of an amount so required to be included

exceeds

(b) the amount, if any, included in the benefit amount that may reasonably be attributed to tax imposed under an Act of the legislature of a province that is a prescribed tax for the purposes of section 154 of the *Excise Tax Act*

shall be included in computing the income of the taxpayer for the year.

(4) Subsections (1) and (2) are applicable with respect to benefits conferred on or after ANNOUNCEMENT DATE.

(5) Subsection (3) is applicable to the 1992 and subsequent taxation years.

5. (1) All that portion of subsection 16(3) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Idem

(3) Where, in the case of a bond, debenture, bill, note, mortgage or similar obligation (other than an obligation that is a prescribed debt obligation for the purpose of subsection 12(9)) issued after June 18, 1971 by a person exempt from tax under section 149, a non-resident person not carrying on business in Canada, or a government, municipality or municipal or other public body performing a function of government,

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

6. (1) Subparagraph 18(5)(*a*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) any amount outstanding at the particular time as or on account of a debt or other obligation to pay an amount to a non-resident insurance corporation, where the amount outstanding at the particular time has, in the non-resident insurance corporation's taxation year that included the particular time, been included, for the purposes of section 138, as property used by it in the year in, or held by it in the year in the course of, carrying on an insurance business through a permanent establishment (within the meaning assigned for the purposes of subsection 112(2)) in Canada,

(2) Paragraph 18(5)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) "specified shareholder" of a corporation at any time means a person who at that time, either alone or together with persons with whom that person is not dealing at arm's length, owns

(i) shares of the capital stock of the corporation that give the holders thereof 25% or more of the votes that could be cast at an annual meeting of the shareholders of the corporation, or

(ii) shares of the capital stock of the corporation having a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation,

and for the purpose of determining whether a particular person is a specified shareholder of a corporation at any time, where the particular person or a person with whom the particular person is not dealing at arm's length has at that time a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently

(iii) to, or to acquire, shares in a corporation or to control the voting rights of shares in a corporation, or

(iv) to cause a corporation to redeem, acquire or cancel any of its shares (other than shares held by the particular person or a person with whom the particular person is not dealing at arm's length)

the particular person or the person with whom the particular person is not dealing at arm's length, as the case may be, shall be deemed at that time to own the shares referred to in subparagraph (iii) and the corporation referred to in subparagraph (iv) shall be deemed at that time to have redeemed, acquired or cancelled the shares referred to in subparagraph (iv), unless the right is not exercisable at that time because the exercise thereof is contingent on the death, bankruptcy or permanent disability of an individual.

(3) Subsection 18(11) of the said Act is amended by striking out the word "or" at the end of paragraph (*d*) thereof, by adding the word "or" at the end of paragraph (*e*) thereof and by repealing all that portion thereof following paragraph (*e*) thereof and substituting the following therefor:

(f) making a contribution to a net income stabilization account,

and, for the purposes of this subsection, to the extent that an indebtedness is incurred by a taxpayer with respect to a property and at any time that property or a property substituted therefor is used for any of the purposes referred to in this subsection, the indebtedness shall be deemed to be incurred at that time for that purpose.

(4) Subsection (1) is applicable to the 1991 and subsequent taxation years and, where a corporation so elects by notifying the Minister of National Revenue in writing before 1993, to its 1985 to 1990 taxation years.

(5) Subsection (2) is applicable to the 1993 and subsequent taxation years and, where a corporation so elects by notifying the Minister of National Revenue in writing before 1993, to its 1989 and subsequent taxation years.

(6) Subsection (3) is applicable to the 1991 and subsequent taxation years.

7. (1) Paragraph 20(1)(*ff*) of the said Act is repealed and the following substituted therefor:

Payments by farmers

(*ff*) an amount paid by the taxpayer in the year as a levy under the *Western Grain Stabilization Act*, as a premium in respect of the gross revenue insurance program established under the *Farm Income Protection Act* or as an administration fee in respect of a net income stabilization account;

(2) Subsection 20(12) of the said Act is repealed and the following substituted therefor:

Foreign non-business income tax

(12) In computing the income of a taxpayer for a taxation year from a business or property, there may be deducted such amount as is claimed by the taxpayer not exceeding the non-business income tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by paragraph 126(7)(*c*) read without reference to subparagraphs (iii) and (v) thereof) in respect of that income other than any such tax, or part thereof, that may reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

(3) Subsection 20(16.1) of the said Act is repealed and the following substituted therefor:

Idem

(16.1) Subsection (16) is not applicable in respect of a passenger vehicle of a taxpayer having a cost to the taxpayer in excess of $20,000 or such other amount as may be prescribed.

(4) Paragraph 20(21)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) the portion of an amount that was received or became receivable by the taxpayer in the particular year or a preceding taxation year as may reasonably be considered to be in respect of an amount described in paragraph (*a*) and that was not repaid by the taxpayer to the issuer of the debt obligation pursuant to an adjustment in respect of interest received before the time of disposition by the taxpayer, or

(5) Subsection 20(24) of the said Act is repealed and the following substituted therefor:

Amounts paid for undertaking future obligations

(24) Where an amount has been included by reason of paragraph 12(1)(*a*) in computing a taxpayer's income for a taxation year in respect of an undertaking to which that paragraph applies and the taxpayer has paid a reasonable amount in a particular taxation year to another person as consideration for the assumption by that other person of the taxpayer's obligations in respect of the undertaking, if the taxpayer and the other person have jointly so elected, the following rules apply:

(*a*) the payment may be deducted in computing the taxpayer's income for the particular year and no amount is deductible under paragraph (1)(*m*) or (*m*.1) in computing the taxpayer's income for that or any subsequent taxation year in respect of the undertaking; and

(*b*) where the amount was received by the other person in the course of business, it shall be deemed to be an amount described in paragraph 12(1)(*a*).

(6) Subsections (1) and (5) are applicable to the 1991 and subsequent taxation years.

(7) Subsection (2) is applicable to the 1992 and subsequent taxation years.

(8) Subsection (3) is applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

(9) Subsection (4) is applicable with respect to dispositions occurring after ANNOUNCEMENT DATE.

8. (1) Subsection 24(2) of the said Act is amended by striking out the word "and" at the end of paragraph (*b*) thereof, by adding the word "and" at the end of paragraph (*c*) thereof and by adding thereto the following paragraph:

(*d*) for the purposes of determining after that time

(i) the amount deemed under subparagraph 14(1)(*a*)(v) to be the spouse's taxable capital gain, and

(ii) the amount to be included by reason of paragraph 14(1)(*b*) in computing the income of the spouse or corporation

in respect of any subsequent disposition of property of the business, the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be the amount, if any, determined under that clause in respect of the business of the individual immediately before the individual ceased to carry on the business.

(2) Section 24 of the said Act is further amended by adding thereto the following subsection:

Where partnership has ceased to exist

(3) Notwithstanding subsection (1), where at any time a partnership has ceased to exist in circumstances to which neither subsection 98(3) nor subsection 98(5) apply, there may be deducted, in computing the income for the first taxation year commencing after that time of a taxpayer that was a member of the partnership immediately before that time, that proportion of the amount that would, had the partnership continued to exist, have been deductible by reason of subsection (1) in computing its income that the fair market value of the taxpayer's interest in the partnership immediately before that time is of the fair market value of all the interests in the partnership immediately before that time.

(3) Subsections (1) and (2) are applicable after July 13, 1990.

9. (1) Section 39 of the said Act is amended by adding thereto the following subsection:

Repayment of assistance

(13) The total of all amounts paid by a taxpayer in a taxation year each of which is

(*a*) such part of any assistance described in subparagraph 53(2)(*k*)(i) in respect of, or for the acquisition of, a capital property (other than depreciable property) by the taxpayer that has been repaid by the taxpayer in the year where the repayment is made after the disposition of the property by the taxpayer and pursuant to an obligation to repay all or any part of that assistance, or

(*b*) an amount repaid by the taxpayer in the year in respect of a capital property (other than depreciable property) acquired by the taxpayer that is repaid after the disposition thereof by the taxpayer and that would have been an amount described in subparagraph 53(2)(*s*)(ii) had the repayment been made before the disposition of the property

shall be deemed to be a capital loss of the taxpayer for the year from the disposition of property by the taxpayer in the year and, for the purposes of section 110.6, that property shall be deemed to have been disposed of by the taxpayer in the year.

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

10. (1) Subsection 40(5) of the said Act is repealed.

(2) Subsection (1) is applicable to dispositions occurring after 1990.

11. (1) The said Act is further amended by adding thereto, immediately after section 43 thereof, the following section:

Life estates in real property

43.1 (1) Notwithstanding any other provision of this Act, where at any time a taxpayer disposes of the remainder interest in a real property to a person or partnership (other than to a registered charity that is a charitable organization described in paragraph 149.1(1)(*b*)), while retaining a life estate or an *estate pour autre vie* (in this section called the "life estate") in the property, the taxpayer shall be deemed

(*a*) to have disposed at that time of the life estate in the property for proceeds of disposition equal to its fair market value at that time; and

(*b*) to have reacquired the life estate immediately after that time at a cost equal to the proceeds of disposition referred to in paragraph (*a*).

Idem

(2) Where, as a result of an individual's death, a life estate to which subsection (1) has applied is terminated,

(*a*) the holder of the life estate immediately before the death shall be deemed to have disposed of the life estate immediately before the death for proceeds of disposition equal to the adjusted cost base to that person of the life estate immediately before the death, and

(*b*) where a person who is the holder of the remainder interest in the real property immediately before the death was not dealing at arm's length with the holder of the life estate, there shall, after the death, be added in computing the adjusted cost base to that person of the real property, an amount equal to the lesser of

(i) the adjusted cost base of the life estate in the property immediately before the death, and

(ii) the amount, if any, by which the fair market value of the real property immediately after the death exceeds the adjusted cost base to that person of the remainder interest immediately before the death.

(2) Subsection (1) is applicable with respect to dispositions and terminations occurring after ANNOUNCEMENT DATE.

12. (1) Paragraph 53(1)(*e*) of the said Act is amended by adding thereto, immediately after subparagraph (vii) thereof, the following subparagraph:

(vii.1) a share of the taxpayer's Canadian development expense or Canadian oil and gas property expense that has been deducted at or before that time in computing the adjusted cost base to the taxpayer of the interest by reason of subparagraph (2)(*c*)(ii) and in respect of which the taxpayer has made an election under subparagraph 66.2(5)(*a*)(iv) or 66.4(5)(*a*)(ii), as the case may be,

(2) Subsection 53(1) of the said Act is further amended by striking out the word "and" at the end of paragraph (*m*) thereof, by adding the word "and" at the end of paragraph (*n*) thereof and by adding thereto, immediately after paragraph (*n*) thereof, the following paragraph:

(*o*) where the property is real property of the taxpayer, any amount required by paragraph 43.1(2)(*b*) to be added in computing the adjusted cost base to the taxpayer of the property.

(3) Subsection 53(2) of the said Act is amended by striking out the word "and" at the end of paragraph (*q*) thereof, by adding the word "and" at the end of paragraph (*s*) thereof and by adding thereto the following paragraph:

(*t*) where the property is a right to acquire shares under an agreement, any amount required by paragraph 164(6.1)(*b*) to be deducted in computing the adjusted cost base to the taxpayer of the right.

(4) All that portion of subsection 53(2.1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Election

(2.1) For the purposes of paragraph (2)(*s*), where a taxpayer has in a taxation year received an amount that would, but for this subsection, be included in the taxpayer's income under paragraph 12(1)(*x*) in respect of the cost of a property (other than depreciable property) acquired by the taxpayer in the year, in the three taxation years immediately preceding the year or in the taxation year immediately following the year, the taxpayer may elect under this subsection on or before the date on or before which the taxpayer is required to file the taxpayer's return of income under this Part for the year or, where the property is acquired in the immediately following year, for that following year, to reduce the cost of the property by such amount as the taxpayer may specify, not exceeding the least of

(5) Subsection (1) is applicable after July 1990.

(6) Subsection (2) is applicable in computing the adjusted cost base of property after ANNOUNCEMENT DATE.

(7) Subsection (3) is applicable after July 13, 1990.

(8) Subsection (4) is applicable to the 1991 and subsequent taxation years.

13. (1) Paragraph 54(*g*) of the said Act is repealed and the following substituted therefor:

"principal residence" « *résidence principale* »

(*g*) "principal residence" of a taxpayer for a taxation year means a particular property that is a housing unit, a leasehold interest therein or a share of the capital stock of a co-operative housing corporation acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation and that is owned, whether jointly with another person or otherwise, in the year by the taxpayer, if

(i) where the taxpayer is an individual other than a personal trust, the housing unit was ordinarily inhabited in the year by the taxpayer, by the taxpayer's spouse or former spouse or by a child of the taxpayer,

(i.1) where the taxpayer is a personal trust, the housing unit was ordinarily inhabited in the calendar year ending in the year by a specified beneficiary of the trust for the year, by the spouse or former spouse of such beneficiary, or by a child of such beneficiary, or

(ii) where the taxpayer is a personal trust or an individual other than a personal trust, the taxpayer has made an election relating to the change in use of the particular property in the year or a preceding taxation year in accordance with subsection 45(2) or (3),

except that, subject to section 54.1, in no case shall a particular property be considered to be a taxpayer's principal residence for a taxation year

(iii) where the taxpayer is an individual other than a personal trust, unless the particular property has been designated by the taxpayer in prescribed form and manner to be the taxpayer's principal residence for the year and no other property has been designated for the purposes of this paragraph for the year by the taxpayer, by a person who was throughout the year the taxpayer's spouse (other than a spouse who was throughout the year living apart from, and was separated pursuant to a judicial separation or written separation agreement from, the taxpayer), by a person who was the taxpayer's child (other than a child who was during the year a married person or 18 years of age or over) or, where the taxpayer was not during the year a married person or a person 18 years of age or over, by a person who was

(A) the mother or father of the taxpayer, or

(B) the brother or sister of the taxpayer, where such brother or sister was not during the year a married person or a person 18 years of age or over,

(iii.1) where the taxpayer is a personal trust, unless

(A) the particular property has been designated by the trust in prescribed form and manner to be the taxpayer's principal residence for the year,

(B) the trust specifies in the designation each individual (in this paragraph referred to as a "specified beneficiary" of the trust for the year) who, in the calendar year ending in the year,

(I) is beneficially interested in the trust, and

(II) except where the trust is entitled to designate it for the year by reason only of subparagraph (ii), ordinarily inhabited the housing unit or has a spouse, former spouse or child who ordinarily inhabited the housing unit,

(C) no corporation (other than a registered charity) or partnership is beneficially interested in the trust at any time in the year, and

(D) no other property has been designated for the purposes of this paragraph for the calendar year ending in the year by any specified beneficiary of the trust for the year, by a person who was throughout that calendar year such beneficiary's spouse (other than a spouse who was throughout that calendar year living apart from, and was separated pursuant to a judicial separation or written separation agreement from, such beneficiary), by a person who was such beneficiary's child (other than a child who was during that calendar year a married person or a person 18 years of age or over), or, where such beneficiary was not during that calendar year a married person or a person 18 years of age or over, by a person who was

(I) the mother or father of such beneficiary, or

(II) the brother or sister of such beneficiary, where such brother or sister was not during that calendar year a married person or a person 18 years of age or over, or

(iv) by reason of subparagraph (ii), if by reason only of that subparagraph the property would, but for this subparagraph, have been a principal residence of the taxpayer for 4 or more previous taxation years,

and for the purposes of this paragraph

(v) the principal residence of a taxpayer for a taxation year shall be deemed to include, except where the particular property consists of a share of the capital stock of a co-operative housing corporation, the land subjacent to the housing unit and such portion of any immediately contiguous land as may reasonably be regarded as contributing to the use and enjoyment of the housing unit as a residence, except that where the total area of the subjacent land and of that portion exceeds 1/2 hectare, the excess shall be deemed not to have contributed to the use and enjoyment of the housing unit as a residence unless the taxpayer establishes that it was necessary to such use and enjoyment, and

(vi) a particular property designated under subparagraph (iii.1) by a trust for a year shall be deemed to be property designated for the purposes of this paragraph by each specified beneficiary of the trust for the calendar year ending in the year;

(2) Subsection (1) is applicable to dispositions occurring after 1990.

14. (1) Subsection 56(1) of the said Act is amended by adding thereto, immediately after paragraph (*c*.1) thereof, the following paragraph:

Reimbursement of support payments

(*c*.2) an amount received by the taxpayer in the year pursuant to a decree, order or judgment of a competent tribunal as a reimbursement of an amount deducted in computing the income of the

taxpayer for the year or a preceding taxation year by reason of paragraph 60(*b*), (*c*) or (*c*.1);

(2) All that portion of paragraph 56(4.1)(*a*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(*a*) a particular individual (other than a trust) or a trust in which the particular individual is beneficially interested has, directly or indirectly by means of a trust or by any means whatever, received a loan from or become indebted to

(3) Subsection (1) is applicable with respect to payments received after 1990.

(4) Subsection (2) is applicable after 1990.

15. (1) Section 60 of the said Act is amended by adding thereto, immediately after paragraph (*c*.1) thereof, the following paragraph:

Repayment of support payments

(*c*.2) an amount paid by the taxpayer in the year or one of the two immediately preceding taxation years pursuant to a decree, order or judgment of a competent tribunal as a repayment of an amount included in computing the income of the taxpayer for the year or a preceding taxation year by reason of paragraph 56(1)(*b*), (*c*) or (*c*.1), to the extent it was not so deducted for a preceding taxation year;

(2) Paragraph 60(*i*) of the said Act is repealed and the following substituted therefor:

Premium or payment under RRSP or RRIF

(*i*) any amount that by reason of section 146 or subsection 147.3(13.1) is deductible in computing the income of the taxpayer for the year;

(3) Section 60 of the said Act is further amended by adding thereto, immediately after paragraph (*j*.01) thereof, the following paragraphs:

Payment to registered pension plan

(*j*.02) an amount equal to the lesser of

(i) the total of

(A) the aggregate of all amounts each of which is a contribution made in the year by the taxpayer to a registered pension plan in respect of eligible service of the taxpayer before 1990 under the plan, where the taxpayer was obliged under the terms of an agreement in writing entered into before March 28, 1988 to make the contribution, and

(B) the aggregate of all amounts each of which is an amount paid in the year by the taxpayer to a registered pension plan as

(I) a repayment pursuant to a prescribed statutory provision of an amount received from the plan that was included, by reason of subsection 56(1), in computing the taxpayer's income for a taxation year ending before 1990, where the taxpayer was obliged as a consequence of a written election made before March 28, 1988 to make the repayment, or

(II) interest in respect of a repayment referred to in subclause (I),

other than the portion of such total as is deductible under paragraph 8(1)(*m*) or paragraph (*j*.03) in computing the taxpayer's income for the year, and

(ii) the aggregate of all amounts each of which is an amount paid out of or under a registered pension plan as part of a series of periodic payments and included, by reason of subsection 56(1), in computing the taxpayer's income for the year, other than the portion of

such aggregate that may reasonably be considered to have been designated by the taxpayer for the purposes of paragraph (*j*.2);

Repayments of pre-1990 pension benefits

(*j*.03) an amount equal to the lesser of

(i) the total of all amounts each of which is an amount paid in the year or a preceding taxation year by the taxpayer to a registered pension plan that was not deductible in computing the taxpayer's income for a preceding taxation year and that was paid as

(A) a repayment pursuant to a prescribed statutory provision of an amount received from the plan that was included, by reason of subsection 56(1), in computing the taxpayer's income for a taxation year ending before 1990, or

(B) interest in respect of a repayment referred to in clause (A), and

(ii) the portion of the total determined under subparagraph (i) that would, if paragraph 8(1)(*m*) and subsections 8(6) to (8) were applicable in respect of the year as they read in their application to the 1990 taxation year, be deductible under paragraph 8(1)(*m*) in computing the taxpayer's income for the year;

Repayments of post-1989 pension benefits

(*j*.04) the total of all amounts each of which is an amount paid in the year by the taxpayer to a registered pension plan as

(i) a repayment by the taxpayer pursuant to a prescribed statutory provision of an amount received from the plan that

(A) was included, by reason of subsection 56(1), in computing the taxpayer's income for a taxation year ending after 1989, and

(B) may reasonably be considered not to have been designated by the taxpayer for the purposes of paragraph (*j*.2), or

(ii) interest in respect of a repayment referred to in subparagraph (i),

except to the extent that the total was deductible under paragraph 8(1)(*m*) in computing the taxpayer's income for the year;

(4) Clauses 60(*l*)(ii)(D) and (E) of the said Act are repealed and the following substituted therefor:

(D) annual or more frequent periodic payments

(I) commencing not later than one year after the date of the payment referred to in clause (C), and

(II) each of which is equal to all other such payments or not equal to all other such payments by reason only of an adjustment that would be in accordance with subparagraphs 146(3)(*b*)(iii) to (v) if the annuity were an annuity under a retirement savings plan, and

(E) payments in full or partial commutation of the annuity and, where the commutation is partial,

(I) equal annual or more frequent periodic payments thereafter, or

(II) annual or more frequent periodic payments thereafter that are not equal by reason only of an adjustment that would be in accordance with subparagraphs 146(3)(*b*)(iii) to (v) if the annuity were an annuity under a retirement savings plan;

(5) All that portion of subsection 60(*s*) of the said Act preceding paragraph (*i*) thereof is repealed and the following substituted therefor:

Repayment of policy loan

(*s*) the total of repayments made by the taxpayer in the year in respect of a policy loan (within the meaning assigned by paragraph 148(9)(*e*)) made under a life insurance policy, not exceeding the amount, if any, by which

(6) Subsection (1) is applicable with respect to payments made after 1990.

(7) Subsection (2) is applicable to the 1992 and subsequent taxation years.

(8) Paragraphs 60(*j*.02) and (*j*.04) of the said Act, as enacted by subsection (3), and subsection (4) are applicable to the 1990 and subsequent taxation years.

(9) Paragraph 60(*j*.03) of the said Act, as enacted by subsection (3), is applicable to the 1991 and subsequent taxation years.

(10) Subsection (5) is applicable to repayments made after ANNOUNCEMENT DATE.

16. (1) All that portion of subsection 63(1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Child care expenses

63. (1) Subject to subsection (2), where a prescribed form containing prescribed information is filed with a taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(*e*) or subsection 150(4)) under this Part for a taxation year, there may be deducted in computing the taxpayer's income for the year such amount as the taxpayer claims not exceeding the total of all amounts each of which is an amount paid, as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer,

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

17. (1) Subparagraph 66.2(5)(*a*)(iv) of the said Act is repealed and the following substituted therefor:

(iv) subject to section 66.8, the taxpayer's share of any expense referred to in any of subparagraphs (i) to (iii) incurred by a partnership in a fiscal period thereof at the end of which the taxpayer was a member thereof, unless the taxpayer makes an election in respect of such share in prescribed form on or before the day that is 6 months after the taxpayer's taxation year in which that period ends, or

(2) Subsection (1) is applicable with respect to fiscal periods of partnerships ending after July 1990, except that an election referred to in subparagraph 66.2(5)(*a*)(iv) of the said Act, as enacted by subsection (1), that is filed on or before the day that is 6 months after the day on which this Act is assented to shall be deemed to have been filed on a timely basis.

18. (1) Subparagraph 66.4(5)(*a*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) subject to section 66.8, the taxpayer's share of any expense referred to in subparagraph (i) incurred by a partnership in a fiscal period thereof at the end of which the taxpayer was a member thereof, unless the taxpayer makes an election in respect of such share in prescribed form on or before the day that is 6 months after the taxpayer's taxation year in which that period ends, or

(2) Subsection (1) is applicable with respect to fiscal periods of partnerships ending after July 1990, except that an election referred to in subparagraph 66.4(5)(*a*)(ii) of the said Act, as enacted by subsection (1), that is filed on or before the day that is 6 months after the day on which this Act is assented to shall be deemed to have been filed on a timely basis.

19. (1) Subsection 66.8(3) of the said Act is amended by striking out the word "and" at the end of paragraph (*a*) thereof, by adding the word "and" at the end of paragraph (*b*) thereof and by adding thereto the following paragraph:

(*c*) a taxpayer's share of Canadian development expenses or Canadian oil and gas property expenses incurred by a partnership in a fiscal period in respect of which the taxpayer has made an election in respect of the share under subparagraph 66.2(5)(*a*)(iv) or 66.4(5)(*a*)(ii), as the case may be, shall be deemed to be nil.

(2) Subsection (1) is applicable with respect to partnership fiscal periods ending after July 1990.

20. (1) Section 69 of the said Act is amended by adding thereto, immediately after subsection (1.1) thereof, the following subsection:

Idem

(1.2) Where, at any time,

(*a*) a taxpayer has disposed of property for proceeds of disposition (determined without reference to this subsection) equal to or greater than its fair market value at that time, and

(*b*) there existed at that time an agreement under which a person with whom the taxpayer was not dealing at arm's length had agreed to pay as rent, royalty or other payment for the use of or the right to use the property an amount less than the amount that would have been reasonable in the circumstances if the taxpayer and the person had been dealing at arm's length at the time the agreement was entered into,

the taxpayer's proceeds of disposition of the property shall be deemed to be the greater of

(*c*) such proceeds determined without reference to this subsection; and

(*d*) the fair market value of the property at the time of the disposition, determined without reference to the existence of the agreement.

(2) Subsection 69(13) of the said Act is amended by adding the word "and" at the end of paragraph (*a*) thereof and by repealing paragraph (*b*) thereof.

(3) Subsection (1) is applicable with respect to dispositions occurring after ANNOUNCEMENT DATE.

(4) Subsection (2) is applicable to an amalgamation or merger of a corporation occurring after the commencement of its first taxation year commencing after June 1988.

21. (1) Subsection 70(5) of the said Act is repealed and the following subsection substituted therefor:

Capital property of a deceased taxpayer

(5) Where in a taxation year a taxpayer has died, the following rules apply:

(*a*) the taxpayer shall be deemed to have disposed, immediately before death, of each property that was at that time a capital property of the taxpayer and to have received proceeds of disposition therefor equal to the fair market value of the property at that time;

(*b*) any person who as a consequence of the death has acquired any property that is deemed by paragraph (*a*) to have been disposed of by the taxpayer at any time shall be deemed to have acquired it immediately after that time at a cost equal to its fair market value at that time; and

(*c*) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (*a*) to have been disposed of has been acquired by any person as a consequence of the death and the amount that was the capital cost to the taxpayer of that property exceeds the amount determined under paragraph (*b*) to be the cost to that person thereof, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(*a*),

(i) the capital cost to that person of the property shall be deemed to be the amount that was the capital cost to the taxpayer of the property, and

(ii) the excess shall be deemed to have been allowed to that person in respect of the property under regulations made under paragraph 20(1)(*a*) in computing income for the taxation years ending before the person's acquisition of the property.

(2) Subsection 70(5.1) of the said Act is amended by striking out the word "and" at the end of paragraph (*b*) thereof, by adding the word "and" at the end of paragraph (*c*) thereof and by adding thereto the following paragraph:

(*d*) for the purposes of determining after that time

(i) the amount deemed under subparagraph 14(1)(*a*)(v) to be the beneficiary's taxable capital gain, and

(ii) the amount to be included by reason of paragraph 14(1)(*b*) in computing the beneficiary's income

in respect of any subsequent disposition of the property of the business, the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be that proportion of the amount, if any, determined under that clause in respect of the business of the taxpayer immediately before that time that the fair market value immediately before that time of the particular property is of the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business.

(3) Section 70 of the said Act is further amended by adding thereto, immediately after subsection (5.3) thereof, the following subsection:

NISA on death

(5.4) Where a taxpayer who has died had at the time of death a net income stabilization account, all amounts held for or on behalf of the taxpayer in the taxpayer's NISA Fund No. 2 shall be deemed to have been paid out of that fund to the taxpayer immediately before that time.

(4) All that portion of subsection 70(6) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Where transfer or distribution to spouse or spouse trust

(6) Where any property of a taxpayer who was resident in Canada immediately before the taxpayer's death that is a property to which subsection (5) would otherwise apply has as a consequence of the death been transferred or distributed to

(5) Paragraph 70(6)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) paragraphs (5)(*a*) and (*b*) are not applicable in respect of the property,

(6) Paragraph 70(6)(*e*) of the said Act is repealed and the following substituted therefor:

(*e*) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(*c*) is applicable as if the references therein to "paragraph (*a*)" and to "paragraph (*b*)" were read as references to "paragraph (6)(*d*)".

(7) Subsection 70(6.1) of the said Act is repealed.

(8) Subsection 70(6.2) of the said Act is repealed and the following substituted therefor:

Transfer or distribution of NISA to spouse or trust

(6.1) Where a property that is a net income stabilization account of a taxpayer has, on or after the taxpayer's death and as a consequence thereof, been transferred or distributed to

(*a*) the taxpayer's spouse, or

(*b*) a trust, created by the taxpayer's will, under which

(i) the taxpayer's spouse is entitled to receive all of the income of the trust that arises before the spouse's death, and

(ii) no person except the spouse may, before that spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

subsections (5.4) and 73(5) shall not apply in respect of the taxpayer's NISA Fund No. 2 if it can be shown, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the spouse or trust, as the case may be.

Election

(6.2) Subsection (6) or (6.1) does not apply to any property of a deceased taxpayer in respect of which the taxpayer's legal representative has elected, in the taxpayer's return of income under this Part (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) for the year in which the taxpayer died, to have subsection (5) or (5.4), as the case may be, apply.

(9) All that portion of subsection 70(7) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

Special rules applicable in respect of trust for benefit of spouse

(7) Where a trust created by a taxpayer's will would, but for the payment of, or provision for payment of, any particular testamentary debts in respect of the taxpayer, be a trust to which subsection (6) or (6.1) applies,

(10) All that portion of paragraph 70(7)(b) of the said Act preceding subparagraph (iii) thereof is repealed and the following substituted therefor:

(b) where the taxpayer's legal representative has so elected in the taxpayer's return (other than a return of income filed under subsection (2) or 104(23), paragraph 128(2)(*e*) or subsection 150(4)) and has

listed therein one or more properties (other than a net income stabilization account) that have, on or after the taxpayer's death and as a consequence thereof, been transferred or distributed to the trust, the total fair market value of which properties immediately after the taxpayer's death was not less than the total of the non-qualifying debts in respect of the taxpayer,

(i) subsection (6) does not apply in respect of the properties so listed, and

(ii) notwithstanding the payment of, or provision for payment of, any such particular testamentary debts, the trust shall be deemed to be a trust described in subsection (6),

except that, where the fair market value, immediately after the taxpayer's death, of all of the properties so listed exceeds the total of the non-qualifying debts in respect of the taxpayer (the amount of which excess is referred to in this subsection as the "listed value excess") and the taxpayer's legal representative has designated in the taxpayer's return one property so listed (other than money) that is capital property other than depreciable property,

(11) All that portion of subsection 70(9) of the said Act preceding paragraph (*b*) thereof is repealed and the following substituted therefor:

Transfer of farm property to child

(9) Where any land in Canada or depreciable property in Canada of a prescribed class of a taxpayer to which subsection (5) would otherwise apply was, immediately before the taxpayer's death, used by the taxpayer, the taxpayer's spouse or any of the taxpayer's children in the business of farming and the property has as a consequence of the death been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death and it can be shown, within the period ending 36 months after the death or, where written

application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, that the property has become vested indefeasibly in the child, the following rules apply:

(*a*) paragraphs (5)(*a*) and (*b*) are not applicable in respect of the property,

(12) Paragraph 70(9)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) where the property was depreciable property of the taxpayer of a prescribed class, paragraph (5)(*c*) is applicable as if the references therein to "paragraph (*a*)" and to "paragraph (*b*)" were read as references to "paragraph (9)(*b*)"

(13) Paragraph 70(9.1)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) subsections 104(4) and (5) are not applicable to the trust in respect of the property;

(14) All that portion of subsection 70(9.2) of the said Act preceding paragraph (*b*) thereof is repealed and the following substituted therefor:

Transfer of family farm corporations and partnerships

(9.2) Where at any time property of a taxpayer that was, immediately before the taxpayer's death, a share of the capital stock of a family farm corporation of the taxpayer or an interest in a family farm partnership of the taxpayer to which subsection (5) would otherwise apply has as a consequence of the death been transferred or distributed to a child of the taxpayer who was resident in Canada immediately before the death and it can be shown, within the period ending 36 months after the death or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the

circumstances, that the property has become vested indefeasibly in the child, the following rules apply:

(*a*) subsection (5) is not applicable in respect of the property, and

(15) Subparagraph 70(9.3)(*b*)(i) of the said Act is repealed and the following substituted therefor:

(i) a share in the capital stock of a Canadian corporation that would be a share in the capital stock of a family farm corporation if subparagraph (10)(*b*)(i) were read without the words "in which any person referred to in clause (B) or (C) was actively engaged on a regular and continuous basis", or

(16) Paragraph 70(9.3)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) subsection 104(4) is not applicable to the trust in respect of the property;

(17) Paragraph 70(10)(*b*) of the said Act is repealed and the following substituted therefor:

"share of the capital stock of a family farm corporation" « *action du capital-actions d'une corporation agricole familiale* »

(*b*) "share of the capital stock of a family farm corporation" of a person at a particular time means a share of the capital stock of a corporation owned by the person at that time where at that time, all or substantially all of the fair market value of the property owned by the corporation was attributable to

(i) property that has been used by

(A) the corporation or any other corporation, a share of the capital stock of which was a share of the capital stock of a family farm corporation of a person referred to in clause (B) or (C),

(B) the person,

(C) a spouse, child or parent of a person referred to in clause (B), or

(D) a partnership, an interest in which was an interest in a family farm partnership of a person referred to in clause (B) or (C)

principally in the course of carrying on the business of farming in Canada in which any person referred to in clause (B) or (C) was actively engaged on a regular and continuous basis,

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii), and

(18) Paragraph 70(10)(*c*) of the said Act is repealed and the following substituted therefor:

"interest in a family farm partnership" *« participation dans une société agricole familiale »*

(*c*) "interest in a family farm partnership" of a person at a particular time means an interest owned by the person at that time in a partnership where, at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(i) property that has been used by

(A) the partnership,

(B) the person,

(C) a spouse, child or parent of a person referred to in clause (B), or

(D) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of a person referred to in clause (B) or (C)

principally in the course of carrying on the business of farming in Canada in which any person referred to in clause (B) or (C) was actively engaged on a regular and continuous basis,

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii).

(19) Subsections (1), (4), (5), (6), (11), (12) and (14) are applicable with respect to dispositions occurring after 1992.

(20) Subsection (2) is applicable with respect to acquisitions occurring as a consequence of the death of a taxpayer after the commencement of the first fiscal period of the taxpayer's business commencing after 1987.

(21) Subsections (3), (8), (9) and (10) are applicable to the 1991 and subsequent taxation years.

(22) Subsection (7) is applicable to the 1990 and subsequent taxation years.

(23) Subsections (13) and (16) are applicable after ANNOUNCEMENT DATE.

(24) Subsections (15), (17) and (18) are applicable to the 1992 and subsequent taxation years.

22. (1) Clause 73(3)(*b*.1)(ii)(B) of the said Act is repealed and the following substituted therefor:

(B) 4/3 of that proportion of the cumulative eligible capital of the taxpayer in respect of the business that the fair market value of the property immediately before the transfer is of the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business,

(2) All that portion of paragraph 73(3)(*d*.1) of the said Act following subparagraph (i) thereof is repealed and the following substituted therefor:

(ii) 4/3 of the amount, if any, by which

(A) that proportion of the amount, if any, determined under subparagraph 14(5)(*a*)(v) in respect of the business of the taxpayer immediately before the time of the transfer that the fair market value of the property immediately before that time is of the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business

exceeds

(B) the amount, if any, included by reason of subparagraph 14(1)(*a*)(iv) in computing the income of the taxpayer as a result of the disposition,

and, for the purposes of determining at any subsequent time the child's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (ii) shall be added to the amount otherwise determined in respect thereof under clause 14(5)(*a*)(v)(A);

(3) Subsection 73(3) of the said Act is further amended by adding thereto, immediately after paragraph (*d*.1) thereof, the following paragraph:

(*d*.2) for the purposes of determining after the time of the transfer

(i) the amount deemed under subparagraph 14(1)(*a*)(v) to be the child's taxable capital gain, and

(ii) the amount to be included by reason of paragraph 14(1)(*b*) in computing the child's income

in respect of any subsequent disposition of the property of the business, the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be that proportion of the amount, if any, determined under that clause in respect of the business of the taxpayer immediately before the time of the transfer that the fair market value immediately before that time of the property transferred is of the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business; and

(4) Section 73 of the said Act is further amended by adding thereto the following subsection:

Disposition of a NISA

(5) Where at any time a taxpayer disposes of an interest in the taxpayer's NISA Fund No. 2, an amount equal to the balance in the fund so disposed

of shall be deemed to have been paid out of the fund at that time to the taxpayer except that,

(*a*) where the interest is disposed of to the taxpayer's spouse, former spouse or an individual referred to in paragraph (1)(*d*), in settlement of rights arising out of their marriage or other conjugal relationship, on or after the breakdown of the marriage or other relationship, that amount shall not be deemed to have been paid to the taxpayer if

(i) the disposition is made pursuant to a decree, order or judgment of a competent tribunal or, in the case of a spouse or former spouse, a written separation agreement, and

(ii) the taxpayer elects in the taxpayer's return of income under this Part for the taxation year in which the property was disposed of to have this paragraph apply to the disposition; and

(*b*) where the interest is disposed of to a taxable Canadian corporation in a transaction in respect of which an election was made under section 85, an amount equal to the proceeds of disposition in respect of that interest shall be deemed to be paid, at that time, to the taxpayer out of the taxpayer's NISA Fund No. 2.

(5) Subsections (1) to (3) are applicable with respect to transfers by a taxpayer occurring after the commencement of the first fiscal period of the taxpayer's business commencing after 1987.

(6) Subsection (4) is applicable in respect of dispositions occurring after 1990.

23. (1) Subsection 74.5(10) of the said Act is repealed,

(2) Subsection (1) is applicable after 1990.

24. (1) All that portion of subsection 80.4(1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Loans

80.4 (1) Where a person or partnership has received a loan or otherwise incurred a debt by reason of or as a consequence of a previous, the current or an intended office or employment of an individual, or by reason of the services performed or to be performed by a corporation carrying on a personal services business, the individual or corporation, as the case may be, shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which the aggregate of

(2) Subsection (1) is applicable to taxation years commencing after 1991.

25. (1) Subsection 84.1(2) of the said Act is amended by striking out the word "and" at the end of paragraph (*c*) thereof, by adding the word "and" at the end of paragraph (*d*) thereof and by adding thereto the following paragraph:

(*e*) for the purposes of paragraph (*b*),

(i) a group of persons in respect of a corporation means any two or more persons each of whom owns shares of the capital stock of the corporation,

(ii) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(iii) a corporation may be controlled by a person or a particular group of persons notwithstanding that the corporation is also

controlled or deemed to be controlled by another person or group of persons.

(2) Subsection (1) is applicable with respect to dispositions occurring after ANNOUNCEMENT DATE.

26. (1) All that portion of paragraph 85(1)(*c*.1) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(*c*.1) where the property of the taxpayer was inventory, capital property (other than depreciable property of a prescribed class) or a NISA Fund No. 2 or a property (other than capital property or an inventory) of the taxpayer that is a security or debt obligation used in the year in, or held in the year in the course of, carrying on the business of insurance or lending money, and the amount that the taxpayer and corporation have agreed on in their election in respect of the property is less than the lesser of

(2) Subsection 85(1) of the said Act is amended by adding thereto, immediately after paragraph (*d*) thereof, the following paragraph:

(*d*.1) for the purposes of determining after the time of the disposition the amount to be included in computing the corporation's income under paragraph 14(1)(*b*), the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be that proportion of the amount, if any, determined under that clause in respect of the taxpayer's business immediately before the time of the disposition that the fair market value immediately before that time of the eligible capital property disposed of to the corporation by the taxpayer is of the fair market value immediately before that time of all eligible capital property of the taxpayer in respect of the business;

(3) Paragraph 85(1.1)(*f*) of the said Act is repealed and the following substituted therefor:

(*f*) an inventory (other than real property, an interest therein or an option in respect thereof); or

(4) Subsection 85(1.1) of the said Act is further amended by striking out the word "or" at the end of paragraph (*g*) thereof, by adding the word "or" at the end of paragraph (*h*) thereof and by adding thereto the following paragraph:

(*i*) a NISA Fund No. 2.

(5) Subsections (1) and (4) are applicable in respect of dispositions occurring after 1990.

(6) Subsection (2) is applicable with respect to the disposition of property to a corporation occurring after the commencement of its first taxation year commencing after June 1988.

(7) Subsection (3) is applicable with respect to dispositions occurring after ANNOUNCEMENT DATE.

27. (1) All that portion of subsection 85.1(1) of the said Act preceding paragraph (*a*) thereof is deleted and the following substituted therefor:

Share for share exchange

85.1 (1) Where shares of any particular class of the capital stock of a Canadian corporation (in this section referred to as the "purchaser") have been issued to a taxpayer (in this section referred to as the "vendor") by the purchaser in exchange for a capital property of the vendor that is shares of any particular class of the capital stock (in this section referred to as the "exchange shares") of another corporation that is a taxable Canadian corporation (in this section referred to as the "acquired corporation"), subject to subsection (2), the following rules apply:

(2) Subsection (1) is applicable with respect to exchanges of shares occurring after ANNOUNCEMENT DATE.

28. (1) Paragraph 87(1)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) all of the shareholders (except any predecessor corporation), who owned shares of the capital stock of any predecessor corporation immediately before the merger, receive shares of the capital stock of the new corporation by virtue of the merger,

(2) All that portion of subsection 87(1.4) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Definition of "subsidiary wholly-owned corporation"

(1.4) Notwithstanding subsection 248(1), for the purposes of this subsection and subsections (1.1), (1.2) and (2.11), "subsidiary wholly-owned corporation" of a corporation (in this subsection referred to as the "parent corporation") means a corporation all the issued and outstanding shares of the capital stock of which belong to

(3) Paragraphs 87(2)(*f*) and (*f*.1) of the said Act are repealed and the following substituted therefor:

Eligible capital property

(*f*) for the purposes of determining under this Act any amount relating to cumulative eligible capital, eligible capital amount, eligible capital expenditure or eligible capital property, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(4) Paragraph 87(2)(*j*) of the said Act is repealed and the following substituted therefor:

Idem

(*j*) for the purposes of paragraphs 20(1)(*m*), (*m*.1) and (*m*.2) and subsection 20(24), the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

(5) Paragraph 87(2)(*j*.6) of the said Act is repealed and the following substituted therefor:

Continuing corporation

(*j*.6) for the purposes of paragraphs 12(1)(*t*) and (*x*), subsections 12(2.2), 13(7.1) and (7.4), subparagraph 13(21)(*f*)(ii.2), subsection 13(24), paragraphs 13(27)(*b*) and (28)(*c*), subsections 13(29) and 18(9.1), paragraphs 20(1)(*e*) and (*hh*), section 32, paragraph 37(1)(*c*), subsection 39(13), subparagraphs 53(2)(*c*)(vi) and (*h*)(ii), paragraph 53(2)(*s*), subsections 53(2.1) and 66(11.4), subparagraph 66.1(6)(*b*)(xi) and subsection 66.7(11), the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(6) Paragraph 87(2)(*l*.3) of the said Act is repealed and the following substituted therefor:

Property taken, lost or destroyed

(*l*.3) where property of a predecessor corporation was unlawfully taken, lost, destroyed or taken under statutory authority, or was a former business property of the predecessor corporation, before the amalgamation, for the purposes of applying sections 13 and 44 and the definition "former business property" in subsection 248(1) to the new corporation in respect of the property and any replacement property acquired therefor, the new corporation shall be deemed to be the same corporation as, and a continuation of, the predecessor corporation;

(7) Paragraph 87(2)(*aa*) of the said Act is repealed and the following substituted therefor:

Refundable dividend tax on hand

(*aa*) where the new corporation has been a private corporation continuously from the time of the amalgamation until the time immediately after the commencement of any taxation year, for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the new corporation at the end of that year there shall be added to the aggregate determined under subsection 129(3) for that year, from which the aggregate of amounts determined under paragraphs 129(3)(*c*) to (*e*) is subtracted, the total of all amounts each of which is the amount, if any, by which the refundable dividend tax on hand immediately before the amalgamation of a predecessor corporation that was a private corporation at that time exceeds its dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year ending at that time, except that no amount shall be so added in respect of a predecessor corporation where subsection 129(1.2) would have applied to deem a dividend paid by the predecessor corporation immediately before the amalgamation not to be a taxable dividend for the purpose of subsection 129(1);

(8) Section 87 of the said Act is further amended by adding thereto, immediately after subsection (2.1) thereof, the following subsection:

Losses, etc., on amalgamation with subsidiary wholly-owned corporation

(2.11) Where a new corporation has been formed by the amalgamation of a particular corporation and one or more of its subsidiary wholly-owned corporations, the new corporation shall, for the purposes of applying section 111 and Part IV in respect of the particular corporation, be deemed to be the same corporation as and a continuation of the particular corporation.

(9) All that portion of subsection 87(3) of the said Act, preceding paragraph (*a*) thereof, is repealed and the following substituted therefor:

Computation of paid-up capital

(3) Subject to subsection (3.1), where there has been an amalgamation or a merger of two or more Canadian corporations, in computing at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation

(10) Section 87 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

Election for non-application of subsection (3)

(3.1) Where,

(*a*) there has been an amalgamation of two or more corporations,

(*b*) all of the issued shares, immediately before the amalgamation, of each class of shares (other than a class of shares all of the issued shares of which were cancelled on the amalgamation) of the capital stock of each predecessor corporation (in this subsection referred to as "exchanged class") have been exchanged for all of the issued shares, immediately after the amalgamation, of a separate class of shares of the capital stock of the new corporation (in this subsection referred to as "substituted class"),

(*c*) immediately after the amalgamation, the number of shareholders of each substituted class, the number of shares of each substituted class owned by each shareholder, the number of issued shares of each substituted class, the terms and conditions of each share of a substituted class and the paid-up capital of each substituted class determined without reference to the provisions of this Act are identical to the number of shareholders of the exchanged class for which the substituted class was substituted, the number of shares of each such exchanged class owned by each shareholder, the number of issued shares of each such exchanged class, the terms and

conditions of each share of such exchanged class and the paid-up capital of each such exchanged class determined without reference to the provisions of this Act, respectively, immediately before the amalgamation, and

(*d*) the new corporation elects in its return of income filed in accordance with section 150 for its first taxation year to have the provisions of this subsection apply,

for the purpose of computing at any particular time the paid-up capital in respect of any particular class of shares of the capital stock of the new corporation, the following rules apply:

(*e*) subsection (3) shall not apply in respect of the amalgamation, and

(*f*) each substituted class shall be deemed to be the same as and a continuation of the exchanged class for which it was substituted.

(11) Paragraph 87(7)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) a debt or other obligation of a predecessor corporation that was outstanding immediately before the amalgamation became a debt or other obligation of the new corporation on the amalgamation, and

(12) Subsection 87(9) of the said Act is amended by adding thereto, immediately after paragraph (*a*.2) thereof, the following paragraphs:

(*a*.3) for the purposes of applying subsection (5) in respect of the merger, the reference therein to "the new corporation" shall be read as a reference to "the parent";

(*a*.4) for the purposes of paragraph (*c*), any shares of the new corporation acquired by the parent on the merger shall be deemed to be new shares;

(13) Subsections (1), (2) and (8) are applicable with respect to amalgamations occurring after 1989.

(14) Subsection (3) is applicable with respect to amalgamations occurring after June 1988.

(15) Subsection (4) is applicable with respect to amalgamations occurring and windings-up commencing after 1990.

(16) Subsection (5) is applicable after January 1990.

(17) Subsection (6) is applicable with respect to amalgamations occurring and windings-up commencing after 1989.

(18) Subsection (7) is applicable with respect to the computation of refundable dividend tax on hand (within the meaning assigned by subsection 129(3) of the said Act, as amended by this Act) for the 1993 and subsequent taxation years.

(19) Subsections (9) and (10) are applicable to amalgamations occurring after 1990.

(20) Subsection (12) is applicable with respect to amalgamations and mergers occurring after ANNOUNCEMENT DATE.

29. (1) Paragraph 88(1)(*a*) of the said Act is amended by adding the word "and" at the end of subparagraph (i) thereof and by repealing subparagraph (ii) thereof.

(2) Subparagraph 88(1)(*c*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) in any other case, the amount that would, but for subsection 69(11), be deemed by paragraph (*a*) to be the proceeds of disposition of the property,

(3) Subsection 88(1) of the said Act is further amended by adding thereto, immediately after paragraph (*c*) thereof, the following paragraph:

(*c*.1) for the purposes of determining after the winding-up the amount to be included by reason of paragraph 14(1)(*b*) in computing the parent's income in respect of the business carried on by the subsidiary immediately before the winding-up, the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be the amount, if any, determined under that clause in respect of that business immediately before the disposition;

(4) Paragraph 88(1)(*d*.2) of the said Act is repealed and the following substituted therefor:

(*d*.2) in determining for the purposes of this paragraph and paragraphs (*c*) and (*d*) the time that a taxpayer last acquired control of the subsidiary, where control of the subsidiary was acquired from a person or group of persons (in this paragraph referred to as the "vendor") with whom the taxpayer was not (otherwise than by virtue of a right referred to in paragraph 251(5)(*b*)) dealing at arm's length, the taxpayer shall be deemed to have last acquired control at the earlier of the time that the vendor last acquired control (within the meaning assigned by subsection 186(2) if the reference therein to "another corporation" were read as a reference to "a person" and the references therein to "the other corporation" were read as references to "the person") of the subsidiary and the time that the vendor was deemed by this subsection to have last acquired

control, except that, in determining the time that a particular taxpayer last acquired control of a corporation where at any time control of the corporation is acquired by the particular taxpayer by reason of a bequest or an inheritance of shares of the capital stock of the corporation, for the purposes of this paragraph and subsection 186(2) in its application to this paragraph, the particular taxpayer shall be deemed at that time, and at any time before that time, to have dealt at arm's length with the person who bequeathed the shares, or from whom the shares were inherited, and each other person related to that person;

(5) Paragraph 88(1)(*e*.5) of the said Act is repealed and the following substituted therefor:

(*e*.5) for the purpose of computing the refundable dividend tax on hand (within the meaning assigned by subsection 129(3)) of the parent at the end of any particular taxation year ending after the subsidiary was wound up, the amount, if any, by which

(i) the subsidiary's refundable dividend tax on hand at the end of its taxation year during which it was wound up

exceeds

(ii) the subsidiary's dividend refund (within the meaning assigned by subsection 129(1)) for its taxation year referred to in subparagraph (i)

shall, if

(iii) the subsidiary was a private corporation at the end of the year during which it was wound up, and

(iv) the parent was a private corporation

(A) where the subsidiary was wound up in the particular year, at the time immediately after the winding-up, and

(B) in any other case, continuously from the time of the winding-up until the time immediately after the commencement of the particular year

be added to the aggregate determined for the particular year under subsection 129(3) from which the aggregate of amounts determined under paragraphs 129(3)(*c*) to (*e*) is subtracted, except that no amount shall be so added in respect of subsidiary where subsection 129(1.2) would have applied to deem a dividend paid by the subsidiary immediately before the winding-up not to be a taxable dividend for the purpose of subsection 129(1);

(6) Paragraph 88(1.3)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) it shall be deemed to have been in existence during the particular period commencing immediately before the end of the subsidiary's first expenditure year, gift year, foreign tax year or loss year, as the case may be, and ending immediately after it was incorporated or otherwise formed;

(7) Subsections (1) and (3) are applicable with respect to distributions of property on the winding-up of a subsidiary in a taxation year of the subsidiary commencing after June 1988.

(8) Subsections (2) and (4) are applicable with respect to windings-up commencing after ANNOUNCEMENT DATE.

(9) Subsection (5) is applicable with respect to the computation of refundable dividend tax on hand (within the meaning assigned by subsection 129(3) of the said Act, as amended by this Act) for the 1993 and subsequent taxation years.

(10) Subsection (6) is applicable to windings-up commencing after 1988.

30. (1) Subsection 94(7) of the said Act is repealed.

(2) Subsection (1) is applicable after 1990.

31. (1) Paragraph 96(1)(*d*) of the said Act is repealed and the following substituted therefor:

(*d*) each income or loss of the partnership for a taxation year were computed as if this Act were read without reference to paragraph 20(1)(*v*.1) and subsections 66.1(1), 66.2(1) and 66.4(1) and as if no deduction were permitted by section 29 of the *Income Tax Application Rules, 1971*, subsection 65(1) or section 66, 66.1, 66.2 or 66.4;

(2) Subsection (1) is applicable to partnership fiscal periods commencing after ANNOUNCEMENT DATE.

32. (1) All that portion of paragraph 98(3)(*b*) of the said Act preceding subparagraph (ii) thereof is repealed and the following substituted therefor:

(*b*) the cost to each such person of that person's undivided interest in each such property shall be deemed to be an amount equal to the total of

(i) that person's percentage of the cost amount to the partnership of the property immediately before its distribution,

(i.1) where the property is eligible capital property, that person's percentage of 4/3 of the amount, if any, determined under subparagraph 14(5)(*a*)(v) in respect of the partnership's business immediately before the particular time, and

(2) Subsection 98(3) of the said Act is further amended by striking out the word "and" at the end of paragraph (*e*) thereof, by adding the word "and" at the end of paragraph (*f*) thereof and by adding thereto the following paragraph:

(g) where the property so distributed by the partnership was eligible capital property in respect of the business,

(i) for the purposes of determining under this Act any amount relating to cumulative eligible capital, eligible capital amount, eligible capital expenditure or eligible capital property, each such person shall be deemed to have continued to carry on the business in respect of which the property was eligible capital property previously carried on by the partnership until the time that the person disposes of the person's undivided interest in the property,

(ii) for the purposes of determining the person's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under subparagraph (*b*)(i.1) in respect of the business shall be added to the amount otherwise determined in respect thereof under clause 14(5)(*a*)(*v*)(A), and

(iii) for the purposes of determining after the particular time

(A) the amount deemed under subparagraph 14(1)(*a*)(*v*) to be the person's taxable capital gain, and

(B) the amount to be included by reason of paragraph 14(1)(*b*) in computing the income of the person

in respect of any subsequent disposition of the property of the business, the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be the amount, if any, of that person's percentage of the amount determined under that clause in respect of the partnership's business immediately before the particular time.

(3) All that portion of paragraph 98(5)(*b*) of the said Act preceding subparagraph (ii) thereof is repealed and the following substituted therefor:

(*b*) the cost to the proprietor of each such property shall be deemed to be an amount equal to the total of

(i) the cost amount to the partnership of the property immediately before that time,

(i.1) where the property is eligible capital property, 4/3 of the amount, if any, determined under subparagraph 14(5)(*a*)(*v*) in respect of the partnership's business immediately before the particular time, and

(4) Subsection 98(5) of the said Act is further amended by striking out the word "and" at the end of paragraph (*f*) thereof, by adding the word "and" at the end of paragraph (*g*) thereof and by adding thereto the following paragraph:

(h) where the property so received by the proprietor is eligible capital property in respect of the business,

(i) for the purposes of determining the proprietor's cumulative eligible capital in respect of the business, an amount equal to 3/4 of the amount determined under

subparagraph (*b*)(i.1) in respect of the business shall be added to the amount otherwise determined in respect thereof under clause 14(5)(*a*)(*v*)(A), and

(ii) for the purposes of determining after the particular time

(A) the amount deemed under subparagraph 14(1)(*a*)(v) to be the proprietor's taxable capital gain, and

(B) the amount to be included in computing the proprietor's income by reason of paragraph 14(1)(*b*)

in respect of any subsequent disposition of property of the business, the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be the amount, if any, determined under that clause in respect of the partnership's business immediately before the particular time;

(5) Subsections (1) to (4) are applicable to acquisitions of property occurring as a consequence of a partnership ceasing to exist after the commencement of its first fiscal period commencing after 1987.

33. (1) Subsections 104(4) and (5) of the said Act are repealed and the following substituted therefor:

Deemed disposition by trust

(4) Every trust shall, at the end of each of the following days, be deemed to have disposed of each property of the trust that was capital property (other than excluded property or depreciable property) or land included in the inventory of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately thereafter for an amount equal to that fair market value, and for the purposes of this Act those days are

(*a*) where the trust

(i) is a trust created by the will of a taxpayer who died after 1971 and that, at the time it was created, was a trust,

(i.1) is a trust created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(*d*) or (*f*) or (6)(*d*) applied and that, immediately after any such property became vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust, or

(ii) is a trust created after June 17, 1971 by a taxpayer during the taxpayer's lifetime that, at any time after 1971, was a trust

under which

(iii) the taxpayer's spouse was entitled to receive all of the income of the trust that arose before the spouse's death, and

(iv) no person except the spouse could, before the spouse's death, receive or otherwise obtain the use of any of the income or capital of the trust,

the day on which the spouse dies;

(*a*.1) where the trust is a pre-1972 spousal trust on January 1, 1993, the day that is the later of

(i) the day on which the spouse referred to in paragraph 108(1)(*f*.1) in respect of the trust dies, and

(ii) January 1, 1993;

(*b*) the day that is 21 years after the latest of

(i) January 1, 1972,

(ii) the day on which the trust was created, and

(iii) where applicable, the day determined under paragraph (*a*) or (*a*.1); and

(*c*) the day that is 21 years after any day (other than a day determined under paragraph (*a*) or (*a*.1)) that is, by reason of this subsection, a day on which the trust is deemed to have disposed of each such property.

Idem

(5) Every trust shall, at the end of each day determined under subsection (4) in respect of the trust, be deemed to have disposed of each property of the trust that was a depreciable property of a prescribed class of the trust for proceeds equal to its fair market value at the end of that day and to have reacquired the property immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that fair market value, except that

(*a*) where the amount that was the capital cost to the trust of the property immediately before the end of the day (in this paragraph referred to as the "actual capital cost") exceeds the deemed capital cost to the trust of the property, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(*a*) as they apply in respect of the property at any subsequent time,

(i) the capital cost to the trust of the property shall be deemed to be the amount that was the actual capital cost to the trust of the property, and

(ii) the excess shall be deemed to have been allowed to the trust in respect of the property under paragraph 20(1)(*a*) in computing income for taxation years before the reacquisition by the trust of the property, and any other amount allowed to the trust in respect of the property under that paragraph in computing income for those years shall be deemed to be nil,

(*b*) for the purposes of this subsection, the reference to "at the end of a taxation year" in subsection 13(1) shall be read as a reference to "at the particular time a trust is deemed by subsection 104(5) to have disposed of depreciable property of a prescribed class", and

(*c*) for the purposes of computing the excess, if any, referred to in subsection 13(1) at the end of the taxation year of a trust that included a day on which the trust is deemed by this subsection to have disposed of a depreciable property of a prescribed class, any amount that, on that day, was included in the trust's income for the year by reason of subsection 13(1) as it reads by reason of paragraph (*b*), shall be deemed to be an amount included in the trust's income by reason of section 13 for a preceding taxation year.

(2) Section 104 of the said Act is further amended by adding thereto, immediately after subsection (5) thereof, the following subsection:

Idem

(5.1) Every trust that holds an interest in a NISA Fund No. 2 that was transferred to it in circumstances to which paragraph 70(6.1)(*b*) applied shall be deemed, at the end of the day on which the spouse referred to in that paragraph dies (in this subsection referred to as the "spouse"), to have been paid an amount out of the fund equal to the amount, if any, by which

(*a*) the balance at the end of that day in the fund so transferred,

exceeds

(*b*) such portion of the amount described in paragraph (*a*) as is deemed by subsection (14.1) to have been paid to the spouse.

(3) Section 104 of the said Act is further amended by adding thereto, immediately after subsection (5.2) thereof, the following subsections:

Election

(5.3) Where a trust so elects in prescribed form filed with the Minister within 6 months after the end of a taxation year of the trust that includes a day (in this subsection referred to as the "disposition day") that would, but for this subsection, be determined in respect of the trust under paragraph (4)(*a*.1), in the case of a trust described in that paragraph, or under paragraph (4)(*b*), in any other case, and there is an exempt beneficiary under the trust on the disposition day, the following rules apply:

(*a*) for the purposes of subsections (4) to (5.2), paragraph (6)(*b*) and subsection 159(6.1), the day determined in respect of the trust under paragraph (4)(*a*.1) or (*b*), as the case may be, shall be deemed to be the first day of the first taxation year of the trust commencing after the first day after the disposition day throughout which there is no exempt beneficiary under the trust;

(*b*) subsection 107(2) shall not apply in respect of a distribution made by the trust during the period

(i) commencing immediately after the disposition day, and

(ii) ending at the end of the first day after the disposition day that is determined in respect of the trust under subsection (4)

to any beneficiary (other than an individual who is an exempt beneficiary under the trust immediately before the time of the distribution);

(*c*) subject to paragraph (*d*), subparagraph 54(*c*)(v) shall not apply in respect of a transfer by the trust after the disposition day during the period

(i) commencing immediately after the disposition day, and

(ii) ending at the end of the first day after the disposition day that is determined in respect of the trust under subsection (4); and

(*d*) where

(i) property is transferred from the trust to another trust in circumstances to which subparagraph 54(*c*)(v) would, but for paragraph (*c*), apply,

(ii) the other trust held no property immediately before the transfer, and

(iii) the terms of the trust immediately before the transfer are identical to the terms of the other trust immediately after the transfer,

subparagraph 54(*c*)(*v*) shall apply in respect of the transfer and the other trust shall be deemed to be the same trust as, and a continuation of, the trust.

Exempt beneficiary

(5.4) For the purposes of subsection (5.3), an "exempt beneficiary" under a trust at a particular time is an individual who is alive and a beneficiary under the trust at the particular time, where

(*a*) in the case of a trust created after February 11, 1991, the individual was alive at the earlier of

(i) the time the trust was created, and

(ii) the earliest of all times each of which is the time that another trust was created which, before the particular time and the end of the day that would, but for subsection (5.3), be determined in respect of the trust under paragraph (4)(*a*.1) or (*b*), transferred property to the trust either

(A) directly, or

(B) indirectly through one or more trusts,

in circumstances in which subsection (5.8) applies; and

(*b*) the individual or the individual's spouse or former spouse is

(i) the designated contributor in respect of the trust, or

(ii) a grandparent, parent, brother, sister, child, niece or nephew

(A) of the designated contributor in respect of the trust, or

(B) of the spouse or former spouse of the designated contributor in respect of the trust.

Beneficiary

(5.5) For the purposes of subsection (5.4), a beneficiary under a trust is an individual who is beneficially interested in the trust, except that an individual shall be deemed not to be a beneficiary under a trust at a particular time

(*a*) where

(i) the interests in the trust at the particular time of all individuals who would, but for this paragraph, be exempt beneficiaries under the trust are conditional on or subject to the exercise of a discretionary power or powers by a person or persons,

(ii) by the exercise of (or the failure to exercise) such power or powers pursuant to the terms of the trust after the particular time, all those interests may terminate without any of those individuals enjoying any benefit under the trust after the particular time, and

(iii) the trust was created after February 11, 1991 or subparagraph (ii) applies in respect of the trust by reason of a variation of the terms of the trust occurring after February 11, 1991; or

(*b*) where it is reasonable to consider that one of the main purposes for the creation of the interest of the individual in the trust was to defer the day determined in respect of the trust under paragraph (4)(*a*.1) or (*b*).

Designated contributor

(5.6) For the purposes of subsection (5.4), a designated contributor in respect of a trust is,

(*a*) where the trust is described in paragraph (4)(*a*) or was, on ANNOUNCEMENT DATE, a pre-1972 spousal trust, the individual who created (or whose will created) the trust;

(*b*) where paragraph (*a*) does not apply and the trust is a testamentary trust at the end of the taxation year for which it makes an election under subsection (5.3), the individual as a consequence of whose death the trust was created; and

(*c*) in the case of any other trust, the individual who is related to any individual beneficially interested in the trust and is designated by the trust in its election under subsection (5.3)

(i) where, throughout the relevant period, the total amount of property previously transferred or loaned by the individual (either directly or through another trust) to the trust

(A) exceeded the total amount of property previously so transferred or loaned by each other individual who was born before and who, at any time, was related to any individual beneficially interested in the trust, and

(B) was not less than the total amount of property previously so transferred or loaned by each other individual who was born after and who, at any time, was related to any individual beneficially interested in the trust,

(ii) where

(A) no individual may be designated in respect of the trust by reason of subparagraph (i),

(B) the individual transferred or loaned property (either directly or through another trust) to the trust at any time during the relevant period, and

(C) the individual was born before all other individuals who,

(I) at any time were related to any individual beneficially interested in the trust, and

(II) transferred or loaned property (either directly or through another trust) to the trust at any time during the relevant period, or

(iii) where throughout the relevant period the property of the trust consisted primarily of

(A) shares of the capital stock of a corporation

(I) controlled, on the day that the trust was created or at the beginning of the relevant period, by the individual or by the individual and one or more other individuals born after, and related to, the individual, or

(II) all or substantially all of the value of which throughout the relevant period derived from property transferred to the corporation by the individual or the individual and one or more other individuals born after, and related to, the individual, and property substituted therefor,

(B) shares of the capital stock of a corporation all or substantially all of the value of which, throughout the part of the relevant period throughout which the shares were held by the trust, derived from shares described in clause (A), distributions in respect thereof, property substituted for such distributions, or any combination thereof,

(C) property substituted for the shares described in clause (A) or (B),

(D) property attributable to profits or gains with respect to property described in clause (A), (B) or (C), or

(E) any combination of the properties described in clauses (A) to (D).

Idem

(5.7) For the purposes of subsection (5.6),

(*a*) the relevant period in respect of a trust is the period that commences one year after the day on which the trust was created and ends at the end of the day that would, but for the election of the trust under subsection (5.3), be determined in respect of the trust under paragraph (4)(*a*.1) or (*b*), as the case may be;

(*b*) two individuals shall be deemed to be related to each other where one individual is the aunt or uncle of the other individual; and

(*c*) an individual shall be deemed not to be a designated contributor in respect of a trust where it is reasonable to consider that one of the main purposes of a series of transactions or events that includes

(i) an individual becoming a trustee with respect to trust property, or

(ii) an acquisition of property or a borrowing by any individual

was to defer the day determined in respect of the trust under paragraph (4)(*b*).

Trust transfers

(5.8) Where capital property (other than excluded property), land included in inventory, Canadian resource property or foreign resource property is transferred at a particular time by a trust (in this subsection referred to as the "transferor trust") to another trust (in this subsection referred to as the "transferee trust") in circumstances in which subparagraph 54(*c*)(v) or subsection 107(2) applies, the following rules apply:

(*a*) for the purposes of applying subsections (4) to (5.2) after the particular time,

(i) subject to paragraph (*b*), the first day (in this subsection referred to as the "disposition day") ending at or after the particular time determined in respect of the transferee trust under subsection (4) shall be deemed to be the earliest of

(A) the first day ending at or after the particular time that would be determined in respect of the transferor trust under subsection (4) without regard to the transfer and any transaction or event occurring after the particular time,

(B) the first day ending at or after the particular time that would otherwise be determined in respect of the transferee trust under subsection (4) without regard to any transaction or event occurring after the particular time,

(C) where the transferor trust is a trust that is described in paragraph (4)(*a*) or paragraph 108(1)(*f*.1) and the spouse referred to therein is alive at the particular time, the first day ending at or after the particular time, and

(D) where

(I) the disposition day would, but for the application of this subsection to the transfer, be determined in respect of the transferee trust under paragraph (5.3)(*a*), and

(II) the particular time is after the day that would, but for subsection (5.3), be determined in respect of the transferee trust under paragraph (4)(*b*),

the first day ending at or after the particular time, and

(ii) where the disposition day determined in respect of the transferee trust under subparagraph (i) is earlier than the day referred to in clause (i)(B) in respect of the transferee trust, subsections (4) to (5.2) shall not apply to the transferee trust on the day referred to in clause (i)(B) in respect of the transferee trust;

(*b*) where the transferor trust is a trust (in this paragraph referred to as an "eligible trust") that is described in paragraph (4)(*a*) or 108(1)(*f*.1) and the spouse referred to therein is alive at the particular time, paragraph (*a*) does not apply in respect of the transfer where the transferee trust is an eligible trust; and

(*c*) for the purposes of subsection (5.3), unless a day ending before the particular time has been determined under paragraph (4)(*a*.1) or (*b*) or would, but for subsection (5.3) have been so determined, a day determined under subparagraph (*a*)(i) shall be deemed to be a day determined under paragraph (4)(*a*.1) or (*b*), as the case may be, in respect of the transferee trust.

(4) Paragraph 104(6)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) in any other case, such amount as the trust claims not exceeding the amount, if any, by which

(i) such part of the amount that, but for

(A) this subsection,

(B) subsections (5.1), (12), and 107(4),

(C) the application of subsections (4), (5) and (5.2) in respect of a day determined under paragraph (4)(*a*), and

(D) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(*b*) and before the death of the spouse referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary or was included in computing the income of a beneficiary by reason of subsection 105(2)

exceeds

(ii) where the trust

(A) is described in paragraph (4)(*a*) and was created after ANNOUNCEMENT DATE, or

(B) would be described in paragraph (4)(*a*) if the reference therein to "at the time the trust was created" were read as a reference to "on ANNOUNCEMENT DATE"

and the spouse referred to in paragraph (4)(*a*) in respect of the trust is alive throughout the year, such part of the amount that, but for

(C) this subsection,

(D) subsections (12) and 107(4), and

(E) subsection 12(10.2), except to the extent that that subsection applies to an amount paid to a trust described in paragraph 70(6.1)(*b*) and before the death of the spouse referred to in that paragraph

would be its income for the year as became payable in the year to a beneficiary (other than

the spouse) or was included in computing the income of a beneficiary (other than the spouse) by reason of subsection 105(2).

(5) Section 104 of the said Act is further amended by adding immediately after subsection (14) thereof the following subsection:

NISA election

(14.1) Where, at the end of the day on which a taxpayer dies and as a consequence of the death, an amount would, but for this subsection, be deemed by reason of subsection (5.1) to have been paid to a trust out of the trust's interest in a NISA Fund No. 2 and the trust and the legal representative of the taxpayer so elect in prescribed manner, such portion of the amount as may be designated in the election shall be deemed to have been paid to the taxpayer out of a NISA Fund No. 2 of the taxpayer immediately before the end of the day and, for the purposes of subparagraph 12(10.2)(*b*)(i) in respect of the trust, the amount shall be deemed to have been paid out of the trust's NISA Fund No. 2 immediately before the end of the day.

(6) All that portion of paragraph 104(15)(*a*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(*a*) where the trust is a trust described in paragraph 108(1)(*f*.1) at the end of the year or a trust described in paragraph (4)(*a*) and the taxpayer's spouse referred to therein is alive at the end of the year, an amount equal to,

(7) Paragraph 104(29)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) the aggregate of all amounts each of which is an amount that is deductible (otherwise than by reason of the membership of the trust in a partnership) in computing the income of the trust for the year under paragraph 20(1)(*v*.1) or that

would, but for section 80.2, be included in computing its income for the year,

(8) Subsection (1) is applicable to taxation years of trusts ending after February 11, 1991 except that

(*a*) paragraph 104(4)(*a*) of the said Act, as enacted by subsection (1), does not apply in respect of any trust described in paragraph (4)(*a*) by reason of subparagraph (i.1) thereof where the spouse who was the beneficiary of that trust died on or before ANNOUNCEMENT DATE, and

(*b*) with respect to those days under subsection 104(4) of the said Act, as amended by subsection (1), that are before 1993, subsection 104(5) of the said Act shall be read without reference to subsection (1) and all that portion of the said subsection preceding paragraph (*c*) thereof shall be read as follows:

(5) Every trust shall, at the end of each day determined under subsection (4) in respect of the trust, be deemed to have disposed of all depreciable property of a prescribed class of the trust for proceeds equal to,

(*a*) where the fair market value of that property at the end of the day exceeds the undepreciated capital cost thereof to the trust at the end of the day, the amount of that undepreciated capital cost plus 1/2 of the excess, and

(*b*) in any other case, the fair market value of that property at the end of that day plus 1/2 of the amount, if any, by which the undepreciated capital cost thereof to the trust at the end of that day exceeds that fair market value,

and to have reacquired each such depreciable property of that class immediately thereafter at a capital cost (in this subsection referred to as the "deemed capital cost") equal to that proportion of the proceeds determined under paragraph (*a*) or (*b*), as the case may be, that the amount that was the fair market value of that property is of the total of the amounts that were the fair market values of all properties of that class at the end of that day, except that

(9) Subsections (2) and (5) are applicable to the 1991 and subsequent taxation years.

(10) Subsections 104(5.3) to (5.7) of the said Act, as enacted by subsection (3), are applicable after February 11, 1991.

(11) Subsection 104(5.8) of the said Act, as enacted by subsection (3), is applicable in respect of property transferred after February 11, 1991 except that paragraph 104(5.8)(*b*) of the said Act, as it applies in respect of property transferred on or before ANNOUNCEMENT DATE shall be read as follows:

(*b*) where the transferor trust or the transferee trust is a trust that is described in paragraph (4)(*a*) or paragraph 108(1)(*f*.1) and the spouse referred to therein is alive at the particular time, paragraph (*a*) does not apply in respect of the transfer; and

(12) Subsection (4) is applicable to the 1991 and subsequent taxation years, except that for taxation years of trusts ending after 1990 and on or before ANNOUNCEMENT DATE, paragraph 104(6)(*b*) of the said Act, as enacted by subsection (4), shall be read as follows:

(b) in any other case, such amount as the trust may claim not exceeding such part of the amount that, but for

(i) this subsection,

(ii) subsections (5.1) and (12),

(iii) subsections (4), (5) and (5.2), and 107(4), where the trust is a trust described in paragraph (4)(*a*), and

(iv) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(*b*) and before the death of the spouse referred to in that paragraph,

would be its income for the year as became payable in the year to a beneficiary or was included in computing the income of a beneficiary by reason of subsection 105(2).

(13) Subsection (6) is applicable to taxation years of trusts ending after ANNOUNCEMENT DATE.

(14) Subsection (7) is applicable to taxation years ending after ANNOUNCEMENT DATE.

34. (1) Paragraph 107(2)(*e*) of the said Act is repealed.

(2) Subsection 107(2) of the said Act is further amended by adding thereto the following paragraph:

(*f*) where the property so distributed was eligible capital property of the trust in respect of a business of the trust,

(i) where the eligible capital expenditure of the trust in respect of the property exceeds the cost at which the taxpayer is deemed by this subsection to have acquired the property, for the purposes of sections 14, 20 and 24,

(A) the eligible capital expenditure of the taxpayer in respect of the property shall be deemed to be the amount that was the eligible capital expenditure of the trust in respect of the property, and

(B) 3/4 of the excess shall be deemed to have been allowed to the taxpayer in respect of the property under paragraph 20(1)(*b*) in computing income for taxation years ending

(I) before the acquisition by the taxpayer of the property, and

(II) after the adjustment time (within the meaning assigned by paragraph 14(5)(*c*)) of the taxpayer in respect of the business, and

(ii) for the purposes of determining after that time

(A) the amount deemed under subparagraph 14(1)(*a*)(v) to be the taxpayer's taxable capital gain, and

(B) the amount to be included by reason of paragraph 14(1)(*b*) in computing the income of the taxpayer

in respect of any subsequent disposition of the property of a business, the amount determined under clause 14(5)(*a*)(v)(B) shall be deemed to be the proportion of that amount, if any, determined under that clause in respect of the business of the trust immediately before the distribution that the fair market value of the property so distributed immediately before the distribution is of the fair market value immediately before the distribution of all eligible capital property of the trust in respect of the business.

(3) All that portion of subsection 107(2.01) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Distribution of principal residence

(2.01) Where at any time (in this subsection referred to as "that time") a property has been distributed by a personal trust to a taxpayer in circumstances to which subsection (2) applies and subsection (4) does not apply and the property would, if the trust had designated the property under paragraph 54(*g*), be a principal residence (within the meaning assigned by that paragraph) of the trust for a taxation year, the following rules apply where the trust so elects in its return of income under this Part for the taxation year that includes that time:

(4) All that portion of subsection 107(4) of the said Act preceding paragraph (*e*) thereof is repealed and the following substituted therefor:

Where trust in favour of spouse

(4) Where

(*a*) at any time property of a trust has been distributed by the trust to a beneficiary in circumstances to which subsection (2) would, but for this subsection, apply,

(*a*.1) the trust is described in paragraph 104(4)(*a*),

(*a*.2) the property so distributed by the trust was capital property, a Canadian resource property, a foreign resource property or property that was land included in the inventory of the trust,

(*b*) the taxpayer to whom the property was so distributed was a person other than the spouse referred to in respect of the trust under paragraph 104(4)(*a*), and

(*c*) that spouse was alive on the day that the property was so distributed,

notwithstanding paragraphs (2)(*a*) to (*c*), the following rules apply:

(*d*) the trust shall be deemed to have disposed of the property and to have received proceeds of disposition therefor equal to its fair market value at that time, and

(5) All that portion of subsection 107(5) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Distribution to non-resident

(5) Where subsection (2) is applicable in respect of the distribution by a trust of any property (other than a Canadian resource property, excluded property or property that would, if at no time in the taxation year of the trust in which it was so distributed the trust had been resident in Canada, be taxable Canadian property) to a non-resident taxpayer (including a partnership other than a Canadian partnership) who was a beneficiary under the trust, notwithstanding paragraphs (2)(*a*) to (*c*), the following rules apply:

(6) Subsection (1) is applicable to distributions occurring after July 13, 1990.

(7) Subsection (2) is applicable to distributions occurring after 1987.

(8) Subsection (3) is applicable to distributions occurring after 1990.

(9) Subsection (4) is applicable to distributions occurring after ANNOUNCEMENT DATE, except that paragraph 107(4)(*d*) of the said Act, as enacted by subsection (4), is not applicable to distributions occurring before 1993.

(10) Subsection (5) is applicable to distributions occurring after 1991.

35. (1) Paragraph 108(1)(*a*) of the said Act is repealed and the following substituted therefor:

"accumulating income" « *revenu accumulé* »

(*a*) "accumulating income" of a trust for a taxation year means the amount that would be the income of the trust for the year if this Act were read without reference to

(i) subsections 104(5.1) and (12),

(ii) where the trust

(A) is a pre-1972 spousal trust at the end of the year,

(B) is described in paragraph 104(4)(*a*), or

(C) made an election under subsection 104(5.3) in its return of income under this Part for a preceding taxation year,

subsections 104(4), (5), (5.2) and 107(4), and

(iii) subsection 12(10.2), except to the extent that that subsection applies to amounts paid to a trust described in paragraph 70(6.1)(*b*) and before the death of the spouse referred to in that paragraph;

(2) Subsection 108(1) of the said Act is further amended by adding thereto, immediately after paragraph (*d*) thereof, the following paragraph:

"excluded property" « *bien exclu* »

(*d*.1) "excluded property" at a particular time means a share of the capital stock of a non-resident-owned investment corporation if, on the first day of the first taxation year of the corporation that ends at or after the particular time, the corporation did not own property referred to in any of clauses 115(1)(*b*)(v)(A) to (D);

(3) Subsection 108(1) of the said Act is further amended by adding thereto, immediately after paragraph (*f*) thereof, the following paragraph:

"pre-1972 spousal trust" « *fiducie au profit du conjoint antérieure à 1972* »

(*f*.1) "pre-1972 spousal trust" at a particular time means a trust

(i) created by the will of a taxpayer who died before 1972, or

(ii) created before June 18, 1971 by a taxpayer during the taxpayer's lifetime

that, throughout the period commencing at the time it was created and ending at the earliest of January 1, 1993, the day on which the taxpayer's spouse died and the particular time, was a trust under which the taxpayer's spouse was entitled to receive all of the income of the trust that arose before the spouse's death, unless a person other than the spouse received or otherwise obtained the use of any of the income or capital of the trust before the end of that period;

(4) All that portion of paragraph 108(1)(*j*) of the said Act preceding subparagraph (ii) thereof is repealed and the following substituted therefor:

"trust" « *fiducie* »

(*j*) "trust" includes an *inter vivos* trust and a testamentary trust but in subsections 104(4), (5), (5.2), (12), (14) and (15) does not include

(i) a unit trust, nor

(i.1) a trust (other than a trust described in paragraph 104(4)(*a*), a trust which has made an election under subsection 104(5.3), or a trust which has made an election that this subparagraph not apply in its return of income under this Part for its first taxation year ending after 1992) all interests in which have vested indefeasibly and no interest in which may become effective in the future

and in subsections 104(4), (5), (5.2), (12), (13.1), (13.2), (14) and (15) and sections 105 to 107, does not include

(5) Subparagraph 108(1)(*j*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) an amateur athlete trust, an employee trust, a trust described in paragraph 149(1)(*o*.4) or a trust governed by a deferred profit sharing plan, an employee benefit plan, an employees profit sharing plan, a foreign retirement arrangement, a registered education savings plan, a registered pension plan, a registered retirement income fund, a registered retirement savings plan or a registered supplementary unemployment benefit plan,

(6) Paragraph 108(1)(*j*) of the said Act is further amended by striking out the word "or" at the end of subparagraph (iv) thereof, by adding the word "nor" at the end of subparagraph (v) thereof and by adding thereto the following subparagraph:

(vi) a trust each of the beneficiaries under which was at all times after it was created a trust referred to in subparagraph (ii), (iii) or (v) or a person who is a beneficiary of the trust by reason only of being a beneficiary under a trust referred to any of those subparagraphs.

(7) All that portion of the English version of subsection 108(3) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

Meaning of "income" of trust

(3) For the purposes of paragraph (1)(*e*), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of paragraphs 70(6)(*b*) and (6.1)(*b*), 73(1)(*c*), 104(4)(*a*) and 108(1)(*f*.1), the income of a trust is its

income computed without reference to the provisions of this Act, minus any dividends included therein

(8) All that portion of subsection 108(4) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Trust not disqualified

(4) For the purposes of subparagraphs 70(6)(*b*)(ii) and (6.1)(*b*)(ii), 73(1)(*c*)(ii) and 104(4)(*a*)(iv) and paragraph 108(1)(*f*.1), where a trust has been created by a taxpayer whether by the taxpayer's will or otherwise, a person, other than the taxpayer's spouse, shall be deemed not to have received or otherwise obtained or to be entitled to receive or otherwise obtain the use of any income or capital of the trust, by reason only of the payment, or provision for payment, as the case may be, by the trust of

(9) Section 108 of the said Act is further amended by adding thereto the following subsection:

Variation of trusts

(6) For the purposes of subsections 104(4), (5) and (5.2), where at any time the terms of a trust are varied, the trust shall at and after that time be deemed to be the same trust as, and a continuation of, the trust immediately before that time, but, for greater certainty, nothing in this subsection shall affect the application of paragraph 104(4)(*a*.1).

(10) Subsections (1), (7) and (8) applicable to the 1991 and subsequent taxation years.

(11) Subsections (2) and (3) are applicable after February 11, 1991.

(12) Subsections (4) and (6) are applicable to the 1993 and subsequent taxation years.

(13) Subsection (5) is applicable to the 1988 and subsequent taxation years, except that, in its application to the 1988 and 1989 taxation years, subparagraph 108(1)(*j*)(ii) of the said Act, as

enacted by subsection (5), shall be read without reference to the expression "a foreign retirement arrangement" therein.

(14) Subsection (9) is applicable with respect to variations occurring after February 11, 1991.

36. (1) Paragraph 110(1)(*f*) of the said Act is amended by striking out the word "or" at the end of subparagraph (i) thereof, by adding the word "or" at the end of subparagraph (ii) thereof and by adding thereto the following subparagraph:

(iii) income from employment with a prescribed international organization,

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

37. (1) All that portion of subsection 110.1(3) of the English version of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor:

such amount, not greater than the fair market value and not less than the adjusted cost base to the corporation of the property at that time, as is designated by the corporation in its return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

(2) Subsection (1) is applicable with respect to gifts made after December 11, 1988.

38. (1) Paragraph (*b*) of the definition "annual gains limit" in subsection 110.6(1) of the said Act is repealed and the following substituted therefor:

(*b*) the amount, if any, by which the total of the individual's net capital losses for other taxation years deducted in computing the individual's taxable income for the year under paragraph 111(1)(*b*) exceeds the amount that would be determined in respect of the individual for the year under paragraph 3(*b*) in respect of capital gains and capital losses if the only properties referred to in that paragraph were properties disposed of by the individual before 1985, and

(2) The definition "interest in a family farm partnership" in subsection 110.6(1) of the said Act is repealed and the following substituted therefor:

"interest in a family farm partnership" « *participation dans une société agricole familiale* »

"interest in a family farm partnership" of an individual (other than a trust that is not a personal trust) at any time means an interest owned by the individual at that time in a partnership where,

(*a*) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property of the partnership was attributable to

(i) property that has been used by

(A) the partnership,

(B) the individual,

(C) where the individual is a personal trust, a beneficiary of the trust,

(D) a spouse, child or parent of a person referred to in clause (B) or (C), or

(E) a corporation a share of the capital stock of which was a share of the capital stock of a family farm corporation of an individual referred to in clause (B), (C) or (D)

principally in the course of carrying on the business of farming in Canada in which any individual referred to in clause (B),(C) or (D) was actively engaged on a regular and continuous basis,

(ii) shares of the capital stock or indebtedness of one or more corporations all or substantially all of the fair market value of the property of which was attributable to property described in subparagraph (iii), or

(iii) properties described in either subparagraph (i) or (ii), and

(*b*) at that time, all or substantially all of the fair market value of the property of the partnership was attributable to

(i) property that has been used principally in the course of carrying on the business of farming in Canada by the partnership or a person referred to in subparagraph (*a*)(i), or

(ii) shares of the capital stock or indebtedness of one or more corporations described in subparagraph (*a*)(ii).

(3) All that portion of paragraph (a) of the definition "share of the capital stock of a family farm corporation" in subsection 110.6(1) of the English version of the said Act preceding clause (A) thereof is repealed and the following substituted therefor:

(*a*) throughout any 24-month period ending before that time, more than 50% of the fair market value of the property owned by the corporation was attributable to

(i) property that has been used by

(4) Section 110.6 of the said Act is further amended by adding thereto, immediately after subsection (1) thereof, the following subsection:

Idem

(1.1) For the purposes of the definitions "qualified small business corporation share" and "share of the capital stock of a family farm corporation" in subsection (1), the fair market value of a net income stabilization account shall be deemed to be nil.

(5) Clause 110.6(2)(*a*)(iii)(A) of the said Act is repealed and the following substituted therefor:

(A) the aggregate of all amounts each of which is an amount deducted under this section in computing the individual's taxable income for a taxation year ending before 1990 (other than an amount deducted under this section for a taxation year in respect of an amount that has been included in computing the individual's income for that year by reason of subparagraph 14(1)(a)(v)), and

(6) Clause 110.6(3)(*a*)(iii)(A) of the said Act is repealed and the following substituted therefor:

(A) the aggregate of all amounts each of which is an amount deducted under this subsection in computing the individual's taxable income for a taxation year ending before 1990 (other than an amount deducted under this subsection for a taxation year in respect of an amount that has been included in computing the individual's income for that year by reason of subparagraph 14(1)(a)(v)), and

(7) All that portion of subsection 110.6(12) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Spousal trust deduction

(12) Notwithstanding any other provision of this Act, a trust described in paragraph 104(4)(*a*) or (*a*.1) (other than a trust that has elected under subsection 104(5.3)) may, in computing its taxable income for its taxation year that includes the day determined in respect of the trust under paragraph 104(4)(*a*) or (*a*.1), as the case may be, deduct under this section an amount equal to the least of

(8) Section 110.6 of the said Act is further amended by adding thereto the following subsection:

Order of deduction

(17) For the purposes of clauses (2)(*a*)(iii)(A) and (3)(*a*)(iii)(A), amounts deducted by an individual under this section in computing the individual's taxable income for a taxation year ending before 1990 shall be deemed to have first been deducted in respect of any amounts that have been included in computing the individual's income for that year by reason of paragraph 14(1)(*a*)(v) before having been deducted in respect of any other amounts that have been included in computing the individual's income for that year.

(9) Subsection (1) is applicable to the 1988 and subsequent taxation years.

(10) Subsections (2) and (3) are applicable to the 1992 and subsequent taxation years.

(11) Subsection (4) is applicable to the 1991 and subsequent taxation years.

(12) Subsections (5), (6) and (8) are applicable to the 1990 and subsequent taxation years.

(13) Subsection (7) is applicable to the 1993 and subsequent taxation years.

39. (1) Paragraph 110.7(1)(a) of the said Act is amended by striking out the word "and" at the end of subparagraph (i) thereof and by adding thereto the following subparagraph:

(iii) neither the taxpayer nor a member of the taxpayer's household is at any time entitled to a reimbursement or any form of assistance (other than a reimbursement or assistance included in computing the income of the taxpayer or the member) in respect of travelling expenses to which subparagraph (ii) applies; and

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

40. (1) Clause 111(8)(*b*)(i)(A) of the said Act is repealed and the following substituted therefor:

(A) the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property, the taxpayer's allowable business investment loss for the year, an amount deducted under section 110.6 or paragraph 111(1)(*b*) in computing the taxpayer's taxable income for the year or an amount deductible under paragraph 110(1)(*d*), (*d*.1), (*d*.2), (*d*.3), (*f*), (*j*) or (*k*), section 112 or subsection 113(1) or 138(6) in computing the taxpayer's taxable income for the year

(2) All that portion of paragraph 111(8)(*c*) of the said Act following subparagraph (ii) thereof is repealed and the following substituted therefor:

the taxpayer had no income other than income described in subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains and allowable capital losses were taxable capital gains and allowable capital losses from the disposition of taxable Canadian property and the taxpayer's only losses were allowable business investment losses and losses from duties of an office or employment performed by the taxpayer in Canada and businesses carried on by the taxpayer in Canada.

(3) Subsections (1) and (2) are applicable with respect to the 1991 and subsequent taxation years.

41. (1) Paragraph 115(1)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) the only losses for the year referred to in paragraph 3(d) were losses from duties of an office or employment performed by the person in Canada and businesses carried on by the person in Canada and allowable business investment losses in respect of property any gain from the disposition of which would by reason of this subsection be included in computing the person's taxable income earned in Canada,

(2) Subsection (1) is applicable with respect to the 1991 and subsequent taxation years.

42. (1) Section 115.1 of the said Act is repealed and the following substituted therefor:

Competent Authority Agreements

115.1 (1) Notwithstanding any other provision of this Act, where the Minister and another person have, pursuant to a provision contained in a tax convention or agreement with another country that has the force of law in Canada, entered into an agreement with respect to the taxation of the other person, all determinations made in accordance with the terms and conditions of the agreement shall be deemed to be in accordance with this Act.

Transfer of rights and obligations

(2) Where rights and obligations under an agreement described in subsection (1) have been transferred to another person with the concurrence of the Minister, that other person shall be deemed, for the purposes of subsection (1), to have entered into the agreement with the Minister.

(2) Subsection (1) is applicable after 1984.

43. (1) Subsection 118(3) of the said Act is repealed and the following substituted therefor:

Pension credit

(3) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

A X B

where

A is the appropriate percentage for the year, and

B is the lesser of $1,000 and

(a) where the individual has attained the age of 65 years before the end of the year, the pension income received by the individual in the year, and

(b) where the individual has not attained the age of 65 years before the end of the year, the qualified pension income received by the individual in the year.

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

44. (1) All that portion of subsection 118.1(6) of the English version of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor:

and the fair market value of the property at that time exceeds its adjusted cost base to the taxpayer, such amount, not greater than the fair market value and not less than the adjusted cost base to the taxpayer of the property at that time, as is designated by the individual or the individual's legal representative in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

(2) Subsection (1) is applicable with respect to gifts made after December 11, 1988.

45. (1) Section 118.2 of the said Act is amended by adding thereto the following subsection:

Attendant care expenses

(5) No amount paid as or on account of attendant care provided to an individual shall be included in computing a taxpayer's deduction under this section or section 64 for a taxation year where the individual or the taxpayer is or was entitled to a reimbursement or any form of assistance in respect of the amount paid, except to the extent that the amount of the reimbursement or assistance is required to be included in computing the individual's or the taxpayer's income for a taxation year.

(2) Subsection (1) is applicable with respect to amounts paid after 1990.

46. (1) Paragraph 118.3(2)(*b*) of the said Act is repealed and the following substituted therefor:

(b) no amount in respect of remuneration for an attendant, or care in a nursing home, by reason of that person's mental or physical impairment, is included in calculating a deduction under section 118.2 (otherwise than by reason of

paragraph (2)(*b*.1) thereof) for the year by the individual or by any other person,

(2) Subsection (1) is applicable to the 1991 and subsequent years.

47. (1) All that portion of paragraph 118.5(1)(*a*) of the said Act following subparagraph (ii) and preceding subparagraph (iii) thereof is repealed and the following substituted therefor:

an amount equal to the product obtained when the appropriate percentage for the year is multiplied by the amount of any fees for the individual's tuition paid in respect of the year to the educational institution if the total of such fees exceeds $100, except to the extent that such fees

(ii.1) are paid to an educational institution described in subparagraph (i), in respect of courses that are not at the post-secondary school level,

(ii.2) are paid to an educational institution described in subparagraph (ii), if

(A) the individual had not attained the age of 16 years before the end of the year, or

(B) the purpose of the individual's enrolment at the institution cannot reasonably be regarded as being to provide the individual with skills, or improve the individual's skills, in an occupation,

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

48. (1) The description of A in subsection 118.9(1) of the said Act is repealed and the following substituted therefor:

A is the lesser of $600 and the total of all amounts each of which is an amount that the individual may deduct for the year under section 118.5 or 118.6; and

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

49. (1) Paragraph 122.5(5)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) where the total of all amounts, each of which is an amount deemed under that subsection to be paid by an individual for a taxation year during a month specified for the year, is less than $100, the total shall be deemed to be paid by the individual during the first month specified for the year, and no other amount shall be deemed to be paid under that subsection by the individual for the year; and

(2) Paragraph 122.5(5)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) no amount shall be deemed to be paid under that subsection by an individual for a taxation year during a month specified for that year where the individual died before that month or was not resident in Canada at the beginning of that month.

(3) Subsection 122.5(6) of the said Act is repealed and the following substituted therefor:

Qualified relation of a deceased individual

(6) Notwithstanding paragraph (5)(*c*), on application made in prescribed form containing prescribed information within 60 days after a person's death (or within such longer period as the Minister considers reasonable in the circumstances) by an individual who

(*a*) is the deceased person's qualified relation for the taxation year in respect of which a payment under this section would, but for that paragraph, be made, and

(*b*) is not an individual to whom that paragraph applies,

each amount that, but for that paragraph, would be deemed to be paid under subsection (3) by the deceased person during a month specified for a taxation year shall be deemed to be paid during the month on account of the individual's tax payable under this Part for that year.

(4) Subsections (2) and (3) are applicable to the 1989 and subsequent taxation years.

50. (1) Paragraph 123.2(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) the tax payable under this Part by the corporation for the year determined without reference to paragraph 123(1)(*b*), this section, sections 125 to 126 and subsections 127(3) and (5) and 137(3) and as if subsection 124(1) were read without reference to the words "in a province" therein

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years except that, in its application to a corporation's taxation year commencing before 1992, there shall be deducted from the amount determined under paragraph 123.2(a) of the said Act, as enacted by subsection (1), in respect of the corporation for the year an amount equal to that proportion of the amount determined under subsection 137(3) of the said Act in respect of the corporation for the year that the number of days in the year that are before 1992 is of the number of days in the year.

51. (1) Subsection 124(3) of the said Act is repealed and the following substituted therefor:

Crown agents

(3) Notwithstanding subsection (1), no deduction may be made under this section from the tax otherwise payable under this Part for a taxation year by a corporation in respect of any taxable income of the corporation for the year that is not, by reason of an enactment of the Parliament of Canada, subject to tax under this Part or by a prescribed federal Crown corporation that is an agent of Her Majesty.

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

52. (1) Paragraph 125(1)(*b*) of the said Act is amended by striking out the word "and" at the end of subparagraph (i) and by adding thereto the following subparagraph:

(iii) the amount, if any, of the corporation's taxable income for the year that is not, by reason of an enactment of the Parliament of Canada, subject to tax under this Part, and

(2) Paragraph 125(5)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) where a Canadian-controlled private corporation (in this paragraph referred to as the "first corporation") has more than one taxation year ending in the same calendar year and it is associated in two or more of those taxation years with another Canadian-controlled private corporation that has a taxation year ending in that calendar year, the business limit of the first corporation for each taxation year ending in the calendar year in which it is associated with the other corporation that ends after the first such taxation year ending in that calendar year is, subject to the application of paragraph (*b*), an amount equal to the lesser of

(i) its business limit for the first such taxation year ending in the calendar year determined under subsection (3) or (4), and

(ii) its business limit for the particular taxation year ending in the calendar year determined under subsection (3) or (4); and

(3) Paragraph 125(7)(*c*) of the said Act is repealed and the following substituted therefor:

"income of the corporation..." *« revenu de la corporation pour l'année provenant d'une entreprise exploitée activement »*

(*c*) "income of the corporation for the year from an active business" means the total of

(i) the income of the corporation for the year from an active business carried on by it including any income for the year pertaining to or incident to that business, other than income for the year from a source in Canada that is a property (within the meaning assigned by subsection 129(4.1)), and

(ii) the amount, if any, included by reason of subsection 12(10.2) in computing the income of the corporation for the year;

(4) Subsection (1) is applicable to the 1992 and subsequent taxation years.

(5) Subsection (2) is applicable to taxation years ending after ANNOUNCEMENT DATE.

(6) Subsection (3) is applicable to the 1991 and subsequent taxation years.

53. (1) All that portion of paragraph 126(3)(*a*) of the English version of the said Act following subparagraph (ii) thereof is repealed and the following substituted therefor:

from employment with an international organization (other than a prescribed international organization), as defined for the purposes of section 2 of the Foreign Missions and International Organizations Act

(2) All that portion of subsection 126(3) of the said Act following subparagraph (*b*)(ii) thereof and preceding paragraph (*c*) thereof is repealed and the following substituted therefor:

exceeds

(iii) the aggregate of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under paragraph 110(1)(*d*), (*d*.1), (*d*.2), (*d*.3), (*f*) or (*j*), in computing the individual's taxable income for the year or in respect of the period or periods referred to in subparagraph (ii), as the case may be,

except that the amount deductible under this subsection in computing the individual's tax payable under this Part for the year may not exceed that proportion of the total of all amounts each of which is an amount paid by the individual to the organization as a levy (the proceeds of which are used to defray expenses of the organization) computed by reference to the remuneration received by the individual in the year from the organization in a manner similar to the manner in which income tax is computed that

(3) Subsections (1) and (2) are applicable to the 1991 and subsequent taxation years.

54. (1) All that portion of subsection 127(1) of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor:

except that in no case shall the total of amounts in respect of all provinces that would otherwise be deductible under this subsection from the tax otherwise payable by the taxpayer under this Part for the year exceed 6 2/3% of the amount that would be the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be, if this Part were read without reference to paragraphs 60(*b*), (*c*), (*c*.1), (*i*) and (*v*) and sections 62, 63 and 64.

(2) Paragraphs (*a*) to (*c*) of the English version of the definition "contract payment" in subsection 127(9) of the said Act are repealed and the following substituted therefor:

(*a*) an amount payable for scientific research and experimental development to the extent that it can reasonably be considered to have been performed for, or on behalf of, a person entitled to a deduction under subparagraph 37(1)(*a*)(i) or clause 37(1)(*a*)(ii)(D) in respect of such scientific research and experimental development, or

(*b*) an amount, other than a prescribed amount, payable by a Canadian government or municipality or other Canadian public authority or by a person exempt from tax under Part I by reason of section 149 for scientific research and experimental development to be performed for it or on its behalf;

(3) Section 127 of the said Act is further amended by adding thereto immediately after subsection (10.7) thereof the following subsection:

Idem

(10.8) For the purposes of paragraph 37(1)(*c*), paragraph (*e*.1) of the definition "investment tax credit" in subsection (9) and for the purposes of subsection (10.7), where an amount of assistance that

(*a*) was applied in reduction of

(i) the capital cost to a taxpayer of a property, by reason of paragraph (11.1)(*b*), or

(ii) the amount of a qualified expenditure made by a taxpayer, by reason of paragraph (11.1)(*c*),

(*b*) was not received by the taxpayer, and

(*c*) ceased in a taxation year to be an amount that the taxpayer may reasonably be expected to receive,

that amount shall be deemed to be an amount of assistance repaid by the taxpayer in the year.

(4) Subsections (1) and (3) are applicable to the 1991 and subsequent taxation years.

(5) Subsection (2) is applicable to amounts that became payable after ANNOUNCEMENT DATE.

55. (1) Paragraph 127.52(1)(*d*) of the said Act is repealed and the following substituted therefor:

(*d*) except in respect of dispositions of property occurring before 1986 or to which section 79 applies,

(i) sections 38 and 41 were read without the references therein to "3/4 of", and

(ii) each amount deemed by reason of subsection 104(21) to be a taxable capital gain for the year of the individual were equal to 4/3 of such amount;

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

56. (1) Paragraph 127.55(*e*) of the said Act is repealed and the following substituted therefor:

(*e*) a trust described in paragraph 104(4)(*a*) or (*a*.1), for its taxation year that includes the day determined in respect of the trust under paragraph 104(4)(*a*) or (*a*.1), as the case may be.

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

57. (1) All that portion of subsection 129(1) of the said Act preceding subparagraph (*a*)(ii) thereof is repealed and the following substituted therefor:

Dividend refund to private corporation

129. (1) Where a return of a corporation's income under this Part for a taxation year has been made within 3 years from the end of the year, the Minister

(*a*) may, upon mailing the notice of assessment for the year, refund without application therefor an amount (in this Act referred to as its "dividend refund" for the year) equal to the lesser of

(i) 1/4 of all taxable dividends paid by the corporation in the year and at a time when it was a private corporation on shares of its capital stock, and

(2) Section 129 of the said Act is further amended by adding thereto, immediately after subsection (2) thereof, the following subsections:

Interest on dividend refund

(2.1) Where a dividend refund for a taxation year is paid to, or applied to a liability of, a corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(*a*) the day that is 120 days after the end of the year, and

(*b*) the day on which the corporation's return of income under this Part for the year was filed under section 150

and ending on the day on which the refund is paid or applied.

Excess interest on dividend refund

(2.2) Where, at any particular time, interest has been paid to, or applied to a liability of, a corporation pursuant to subsection (2.1) in respect of a dividend refund and it is determined at a subsequent time that the dividend refund was less than that in respect of which interest was so paid or applied, the following rules apply:

(*a*) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the dividend refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;

(*b*) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable computed from the particular time to the day of payment; and

(*c*) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

(3) All that portion of subsection 129(3) of the said Act preceding subparagraph (*a*) thereof is repealed and the following substituted therefor:

"Refundable dividend tax on hand"

(3) In this section, "refundable dividend tax on hand" of a corporation at the end of any particular taxation year means the amount, if any, by which the aggregate of

(4) Subparagraph 129(4)(*a*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) all amounts each of which is the corporation's income for the year from a source in Canada that is property (other than exempt income, an amount included in the corporation's income for the year by reason of subsection 12(10.2), any dividend the amount of which was deductible in computing its taxable income for the year or income that, but for paragraph 108(5)(*a*), would not be income from a property), determined after deducting all outlays and expenses deductible in computing the corporation's income for the year to the extent that they may reasonably be regarded as having been made or incurred for the purpose of earning income from that property

(5) Subsection (1) is applicable to the 1993 and subsequent taxation years, except that in its application to taxation years that commence before 1993 and end after 1992, subparagraph 129(1)(*a*)(i) of the said Act, as enacted by subsection (1), shall be read as follows:

(i) the total of

(A) 1/4 of all taxable dividends paid by the corporation on shares of its capital stock in the year and before 1993, where the corporation was a private corporation at the end of the year, and

(B) 1/4 of all taxable dividends paid by the corporation on shares of its capital stock in the year and at a time after 1992 when it was a private corporation, and

(6) Subsection (2) is applicable with respect to dividend refunds paid or applied with respect to taxation years commencing after 1991.

(7) Subsection (3) is applicable to the 1993 and subsequent taxation years.

(8) Subsection (4) is applicable to the 1991 and subsequent taxation years.

58. (1) All that portion of subsection 130(2) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Application of ss. 131(1) to (3.2)

(2) Where a corporation was, throughout a taxation year, an investment corporation other than a mutual fund corporation, subsections 131(1) to (3.2) are applicable in respect of the corporation for the year

(2) Subsection (1) is applicable with respect to capital gains refunds paid or applied with respect to taxation years commencing after 1991.

59. (1) Section 131 of the said Act is amended by adding thereto, immediately after subsection (3) thereof, the following subsections:

Interest on capital gains refund

(3.1) Where a capital gains refund for a taxation year is paid to, or applied to a liability of, a corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(*a*) the day that is 120 days after the end of the year, and

(*b*) the day on which the corporation's return of income under this Part for the year was filed under section 150

and ending on the day on which the refund is paid or applied.

Excess interest on capital gains refund

(3.2) Where, at any particular time, interest has been paid to, or applied to a liability of, a corporation pursuant to subsection (3.1) in respect of a capital gains refund and it is determined at a subsequent time that the capital gains refund was less than that in respect of which interest was so paid or applied, the following rules apply:

(*a*) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the capital gains refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the corporation at the particular time;

(*b*) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable computed from the particular time to the day of payment; and

(*c*) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

(2) Subsection (1) is applicable with respect to capital gains refunds paid or applied with respect to taxation years commencing after 1991.

60. (1) Section 132 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsections:

Interest on capital gains refund

(2.1) Where a capital gains refund for a taxation year is paid to, or applied to a liability of, a mutual fund trust, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(*a*) the day that is 120 days after the end of the year, and

(*b*) the day on which the trust's return of income under this Part for the year was filed under section 150

and ending on the day on which the refund is paid or applied.

Excess interest on capital gains refund

(2.2) Where, at any particular time, interest has been paid to, or applied to a liability of, a trust pursuant to subsection (2.1) in respect of a capital gains refund and it is determined at a subsequent time that the capital gains refund was less than that in respect of which interest was so paid or applied, the following rules apply:

(*a*) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the capital gains refund shall be deemed to be an amount (in this subsection referred to as the "amount payable") that became payable under this Part by the trust at the particular time;

(*b*) the trust shall pay to the Receiver General interest at the prescribed rate on the amount payable computed from the particular time to the day of payment; and

(*c*) the Minister may at any time assess the trust in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J are applicable, with such modifications as the circumstances require, in

respect of the assessment as though it had been made under section 152.

(2) Subsection (1) is applicable with respect to capital gains refunds paid or applied with respect to taxation years commencing after 1991.

61. (1) Section 133 of the said Act is amended by adding thereto, immediately after subsection (7) thereof, the following subsections:

Interest on allowable refund

(7.01) Where an allowable refund for a taxation year is paid to, or applied to a liability of, a non-resident-owned investment corporation, the Minister shall pay or apply interest on the refund at the prescribed rate for the period beginning on the day that is the later of

(*a*) the day that is 120 days after the end of the year, and

(*b*) the day on which the corporation's return of income under this Part for the year was filed under section 150

and ending on the day on which the refund is paid or applied.

Excess interest on allowable refund

(7.02) Where, at any particular time, interest has been paid to, or applied to a liability of, a corporation pursuant to subsection (7.01) in respect of an allowable refund and it is determined at a subsequent time that the allowable refund was less than that in respect of which interest was so paid or applied, the following rules apply:

(*a*) the amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the allowable refund shall be deemed to be an amount (in this subsection referred to as the "amount

payable") that became payable under this Part by the corporation at the particular time;

(*b*) the corporation shall pay to the Receiver General interest at the prescribed rate on the amount payable computed from the particular time to the day of payment; and

(*c*) the Minister may at any time assess the corporation in respect of the amount payable and, where the Minister makes such an assessment, the provisions of Divisions I and J are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 152.

(2) Subsection (1) is applicable with respect to allowable refunds paid or applied with respect to taxation years commencing after 1991.

62. (1) Paragraph 137(5.2)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) each amount allocated to a member under subsection (5.1) may be deducted by that member in computing its taxable income for its taxation year that includes the last day of the payer's taxation year in respect of which the amount was so allocated.

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

63. (1) Subsection 138.1(7) of the said Act is repealed and the following substituted therefor:

Where subsections (1) to (6) not to apply

(7) Subsections (1) to (6) do not apply in respect of the holder of a segregated fund policy with respect to such a policy that is issued or effected as a registered retirement savings plan or a registered retirement income fund or is issued pursuant to a registered pension plan.

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

64. (1) The said Act is further amended by adding thereto, immediately after section 143 thereof, the following section:

Amateur athletes' reserve funds

143.1 (1) Where a national sport organization that is a registered Canadian amateur athletic association receives an amount for the benefit of an individual under an arrangement made pursuant to rules of an international sport federation that require amounts to be held, controlled and administered by the organization in order to preserve the eligibility of the individual to compete in a sporting event sanctioned by the federation, the following rules apply:

(*a*) an *inter vivos* trust (in this section referred to as an "amateur athlete trust") shall be deemed to be created on the day that is the later of

(i) the day that the first such amount is received by the organization, and

(ii) January 1, 1992,

and to exist continuously thereafter until subsection (3) or (4) applies in respect of the trust;

(*b*) all property required to be held after 1991 under the arrangement shall be deemed to be property of the trust and not property of any other person;

(*c*) any amount received at any time by the organization under the arrangement shall, to the extent that it would but for this subsection have been included in computing the individual's income for the taxation year that includes that time, be deemed to be income of the trust for the taxation year and not to be income of the individual;

(*d*) all amounts paid at any time by the organization under the arrangement to or for the benefit of the individual shall be deemed to be amounts distributed at that time to the individual by the trust;

(*e*) the individual shall be deemed to be the beneficiary under the trust;

(*f*) the organization shall be deemed to be the trustee of the trust; and

(*g*) no tax is payable under this Part by the trust on its taxable income for any taxation year.

Amounts included in beneficiary's income

(2) In computing the income for a taxation year of the beneficiary under an amateur athlete trust there shall be included the total of all amounts each of which is an amount distributed in the year to the beneficiary by the trust.

Termination of amateur athlete trust

(3) Where an amateur athlete trust holds property on behalf of a beneficiary who has not competed in an international sporting event as a Canadian national team member for a period of eight years ending in a particular taxation year and commencing in the year that is the later of,

(*a*) where the beneficiary has competed in such an event, the year in which the beneficiary last so competed, and

(*b*) the year in which the trust was created,

the trust shall be deemed to have distributed at the end of the particular taxation year to the beneficiary an amount equal to,

(*c*) where the trust is liable to pay tax under Part XII.2 of the Act in respect of the particular year, 64% of the fair market value of all property held by it at that time, and

(*d*) in any other case, the fair market value of all property held by it at that time.

Death of beneficiary

(4) Where an amateur athlete trust holds property on behalf of a beneficiary who has died in a year, the trust shall be deemed to have distributed, immediately before the death of the beneficiary, to the beneficiary an amount equal to,

(*a*) where the trust is liable to pay tax under Part XII.2 of the Act in respect of the year, 64% of the fair market value of all property held by it at that time; and

(*b*) in any other case, the fair market value of all property held by it at that time.

(2) Subsection (1) is applicable with respect to the 1992 and subsequent taxation years, and where the taxpayer so elects by notifying the Minister of National Revenue in writing, to any taxation year ending after 1987 and before 1992 throughout which the taxpayer was resident in Canada, in which case the reference to 1992 in paragraph 143.1(1)(*a*) of the said Act, as enacted by subsection (1), shall be read as a reference to the taxation year for which the election is made, and the reference to 1991 in paragraph 143.1(1)(*b*) of the said Act, as enacted by subsection (1), shall be read as a reference to the taxation year immediately preceding the year for which the election is made.

65. (1) All that portion of paragraph 146(1)(*d*.1) of the said Act preceding the description of G therein is repealed and the following substituted therefor:

"Net past service adjustment" « *facteur d'équivalence pour services passés net* »

(*d*.1) "net past service pension adjustment" of a taxpayer for a taxation year means the amount, which can be positive or negative, determined by the formula

P - G

where

P is the total of all amounts each of which is the taxpayer's past service pension adjustment for the year in respect of an employer, and

(2) Paragraph 146(5)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) the amount, if any, by which the total of all amounts each of which is a premium paid by the taxpayer after 1990 and on or before the day that is 60 days after the end of the year under a registered retirement savings plan under which the taxpayer was the annuitant at the time the premium was paid, other than the portion, if any, of the premium

(i) that was deducted in computing the taxpayer's income for a preceding taxation year,

(ii) that was designated for any taxation year for the purposes of paragraph 60(*j*), (*j*.1) or (*l*),

(iii) in respect of which the taxpayer has received a payment that has been deducted under subsection (8.2) in computing the taxpayer's income for a preceding taxation year, or

(iv) that was deductible under subsection (6.1) in computing the taxpayer's income for any taxation year

exceeds the total of all amounts each is which is an amount that was deducted by reason of subsection 147.3(13.1) in computing the taxpayer's income for the year or a preceding taxation year; and

(3) Paragraph 146(8.2)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) the taxpayer or the taxpayer's spouse can reasonably be regarded as having received a payment from a registered retirement savings plan or a registered retirement income fund in respect of such portion of the undeducted premiums as

(i) was not paid by way of a transfer of an amount from a registered pension plan to a registered retirement savings plan, and

(ii) was not paid by way of a transfer of an amount from a deferred profit sharing plan to a registered retirement savings plan in accordance with subsection 147(19),

(4) All that portion of subsection 146(16) of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor:

and, where there has been such a payment or transfer of such property on behalf of the transferor before the maturity of the plan,

(*c*) the amount of the payment or transfer shall not by reason only of the payment or transfer be included in computing the income of the transferor or the spouse or former spouse of the transferor,

(*d*) no deduction may be made under subsection (5), (5.1) or (8.2) or section 8 or 60 in respect of the payment or transfer in computing the income of any taxpayer, and

(*e*) where the payment or transfer was made to a registered retirement savings plan, for the purposes of subsection (8.2), the amount of the payment or transfer shall be deemed not to be a premium paid to that plan by the taxpayer.

(5) Subsection (1) is applicable after 1988.

(6) Subsection (2) is applicable to the 1992 and subsequent taxation years.

(7) Subsections (3) and (4) are applicable to the 1991 and subsequent taxation years except that, for the 1991 taxation year, subparagraph 146(8.2)(*b*)(i), as enacted by subsection (3), shall be read as follows:

(i) was not paid by way of a transfer of an amount from a registered pension plan to a registered retirement savings plan in accordance with any of subsections 147.3(1) and (4) to (7), and

66. (1) Paragraph 146.3(2)(*f*) of the said Act is amended by striking out the word "or" at the end of subparagraph (iii) thereof and by adding thereto the following subparagraphs:

(v) a registered pension plan of which the individual is a member (within the meaning assigned by subsection 147.1(1)), or

(vi) a registered pension plan in accordance with subsection 147.3(5) or (7);

(2) Subsection (1) is applicable after August 29, 1990.

67. (1) Paragraphs 147.1(2)(*b*) and (*c*) of the said Act are repealed and the following substituted therefor:

(*b*) where a pension plan that is submitted for registration before 1992 is registered by the Minister, the registration is effective from such day as is specified in writing by the Minister; and

(*c*) where a pension plan that is submitted for registration after 1991 is registered by the Minister, the registration is effective from the later of

(i) January 1 of the calendar year in which application for registration is made in prescribed manner by the plan administrator, and

(ii) the day of commencement of the plan.

(2) Subsection (1) is applicable after 1990.

68. (1) Subsection 147.3(1) of the said Act is repealed and the following substituted therefor:

Transfer -- money purchase to money purchase, RRSP or RRIF

147.3 (1) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(*a*) is a single amount;

(*b*) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a money purchase provision of the plan as registered; and

(*c*) is transferred directly to

(i) another registered pension plan to provide benefits in respect of the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

(2) Subsections 147.3(4) and (5) of the said Act are repealed and the following substituted therefor:

Transfer -- defined benefit to money purchase, RRSP or RRIF

(4) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(*a*) is a single amount no portion of which relates to an actuarial surplus;

(*b*) is transferred on behalf of a member in full or partial satisfaction of the member's entitlement to benefits under a defined benefit provision of the plan as registered;

(*c*) does not exceed a prescribed amount; and

(*d*) is transferred directly to

(i) another registered pension plan to provide benefits in respect of the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Transfer to RPP, RRSP or RRIF for spouse on marriage breakdown

(5) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(*a*) is a single amount;

(*b*) is transferred on behalf of an individual who is a spouse or former spouse of a member of the plan and who is entitled to the amount pursuant to a decree, order or judgment of a competent tribunal, or a written agreement, relating to a

division of property between the member and the individual in settlement of rights arising out of or on a breakdown of their marriage or other conjugal relationship; and

(*c*) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

(3) Paragraph 147.3(6)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) is transferred directly to

(i) another registered pension plan for the benefit of the member,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

(4) Paragraph 147.3(7)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) is transferred directly to

(i) another registered pension plan for the benefit of the individual,

(ii) a registered retirement savings plan under which the individual is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the individual is the annuitant (within the meaning assigned by subsection 146.3(1)).

(5) Subsection 147.3(10) of the said Act is repealed and the following substituted therefor:

Idem

(10) Where, on behalf of an individual, an amount is transferred from a registered pension plan (in this subsection referred to as the "transferor plan") to another plan or fund (in this subsection referred to as the "transferee plan") that is a registered pension plan, a registered retirement savings plan or a registered retirement income fund and the transfer is not in accordance with any of subsections (1) to (7),

(*a*) notwithstanding section 254, the amount shall be deemed to have been paid from the transferor plan to the individual;

(*b*) subject to paragraph (*c*), the individual shall be deemed to have paid the amount as a contribution or premium to the transferee plan; and

(*c*) where the transferee plan is a registered retirement income fund, for the purposes of subsection 146(5) and Part X.1 the individual shall be deemed to have paid the amount at the time of the transfer as a premium under a registered retirement savings plan under which the individual was the annuitant (within the meaning assigned by subsection 146(1)).

(6) All that portion of subsection 147.3(11) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Division of transferred amount

(11) Where an amount is transferred from a registered pension plan to another registered pension plan, to a registered retirement savings plan or to a registered retirement income fund and a portion, but not all, of the amount is transferred in accordance with any of subsections (1) to (8),

(7) All that portion of subsection 147.3(12) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Restriction re transfers

(12) A registered pension plan becomes a revocable plan at any time that an amount is transferred from the plan to another registered pension plan, to a registered retirement savings plan or to a registered retirement income fund unless

(8) Section 147.3 of the said Act is further amended by adding thereto, immediately after subsection (13) thereof, the following subsection:

Withdrawal of excessive transfers to RRSPs and RRIFs

(13.1) There may be deducted in computing the income of an individual for a taxation year the lesser of

(*a*) the amount, if any, by which

(i) the total of all amounts each of which is an amount included by reason of subsection 146(8), (8.3) or (12) or 146.3(5), (5.1) or (11) in computing the individual's income for the year, to the extent that the amount is not a prescribed withdrawal,

exceeds

(ii) the total of all amounts each of which is an amount deductible under paragraph 60(*l*) or subsection 146(8.2) in computing the income of the individual for the year; and

(*b*) the amount, if any, by which

(i) the total of all amounts each of which is an amount that was

(A) transferred to a registered retirement savings plan or registered retirement income fund under which the individual was the annuitant (within the meaning assigned by subsection 146(1) or 146.3(1), as the case may be),

(B) included in computing the income of the individual for the year or a preceding taxation year, and

(C) deemed by paragraph (10)(*b*) or (*c*) to have been paid by the individual as a premium to a registered retirement savings plan,

exceeds

(ii) the aggregate of all amounts each of which is an amount

(A) deductible by reason of this subsection in computing the individual's income for a preceding taxation year, or

(B) deducted by reason of subsection 146(5) in computing the individual's income for a preceding taxation year, to the extent that the amount may reasonably be considered to be in respect of an amount referred to in subparagraph (i).

(9) Subsections (1) to (7) are applicable with respect to transfers occurring after August 29, 1990.

(10) Subsection (8) is applicable to the 1992 and subsequent taxation years except that, in its application to the 1992 taxation year, subsection 147.3(13.1) of the said Act, as enacted by subsection (8), shall be read as follows:

(13.1) There may be deducted in computing the income of an individual for the 1992 taxation year the lesser of

(*a*) the amount, if any, by which

(i) the total of all amounts each of which is an amount included by reason of subsection 146(8), (8.3) or (12) or 146.3(5), (5.1) or (11) in computing the individual's income for a taxation year ending after 1988 and before 1993, to the extent that the amount is not a prescribed withdrawal,

exceeds

(ii) the total of all amounts each of which is an amount deductible under paragraph 60(*l*) or subsection 146(8.2) in computing the income of the individual for a taxation year ending after 1988 and before 1993; and

(*b*) the amount, if any, by which

(i) the total of all amounts each of which is an amount

(A) transferred to a registered retirement savings plan or registered retirement income fund under which the individual was the annuitant (within the meaning assigned by subsection 146(1) or 146.3(1), as the case may be),

(B) included in computing the income of the individual for the year or a preceding taxation year, and

(C) deemed by paragraph (10)(*b*) or (*c*) to have been paid by the individual as a premium to a registered retirement savings plan,

exceeds

(ii) the total of all amounts each of which is an amount deducted by reason of subsection 146(5) in computing the individual's income for a preceding taxation year, to the extent that the amount may reasonably be considered to be in respect of an amount referred to in subparagraph (i).

69. (1) Subsection 148(1) of the said Act is amended by adding thereto, immediately after paragraph (*b*) thereof, the following paragraph:

(*b*.1) a registered retirement income fund,

(2) Paragraph 148(2)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) where at any time a policyholder becomes entitled to receive under a life insurance policy a particular amount as, on account of, in lieu of payment of or in satisfaction of, a policy dividend, the policyholder shall be deemed

(i) to have disposed of an interest in the policy at that time, and

(ii) to have become entitled to receive proceeds of the disposition equal to the amount, if any, by which

(A) the particular amount

exceeds

(B) the part of the particular amount applied immediately after that time to pay a premium under the policy or repay a policy loan under the policy, as provided for under the terms and conditions of the policy;

(3) Subparagraph 148(9)(*a*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) all amounts each of which is an amount paid before that time by or on behalf of the policyholder, in respect of a premium under the policy, other than amounts referred to in clause (2)(*a*)(ii)(B), or in subclause (e.2)(i)(B)(III) or clause (e.2)(ii)(A),

(4) Subparagraph 148(9)(*a*)(iv) of the said Act is repealed and the following substituted therefor:

(iv) all amounts each of which is an amount in respect of the repayment before that time and after March 31, 1978 of a policy loan not exceeding the total of the proceeds of the disposition, if any, in respect of that loan and the amount, if any, described in subparagraph (vii) but not including any payment of interest thereon, any loan repayment that was deductible pursuant to paragraph 20(1)(*hh*) (as it applied in taxation years prior to 1985) or 60(s) or any loan repayment referred to in clause (2)(*a*)(ii)(B),

(5) Paragraph 148(9)(*a*) of the said Act is further amended by striking out the word "and" at the end of subparagraph (v) thereof, by adding the word "and" at the end of subparagraph (v.1) thereof and by adding thereto, immediately after subparagraph (v.1) thereof, the following subparagraph:

(v.2) in the case of an interest in a life insurance policy (other than an annuity contract) to which subsection (8.2) applied before that time, the total of all amounts, each of which is a mortality gain, as defined by regulation and determined by the issuer of the policy in accordance with the regulations, in respect of the interest immediately before the end of the calendar year ending in a taxation year commencing before that time

(6) Clause 148(9)(*e.2*)(i)(B) of the said Act is repealed and the following substituted therefor:

(B) the total of amounts each of which is

(I) an amount payable at that time by the policyholder in respect of a policy loan in respect of the policy,

(II) a premium under the policy that is due but unpaid at that time, or

(III) an amount applied, immediately after the time of the surrender, to pay a premium under the policy, as provided for under the terms and conditions of the policy,

(7) Clause 148(9)(*e.2*)(ii)(A) of the said Act is repealed and the following substituted therefor:

(A) the amount of the loan, other than the part thereof applied, immediately after the loan, to pay a premium under the policy, as provided for under the terms and conditions of the policy, and

(8) Subsection (1) is applicable to the 1991 and subsequent taxation years.

(9) Subsection (2) is applicable to policy dividends received or receivable in taxation years commencing after ANNOUNCEMENT DATE.

(10) Subsection (3) is applicable to amounts paid in taxation years commencing after ANNOUNCEMENT DATE.

(11) Subsection (4) is applicable to loan repayments occurring in taxation years commencing after ANNOUNCEMENT DATE.

(12) Subsection (5) is applicable with respect to transfers and distributions occurring after 1989.

(13) Subsection (6) is applicable to surrenders occurring in taxation years commencing after ANNOUNCEMENT DATE.

(14) Subsection (7) is applicable to policy loans made in taxation years commencing after ANNOUNCEMENT DATE.

70. (1) Subsection 149(1) of the said Act is amended by adding thereto, immediately after paragraph (*u*) thereof, the following paragraph:

Amateur athlete trust

(*v*) an amateur athlete trust;

(2) Subsection 149(2) of the said Act is repealed and the following substituted therefor:

Determination of income

(2) For the purposes of paragraphs (1)(*e*), (*i*), (*j*) and (*l*), in computing the part, if any, of any income that was payable to or otherwise available for the personal benefit of any person or the total of any amounts that is not less than a percentage specified in any of those paragraphs of any income for a period, the amount of such income shall be deemed to be the amount thereof determined on the assumption that the amount of any taxable capital gain or allowable capital loss is nil.

(3) Subsection 149(10) of the said Act is amended by adding thereto, immediately after paragraph (*a*) thereof, the following paragraph:

(*a*.1) for the purpose of computing the corporation's income for its first taxation year ending after that time, the corporation shall be deemed to have deducted under sections 20, 138 and 140 in computing its income for its taxation year ending immediately before that time, the greatest amount that could have been claimed or deducted for that year as a reserve under those provisions;

(4) Section 149 of the said Act is further amended by adding the following subsection thereto:

Information returns

(12) Every person exempt from tax under this Part by reason of paragraph (1)(*e*) or (*l*) shall, within 6 months from the end of each fiscal period of the person and without notice or demand therefor, file with the Minister an information return for the period in prescribed form and containing prescribed information, if

(*a*) the total of all amounts each of which is a taxable dividend or an amount received or receivable by the person as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties in the period exceeds $10,000;

(*b*) at the end of the person's immediately preceding fiscal period the total assets of the person (determined in accordance with generally accepted accounting principles) exceeded $200,000; or

(*c*) an information return was required to be filed under this subsection by the person for a preceding fiscal period.

(5) Subsection (1) is applicable to the 1988 and subsequent taxation years.

(6) Subsections (2) and (3) are applicable to the 1992 and subsequent taxation years.

(7) Subsection (4) is applicable to fiscal periods ending after 1992.

71. (1) All that portion of subsection 152(3.1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Definition of "normal reassessment period"

(3.1) For the purposes of subsections (4), (4.2), (4.3) and (5), the normal reassessment period for a taxpayer in respect of a taxation year is,

(2) Section 152 of the said Act is further amended by adding thereto, immediately after subsection (4.2) thereof, the following subsections:

Consequential assessment in subsequent year

(4.3) Notwithstanding subsections (4), (4.1) and (5), where the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may, or where the taxpayer so requests in writing, shall, before the later of the expiry of the normal reassessment period in respect of another taxation year and the end of the day that is one year after the day on which all rights of objection and appeal have expired or been determined with respect to the particular year, reassess the tax, interest or penalties payable, or redetermine an amount deemed to have been paid, under this Part by the taxpayer in respect of the other taxation year, but only for the purpose of giving effect to any provision of this Act requiring the inclusion, or allowing the deduction, of an amount in computing a balance of the taxpayer for the other year, to the extent that the inclusion or deduction may reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.

Definition of "balance"

(4.4) For the purposes of subsection (4.3), a "balance" of a taxpayer for a taxation year is the income, taxable income, taxable income earned in Canada or any loss of the taxpayer for the year, or the tax or other amount payable by, any amount refundable to, or any amount deemed to have been paid by, the taxpayer for the year.

(3) Subsections (1) and (2) are applicable with respect to reassessments and redeterminations in respect of taxation years made after the day this Act is assented to that relate to changes in balances for other taxation years made as a result of assessments made, or decisions on appeals rendered, after ANNOUNCEMENT DAY.

72. (1) Subparagraph 157(1)(a)(i) of the said Act is repealed and the following substituted therefor:

(i) on or before the last day of each month in the year, an amount equal to 1/12 of the total of the amounts estimated by it to be the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year,

(2) All that portion of paragraph 157(1)(b) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(b) the remainder of the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year

(3) All that portion of subsection 157(2) of the English version of the said Act following paragraph (c) thereof is repealed and the following substituted therefor:

(d) no tax was payable by it under any of Parts I.3, VI and VI.1,

it may, instead of paying the instalments required by subsection (1), pay to the Receiver General at the end of the third month following the end of the year the total of the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year.

(4) Subsection 157(2.1) of the said Act is repealed and the following substituted therefor:

Idem

(2.1) Where

(a) the total of the taxes payable (before taking into consideration any amount referred to in any of subparagraphs 161(7)(a)(ii) to (vii) that was excluded or deducted, as the case may be) under this Part and Parts I.3, VI and VI.1 by a corporation for a taxation year, or

(b) the corporation's first instalment base for the year

is not more than $1,000, the corporation may, instead of paying the instalments required by paragraph (1)(a) for the year, pay to the Receiver General, pursuant to paragraph (1)(b), the total of the taxes payable by it under this Part and Parts I.3, VI and VI.1 for the year.

(5) Paragraph 157(3)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) where the corporation is neither a mutual fund corporation nor a non-resident-owned investment corporation, 1/12 of the corporation's dividend refund (within the meaning assigned by subsection 129(1)) for the year,

(6) Subsections (1) to (4) are applicable to the 1992 and subsequent taxation years.

(7) Subsection (5) is applicable to the 1993 and subsequent taxation years.

73. (1) Subsection 159(7) of the said Act is repealed and the following substituted therefor:

Election where subsection 104(4) applicable

(6.1) Where a day determined under paragraph 104(4)(*a*), (*a*.1), (*b*) or (*c*) in respect of a trust occurs in a taxation year of the trust and the trust so elects and furnishes to the Minister security acceptable to the Minister for payment of any tax the payment of which is deferred by the election, notwithstanding any provision of this Part respecting the time within which payment shall be made of the tax payable under this Part by the trust for the year, all or any portion of such part of that tax as is equal to the amount, if any, by which that tax exceeds the amount that that tax would be if this Act were read without reference to paragraph 104(4)(*a*), (*a*.1), (*b*) or (*c*), as the case may be, may be paid in such number (not exceeding 10) of equal consecutive annual instalments as is specified by the trust in the election, the first instalment of which shall be paid on or before the day on or before which payment of that tax would, but for the election, have been required to be made and each subsequent instalment of which shall be paid on or before the next following anniversary of that day.

Form and manner of election and interest

(7) Every election made by a taxpayer under subsection (4) or (6.1) or by the legal representative of a taxpayer under subsection (5), as the case may be, shall be made in prescribed form and on condition that, at the time of payment of any amount payment of which is deferred by the election, the taxpayer shall pay to the Receiver General interest on the amount at the prescribed rate in effect at the time the election was made computed from the day on or before which the amount would, but for the election, have been required to be paid to the day of payment.

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

74. (1) Subsection 161(1) of the said Act is repealed and the following substituted therefor:

General

161.(1) Where at any time after the day on or before which a taxpayer is required to pay the remainder of the taxpayer's tax payable under this Part for a taxation year (or would be so required if a remainder of such tax were payable),

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year,

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess computed for the period during which that excess is outstanding.

(2) All that portion of subsection 161(4) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Limitations respecting individuals

(4) For the purposes of subsection (2) and section 163.1, where an individual is required to pay a part or instalment of tax for a taxation year computed by reference to

(3) All that portion of subsection 161(4.1) of the said Act preceding paragraph (*b*) thereof is repealed and the following substituted therefor:

Limitation respecting corporations

(4.1) For the purposes of subsection (2) and section 163.1, where a corporation is required to pay a part or instalment of tax for a taxation year computed by reference to a method described in subsection 157(1), the corporation shall be deemed to have been liable to pay a part or instalment computed by reference to

(a) the total of the taxes payable under this Part and Parts I.3, VI and VI.1 by the corporation for the year,

(4) All that portion of subsection 161(7) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Effect of carryback of loss, etc.

(7) For the purpose of computing interest under subsection (1) or (2) on tax or a part of an instalment of tax for a taxation year, and for the purpose of section 163.1,

(5) Subsection (1), and paragraph 161(4.1)(*a*) of the said Act as enacted by subsection (3), are applicable to the 1992 and subsequent taxation years.

(6) Subsection (2), all that portion of subsection 161(4.1) of the said Act preceding paragraph (*a*) thereof, as enacted by subsection (3), and subsection (4) are applicable with respect to instalments of tax that become payable after the day on which this Act is assented to.

75. (1) Section 164 of the said Act is amended by adding thereto, immediately after subsection (6) thereof, the following subsection:

Exercise or disposition of employee stock option by legal representative of deceased

(6.1) Where, within the first taxation year of the estate of a deceased taxpayer, a right to acquire shares under an agreement in respect of which a benefit was deemed to have been received by the taxpayer by reason of paragraph 7(1)(*e*) (in this

employee

subsection referred to as "the right") is exercised or disposed of by the taxpayer's legal representative, notwithstanding any other provision of this Act, where the taxpayer's legal representative elects in prescribed manner and within a prescribed time, the following rules apply:

(*a*) the amount, if any, by which

(i) the amount of the benefit deemed to have been received by the taxpayer by reason of paragraph 7(1)(*e*) in respect of the right

exceeds the total of

(ii) the amount, if any, by which the value of the right immediately before the time it was exercised or disposed of exceeds the amount, if any, paid by the taxpayer to acquire the right, and

(iii) where an amount has been deducted by reason of paragraph 110(1)(*d*) in computing the taxpayer's taxable income for the taxation year in which the taxpayer died in respect of the benefit deemed to have been received by the taxpayer in that year by reason of paragraph 7(1)(*e*) in respect of that right, ¼ of the amount, if any, by which the amount determined under subparagraph (i) exceeds the amount determined under subparagraph (ii),

shall be deemed to be a loss of the taxpayer from employment for the year in which the taxpayer died;

(*b*) there shall be deducted in computing the adjusted cost base to the estate of the right at any time the amount of the loss that would be determined under paragraph (*a*) if that paragraph were read without reference to subparagraph (iii) thereof; and

(*c*) the legal representative shall, at or before the time prescribed for filing the election under this subsection, file an amended return of income for the taxpayer for the taxation year in which the taxpayer died to give effect to the rule in paragraph (*a*).

(2) Subsection (1) is applicable with respect to deaths occurring after July 13, 1990.

76. (1) All that portion of subsection 164.1(1) of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor:

if

(*c*) an amount was deemed under subsection 122.2(1) to have been paid for the preceding taxation year by

(i) the individual, or

(ii) the individual's spouse where that spouse died after the end of that preceding year

in respect of the child, and

(*d*) for that preceding year,

(i) the aggregate determined under subparagraph 122.2(1)(*b*)(i) in respect of the individual, or

(ii) the individual's income where the individual's spouse died after the end of that preceding year,

did not exceed,

(iii) where the amount or amounts to be paid by reason of this subsection are in respect of 3 or more eligible children of the individual, $24,090, and

(iv) in any other case, 2/3 of $24,090.

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

77. (1) Paragraph 165(1.1)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) under subsection 67.5(2), subparagraph 152(4)(*b*)(i), subsection 152(4.3) or (6) or 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(2) Subsection 165(1.2) of the said Act is repealed and the following substituted therefor:

Idem

(1.2) Notwithstanding subsection (1), no objection may be made to an assessment made under subsection 152(4.2) or 169(3).

(3) Subsections 165(3) and (4) of the said Act are repealed and the following substituted therefor:

Duties of Minister

(3) On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

78. Subsection 166.1(5) of the said Act is repealed and the following substituted therefor:

Duties of Minister

(5) On receipt of an application made under subsection (1), the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the taxpayer in writing of the Minister's decision.

79. (1) Paragraph 169(2)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) under subsection 67.5(2), subparagraph 152(4)(*b*)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(2) Section 169 of the said Act is further amended by adding thereto the following subsections:

Disposition of appeal on consent

(3) Notwithstanding section 152, for the purpose of disposing of an appeal made under a provision of this Act, the Minister may at any time, with the consent in writing of the taxpayer, reassess tax, interest, penalties or other amounts payable under this Act by the taxpayer.

Provisions applicable

(4) The provisions of Division I are applicable, with such modifications as the circumstances require, in respect of a reassessment made under subsection (3) as though it had been made under section 152.

80. Section 175 of the said Act is repealed and the following substituted therefor:

Institution of Appeals

175. An appeal to the Tax Court of Canada under this Act, other than one referred to in section 18 of the *Tax Court of Canada Act*, shall be instituted in the manner set forth in that Act or any rules made under that Act.

81. (1) Subsection 180.1(1.1) of the said Act is repealed and the following substituted therefor:

Foreign tax deduction

(1.1) There may be deducted from the tax otherwise payable under this Part for a taxation year (computed without reference to subsection (1.2)) by an individual the amount, if any by which

(a) the total of all amounts that would be

(i) deductible by the individual under section 126 for the year, or

(ii) the individual's special foreign tax credit for the year determined under section 127.54,

if the references in section 126 to "the tax for the year otherwise payable under this Part by him" were read as "the aggregate of the tax for the year otherwise payable under this Part by him and the tax for the year that would be payable by him under Part I.1 but for subsections 180.1(1.1) and (1.2)"

exceeds

(b) the total of all amounts deductible by the individual under section 126 for the year and the individual's special foreign tax credit for the year determined under section 127.54.

(2) Subsection (1) is applicable to the 1988 and subsequent taxation years.

82. (1) Paragraph (*b*) of the definition "long-term debt" in subsection 181(1) of the said Act is repealed and the following substituted therefor:

(*b*) in the case of a financial institution that is not a bank, its subordinate indebtedness evidenced by obligations issued for a term of not less than 5 years (other than, where the financial institution is a prescribed federal Crown corporation for the purposes of section 27, such indebtedness

evidenced by obligations issued to and held by Her Majesty in right of Canada);

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

83. (1) Subsection 181.1(3) of the said Act is amended by striking out the word "or" at the end of paragraph (*d*) thereof, by adding the word "or" at the end of paragraph (*e*) thereof and by adding thereto the following paragraph:

(*f*) that was throughout the year a corporation described in subsection 136(2) the principal business of which was marketing (including processing incidental to or connected therewith) natural products belonging to or acquired from its members or customers.

(2) Subsection (1) is applicable to taxation years ending after June 1989.

84. (1) Paragraph 181.2(3)(*d*) of the said Act is repealed and the following substituted therefor:

(*d*) the amount of all indebtedness of the corporation at the end of the year represented by bonds, debentures, mortgages, notes, <u>bankers' acceptances</u> or similar obligations,

(2) Subsection 181.2(4) of the said Act is amended by adding thereto, immediately after paragraph (*d*) thereof, the following paragraph:

(*d*.1) a loan or advance to, or a bond, debenture, note, mortgage or similar obligation of, a partnership all of the members of which, throughout the year, were corporations (other than financial institutions) that were not exempt from tax under this Part (otherwise than by reason of paragraph 181.1(3)(*d*)),

(3) Section 181.2 of the said Act is further amended by adding thereto the following subsection:

"Loan"

(6) For the purpose of subsection (4), where a corporation has made a particular loan to a trust that has neither

(*a*) made any loans or advances to nor received any loans or advances from, nor

(*b*) acquired any bond, debenture, note, mortgage or similar obligation of nor issued any bond, debenture, note, mortgage or similar obligation to

a person not related to the corporation, as part of a series of transactions in which the trust has made a loan to another corporation (other than a financial institution) to which the corporation is related, the least of

(*c*) the amount of the particular loan,

(*d*) the amount of the loan from the trust to the other corporation, and

(*e*) the amount, if any, by which

(i) the total of all amounts each of which is the amount of a loan from the trust to any corporation

exceeds

(ii) the total of all amounts each of which is the amount of a loan (other than the particular loan) from any corporation to the trust

at any time shall be deemed to be the amount of a loan from the corporation to the other corporation at that time.

(4) Subsection (1) is applicable with respect to taxation years ending after ANNOUNCEMENT DATE.

(5) Subsection (2) is applicable to the 1991 and subsequent taxation years.

(6) Subsection (3) is applicable after June 1989.

85. (1) Paragraph 181.3(1)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) the total of all amounts each of which is the carrying value at the end of the year of an asset of the financial institution (other than property held by the institution primarily for the purpose of resale that was acquired by the financial institution, in the year or the immediately preceding year, as a consequence of another person's default in respect of a debt owed to the institution) that is tangible property used in Canada (and, in the case of a financial institution that is an insurance corporation, that is non-segregated property, within the meaning assigned by paragraph 138(12)(*j*));

(2) Subsection (1) is applicable to taxation years ending after June 1989.

86. (1) Sections 181.7 to 181.9 of the said Act are repealed and the following substituted therefor:

Provisions applicable to Part

181.7 Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

87. (1) All that portion of paragraph 186(1)(*a*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(*a*) all amounts received by the particular corporation in the year and at a time when it was a subject corporation or a private corporation as, on account of, in lieu of payment of or in satisfaction of, taxable dividends from corporations other than payer corporations connected with it,

(2) All that portion of paragraph 186(1)(*b*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(*b*) all amounts each of which is an amount in respect of a taxable dividend, in respect of which an amount is deductible under subsection 112(1) in computing its taxable income for the year, received by the particular corporation in the year and at a time when it was a subject corporation or a private corporation from a subject corporation or a private corporation that was a payer corporation connected with the particular corporation equal to that proportion of

(3) Subparagraph 186(1)(*b*)(iii) of the said Act is repealed and the following substituted therefor:

(iii) the aggregate of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend and at a time when it was a subject corporation or a private corporation

(4) All that portion of subsection 186(5) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Presumption

(5) A corporation that is at any time a subject corporation shall for the purposes of paragraphs 87(2)(*aa*) and 88(1)(*e*.5) and section 129 be deemed to be a private corporation at that time,

except that its refundable dividend tax on hand at the end of any taxation year shall be deemed to the amount, if any, by which the aggregate of

(5) Subsections (1) and (2) are applicable with respect to dividends received after 1992.

(6) Subsection (3) is applicable with respect to dividends paid in the 1992 or a subsequent taxation year, except that with respect to dividends paid in a taxation year commencing before 1993 and ending after 1992, subparagraph 186(1)(*b*)(iii) of the said Act, as enacted by subsection (3), shall be read as follows:

(iii) the aggregate of all taxable dividends paid by the payer corporation in its taxation year in which it paid the dividend that were paid before 1993 or at a time when the payer corporation was a subject corporation or a private corporation

(7) Subsection (4) is applicable to the 1993 and subsequent taxation years.

88. (1) Section 190.15 of the said Act is amended by adding thereto the following subsection:

Idem

(6) Two corporations that would, but for this subsection, be related to each other by reason only of

(*a*) the control of any corporation by Her Majesty in right of Canada or a province, or

(*b*) a right referred to in paragraph 251(5)(*b*),

shall, for the purposes of section 190.14 and this section, be deemed not to be related to each other except that, where at any time a taxpayer has a right referred to in paragraph 251(5)(*b*) with respect to shares and it may reasonably be considered that one of the main purposes of the acquisition of the right

was to avoid any limitation on the amount of a corporation's capital deduction for a taxation year, for the purposes of determining whether a corporation is related to any other corporation, the corporations shall, for the purposes of this section, be deemed to be in the same position in relation to each other as if the taxpayer owned the shares.

(2) Subsection (1) is applicable to the 1989 and subsequent taxation years.

89. (1) Sections 190.21 to 190.24 of the said Act are repealed and the following substituted therefor:

Provisions applicable to Part

190.21 Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

90. (1) Paragraphs 191(3)(*a*) and (*b*) of the said Act are repealed and the following substituted therefor:

(*a*) where it may reasonably be considered that the principal purpose for a person acquiring an interest that would, but for this subsection, be a substantial interest in a corporation is to avoid or limit the application of Part I or IV.1 or this Part, the person shall be deemed not to have a substantial interest in the corporation;

(*b*) where it may reasonably be considered that the principal purpose for an acquisition of a share of the capital stock of a corporation (in this paragraph referred to as the "issuer") by any person (in this paragraph referred to as the "acquiror") that had, immediately after the time of the acquisition, a substantial interest in the issuer from another person that did not, immediately

before that time, have a substantial interest in the issuer, was to avoid or limit the application of Part I or IV.1 or this Part with respect to a dividend on the share, the acquiror and specified persons (within the meaning assigned by paragraph (*h*) of the definition "taxable preferred share" in subsection 248(1)) in relation to the acquiror shall be deemed not to have a substantial interest in the issuer with respect to any dividend paid on the share;

(2) Subparagraphs 191(3)(*d*)(ii) and (iii) of the said Act are repealed and the following substituted therefor:

(ii) a trust in which all persons who are beneficially interested are related to each other (otherwise than by reason of a right referred to in paragraph 251(5)(*b*)) and, for the purposes of this subparagraph, where a particular person who is beneficially interested in the trust is an aunt, uncle, niece or nephew of another person, the particular person and any person who is a child or descendant of the particular person shall be deemed to be related to the other person and any person who is the child or descendant of the other person, or

(iii) a trust in which only one person is beneficially interested,

(3) Subsection (1) is applicable with respect to dividends paid or received after ANNOUNCEMENT DATE.

(4) Subsection (2) is applicable after 1990.

91. (1) Subsection 191.4(2) of the said Act is repealed and the following substituted therefor:

Provisions applicable to Part

(2) Sections 152, 158 and 159, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

92. (1) All that portion of subsection 204.2(1.3) of the said Act preceding the description of G therein is repealed and the following substituted therefor:

Net past service pension adjustment

(1.3) For the purposes of subsection (1.1), the net past service pension adjustment of an individual, at any time, for a taxation year is the amount, which can be positive or negative, determined by the formula

P - G

where

P is the total of all amounts each of which is the accumulated PSPA of the individual for the year in respect of an employer, determined as of that time in accordance with prescribed rules; and

(2) Subsection (1) is applicable after 1988.

93. (1) Paragraph 206(2)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) the amount, if any, by which

(i) the total of all amounts each of which is the cost amount of a foreign property to a taxpayer described in any of paragraphs 205(*a*) to (*f*)

exceeds the total of

(ii) where the taxpayer is described in any of paragraphs (*b*), (*c*) and (*e*), all amounts each of which is the cost amount to the taxpayer of a foreign property that was not at the end of the month a qualified investment of the taxpayer, within the meaning assigned by paragraph 146(1)(*g*), 146.3(1)(*d*) or 204(*e*), as the case may be, and

(iii) all amounts (other than an amount included in respect of the taxpayer for the month under subparagraph (ii)) each of which is the cost amount to the taxpayer of foreign property that became foreign property to the taxpayer after its last acquisition by the taxpayer and at a time that is not more than 24 months before the end of the month,

(2) Section 206 of the said Act is further amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

Reorganizations, etc.

(3.1) Where

(*a*) a security (in this subsection referred to as the "new security") is issued at a particular time by a corporation to a taxpayer in the course of a corporate merger or reorganization of capital and in exchange for another security acquired before the particular time by the taxpayer, and

(*b*) the new security is foreign property at the particular time

the following rules apply for the purposes of applying subparagraph (2)(*a*)(iii) to the taxpayer at or after the particular time:

(*c*) the new security shall be deemed to have been last acquired by the taxpayer at the time the other security was last acquired by the taxpayer;

(*d*) where the other security was not foreign property immediately before the particular time, the new security shall be deemed to have become foreign property at the particular time; and

(*e*) where the other security was foreign property immediately before the particular time, the new security shall be deemed to have become foreign property at the time the other security became foreign property.

(3) Subsections (1) and (2) are applicable to months ending after ANNOUNCEMENT DATE.

94. (1) Section 207.6 of the said Act is amended by adding thereto the following subsection:

Prescribed plan or arrangement

(6) For the purposes of the provisions of this Act relating to retirement compensation arrangements, the following rules apply in respect of a prescribed plan or arrangement:

(*a*) the plan or arrangement is deemed to be a retirement compensation arrangement;

(*b*) an amount credited at any time to the account established in the accounts of Canada or a province in connection with the plan or arrangement is, except to the extent that it is in respect of a refund determined under subsection 207.7(2), deemed to be a contribution under the plan or arrangement at that time;

(*c*) the custodian of the plan or arrangement is deemed to be

(i) where such account is established in the accounts of Canada, Her Majesty in right of Canada, and

(ii) where such account is established in the accounts of a province, Her Majesty in right of that province; and

(*d*) the subject property of the plan or arrangement, at any time, is deemed to include an amount of cash equal to the balance at that time in such account.

(2) Subsection (1) is applicable after 1991.

95. (1) Section 210.2 of the said Act is amended by adding thereto, immediately after subsection (1) thereof, the following subsection:

Amateur athlete trusts

(1.1) Notwithstanding section 210.1, where an amount described in subsection 143.1(2) in respect of an amateur athlete trust would, if Part I were applicable, be required to be included in computing the income for a taxation year of a designated beneficiary under the trust, the trust shall pay a tax under this Part in respect of the year equal to 36% of 100/64 of that amount.

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

96. (1) Subparagraph 212(1)(*b*)(iv) of the said Act is repealed and the following substituted therefor:

(iv) interest payable on any bond, debenture or similar obligation to a person with whom the payer is dealing at arm's length and to whom a certificate of exemption that is in force on the day the amount is paid or credited has been issued under subsection (14),

(2) Subparagraph 212(1)(*b*)(vii) of the said Act is amended by striking out the word "or" at the end of clause (D) thereof, by adding the word "or" at the end of clause (E) thereof and by adding thereto the following clause:

(F) in the event of the person's death;

(3) All that portion of subparagraph 212(1)(*h*)(iii.1) of the said Act preceding clause (A) thereof is repealed and the following substituted therefor:

(iii.1) that portion thereof that is transferred by the payer on behalf of the non-resident person, pursuant to an authorization in prescribed form, to a registered pension plan, registered retirement savings plan or registered retirement income fund and that

(4) Subsection 212(1) of the said Act is further amended by striking out the word "or" at the end of paragraph (*r*) thereof and by adding thereto the following paragraphs:

NISA Fund No. 2 payments

(t) a payment out of a NISA Fund No. 2 to the extent that that amount would, if Part I were applicable, be required by subsection 12(10.2) to be included in computing the person's income for a taxation year; or

Amateur athlete trust payments

(*u*) a payment in respect of an amateur athlete trust that would, if Part I were applicable, be required by section 143.1 to be included in computing the person's income for a taxation year.

(5) Subsections (1) and (2) are applicable with respect to amounts paid or credited after 1991.

(6) Subsection (3) is applicable with respect to payments made after August 29, 1990.

(7) Paragraph 212(1)(*t*) of the said Act, as enacted by subsection (4), is applicable with respect to payments made after 1990.

(8) Paragraph 212(1)(*u*) of the said Act, as enacted by subsection (4), is applicable with respect to payments made after 1991.

97. (1) Subsection 212.1(3) of the said Act is amended by striking out the word "and" at the end of paragraph (*b*) thereof, by adding the word "and" at the end of paragraph (*c*) thereof and by adding thereto the following paragraph:

(*d*) for the purposes of paragraph (*a*),

(i) a group of persons in respect of a corporation means any two or more persons each of whom owns shares of the capital stock of the corporation,

(ii) a corporation that is controlled by one or more members of a particular group of persons in respect of that corporation shall be considered to be controlled by that group of persons, and

(iii) a corporation may be controlled by a person or a particular group of persons notwithstanding that the corporation is also controlled or deemed to be controlled by another person or group of persons.

(2) Subsection (1) is applicable with respect to dispositions occurring after ANNOUNCEMENT DATE.

98. (1) Subsection 214(3) of the said Act is amended by striking out the word "and" at the end of paragraph (*i*) thereof and by adding thereto the following paragraphs:

(*k*) where, by reason of subsection 143.1(2), an amount distributed at any time by an amateur athlete trust would, if Part I were applicable, be required to be included in computing an individual's income, that amount shall be deemed

to have been paid at that time to the individual as a payment in respect of an amateur athlete trust; and

(*l*) where by reason of subsection 12(10.2) an amount would at any particular time, if Part I were applicable, be required to be included in computing a taxpayer's income, that amount shall be deemed to have been paid by Her Majesty in right of Canada at that time to the taxpayer out of the taxpayer's NISA Fund No. 2.

(2) Paragraph 214(3)(*k*) of the said Act, as enacted by subsection (1), is applicable with respect to amounts distributed after 1991.

(3) Paragraph 214(3)(*l*) of the said Act, as enacted by subsection (1), is applicable after 1990.

99. (1) Paragraph 219(1)(*a*.3) of the said Act is repealed and the following substituted therefor:

(*a*.3) the amount deducted by the corporation under paragraph 20(1)(*v*.1) in computing the amount referred to in paragraph (*a*), other than any portion of the amount so deducted that was deductible by reason of the membership of the corporation in a partnership,

(2) Paragraph 219(1)(*e*) of the said Act is repealed and the following substituted therefor:

(*e*) the total of the taxes payable by it under Parts I, I.3 and VI for the year less, where the corporation was, at no time in the year, resident in Canada, that proportion of the tax payable by it under Part I for the year that the amount determined under paragraph (*d*) in respect of the corporation for the year is of the corporation's amount taxable for the year,

(3) Subsection (1) is applicable after ANNOUNCEMENT DATE.

(4) Subsection (2) is applicable to taxation years ending after June 1989.

100. Subsection 223(3) of the said Act is repealed and the following substituted therefor:

Registration in court

(3) On production to the Federal Court of Canada, a certificate made under subsection (2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection (1) under which the amount is payable and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.

101. All that portion of subsection 224(1.2) of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor:

the Minister may, by registered letter or by a letter served personally, require the particular person to pay forthwith, where the moneys are immediately payable, and in any other case, as and when the moneys become payable, the moneys otherwise payable to the tax debtor or the secured creditor in whole or in part to the Receiver General on account of the tax debtor's liability under subsection 227(10.1) or a similar provision, and on receipt of that letter by the particular person, the amount of those moneys that is required by that letter to be paid to the Receiver General shall, notwithstanding any security interest in those moneys, become the property of Her Majesty to the extent of that liability as assessed by the

Minister and shall be paid to the Receiver General in priority to any such security interest.

102. The said Act is further amended by adding thereto, immediately after section 227.1 thereof, the following section:

Compliance by unincorporated bodies

227.2 Unless otherwise provided for under this Act, where any amount is required to be paid or remitted or any other thing is required to be done by or under this Act or a regulation by a person (in this subsection referred to as the "body") that is not an individual, a corporation, a trust nor an estate, it shall be the joint and several liability of

(*a*) every person holding office as president, chairperson, treasurer, secretary or similar officer of the body,

(*b*) where there is no such officer, every member of any committee having management of the affairs of the body, and

(*c*) where there is no such officer and no such committee, every member of the body,

to pay or remit that amount or to comply with the requirement, as the case may be.

103. (1) All that portion of subsection 230.1(1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Books and records re political contributions

230.1 (1) Every registered agent of a registered party and the official agent of each candidate at an election of a member or members to serve in the House of Commons of Canada shall keep records and books of account sufficient to enable the amounts contributed received by the agent and expenditures made by the agent to be verified (including duplicates of all receipts for amounts contributed, containing prescribed information, signed by the agent) at,

(2) All that portion of subsection 230.1(2) of the English version of the said Act following paragraph (*a*) thereof is repealed and the following substituted therefor:

(*b*) in the case of an official agent, within the time within which a return is required to be submitted by the agent to a returning officer pursuant to section 228 of the *Canada Elections Act*,

file with the Minister a return of information in prescribed form and containing prescribed information.

(3) Subsection 230.1(4) of the said Act is repealed and the following substituted therefor:

Reports to chief electoral officer

(4) The Minister shall, notwithstanding section 241, as soon as is reasonably possible after each election, and at such other time as is appropriate having regard to the time of receipt by the Minister of returns of information under subsection (2), forward to the Chief Electoral Officer a report based on all such returns of information as have been received by the Minister since the most recent such report, setting out the total of amounts contributed to each registered party and the total of amounts contributed to each candidate at an election of a member or members to serve in the House of Commons of Canada since the most recent such report, and upon receipt thereof by the Chief Electoral Officer, the report is a public record and may be inspected by any person upon request during normal business hours.

(4) Subsections (1) to (3) are applicable to the 1992 and subsequent taxation years.

104. Section 233 of the said Act is repealed and the following substituted therefor:

Information return

233. Every person shall, on written demand from the Minister, served personally or otherwise, whether or not the person has filed an information return as required by this Act or a regulation, file with the Minister, within such reasonable time as may be stipulated in the demand, such information as is designated therein.

105. Subsection 239(2.2) of the said Act is repealed and the following substituted therefor:

Offence with respect to confidential information

(2.2) Every person

(*a*) who contravenes subsection 241(1), or

(*b*) who knowingly contravenes an order made under subsection 241(4.1)

is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

Idem

(2.21) Every person

(*a*) to whom taxpayer information has been provided for a particular purpose pursuant to paragraph 241(4)(*b*), (*c*), (*e*), (*g*) or (*j*), or

(*b*) who is an official or authorized person to whom taxpayer information has been provided for a particular purpose pursuant to paragraph 241(4)(*a*), (*d*) or (*h*)

who for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

Definitions

(2.22) In subsections (2.2) and (2.21), "authorized individual" "authorized person", "official" and "taxpayer information" have the meanings assigned by subsection 241(10).

106. (1) Subsections 241(1) to (5) of the said Act are repealed and the following substituted therefor:

Provision of information

241. (1) Except as authorized by this section, no official or authorized person shall

(*a*) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;

(*b*) knowingly allow any person to have access to any taxpayer information; or

(*c*) knowingly use any taxpayer information other than in the course of the administration or enforcement of this Act, the *Canada Pension Plan* or the *Unemployment Insurance Act* or for the purpose for which it was provided under this section.

Idem

(2) Notwithstanding any other Act of Parliament or other law, no official or authorized person shall be required, in connection with any legal proceedings, to give or produce evidence relating to any taxpayer information.

Communication where proceedings have been commenced

(3) Subsections (1) and (2) do not apply in respect of

(*a*) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information, under an Act of Parliament; or

(*b*) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan* or the *Unemployment Insurance Act*.

Circumstances involving danger

(3.1) The Minister may provide to appropriate persons any information relating to imminent danger of death or physical injury to any individual.

Where taxpayer information may be disclosed

(4) An official or authorized person may

(*a*) provide taxpayer information to any person as may reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act, the *Canada Pension Plan* or the *Unemployment Insurance Act*, solely for that purpose;

(*b*) provide to a taxpayer taxpayer information that may reasonably be regarded as necessary for the purposes of determining any tax, interest, penalty or other amount that is or may become payable by the taxpayer, or any refund or tax credit to which the taxpayer is or may become entitled, under this Act or any other amount that is relevant for the purposes of that determination;

(*c*) provide to the person who seeks a certification referred to in paragraph 147.1(10)(*a*) the certification or a refusal to make the certification, solely for the purposes of administering a registered pension plan;

(*d*) provide taxpayer information

(i) to an official of the Department of Finance solely for the purposes of the formulation or evaluation of fiscal policy,

(ii) to an official of the Department of National Revenue, Customs and Excise, solely for the purposes of the administration or enforcement of the *Customs Act*, the *Customs Tariff*, the *Excise Tax Act* or the *Excise Act*,

(iii) to an official of the Department of Energy, Mines and Resources or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of Canada or of the province relating to the exploration for or exploitation of Canadian petroleum and gas resources,

(iv) to an official of the government of a province solely for the purposes of the administration or enforcement of a law of the province that provides for the imposition of a tax payable to the province or for the purposes of the formulation or evaluation of fiscal policy,

(v) to an official of the government of a province that has received or is entitled to receive a payment referred to in this subparagraph, or to an official of the Department of Energy, Mines and Resources, solely for the purposes of the provisions relating to payments to a province in respect of the taxable income of corporations earned in the offshore area with respect to the province under the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the *Canada-Newfoundland Atlantic Accord Implementation Act* or similar Acts relating to the exploration for or exploitation of offshore Canadian petroleum and gas resources,

(vi) to an official, solely for the purposes of the administration or enforcement of the *Pension Benefits Standards Act, 1985* or a similar law of a province,

(vii) to an official of the Department of Veteran Affairs solely for the purposes of administering the *War Veterans Allowance Act* or Part XI of the *Civilian War Pensions and Allowances Act*,

(viii) to an official of a department or agency of the Government of Canada or of a province as to the name, address, occupation, size or type of business of a taxpayer, solely for the purposes of enabling that department or agency to obtain statistical data for research and analysis,

(ix) to an official of the Canada Employment and Immigration Commission or the Department of Employment and Immigration, solely for the purposes of the administration or enforcement of, or the evaluation or formulation of policy for the purposes of, the *Unemployment Insurance Act* or an employment program of the Government of Canada,

(x) to an official of the Department of Agriculture or of the government of a province solely for the purposes of the administration or enforcement of a program of the Government of Canada or of the province established under an agreement entered into pursuant to the *Farm Income Protection Act*,

(xi) to an official of the Department of Communications or a member of the Canadian Cultural Property Export Review Board, solely for the purpose of administering the provisions of sections 32 and 33 of the *Cultural Property Export and Import Act*, or

(xii) to an official solely for the purposes of setting off against any sum of money that may be due or payable by Her Majesty in right of Canada a debt due to

(A) Her Majesty in right of Canada, or

(B) Her Majesty in right of a province on account of taxes payable to the province where an agreement exists between Canada and the province under which Canada is

authorized to collect the taxes on behalf of the province;

(*e*) provide taxpayer information, or allow inspection of or access to taxpayer information, as the case may be, pursuant to

(i) subsection 36(2) or section 46 of the *Access to Information Act*,

(ii) section 13 of the *Auditor General Act*,

(iii) section 92 of the *Canada Pension Plan*,

(iv) a warrant issued under subsection 21(3) of the *Canadian Security Intelligence Service Act*,

(v) an order made under subsection 462.48(3) of the *Criminal Code*,

(vi) section 62 of the *Family Orders and Agreements Enforcement Assistance Act*,

(vii) paragraph 33(3)(*a*) of the *Old Age Security Act*,

(viii) subsection 34(2) or section 45 of the *Privacy Act*,

(ix) section 24 of the *Statistics Act*,

(x) section 9 of the *Tax Rebate Discounting Act*, or

(xi) a provision contained in a tax convention or agreement between Canada and another country that has the force of law in Canada;

(*f*) use taxpayer information to compile information in a form that does not directly or indirectly reveal the identity of the taxpayer to whom the information relates;

(*g*) use, or provide to any person, taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized individual by Her Majesty in right of Canada, to the extent that the information is relevant for that purpose;

(*h*) provide access to records of taxpayer information to the National Archivist of Canada or a person acting on behalf of or under the direction of the National Archivist of Canada, solely for the purposes of section 5 of the *National Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 6 of that Act;

(*i*) use taxpayer information relating to a taxpayer to provide information to the taxpayer; or

(*j*) provide or allow inspection of or access to taxpayer information to any person otherwise legally entitled to it by reason of an Act of Parliament solely for the purposes for which that person is entitled to the information.

Measures to prevent unauthorized use or disclosure

(4.1) The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized individual may order such measures as are necessary to ensure that taxpayer information is not used or provided to any person for any purpose not relating to that proceeding, including

(*a*) holding a hearing *in camera*;

(*b*) banning the publication of the information;

(*c*) concealing the identity of the taxpayer to whom the information relates; and

(*d*) sealing the records of the proceeding.

Disclosure to taxpayer or on consent

(5) An official or authorized person may provide taxpayer information relating to a taxpayer

(*a*) to the taxpayer; and

(*b*) with the consent of the taxpayer, to any other person.

(2) All that portion of subsection 241(6) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Appeal from order or direction

(6) An order or direction made in the course of or in connection with any legal proceedings requiring an official or authorized person to give or produce evidence relating to any taxpayer information may, by notice served upon all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

(3) Subsection 241(10) of the said Act is repealed and the following substituted therefor:

Definitions

(10) In this section,

"authorized individual" « *particulier autorisé* »

"authorized individual" means a person engaged or employed by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act, the *Canada Pension Plan* or the *Unemployment Insurance Act*;

"authorized person" « *personne autorisée* »

"authorized person" means any person engaged or employed, or formerly engaged or employed, by or on behalf of Her Majesty in right of Canada or a province to assist in carrying out the provisions of this Act, the *Canada Pension Plan* or the *Unemployment Insurance Act*;

"court of appeal" « *cour d'appel* »

"court of appeal" has the meaning assigned by paragraphs *(a)* to *(j)* of the definition "court of appeal" in section 2 of the *Criminal Code*;

"official" « *fonctionnaire* »

"official" means any person employed in or occupying a position of responsibility

(*a*) in the service of Her Majesty in right of Canada or a province, or

(*b*) in the service of an authority engaged in administering a law of a province similar to the *Pension Benefits Standards Act, 1985*

or any person formerly so employed or formerly occupying such a position;

"taxpayer information" « *renseignement confidentiel* »

"taxpayer information" means information of any kind relating to one or more taxpayers that is

(*a*) obtained by or on behalf of the Minister for the purposes of this Act, or

(*b*) prepared from information referred to in paragraph (*a*),

but does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

PGRT Act references

(11) The references in subsections (1), (3), (4) and (10) to "this Act" shall be read as references to "this Act or the *Petroleum and Gas Revenue Tax Act*".

107. (1) Paragraphs (*d*) and (*e*) of the definition "cost amount" in subsection 248(1) of the said Act are repealed and the following substituted therefor:

(*d*) where the property was eligible capital property of the taxpayer in respect of a business, 4/3 of the amount that would, but for subsection 14(3), be that proportion of the

cumulative eligible capital of the taxpayer in respect of the business at that time that

(i) the fair market value at that time of the property

is of

(ii) the fair market value at that time of all the eligible capital property of the taxpayer in respect of the business,

(*e*) where the property was a debt owing to the taxpayer (other than the amount in respect of such property that was deducted under paragraph 20(1)(*p*) in computing the taxpayer's income for a taxation year ending before that time or of a net income stabilization account) or any other right of the taxpayer to receive an amount (other than a right to receive an amount in respect of a net income stabilization account), the amortized cost of the property to the taxpayer at that time or, where the property does not have an amortized cost to the taxpayer, the amount of the debt or right that was outstanding at that time,

(2) The definition "person" in subsection 248(1) of the said Act is repealed and the following substituted therefor:

"person"
« *personne* »

"person", or any word or expression descriptive of a person, includes any corporation, and any entity exempt from tax under Part I by reason of subsection 149(1), and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends;

(3) All of that portion of the definition "small business corporation" in subsection 248(1) of the

said Act following paragraph (*c*) thereof is repealed and the following substituted therefor:

including, for the purposes of paragraph 39(1)(*c*), a corporation that was at any time in the 12 months preceding that time a small business corporation, and, for the purposes of this definition, the fair market value of a net income stabilization account shall be deemed to be nil;

(4) The definition "specified shareholder" in subsection 248(1) of the said Act is amended by striking out the word "and" at the end of paragraph (*c*) thereof, by adding the word "and" at the end of paragraph (*d*) thereof and by adding thereto the following paragraph:

(*e*) notwithstanding paragraph (*b*), where a beneficiary's share of the income or capital of the trust depends upon the exercise by any person of, or the failure by any person to exercise, any discretionary power, the beneficiary shall be deemed to own each share of the capital stock of a corporation owned at that time by the trust;

(5) Subsection 248(1) of the said Act is further amended by adding thereto, in alphabetical order therein, the following definitions:

"amateur athlete trust" *« fiducie au profit d'un athlète amateur »*

"amateur athlete trust" has the meaning assigned by subsection 143.1(1);

"net income stabilization account" *« compte de stabilisation du revenu net »*

"net income stabilization account" means an account of a taxpayer under the "net income stabilization account program" under the *Farm Income Protection Act*;

"NISA Fund No. 2" *« second fond du compte de stabilisation du revenu net »*

"NISA Fund No. 2" means the portion of a taxpayer's net income stabilization account described in paragraph 8(2)(*b*) of the *Farm Income Protection Act*;

(6) Section 248 of the said Act is further amended by adding thereto, immediately after subsection (9) thereof, the following subsections:

How trust created

(9.1) For the purposes of this Act, a trust shall be considered to be created by a taxpayer's will if the trust is created

(*a*) under the terms of the taxpayer's will; or

(*b*) by an order of a court in relation to the taxpayer's estate made pursuant to any law of a province providing for the relief or support of dependants.

Vested indefeasibly

(9.2) For the purposes of this Act, property shall be deemed not to have become vested indefeasibly

(*a*) in a trust created by a taxpayer's will under which the taxpayer's spouse is a beneficiary, unless the property became vested indefeasibly in the trust before the death of the spouse; and

(*b*) in an individual (other than a trust), unless the property became vested indefeasibly in the individual before the death of the individual.

(7) Subsection 248(11) of the said Act is repealed and the following substituted therefor:

Compound interest

(11) Interest computed at a prescribed rate under any of subsections 129(2.1) and (2.2), 131(3.1) and (3.2), 132(2.1) and (2.2), 133(7.01) and (7.02), 159(7), 160.1(1), 161(1), (2) and (11), 164(3) to (4), 181.8(1) and (2), 182(2), 185(2), 187(2) and 189(7),

section 190.23 and subsections 191(2), 193(3), 195(3), 202(5), and 227(8.3), (9.2) and (9.3) shall be compounded daily and, where interest is computed on an amount under any of those provisions and is unpaid or unapplied on the day it would, but for this subsection, have ceased to be computed under that provision, interest at the prescribed rate shall be computed and compounded daily on the unpaid or unapplied interest from that day to the day it is paid or applied and shall be paid or applied as would have been the case if interest had continued to be computed under that provision after that day.

(8) Section 248 of the said Act is further amended by adding thereto the following subsection:

Beneficially interested

(25) For the purposes of this Act, a person or partnership is beneficially interested in a trust if the person or partnership has any right (whether immediate or future, whether absolute or contingent or whether conditional on or subject to the exercise of any discretionary power by any person or persons) to receive any of the income or capital of the trust either directly from the trust or indirectly through one or more other trusts.

(9) Paragraph (*d*) of the definition "cost amount" in subsection 248(1) of the said Act, as enacted by subsection (1), is applicable

(*a*) in the case of a corporation, to taxation years of the corporation commencing after June 1987, and

(*b*) in any other case, to fiscal periods commencing after 1987

except that, in its application before July 14, 1990, paragraph (*d*) of the definition "cost amount" in subsection 248(1) of the said Act, as enacted by subsection (1), shall be read as follows:

(*d*) where the property is eligible capital property in respect of business, 4/3 of the amount that would, but for subsection 14(3), be the cumulative eligible capital of the taxpayer in respect of the business at that time,

(10) Paragraph (*e*) of the definition "cost amount" in subsection 248(1) of the said Act, as enacted by subsection (1), subsection (3), and the definitions "net income stabilization account" and "NISA Fund No. 2" in subsection 248(1) of the said Act, as enacted by subsection 5, are applicable to the 1991 and subsequent taxation years.

(11) Subsection (4) is applicable after 1991.

(12) The definition "amateur athlete trust" in subsection 248(1) of the said Act, as enacted by subsection (5), is applicable to the 1988 and subsequent taxation years.

(13) Subsection 248(9.1) of the said Act, as enacted by subsection (6), is applicable to the 1990 and subsequent taxation years.

(14) Subsection 248(9.2) of the said Act, as enacted by subsection (6), is applicable in respect of deaths occurring after ANNOUNCEMENT DATE.

(15) Subsection (7) is applicable with respect to refunds paid or applied with respect to taxation years commencing after 1991.

(16) Subsection (8) is applicable after 1990.

108. (1) Subsection 252(3) of the said Act is repealed and the following substituted therefor:

Extended meaning of "spouse" and "former spouse"

(3) For the purposes of paragraphs 56(1)(*b*) and (*c*), section 56.1, paragraphs 60(*b*), (*c*) and (*j*), section 60.1, subsections 70(6) and (6.1), 73(1) and (5), 104(4), (5.1) and (5.4), paragraph 108(1)(*f*.1), subsection 146(16), subparagraph 146.3(2)(*f*)(iv), paragraph 146.3(14)(*b*), subsections 147.3(5) and (7) and 148(8.1) and (8.2), subparagraph 210(*c*)(ii) and subsections 248(22) and (23), "spouse" and "former spouse" include a party to a voidable or void marriage, as the case may be.

(2) Subsection (1) is applicable to the 1991 and subsequent taxation years.

109. (1) Paragraph 258(3)(*b*) of the said Act is repealed at the following substituted therefor:

(*b*) any other share that

(i) is a grandfathered share, or

(ii) was issued before 8:00 p.m. Eastern Daylight Savings Time, June 18, 1987 and was not deemed by paragraph 112(2.2)(*f*) to have been issued after that time

by a corporation from a corporation not resident in Canada, if the dividend would have been a dividend in respect of which no deduction could have been made under subsection 112(1) or (2) or 138(6) by reason of subsection 112(2.2), as it read on June 17, 1987, if the corporation that paid the dividend were a taxable Canadian corporation

(2) Subsection (1) is applicable with respect to dividends received or deemed to be received on shares acquired after 8:00 p.m. Eastern Daylight Savings Time, June 18, 1987.

110. (1) Paragraph 259(3)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) it has never borrowed money except where the borrowing was for a term not exceeding 90 days and the borrowing was not part of a series of loans or other transactions and repayments;

(2) Subsection (1) is applicable with respect to borrowings occurring after 1990.

PART II

CANADA PENSION PLAN

111. (1) Subsection 27(4) of the *Canada Pension Plan* is repealed and the following substituted therefor:

Procedure for making application or appeal

(4) An application for the determination of a question or an appeal for reconsideration of an assessment by the Minister shall be addressed to the Chief of Appeals in a District Office of the Department of National Revenue, Taxation and delivered or mailed to that office.

(2) Subsection (1) is applicable with respect to applications and appeals made after the day on which this Act is assented to.

PART III

INCOME TAX CONVENTIONS INTERPRETATION ACT

112. (1) Section 5 of the *Income Tax Conventions Interpretation Act* is amended by adding thereto, in alphabetical order, the following definitions:

"annuity" *« rente »*

"annuity" does not include a payment that is a pension payment arising in Canada;

"pension" « *pension* »

"pension" includes payments arising in Canada under

(*a*) a registered pension plan,

(*b*) a registered retirement savings plan,

(*c*) a registered retirement income fund,

(*d*) a retirement compensation arrangement,

(*e*) a deferred profit sharing plan,

(*f*) a plan that is deemed by subsection 147(15) of the *Income Tax Act* not to be a deferred profit sharing plan,

(*g*) an annuity contract purchased pursuant to a plan referred to in paragraph (*e*) or (*f*),

(*h*) an annuity contract where the amount paid by or on behalf of an individual to acquire the contract was deductible under paragraph 60(*l*) of the *Income Tax Act* in computing the individual's income for any taxation year (or would have been so deductible if the individual had been resident in Canada), and

(*i*) a superannuation, pension or retirement plan not otherwise referred to in this definition,

and, for the purpose of this definition, the definition "annuity" in this section shall not apply;

"periodic pension payment" « *paiement périodique de pension* »

"periodic pension payment" does not include a pension payment arising in Canada that is

(*a*) a lump sum payment, or a payment that can reasonably be considered to be an instalment of a lump sum amount, under a registered pension plan,

(*b*) a payment before maturity, or a payment in full or partial commutation of the retirement income, under a registered retirement savings plan,

(*c*) a payment at any time in a calendar year under a registered retirement income fund where the total of all payments made under the fund at or before that time and in the year, other than

(i) a payment or portion thereof that is not required by section 146.3 of the *Income Tax Act* to be included in computing the income of any person and that is not included under paragraph 212(1)(*q*) of that Act in respect of any person, and

(ii) a payment in respect of which a deduction is available by reason of paragraph 60(*l*) of the *Income Tax Act* in computing the income of any person,

exceeds the greater of

(iii) twice the amount that would be the minimum amount under the fund for the year, and

(iv) 10% of the amount that would be the fair market value of the property held in connection with the fund at the beginning of the year

if all property transferred in the year and before that time to the carrier of the fund as consideration under the fund had been transferred immediately before the beginning of the year and the definition "minimum amount" in paragraph 146.3(1)(*b*.1) were applicable with respect to all registered retirement income funds, or

(*d*) a payment to a recipient at any time in a calendar year under an arrangement, other than a plan or fund referred to in paragraphs (*a*) to (*c*) where

(i) the payment is not

(A) one of a series of annual or more frequent payments to be made over the lifetime of the recipient or over a period of at least 10 years,

(B) one of a series of annual or more frequent payments, each of which is contingent upon the recipient continuing to suffer from a physical or mental impairment, or

(C) a payment to which the recipient is entitled as a consequence of the death of an individual who was in receipt of periodic pension payments under the arrangement, and that is made pursuant to a guarantee that a minimum number of payments will be made in respect of the individual, or

(ii) at the time the payment is made, it may reasonably be concluded that

(A) the total amount of payments (other than excluded payments) under the arrangement to the recipient in the year will exceed twice the total amount of payments (other than excluded payments) made under the arrangement to the recipient in the immediately preceding year, otherwise than by reason of the fact that payments commenced to be made to the recipient in the preceding year and were made for a period of less than 12 months in that year, or

(B) the total amount of payments (other than excluded payments) under the arrangement to the recipient in the year will exceed twice the total amount of payments (other than excluded payments) to be made under the arrangement to the recipient in any subsequent year, otherwise than by reason of the termination of the series of payments or the reduction in the amount of payments to be made after the death of any individual,

and, for the purposes of this subparagraph, "excluded payment" means a payment that is neither a periodic payment nor a payment described in any of clauses (i)(A) to (C).

(2) Subsection (1) is applicable with respect to amounts paid after ANNOUNCEMENT DATE.

PART IV

TAX REBATE DISCOUNTING ACT

113. (1) The *Tax Rebate Discounting Act* is amended by adding thereto, immediately after section 2 thereof, the following section:

Payment to discounter

2.1 (1) Where a discounter has acquired a client's right to a refund of tax, the Minister of National Revenue may pay the amount of the refund to the discounter.

Effect of payment to discounter

(2) A payment of a client's refund of tax made by the Minister of National Revenue under subsection (1) to a discounter shall be deemed to have been made to the client as a refund of tax at the time the payment was made to the discounter, except that where the amount of the payment, not including interest, exceeds by ten dollars or more the amount estimated to be the client's refund of tax at the time the right to the refund was acquired by the

discounter, the excess shall be deemed to be held in trust for the client by the discounter until such time as it is paid to the client or the Receiver General.

Where bankruptcy, etc., of discounter

(3) In the event of any liquidation, assignment or bankruptcy of a discounter, the amount deemed by subsection (2) to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the discounter's own moneys or from the assets of the estate.

(2) Subsection (1) is applicable with respect to refunds of tax (within the meaning assigned by subsection 2(1) of the said Act) in respect of the 1992 and subsequent taxation years (within the meaning assigned by section 249 of the *Income Tax Act*).

PART V

UNEMPLOYMENT INSURANCE ACT

114. (1) Subsection 61(5) of the *Unemployment Insurance Act* is repealed and the following substituted therefor:

Procedure for making application or appeal

(5) An application for the determination of a question or an appeal for reconsideration of an assessment by the Minister shall be addressed to the Chief of Appeals in a District Office of the Department of National Revenue, Taxation and delivered or mailed to that office.

(2) Subsection (1) is applicable with respect to applications and appeals made after the day on which this Act is assented to.

PART VI

AN ACT TO AMEND THE INCOME TAX ACT AND RELATED STATUTES AND TO AMEND THE CANADA PENSION PLAN, THE UNEMPLOYMENT INSURANCE ACT, 1971, THE FINANCIAL ADMINISTRATION ACT AND THE PETROLEUM AND GAS REVENUE TAX ACT

115. (1) Subsections 118(2) and (4) of *An Act to Amend the Income Tax Act and related statutes and to amend the Canada Pension Plan, the Unemployment Insurance Act, 1971, the Financial Administration Act and the Petroleum and Gas Revenue Tax Act*, being chapter 6 of the Statutes of Canada, 1986, are repealed.

(2) Subsection (1) shall be deemed to have come into force on February 13, 1986.

PART VII

AN ACT TO AMEND THE CANADA PENSION PLAN, THE UNEMPLOYMENT INSURANCE ACT, THE FINANCIAL ADMINISTRATION ACT AND THE PETROLEUM AND GAS REVENUE TAX ACT

116. (1) Subsections 1(3) and (5) of *An Act to amend the Canada Pension Plan, the Unemployment Insurance Act, the Financial Administration Act and the Petroleum and Gas Revenue Tax Act*, being chapter 5 of the Revised Statutes of Canada, 1985 (2nd Supp.), are repealed.

(2) Subsection (1) shall be deemed to have come into force on February 13, 1986.

117. (1) Subsections 4(2) and (3) of the said Act are repealed.

(2) Subsection (1) shall be deemed to have come into force on February 13, 1986.

PART VIII

AN ACT TO AMEND THE INCOME TAX ACT, THE CANADA PENSION PLAN, THE CULTURAL PROPERTY EXPORT AND IMPORT ACT, THE INCOME TAX CONVENTIONS INTERPRETATION ACT, THE TAX COURT OF CANADA ACT, THE UNEMPLOYMENT INSURANCE ACT, THE CANADA-NEWFOUNDLAND ATLANTIC ACCORD IMPLEMENTATION ACT, THE CANADA-NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT AND CERTAIN RELATED ACTS

118. (1) Clause 247 of *An Act to amend the Income Tax Act, the Canada Pension Plan, the Cultural Property Export and Import Act, the Income Tax Conventions Interpretation Act, the Tax Court of Canada Act, the Unemployment Insurance Act, the Canada-Newfoundland Atlantic Accord Implementation Act, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and certain related Acts* is repealed.

(2) Subsection (1) shall be deemed to have come into force on the day on which the said Act was assented to.

Explanatory Notes to Draft Legislation Relating to Income Tax

These explanatory notes are provided to assist in an understanding of amendments to the *Income Tax Act*, the draft *Canada Pension Plan*, the *Income Tax Conventions Interpretation Act*, the *Tax Rebate Discounting Act*, the *Unemployment Insurance Act* and certain related Acts. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Cette publication est également offerte en français.

PREFACE

The legislation to which these explanatory notes relate contains draft technical amendments to the *Income Tax Act*, the *Canada Pension Plan*, the *Income Tax Conventions Interpretation Act*, the *Tax Rebate Discounting Act*, the *Unemployment Insurance Act* and certain related Acts. These amendments are designed to clarify and, in some cases, correct the application of the *Income Tax Act* and associated statutes.

These explanatory notes describe amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

A draft amendment to the Income Tax Regulations, with accompanying explanatory note, is also included in this document.

The Honourable Don Mazankowski
Minister of Finance

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Clause 1

Income from Office or Employment

ITA
6

Section 6 of the Act deals with employment income and provides for the inclusion of employment-related benefits in an employee's income.

Subclause 1(1)

ITA
6(1)(e.1)(i)

Pursuant to subsection 6(7) of the Act, the value of a benefit in respect of property or a service provided to an employee is to be determined net of any goods and services tax (GST) on the property or service. Except where the supply of the property or service is a zero-rated or exempt supply, paragraph 6(1)(e.1) requires an additional amount to be added to the income of the employee equal to 7 per cent of the value of the employee benefit net of any applicable provincial tax in respect of the property or service. This generally results in the employee being required to include in income the amount of GST that would have been payable in respect of the benefit had the property or service been purchased in the marketplace. The exclusion for zero-rated supplies (such as groceries) and exempt supplies (such as group life insurance) removes from this rule those benefits that would not be taxable under the GST if the employee were to acquire the property or service directly. This amendment, which is applicable to the 1992 and subsequent taxation years, extends the taxability of the value of GST where the employer is not a GST registrant or where the employer is denied an input tax credit in respect of the GST applied to the property or service.

Also, this amendment provides that, in computing the GST portion under paragraph 6(1)(e.1) to be added to the benefits included in income under paragraph 6(1)(a) or (e), the amount of any payment by the taxpayer to the employer for such benefits is not to be taken into account.

Subclause 1(2)

ITA
6(4.1)

Where an employer pays all or a part of the premiums under a group term life insurance policy for its employees, subsection 6(4) of the Act provides that the payment will result in a taxable benefit to an employee where the life insurance coverage provided in respect of the employee under all such policies exceeds $25,000. Where an employer pays all or part of the premiums under a group sickness or accident insurance plan for employees, paragraph 6(1)(f) of the Act provides that an employee will be subject to tax on periodic wage loss replacement payments from the plan in excess of the amount of any contributions made to the plan by the employee.

In some instances, group term life insurance policies and accident or sickness policies may provide additional insurance coverage to employees, which does not result in a taxable benefit to the employees because the insurance is not life insurance and the payment of any such amount under the policy to the employee is not periodic.

New subsection 6(4.1), which is applicable to the 1992 and subsequent taxation years, will provide that premiums paid by an employer in respect of such additional coverage under group term life and accident or sickness insurance policies will result in a taxable benefit to an employee, where the amount of coverage so provided, when combined with the amount of any group term life insurance coverage also provided in respect of the employee, exceeds $25,000.

Clause 2

Deductions from Employment Income

ITA
8(1)(m.2)

Section 8 of the Act provides for the deduction of various amounts in computing income from an office or employment.

Paragraph 8(1)(m.2) of the Act allows a deduction in computing income from employment in respect of qualifying employee contributions made to a pension plan that is a retirement compensation arrangement (RCA), where the custodian of the RCA is resident in Canada.

Subparagraph 8(1)(m.2)(iii) is amended for the 1992 and subsequent taxation years so that qualifying employee contributions for this purpose include contributions made to a prescribed plan or arrangement. For further detail, reference may be made to the commentary on new subsection 207.6(6) of the Act.

Clause 3

Income from Business or Property

ITA
12

Section 12 of the Act requires the inclusion of various amounts in computing the income of a taxpayer for a taxation year from a business or property.

Subclause 3(1)

ITA
12(1)(p)

Paragraph 12(1)(p) of the Act requires a taxpayer to include in income any amount received in the year as a payment or as a refund of a levy under the *Western Grain Stabilization Act*. This

paragraph is amended for the 1991 and subsequent taxation years to also apply to any amount received in the year as a payment, or as a refund of a premium, in respect of the "gross revenue insurance program" under the *Farm Income Protection Act*. The "gross revenue insurance program" is a new agricultural program which combines the protection offered by a crop insurance program with the protection offered by a revenue insurance program. Further details of this program are provided in the *Farm Income Protection Act*.

Subclause 3(2)

ITA
12(1)(z)

New paragraph 12(1)(z) of the Act requires a taxpayer to include in computing income amounts in respect of an amateur athlete trust as provided in new section 143.1 of the Act. New paragraph 12(1)(z), which is applicable to the 1988 and subsequent taxation years, ensures that amounts so required to be included in the income of the athlete are treated as income from a business or property. This treatment recognizes that the funds held by an amateur athlete trust are generally derived from such sources.

Subclause 3(3)

ITA
12(3)

Subsection 12(3) of the Act requires corporations, partnerships and certain trusts to use the accrual method for computing income in respect of debt obligations. Certain debt interests are not, however, subject to these accrual rules. Subsection 12(3) is amended for the 1991 and subsequent taxation years to extend this exemption to a net income stabilization account (NISA), which is defined in amended subsection 248(1). Further details in respect of the NISA program are provided in the commentary to new subsection 12(10.2).

Subclause 3(4)

ITA
12(10.2) and (10.3)

The net income stabilization account ("NISA") program is a new agricultural program which is designed to assist farmers in the stabilization of their farm income.

Generally, a NISA is composed of two separate funds. NISA Fund No. 1 represents after-tax contributions of a farm producer. NISA Fund No. 2 is comprised of government contributions to the NISA and interest earned on all NISA contributions. The expressions "net income stabilization account" and "NISA Fund No. 2" are defined in amended subsection 248(1) of the Act. Additional details in respect of the NISA program are provided in the *Farm Income Protection Act.*

New subsection 12(10.2) provides that taxpayers are required to include in income, as income from a property, the total of all amounts each of which is the amount, if any, by which the amount determined under paragraph (a) thereof exceeds that determined under paragraph (b) thereof. Paragraph 12(10.2)(a) is the amount of a particular payment made at a particular time in the year out of the taxpayer's NISA Fund No. 2. Paragraph 12(10.2)(b) provides a reduction from a payment out of a taxpayer's NISA Fund No. 2 to the extent that the taxpayer's NISA Fund No. 2 includes certain previously realized amounts minus the total of all such amounts applied in reduction of an amount that would otherwise be included in income under subsection 12(10.2). An example of the application of paragraph 12(10.2)(b) is contained in the commentary to new subsections 73(5) and 104(14.1).

There are a number of new other provisions of the Act which treat a taxpayer as having been paid an amount out of a NISA Fund No. 2 and thus will result in the application of new subsection 12(10.2). In this latter regard, see the commentary accompanying new subsections 70(5.4), 73(5), 104(5.1) and 104(14.1). For example, new subsection 70(5.4) provides that a deceased taxpayer will be considered to have been paid all amounts held for or on behalf of the taxpayer in the taxpayer's NISA Fund No. 2 immediately before death.

New subsection 12(10.3) of the Act ensures that a taxpayer will not be considered to have received an amount of income by reason only of the crediting or adding of an amount (e.g., interest) to the taxpayer's NISA Fund No. 2.

These amendments are applicable to the 1991 and subsequent taxation years.

Subclause 3(5)

ITA
12(11)(a)(x) and (xi)

Paragraph 12(11)(a) of the Act defines the term "investment contract" for the purposes of the rules in subsection 12(4) requiring the periodic reporting of accrued investment income. This paragraph is amended for the 1991 and subsequent taxation years to exclude a "net income stabilization account" from the accrual rules in respect of investment income.

Clause 4

Shareholder Benefits

ITA
15

Section 15 of the Act requires the inclusion in income of certain benefits received or enjoyed by shareholders of corporations.

Subclauses 4(1) and (2)

ITA
15(1)

Subsection 15(1) of the Act requires a shareholder of a corporation to include in income the amount or value of certain benefits conferred on the shareholder by the corporation. Benefits described in paragraphs 15(1)(a), (b) or (c) are excluded from the income inclusion. Paragraph (c), in particular, provides that no benefit will

be considered to have been provided where a corporation confers on all the owners of its common shares a right to buy additional shares. New paragraph (c), which is applicable to benefits conferred on or after Announcement Date, provides that a benefit will be excluded from income under paragraph 15(1)(c) only if the corporation confers the identical right at the same time per common share on each common shareholder to acquire additional shares of the capital stock of the corporation. For this purpose, rights will not be considered identical if the costs of acquiring the rights differ.

Subclause 4(3)

ITA
15(1.4)

Subsection 15(1.4) of the Act provides that, where subsection 15(1) requires the amount or value of a benefit to be included in computing the income of a shareholder in respect of a supply (other than a zero-rated supply or an exempt supply) of a property or service that is taxable under the goods and service tax (GST), the taxpayer must also include in income an amount equal to 7% of the amount or value of the benefit which is required by subsection 15(1) to be included in computing the taxpayer's income. This generally results in the shareholder being required to include in income the GST that would have been payable in respect of the benefit had the property or service been purchased in the marketplace. This amendment, which is applicable to the 1992 and subsequent taxation years, extends the taxability of the value of GST where the corporation is not a GST registrant or where the corporation is denied an input tax credit in respect of the GST applied to the property or service.

This amendment also provides that, in computing the GST portion under subsection 15(1.4) to be added to the benefits under subsection 15(1), the amount of any payment by the taxpayer to the corporation for such a benefit is not to be taken into account.

Clause 5

Obligation Issued at Discount

ITA
16(3)

Section 16 of the Act deals with blended payments which are partly of a capital nature and partly of an interest or other income nature.

Where an obligation is issued at a discount by a government or other tax-exempt issuer and the yield (including the discount) is more than 4/3 of the stated interest rate, the discount will be treated as income of the first owner of the obligation who is resident in Canada and not exempt from tax.

Prior to the enactment of the interest accrual rules in Part LXX of the Income Tax Regulations, in which non-interest bearing debt obligations were deemed to be prescribed debt obligations for the purpose of subsection 12(9), it was appropriate for subsection 16(3) to apply to non-interest bearing debt obligations. However, the application of both the interest accrual rules and subsection 16(3) may produce inappropriate results when applied to non-interest bearing debt obligations. This amendment, which applies to the 1991 and subsequent taxation years, excludes from the application of subsection 16(3) an obligation that is a prescribed debt obligation for the purposes of subsection 12(9).

Clause 6

Prohibited Deductions - Business and Property Income

ITA
18

Section 18 of the Act prohibits the deduction of certain outlays or expenses in computing a taxpayer's income from a business or property.

Subclause 6(1)

ITA
18(5)(a)(ii)

The thin capitalization rules in subsections 18(4) to (8) of the Act disallow the deduction by a corporation of interest on debts owing to certain specified non-residents to the extent that the corporation's debt/equity ratio in relation to the specified non-residents exceeds 3 to 1.

Paragraph 18(5)(a) of the Act defines a corporation's "outstanding debts to specified non-residents" for the purposes of the limit on interest deductibility under subsection 18(4). Subparagraph 18(5)(a)(ii) provides that a debt owing to a non-resident insurer by a corporation that the insurer controls will not be included under this definition if, for the purposes of section 138, the non-resident insurer treats the debt as property held by it in the year in the course of carrying on an insurance business in Canada.

This subparagraph is amended to eliminate the requirement that the corporation be controlled by the non-resident insurer. As a result, any debt owing to a non-resident insurer is to be excluded where the debt is part of the insurer's Canadian business property. The paragraph is also amended to provide that a debt will be excluded from the corporation's "outstanding debts to specified non-residents" only where it is included as property used by the non-resident insurer in carrying on business in Canada through a permanent establishment.

The amendments to subparagraph 18(5)(a)(ii) are applicable to the 1991 and subsequent taxation years, and to the 1985 to 1990 taxation years where a corporation elects in writing before 1993.

Subclause 6(2)

ITA
18(5)(c)

Paragraph 18(5)(c) of the Act provides that a person who owns 25% or more of the issued shares of any class of the capital stock of a corporation is a "specified shareholder" of that corporation for the purposes of the thin-capitalization rules. This paragraph is amended to provide that a specified shareholder of a corporation will include only those persons that own either 25% or more of the voting shares of the corporation or shares having a fair market value of 25% or more of the fair market value of all the issued and outstanding shares of the corporation. Paragraph 18(5)(c) is further amended to provide that, for the purposes of determining whether or not either of these 25% thresholds has been met, a person will be deemed to own any shares that he has the right to acquire and that any shares that the person has the right to require the corporation to redeem (other than those shares held by the person) shall be considered to have been so redeemed.

This amendment is applicable to the 1993 and subsequent taxation years, except that a corporation may elect to have it apply also to its 1989 to 1992 taxation years.

Subclause 6(3)

ITA
18(11)

Subsection 18(11) prohibits the deduction of interest and other expenses associated with the borrowing of money to incur indebtedness for certain purposes such as making an RRSP contribution. New paragraph 18(11)(f) of the Act extends, for the 1991 and subsequent taxation years, this prohibition to indebtedness incurred to contribute to a "net income stabilization account".

Subsection 18(11) is also amended for the 1991 and subsequent taxation years to clarify that, for the purposes of that subsection, it is only "to the extent that" an indebtedness is incurred by a taxpayer with respect to a property used for a purpose referred to

in the subsection that the indebtedness in respect of that property is considered to be incurred for the restricted purpose.

Clause 7

Deductions in Computing Income
from Business or Property

ITA
20

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

Subclause 7(1)

ITA
20(1)(ff)

Paragraph 20(1)(ff) of the Act provides taxpayers with a deduction for amounts paid as a levy under the *Western Grain Stabilization Act*. This paragraph is amended for the 1991 and subsequent taxation years to also apply to premiums paid in respect of the "gross revenue insurance program" under the *Farm Income Protection Act* or amounts paid as an administration fee in respect of a "net income stabilization account".

Subclause 7(2)

ITA
20(12)

Subsection 20(12) of the Act permits non-business income tax paid to a foreign government to be deducted in computing a taxpayer's income, as an alternative to claiming that tax as a foreign tax credit under section 126 of the Act. This amendment, which applies to the 1992 and subsequent taxation years, provides that a deduction under subsection 20(12) is available only with respect to foreign taxes paid in respect of income from a business or property, and

also clarifies that any amount claimed under that subsection is to be deducted in computing income from the source to which that tax relates.

Subclause 7(3)

ITA
20(16.1)

Subsection 20(16.1) of the Act provides that a terminal loss in respect of a depreciable property that is a "passenger vehicle" costing more than a prescribed amount (currently set at $24,000) is not deductible in computing income. (Essentially, a passenger vehicle is an automobile acquired after June 17, 1987.) On the other hand, any recapture of capital cost allowance (CCA) upon the disposition of such a vehicle is not required to be included in income. However, where a taxpayer owns at the beginning of a particular year a passenger vehicle costing more than the prescribed amount and disposes of it before the end of that particular year, it is intended that the taxpayer benefit from a deduction equal to 50% of the CCA deduction that would have otherwise been available in respect of the former vehicle for that particular year had he not disposed of that vehicle. The original requirement that the taxpayer acquire another vehicle at a cost in excess of the prescribed amount before the 50% CCA deduction be allowed has been deleted. Subsection 20(16.1) is amended in order that it override subsection 20(16) which would otherwise deny any CCA deduction in such circumstances.

This amendment is applicable to taxation years and fiscal periods commencing after June 17, 1987 that end after 1987.

Subclause 7(4)

ITA
20(21)(b)

Subsection 20(21) provides a deduction in computing a taxpayer's income for a taxation year in which a debt obligation is disposed of at fair market value. The deduction is in respect of any previous over-inclusion of interest on that debt obligation and is measured as

the excess of interest included in the taxpayer's income in the year of disposition or any preceding year over interest that was received or receivable at or before the time of disposition. This subsection is amended, with application to dispositions occurring after Announcement Date, to ensure that all amounts received or that became receivable in respect of interest on the obligation in the year of disposition, or in a preceding taxation year, will be taken into account in computing the deduction.

Subclause 7(5)

ITA
20(24)

Subsection 20(24) of the Act provides that a taxpayer may deduct from income certain payments made to obtain another person's agreement to deliver goods or render services for which the taxpayer has included certain amounts in business income pursuant to paragraph 12(1)(a). Conversely, the other person must include the amount received in income and may be entitled to claim a reserve under paragraph 20(1)(m) of the Act with respect to goods to be delivered or services to be rendered after the recipient's year-end.

Subsection 20(24) is amended in two respects. First, its applicability is extended to circumstances where the other person is paid an amount to assume obligations to which paragraph 12(1)(a) applies, not merely those made with respect to undelivered goods or unrendered services. For example, taxpayers may be eligible to claim subsection 20(24) treatment in respect of payments made to another person who assumes the taxpayer's obligation to repay a customer who returns containers used to deliver goods (and for which the customer paid a deposit), or to another person who agrees to provide customers with the use of land or chattels for which rents or other amounts were received in advance by the taxpayer in the course of business. Further, where the amount is received by the other person in the course of business, paragraph 20(24)(b) requires that other person to include the amount in income under paragraph 12(1)(a), subject to any eligible reserve claim that may be deducted from income. Where the other person does not receive the amount in the course of business (e.g.,

as rental income from property), it would be required to be included in income as earned pursuant to section 9.

Secondly, paragraph 20(24)(a) is amended to provide that the taxpayer may not deduct a reserve in respect of the undertaking under paragraph 20(1)(m.1).

These amendments are applicable to the 1991 and subsequent taxation years.

Clause 8

Treatment of Eligible Capital Property on Rollovers

ITA
24

Section 24 of the Act provides rules for the treatment of eligible capital property of a taxpayer who has ceased to carry on business.

Subclause 8(1)

ITA
24(2)

Subsection 24(2) of the Act provides an automatic rollover of the cumulative eligible capital in respect of a business of a taxpayer who ceases to carry on the business in circumstances where the business is thereafter carried on by the taxpayer's spouse or by a corporation controlled by the taxpayer. This subsection is amended effective after July 13, 1990, to prevent an overstatement of the deemed taxable capital gain or amount to be included in income on the subsequent disposition of eligible capital property by the spouse or corporation. Such an overstatement would occur because the calculation of the deemed taxable capital gain under subparagraph 14(1)(a)(v), or the amount to be included in income under paragraph 14(1)(b), of the spouse or corporation would not include any amount relating to cumulative eligible capital amounts deducted by the taxpayer under paragraph 20(1)(b) before the taxpayer's adjustment time, as defined in paragraph 14(5)(c) of the Act.

The following example illustrates the operation of new paragraph 24(2)(d):

Assume an individual, with a calendar fiscal period for the individual's business, purchases an eligible capital property before the individual's adjustment time (when the inclusion rate for eligible capital property was one half) for $300,000. This is the first and only eligible capital property held in respect of the individual's business. The individual takes deductions under paragraph 20(1)(b) totalling $40,650 before adjustment time, and deductions under that paragraph totalling $11,482 subsequent to adjustment time. The individual then transfers the property to the individual's spouse, immediately before which time the individual's cumulative eligible capital is $152,543. This is the only eligible capital property held by the spouse in respect of the business.

The spouse disposes of the eligible capital property for $500,000, before deducting any amount under paragraph 20(1)(b). In the absence of new paragraph 24(2)(d), the spouse's deemed taxable capital gain under subparagraph 14(1)(a)(v) would be $170,325, since no amount would be calculated under clause 14(1)(a)(v)(B) in respect of the disposition by the spouse.

Under the amendment to subsection 24(2), the calculations of the amount to be included in computing the spouse's income and the spouse's deemed taxable capital gain in the year in which the spouse disposes of the eligible capital property are as follows:

- *the amount to be included in the spouse's income from the business for the year in which the eligible capital property is disposed of*

  = *lesser of*

  (A) the negative balance in the spouse's cumulative eligible capital (the "excess"), and

  (B) the total of the spouse's and the individual's unrecaptured deductions

= *lesser of*

(A) [(3/4 of $500,000) - 152,543] = $222,457, and

(B) $52,132

= *$52,132*

- *the amount deemed to be a taxable capital gain of the spouse*

  = *the amount by which the excess exceeds the total of the amount included in income plus 1/2 the unrecaptured pre-adjustment time deductions*

  = *$222,457 - ($52,132 + 1/2 $40,650)*

  = *$150,000*

Subclause 8(2)

ITA
24(3)

Subsection 24(1) of the Act provides a deduction, in computing the income of a taxpayer for a taxation year equal to the amount of the residual cumulative eligible capital of a business. The deduction is available in the first taxation year after the taxation year in which the taxpayer has ceased to carry on a business and in which the taxpayer has also disposed of all eligible capital property of value in respect of the business. New subsection 24(3), which is applicable after July 13, 1990, provides that, where a partnership has been dissolved in circumstances where neither subsection 98(3) nor subsection 98(5) apply, each former member of the partnership may deduct an amount equal to that former member's proportion of the amount that would be deductible under subsection 24(1) by the partnership had the partnership not ceased to exist.

Clause 9

Capital Gains and Losses

ITA
39(13)

Section 39 of the Act sets out the meaning of capital gain, capital loss and business investment loss and provides a number of special rules relating to capital gains.

New subsection 39(13) of the Act provides, generally, that the portion of an amount that was applied in reduction of the adjusted cost base (ACB) of a taxpayer's non-depreciable capital property, and which is subsequently repaid by the taxpayer at a time that is after the disposition of that property, will be treated as a capital loss of the taxpayer. The reduction of the ACB of a property in these circumstances is provided in subparagraph 53(2)(k)(i) and subsection 53(2.1). In the absence of this amendment, a taxpayer would not receive tax recognition for the repayment notwithstanding that it represents an amount that was applied in reduction of the ACB of property that has been disposed of.

This amendment is applicable to the 1991 and subsequent taxation years.

Clause 10

Principal Residence: Spousal Trusts

ITA
40(5)

Subsection 40(5) of the Act is a special rule that, in conjunction with subsection 40(4) and subparagraph 54(g)(vi), allows a spousal trust the benefit of the principal residence exemption for capital gains on a residence held by the trust in respect of a period of time during which the settlor spouse and beneficiary spouse occupied it. Subsection 40(5) is repealed, effective for dispositions occurring after 1990, as a consequence of the amended definition of principal residence in paragraph 54(g). This amended definition will allow personal trusts, including spousal trusts, to claim the principal

residence exemption. This is explained in more detail in the commentary on the amendment to paragraph 54(g).

Clause 11

Dispositions of Remainder Interests in Property

ITA
43.1

An individual who is the owner of a real property may create different interests in the property, each of which would constitute a separate property. One of the interests that may be so created is a life estate, which refers to the right to occupy, use and deal with the property during the lifetime of a particular individual. Where this right is granted to an individual to last for the lifetime of another person, the estate is referred to as an estate pur autre vie. Another interest in real property is the remainder interest, which refers to the right to full ownership of the whole property after the death of the individual who is the measuring life for purposes of the life estate or estate pur autre vie. New section 43.1 of the Act provides rules to apply in dealing with such interests.

ITA
43.1(1)

New subsection 43.1(1) of the Act deals with the disposition of the remainder interest in a real property by a taxpayer who retains the life estate or estate pur autre vie (both of which terms are referred to as the life estate for purposes of new section 43.1) in the property. The new subsection, which is applicable to dispositions occurring after Announcement Date, provides that in such a case, the taxpayer will be deemed to have disposed of the life estate that has been retained, for proceeds equal to its fair market value at the time the remainder interest is disposed of, and to have reacquired the life estate immediately after that time at the same fair market value.

For example, where an individual who owns a real property decides to give the remainder interest in the property to his or her child while retaining the life estate, subsection 43.1(1) ensures that there

is a realization of any capital gain or loss that has accrued to the individual on the whole property at the time the remainder interest is disposed of. Without this provision, such a disposition could result in the deferral of the realization of any capital gain on the interest in the property retained by the individual until such time, after the individual's death, as the child disposes of the property. The provisions of new subsection 43.1(1) do not apply in cases where the remainder interest is disposed of to a registered charity that is not a charitable foundation.

ITA
43.1(2)

New subsection 43.1(2) of the Act applies where a life estate to which subsection 43.1(1) has applied is terminated as a result of an individual's death. At the death of the measuring life for a life estate or an estate *pur autre vie*, the estate terminates, and the individual holding the remainder interest in the property at the time of the death becomes the owner of the whole property. Paragraph 43.1(2)(a) provides that the life estate holder is deemed to have disposed of the life estate immediately before the death of the measuring life for proceeds of disposition equal to its adjusted cost base. Thus, no capital gain or loss would arise in respect of such a disposition.

New paragraph 43.1(2)(b) provides for an addition to the adjusted cost base of the property in the hands of the individual who held the remainder interest at the time of the termination of the life estate, where that individual and the life estate holder were not dealing at arm's length at that time. In such a case, the adjusted cost base of the real property would be increased by an amount equal to the lesser of the adjusted cost base of the life estate in the property, immediately before its termination as a result of the death of the measuring life, and the amount, if any, by which the fair market value of the whole real property exceeds the adjusted cost base of the remainder interest at that time. This amendment recognizes that, pursuant to new paragraph 43.1(2)(a), the termination of the life estate did not give rise to a capital loss to the deceased life estate holder.

New section 43.1 of the Act applies to dispositions and terminations occurring after Announcement Date.

Clause 12

Adjustments to Cost of Property

ITA
53

Section 53 of the Act sets out rules for determining the adjusted cost base of capital property for the purposes of calculating any gain or loss on its disposition.

Subclause 12(1)

ITA
53(1)(e)(vii.1)

Paragraph 53(1)(e) of the Act provides for additions in computing the adjusted cost base (ACB) to a taxpayer of an interest in a partnership. New subparagraph 53(1)(e)(vii.1) provides an addition in computing the ACB of the interest equal to the taxpayer's share of Canadian development expense or Canadian oil and gas property expense incurred by the partnership in a fiscal period. This subparagraph applies where an election is made by the taxpayer with respect to such a share under amended subparagraph 66.2(5)(a)(iv) or 66.4(5)(a)(ii). Under such an election, the taxpayer's share of such expenses is excluded in determining the taxpayer's Canadian development expense or Canadian oil and gas property expense. For further detail, reference may be made to the commentary on the amendments to those subparagraphs.

This amendment is applicable after July 1990.

Subclause 12(2)

ITA
53(1)(o)

New paragraph 53(1)(o) of the Act is strictly consequential on the introduction of special rules relating to life estates and remainder interests in real property provided under new section 43.1. This new paragraph provides for an increase in the adjusted cost base to a taxpayer of property in circumstances to which new paragraph 43.1(2)(b) applies. This amendment is effective as of Announcement Date.

Subclause 12(3)

ITA
53(2)(t)

New paragraph 53(2)(t) provides for a deduction in computing the adjusted cost base to the estate of a deceased taxpayer of employee stock options in respect of which the estate has made an election under new subsection 164(6.1) of the Act. The amount of that deduction is the amount treated by paragraph 164(6.1)(a) as being a loss of the deceased from employment for the year of death, determined as if that paragraph were read without reference to subparagraph (iii) thereof. New paragraph 53(2)(t), which applies July 13, 1990, is intended to prevent a loss in respect of those options from being claimed both as an employment loss of the deceased and as a capital loss of the estate.

Subclause 12(4)

ITA
53(2.1)

Subsection 53(2.1) permits a taxpayer to elect to reduce the adjusted cost base of a capital property by the amount of a related inducement, reimbursement, contribution or allowance received by the taxpayer that would otherwise be included in income pursuant to paragraph 12(1)(x). This subsection is amended to clarify that

such an election may be made only in respect of capital property (other than depreciable property).

This amendment is applicable to the 1991 and subsequent taxation years.

Clause 13

Principal Residence

ITA
54(g)

Paragraph 54(g) of the Act defines the expression "principal residence" for the purpose of the capital gains exemption provided for a principal residence in paragraph 40(2)(b). Under paragraph 54(g), only one property may generally be claimed as a principal residence in respect of a year for a family unit. (For this purpose, a family unit generally consists of an individual, his or her spouse and their minor children.) Under the present rules, only trusts that qualify as spousal trusts (as described in subsection 70(6) or 73(1)) are allowed the benefit of the principal residence exemption. The amendments to paragraph 54(g) allow certain personal trusts that are not spousal trusts also to qualify for the principal residence exemption. The expression "personal trust" is defined in subsection 248(1).

New subparagraphs 54(g)(i.1) and (iii.1) are introduced so that any trust that qualifies as a personal trust may generally claim a property as a principal residence for a taxation year where, in that year, an individual "beneficially interested" in the trust ordinarily inhabits the property or has a spouse, former spouse or child who ordinarily inhabits it. The expression "beneficially interested" is defined in new subsection 248(25). Individuals so described in respect of a trust are referred to in the legislation as "specified beneficiaries" of the trust. To qualify for the exemption, the principal residence must be designated by the trust in prescribed form and manner. Each specified beneficiary is required to be listed in such a designation by the trust for its taxation year and is treated under amended subparagraph 54(g)(vi) as having designated the property as a principal residence for the calendar year ending in that year. Subparagraph 54(g)(vi), together with

subparagraph 54(g)(iii) and new clause 54(g)(iii.1)(D), ensures that not more than one principal residence may be claimed, either directly or through a trust, by a family unit for a taxation year.

The new rule allowing personal trusts to claim the principal residence exemption with respect to a property does not apply where a corporation (other than a registered charity) or a partnership is beneficially interested in the trust.

Subparagraph 54(g)(ii), in conjunction with existing subparagraphs 54(g)(iii) and (iv), allow a taxpayer to claim property as a principal residence for up to 4 years without being occupied by the taxpayer or a member of the taxpayer's family unit. The claim for a taxation year may be made where an election is made with respect to the change of use of property under subsection 45(2) or (3) for the year. Subparagraph 54(g)(ii) is amended to ensure that the claim for a taxation year may also be made where the election under subsection 45(2) or (3) has been made in a preceding taxation year. By virtue of amended subparagraph 54(g)(ii) and new subparagraph 54(g)(iii.1), a personal trust electing under subsection 45(2) or (3) may claim property as a principal residence for a year, in which case each trust beneficiary in the year is considered to be a specified beneficiary for the purposes of subparagraph 54(g)(vi).

These amendments apply with respect to dispositions occurring after 1990.

Clause 14

Amounts to be Included in Income

ITA
56

Section 56 of the Act lists certain types of income that are required to be included in computing a taxpayer's income from a source other than property, business or employment and other than from the disposition of capital properties.

Subclause 14(1)

ITA
56(1)(c.2)

Court-ordered alimony or other periodic maintenance allowances for the support of the recipient, children of the recipient or both are included in income under certain conditions by reason of paragraphs 56(b), (c) and (c.1), and are deductible by the payor under paragraphs 60(b), (c) or (c.1). New paragraph 56(1)(c.2) requires that where such amounts are ordered reimbursed by a court, the amount received as the reimbursement is to be included in income in the year it is received. Conversely, new paragraph 60(c.2) allows a deduction from income in respect of the payment of such reimbursements.

This amendment applies to payments received after 1990.

Subclause 14(2)

ITA
56(4.1)

Subsection 56(4.1) of the Act applies in certain cases to attribute income from a particular individual to another individual with whom the particular individual does not deal at arm's length. The rules do not apply unless the particular individual or a trust in which the particular individual is "beneficially interested" received a loan from, or became indebted to, the other individual. (The expression "beneficially interested" is currently defined for this purpose in subsection 74.5(10) of the Act.)

Subsection 56(4.1) is amended to eliminate the reference to subsection 74.5(10). This is because the expression "beneficially interested" is now defined in new subsection 248(25) rather than in subsections 74.5(10) and 94(7). The amendment is effective as of January 1, 1991.

Clause 15

Deductions in Computing Income

ITA
60

Section 60 of the Act provides for a variety of deductions in computing income, many of which relate to certain income inclusions required under section 56 of the Act.

Subclause 15(1)

ITA
60 (c.2)

New paragraph 60(c.2) is the counterpart of new paragraph 56(1)(c.2) and provides for the deduction of repayments of alimony or maintenance allowances previously included in income. Specifically, paragraph 60(c.2) provides that, where amounts of court-ordered alimony or maintenance allowances were included in income of the recipient in a year and a court subsequently orders the reimbursement by a taxpayer of the amounts (for example, in a cancellation or variation of the original order), the court-ordered reimbursement may be deducted by the taxpayer within a 3-year period.

This amendment applies to payments made after 1990.

Subclause 15(2)

ITA
60(i)

Paragraph 60(i) of the Act permits a deduction in respect of amounts that are deductible under section 146, including withdrawals of RRSP overcontributions that are deductible by reason of subsection 146(8.2). This paragraph is amended to permit a deduction in respect of amounts that are deductible by reason of new subsection 147.3(13.1). New subsection 147.3(13.1) permits a deduction in respect of amounts transferred in excess of allowable

limits set out in section 147.3 from a registered pension plan to an RRSP or a registered retirement income fund.

This amendment is applicable to the 1992 and subsequent taxation years.

Subclause 15(3)

ITA
60(j.02) to (j.04)

Three new rules are being added in paragraphs 60(j.02) to (j.04) of the Act to provide deductions in respect of certain payments to registered pension plans (RPPs).

New paragraph 60(j.02) provides transitional relief where an agreement to acquire past service benefits under an RPP may have been entered into with the expectation that payments under the agreement (including the repayment of benefits received from certain other RPPs) would be deductible, by virtue of paragraph 60(j), as transfers of pension income. Paragraph 60(j) was amended with respect to the 1990 and subsequent taxation years to terminate the rollover provided by that provision for periodic pension income. Paragraph 60(j.02) is intended to continue the deduction formerly provided by paragraph 60(j) for payments made pursuant to elections or agreements made or entered into before March 28, 1988, which is the date on which the amendments to paragraph 60(j) were first announced.

More specifically, paragraph 60(j.02), which is applicable to the 1990 and subsequent taxation years, permits an individual to deduct the lesser of two amounts in computing income for a taxation year. The first amount is the sum of

- contributions made by the individual in the year to an RPP in respect of pre-1990 service, where the individual was obliged to make the contributions under the terms of a written agreement entered into before March 28, 1988,

- amounts paid by the individual in the year to an RPP as repayments of pension benefits received before 1990, where the repayments are made pursuant to a prescribed statutory

provision and are required as a consequence of a written election made before March 28, 1988, and

- amounts paid by the individual in the year to an RPP as interest in respect of the repayments just described.

However, the first amount does not include amounts deductible under paragraph 8(1)(m) (employee's RPP contributions) or new paragraph 60(j.03) (repayments of pre-1990 pension benefits). The second amount is the total periodic pension income received by the individual in the year, other than income that has been designated for the purposes of the tax-free transfer to a spousal RRSP provided by paragraph 60(j.2).

New paragraph 60(j.03), which applies commencing with the 1991 taxation year, contains a rule applicable in limited circumstances in respect of the repayment of pre-1990 pension benefits. The paragraph allows an individual to claim a deduction in computing income for a taxation year for amounts paid by the individual to a RPP as repayments of pension benefits received before 1990 (or as interest in respect of such repayments), if the repayments are made pursuant to a prescribed statutory provision. The deduction is limited to the amount that could have been deducted under paragraph 8(1)(m) had that paragraph and subsections 8(6) to (8) continued in force as they applied in 1990.

New paragraph 60(j.04), which applies commencing with the 1990 taxation year, provides a deduction in respect of the repayment of post-1989 pension benefits. The paragraph allows an individual to claim a deduction in computing income for a taxation year for amounts paid by the individual to a RPP as repayments of pension benefits received after 1989 (or as interest in respect of such repayments), where the repayments are made pursuant to a prescribed statutory provision. However, the deduction is available only to the extent that the repayments are not deductible under paragraph 8(1)(m), and is not available for repayments of pension benefits that have been designated for the purposes of paragraph 60(j.2) (tax-free transfer to spousal RRSP).

New paragraphs 60(j.02) to (j.04) contemplate the prescription in the Income Tax Regulations of a number of statutory provisions with respect to the repayment of pension benefits. For these purposes, it is intended to prescribe subsection 39(7) of the *Public*

Service Superannuation Act and similar provisions in the *Canadian Forces Superannuation Act*, the *Members of Parliament Retiring Allowances Act* and the *Royal Canadian Mounted Police Superannuation Act.*

As noted above, new paragraphs 60(j.02) to (j.04) apply on a retroactive basis. Revenue Canada would be in a position to refund any tax and interest for the 1990 and 1991 taxation years resulting from the application of the new paragraphs only after they receive Royal Assent.

Subclause 15(4)

ITA
60(l)

Where an individual has received a refund of premiums out of a registered retirement savings plan (RRSP) or has received certain other amounts, paragraph 60(l) of the Act provides a deduction for qualifying payments (not exceeding the amounts so received) made by the individual to an RRSP or registered retirement income fund, or to acquire an annuity described in subparagraph 60(l)(ii).

To qualify under subparagraph 60(l)(ii), an annuity must provide for equal periodic payments. The subparagraph is amended to allow the acquisition of annuities that provide for payments that are cost-of-living adjusted or that otherwise fluctuate in any of the ways permitted by subparagraphs 146(3)(b)(iii) to (v) for retirement income payable under an RRSP.

This amendment is applicable to the 1990 and subsequent taxation years.

Subclause 15(5)

ITA
60(s)

Paragraph 60(s) of the Act provides a deduction for certain policy loan repayments to the extent that an amount was previously included in the taxpayer's income in respect of the receipt of a

policy loan. The amendment clarifies that the deductible portion will not include any amount in respect of interest paid on such a loan. Interest paid on a policy loan is treated as a premium paid under the policy, in accordance with paragraph 148(9)(e.1) of the Act, and is added in computing the adjusted cost basis of the taxpayer's interest in the policy under subparagraph 148(9)(a)(ii). Policy loan repayments which are not in respect of interest are included in computing the adjusted cost basis of the taxpayer's interest in the policy under subparagraph 148(9)(a)(iv) only to the extent the repayment is not deductible under paragraph 20(1)(hh) or 60(s).

This amendment to paragraph 60(s) is applicable to repayments made after Announcement Date.

Clause 16

Child Care Expenses

ITA
63

Section 63 of the Act provides rules governing the deductibility of child care expenses. The amendment to subsection 63(1) ensures that the eligible expenses are deductible in computing the income for the year in which the child care services are provided. That subsection is also amended to enable a taxpayer to claim an amount that is less than the maximum amount allowed under that section where it is advantageous for the taxpayer to do so. This is the case, for example, where a taxpayer does not need the full amount of the child care expense deduction to reduce his or her tax liability to zero. Claims in respect of child care expenses reduce the additional refundable child tax credit available in respect of children under 7 years of age and, because such expenses are deductible in computing net income, may also reduce that portion of the taxpayer's goods and services tax credit that is paid to single parents. This amendment applies to the 1992 and subsequent taxation years.

Clause 17

Canadian Development Expense

ITA
66.2(5)(a)(iv)

Paragraph 66.2(5)(a) of the Act defines oil, gas and mining expenditures that qualify as Canadian development expenses. Subparagraph 66.2(5)(a)(iv) provides, subject to the at-risk rules in section 66.8, that a taxpayer's Canadian development expenses include the taxpayer's share of such expenses of a partnership.

Subparagraph 66.2(5)(a)(iv) is amended so that a taxpayer may elect to have such a share of a partnership's Canadian development expenses in a fiscal period excluded in determining the taxpayer's own Canadian development expenses. The election may be made within 6 months after the end of the taxpayer's taxation year in which the fiscal period of the partnership ends. If the taxpayer makes the election, he is not allowed to deduct any amount in respect of such share in computing income. However, new subparagraph 53(1)(e)(vii.1) provides an addition equal to the amount of such a share in computing the adjusted cost base to the taxpayer of his interest in the partnership. This addition offsets the subtraction under paragraph 53(2)(c) of the same amount in computing the adjusted cost base to the taxpayer of the interest.

Example

Corporation A is a member of a partnership. Its share of Canadian development expenses incurred by the partnership for the fiscal period of the partnership ending January 30, 1991 is $10,000. There is no income or loss at the partnership level in the fiscal period. What are the consequences to Corporation A if the partnership interest is disposed of for $110,000 on October 1, 1991, assuming Corporation A makes an election in respect of its share of the expenses under new subparagraph 66.2(5)(a)(iv) and the adjusted cost base to Corporation A before the end of the fiscal period is $90,000?

Result:

1. As a consequence of the election, Corporation A will not be entitled to deduct any portion of the $10,000 under subsection 66.2(2).

2. An amount of $10,000 in computing the adjusted cost base of the interest is deducted after the end of the fiscal period under paragraph 53(2)(c). However, this amount is offset by the addition of the same amount under new subparagraph 53(1)(e)(vii.1). The adjusted cost base after the end of the fiscal period to Corporation A thus remains $90,000.

3. Corporation A therefore has a capital gain of $20,000 from the disposition of the partnership interest.

This amendment is applicable with respect to fiscal periods of partnerships ending after July 1990, except that an election of a taxpayer with respect to such a fiscal period will be considered to have been made on a timely basis if it filed with the Minister of National Revenue within 6 months of Royal Assent.

Clause 18

Canadian Oil and Gas Property Expense

ITA
66.4(5)(a)(ii)

Paragraph 66.4(5)(a) of the Act defines oil and gas expenditures that qualify as Canadian oil and gas property expenses. Subparagraph 66.4(5)(a)(ii) provides, subject to the at-risk rules in section 66.8, that a taxpayer's Canadian oil and gas property expenses include the taxpayer's share of such expenses of a partnership.

Subparagraph 66.4(5)(a)(ii) is amended so that a taxpayer may elect to have such a share of a partnership's Canadian oil and gas property expenses in a fiscal period excluded in determining the taxpayer's own Canadian oil and gas property expenses. The election may be made within 6 months after the end of the taxpayer's taxation year in which the fiscal period of the

partnership ends. If the taxpayer makes the election, he is not allowed to deduct any amount in respect of such share in computing income. However, new subparagraph 53(1)(e)(vii.1) provides an addition equal to the amount of such share in computing the adjusted cost base to the taxpayer of his interest in the partnership. This addition offsets the subtraction under paragraph 53(2)(c) of the same amount in computing the adjusted cost base to the taxpayer of the interest. For further detail, see the commentary on the corresponding amendment to subparagraph 66.2(5)(a)(iv).

This amendment is applicable with respect to fiscal periods of partnerships ending after July 1990, except that an election of a taxpayer with respect to such a fiscal period will be considered to have been made on a timely basis if it filed with the Minister of National Revenue within 6 months of Royal Assent.

Clause 19

Resource Expenses of Limited Partner

ITA
66.8(3)

Subsection 66.8(1) of the Act provides for the reduction of a taxpayer's share of a partnership's resource expenditures incurred in a fiscal period in certain cases where the taxpayer's share of such resource expenditures exceeds the taxpayer's "at-risk amount" at the end of the fiscal period in respect of the partnership. Where there is such a reduction, subsection 66.8(2) allows the amount of reduction to be carried forward and treated as if it were an expense incurred in the immediately following fiscal period.

Section 66.8 is amended so that a taxpayer's share of Canadian development expenses and Canadian oil and gas property expenses incurred by a partnership in a fiscal period is deemed to be nil where the taxpayer makes an election with respect to the share under subparagraph 66.2(5)(a)(iv) or 66.4(5)(a)(ii). This ensures that the at-risk rules do not affect such an election.

This amendment is applicable with respect to fiscal periods of partnerships ending after July 1990.

Clause 20

Inadequate Considerations

ITA
69

Section 69 of the Act provides rules dealing primarily with transactions entered into for inadequate or unreasonable considerations.

Subclause 20(1)

ITA
69(1.2)

New subsection 69(1.2) of the Act deals with the disposition of property which is subject to an agreement between persons not dealing at arm's length that provides for payments of less than a reasonable amount for the use of or the right to use the property. The existence of such a non-arm's length agreement may reduce the fair market value of the property and thus affect the amount of any capital gain on the disposition of the property.

The provisions of new subsection 69(1.2) apply where such a property is disposed of and the proceeds of disposition are less than the fair market value of the property determined without reference to the agreement. In such circumstances, the proceeds of disposition of the property for the purposes of the Act will be deemed to be the greater of the fair market value of the property determined without reference to the agreement, and the proceeds of disposition determined without reference to this subsection.

For example, where a taxpayer leases a property to a person with whom the taxpayer is not dealing at arm's length, for payments less than those that would otherwise have been reasonable in the circumstances, and subsequently gives the property to another person, both subsection 69(1) concerning gifts, and new subsection 69(1.2), will apply. The application of subsection 69(1) will give rise to proceeds of disposition equal to the property's fair

market value at the time of the gift. Under subsection 69(1.2), if that fair market value is less than the fair market value of the property determined without reference to the existence of the lease, the proceeds of disposition will be deemed to be the fair market value of the property determined without reference to the lease. The same result would be obtained where there is a deemed disposition of property at fair market value on the death of an individual.

The provisions of new subsection 69(1.2) are applicable with respect to dispositions of property occurring after Announcement Date.

Subclause 20(2)

ITA
69(13)

Subsection 69(13) of the Act provides a special rule for the purpose of determining whether subsection 69(11) is applicable in respect of an amalgamation or merger. This latter subsection sets out an anti-avoidance rule which prevents a person or partnership from disposing of a property as part of a series of transactions for less than fair market value proceeds so as to obtain the benefit of the tax deductions or entitlements of another person on a subsequent disposition of the property. The amendment to subsection 69(13) is consequential on the amendment to the definition "cost amount" in respect of eligible capital property in subsection 248(1). That amendment multiplies by 4/3 the prorated cumulative eligible capital to take account of the 3/4 inclusion rate with respect to eligible capital property. This amendment applies to amalgamations occurring in or after a corporation's first taxation year commencing after June 1988.

Clause 21

Death of a Taxpayer

ITA
70

Section 70 of the Act provides certain rules that apply upon the death of a taxpayer.

Subclause 21(1)

ITA
70(5)

Subsection 70(5) of the Act generally provides for the deemed realization of depreciable and other capital property owned by a taxpayer immediately before the taxpayer's death.

In the case of depreciable property of a prescribed class, paragraph 70(5)(b) currently provides that the property is to be treated as having been disposed of for an amount that is at the midpoint between the undepreciated capital cost and fair market value of the property. This result is in contrast with other capital property which is treated as having been disposed of for proceeds of disposition that equal the fair market value of the property immediately before the taxpayer's death.

Subsection 70(5) is amended to provide that the disposition of a taxpayer's depreciable property will be for proceeds that equal the fair market value of the property immediately before the taxpayer's death. This is effected by extending the application of paragraph 70(5)(a) to all capital property of a taxpayer. (Paragraphs 70(5)(c) and (e) become revised paragraphs 70(5)(b) and (c), respectively.) As such, terminal losses, recapture, and capital gains arising in respect of the disposition on death of a taxpayer's depreciable capital property will, as is the case for other capital property, be determined on the basis of proceeds of disposition that are equal to the fair market value of the property.

As is the case with corresponding amendments to subsections 104(5) and 107(4), this amendment is applicable with respect to dispositions occurring after 1992.

Subclause 21(2)

ITA
70(5.1)

Subsection 70(5.1) provides a tax deferral where, as a consequence of a taxpayer's death, any person (other than the taxpayer's spouse or a corporation controlled by the taxpayer) has acquired eligible capital property of the taxpayer. This subsection is amended to prevent an overstatement of the deemed taxable capital gain or the amount to be included in income on the subsequent disposition of eligible capital property by the person. Such an overstatement would occur because the calculation of the person's deemed taxable capital gain under subparagraph 14(1)(a)(v), or the amount to be included in income under paragraph 14(1)(b), would not include any amount relating to cumulative eligible capital amounts deducted by the taxpayer under paragraph 20(1)(b) before the taxpayer's adjustment time (as defined by paragraph 14(5)(c)). Reference may be made to the commentary concerning subsection 24(2) for an example of the operation of a similar amendment in circumstances where an individual ceases to carry on business and the business is subsequently carried on by the individual's spouse. The amendment to subsection 70(5.1) applies to acquisitions of eligible capital property occurring as a result of a taxpayer's death after the commencement of the first fiscal period of the taxpayer's business commencing after 1987.

Subclause 21(3)

ITA
70(5.4)

Subject to new subsection 70(6.1), new subsection 70(5.4) of the Act, which is applicable for the 1991 and subsequent taxation years, provides that, where a taxpayer has a "net income stabilization account" at the time of death, the taxpayer shall be considered to have been paid all amounts in the taxpayer's NISA Fund No. 2

immediately before that time. (The expressions "net income stabilization account" and "NISA Fund No. 2" are each defined in amendments to subsection 248(1) of the Act). Accordingly, such amounts are generally required to be included under new subsection 12(10.2) in computing the income of the deceased taxpayer for the year of death.

Subclauses 21(4) to (6)

ITA
70(6)

Subsection 70(6) of the Act sets out certain rules that apply to the transfer of capital property on the death of a taxpayer where the transfer is to a spouse or spousal trust. The amendments to this subsection, which are applicable with respect to dispositions occurring after 1992, revise a number of cross-references to subsection 70(5) and are strictly consequential on the amendment of that subsection.

Subclauses 21(7) and (8)

ITA
70(6.1) and (6.2)

Subsection 70(6.1) of the Act provides that a trust is considered to have been created by a taxpayer's will if it was created under the terms of the will or by a court order in relation to the taxpayer's estate that provides for support or relief of the taxpayer's dependants pursuant to provincial law. The existing provision applies for the purposes of subsection 70(6) and paragraph 104(4)(a) under which transfers to qualifying spousal trusts may be made on a rollover basis with the recognition of gains delayed for tax purposes until the death of the surviving spouse.

Subsection 70(6.1) is repealed for the 1990 and subsequent taxation years. Instead, the rule currently in subsection 70(6.1) will apply for all purposes under new subsection 248(9.1). This means that the rule will now also apply to the new definition of a "pre-1972

spousal trust" in new paragraph 108(1)(f.1), to new subsection 248(9.2) and to section 70 as a whole.

New subsection 70(6.1) of the Act provides that where, as a consequence of death and provided certain conditions are satisfied, a taxpayer transfers a "net income stabilization account" (NISA) to a spouse or a spousal trust, there will be a rollover of the deceased taxpayer's NISA Fund No. 2 to the spouse or the spousal trust.

Subsection 70(6.2) allows a deceased taxpayer's legal representative to make an election, in respect of capital property of the taxpayer which would otherwise be eligible for rollover treatment under subsection 70(6), to have the general rules in subsection 70(5) apply to the disposition of capital property. Subsection 70(6.2) is amended to provide that an election may also be made to have new subsection 70(5.4), rather than new subsection 70(6.1), apply to the deceased taxpayer's NISA Fund No. 2. Accordingly, all amounts held in a deceased taxpayer's NISA Fund No. 2 immediately before the taxpayer's death may be reported as income on that taxpayer's terminal return of income, notwithstanding that such amounts are generally eligible for a rollover on death to a spouse or a spousal trust.

New subsections 70(6.1) and (6.2) are applicable to the 1991 and subsequent taxation years.

Subclauses 21(9) and (10)

ITA
70(7)

Subsection 70(7) of the Act provides rules under which certain "tainted" spousal trusts may be considered qualifying spousal trusts for the purposes of the rollover of capital property under subsection 70(6). These rules apply where a spousal trust is not a qualifying spousal trust because of the payment of, or provision for payment of, certain testamentary debts. Essentially, these rules provide for a mechanism by which such testamentary debts may be applied against certain property of the trust so listed by the legal representatives of the deceased taxpayer whose will created the trust. For this purpose, and pursuant to paragraph 70(7)(a), a deceased taxpayer's legal representative is allowed to file the

taxpayer's terminal return up to 18 months following the taxpayer's death. This extension in the filing period in such circumstances does not, however, result in any reduction of interest arrears computed under section 161.

Subsection 70(7) is amended to ensure that the extension of the filing period to 18 months in respect of a deceased taxpayer's terminal return also applies to circumstances where the deceased taxpayer's net income stabilization account has been transferred or distributed as a consequence of the taxpayer's death to a qualifying spousal trust (see new subsection 70(6.1)).

Further, paragraph 70(7)(b) is amended in four respects. First, that paragraph is amended to provide that a net income stabilization account is not one of the properties that may be so listed for the purpose of "purifying" a spousal trust. Secondly, it is amended to ensure that any election made under subsection 70(7) in respect of a taxpayer is made on the taxpayer's terminal return. Thirdly, the first reference to "other than money" in paragraph 70(7)(b) is removed as money is property and that reference is, therefore, unnecessary. Finally, the references to property that is "specified" is unnecessary and has been deleted.

These amendments are applicable to the 1991 and subsequent taxation years.

Subclauses 21(11), (12) and (14)

ITA
70(9) and (9.2)

Subsections 70(9) and (9.2) of the Act provide rules allowing a rollover of capital gains on intergenerational transfers of farm property from a taxpayer to a child of the taxpayer as a result of the death of the taxpayer or the taxpayer's spouse. The amendments to these subsections, which are applicable with respect to dispositions occurring after 1992, revise references to subsection 70(5) and are strictly consequential on the amendment of that provision.

Subclauses 21(13), (15) and (16)

ITA
70(9.1) and (9.3)

Subsections 70(9.1) and (9.3) of the Act allow qualifying farm properties, qualifying shares of a family farm corporation and qualifying interests in a partnership carrying on a farming business to be transferred from a spousal trust on the beneficiary spouse's death on a rollover basis without recognition under subsections 104(4) and (5) of any accrued gains at the time of such death.

These subsections are amended to clarify that the exemption from the rules in subsections 104(4) and (5) applies in respect of property held by a spousal trust. The exemption would not extend, for example, to property held by another trust to which property has been transferred after the death of the beneficiary spouse. These amendments are applicable after Announcement Date.

Subparagraph 70(9.3)(b)(i) is amended to take into account the amendment to paragraph 70(10)(b). This amendment applies to the 1992 and subsequent taxation years.

Subclause 21(17)

ITA
70(10)(b)

Paragraph 70(10)(b) of the Act provides a definition of the expression "share of the capital stock of a family farm corporation". This definition is relevant for the purpose of the special rollover rules provided in sections 70 and 73 dealing with the transfer of a share of the capital stock of a family farm corporation or an interest in a family farm partnership by a taxpayer to a child. The current definition requires that, at the time of determination, all or substantially all of the property of the corporation either be used by the corporation in carrying on the business of farming in Canada in which the taxpayer, his spouse or child was actively engaged or, alternatively, be shares or certain debt obligations issued by other corporations that meet that property requirement. A number of

changes are being made to this definition, applicable to the 1992 and subsequent taxation years.

The definition is amended to clarify that the share of the capital stock of a family farm corporation must be owned by the taxpayer at the relevant time. The definition has been further modified to clarify that the property of the family farm corporation is not required to be used in the course of carrying on the business of farming at the relevant time. Provided that the other conditions of the definition have been satisfied, prior use of the property in the circumstances described in subparagraph (i) of the definition will suffice.

As well, the type of property that the corporation may own has been broadened to include any indebtedness of other corporations that satisfy the conditions of the definition. This change is consistent with amendments being made to the definition "interest in a family farm partnership".

The definition is also being amended to require that, at the relevant time, all or substantially all of the fair market value of the corporation's property be attributable to property that has been used principally in the course of carrying on a farming business in Canada in which the taxpayer or certain other qualifying individuals were actively engaged on a regular and continuous basis. The requirement that eligible individuals be actively engaged in carrying on a farm business on a regular and continuous basis is intended merely to clarify the amount of involvement necessary on the part such individuals. Similarly, basing the test on the fair market value of the property will provide greater certainty and is consistent with recent amendments made to the definitions "small business corporation" in section 248 and "qualified small business corporation share" in section 110.6. A corresponding amendment is being made to the definition of the expression "interest in a family farm partnership" in paragraph 70(10)(c).

Finally, the list of qualifying users of the property is expanded to include a parent of the taxpayer and a family farm partnership of a qualifying user. Thus, a share owned by a person will qualify provided that at the time of the disposition of the share all or substantially all of the fair market value of the property owned by the corporation was attributable to property used by either the corporation, the person, the spouse, parent or child of the person or

a family farm partnership of any such person in the course of carrying on the business of farming in Canada in which any such person was actively engaged on a regular and continuous basis.

Subclause 21(18)

ITA
70(10)(c)

Paragraph 70(10)(c) of the Act provides a definition of the expression "interest in a family farm partnership". This definition is relevant for the purpose of the special rollover rules provided in sections 70 and 73 dealing with the transfer of a share of the capital stock of a family farm corporation or an interest in a family farm partnership by a taxpayer to a child. The current definition requires that all or substantially all of the property of the partnership at the relevant time be used by the partnership in carrying on the business of farming in Canada in which the person, his spouse or child was actively engaged. A number of changes have been made to this definition applicable to the 1992 and subsequent taxation years.

The definition is amended to clarify that the interest in a family farm partnership must be owned by the person at the relevant time. The definition has been further modified to clarify that the property is not required to be used in the course of carrying on the business of farming at the relevant time. Provided that the other conditions of the definition have been satisfied, prior use of the property in the circumstances described in subparagraph (i) of the definition will suffice.

The definition is also being amended to require that, at the relevant time, all or substantially all of the fair market value of the partnership's property was attributable to property that has been used principally in the course of carrying on a farming business in Canada in which the person or certain other qualifying persons were actively engaged on a regular and continuous basis (or to shares or indebtedness of corporations that meet this test). The requirement that such eligible persons be actively engaged in carrying on a farming business on a regular and continuous basis is merely intended to clarify the amount of involvement necessary on the part of such individuals. Similarly, basing the test on the fair

market value of the property will provide greater certainty and is consistent with recent amendments made to the definitions "small business corporation" in section 248 and "qualified small business corporation share" in section 110.6. A corresponding amendment is being made to the definition of the expression "share of the capital stock of a family farm corporation" in paragraph 70(10)(b).

The types of property that the partnership may own has been expanded to include shares or any indebtedness of farm corporations all or substantially all of the fair market of the property of which is property used in a farming business in which the individual or his family members are engaged on a regular and continuous basis.

Finally, the list of qualifying users of the property is expanded to include a parent of the taxpayer and a family farm corporation of qualifying users.

Clause 22

Inter vivos Transfers of Property

ITA
73

Section 73 of the Act provides rules governing the tax treatment of certain *inter vivos* transfers of property.

Subclauses 22(1) to (3)

ITA
73(3)

Subsection 73(3) of the Act provides rules relating to the *inter vivos* transfer by a taxpayer to the taxpayer's children of family farm properties on a rollover basis. The amendment to clause 73(3)(b.1)(ii)(B) clarifies the intended application of this provision in circumstances where the parent transfers one of several eligible capital properties in respect of a business to a child, or transfers different eligible capital properties in respect of a business to a child.

Subsection 73(3) is further amended to ensure that the amount referred to in subparagraph (d)(ii) thereof (that is, the amount of unrecaptured deductions under paragraph 20(1)(b)) is multiplied by 4/3 to provide that, in view of the 3/4 inclusion rate in respect of eligible capital expenditures, the child is placed in the same tax position as the parent with respect to the property.

Finally, subsection 73(3) is amended to prevent an overstatement of the deemed taxable capital gain or amount to be included in income on the subsequent disposition of eligible capital property by the child. Such an overstatement would occur because the calculation of the child's deemed taxable capital gain under subparagraph 14(1)(a)(v), or the amount to be included in the child's income under paragraph 14(1)(b), would not include any amount relating to cumulative eligible capital amounts deducted by the taxpayer under paragraph 20(1)(b) before the taxpayer's adjustment time (as defined in paragraph 14(5)(c)). In this respect, reference may be made to the commentary concerning subsection 24(2), which provides an example of the operation of a similar amendment in circumstances where an individual ceases to carry on a business and the business is subsequently carried on by the individual's spouse.

These amendments are applicable with respect to transfers by a taxpayer occurring after the commencement of the first fiscal period of the taxpayer's business commencing after 1987.

Subclause 22(4)

ITA
73(5)

New subsection 73(5), which is applicable to the disposition after 1990 by a taxpayer of an interest in the taxpayer's NISA Fund No. 2, requires that an amount equal to the balance in the fund so disposed of is to be considered to have been paid out of the fund at that time to the taxpayer. Accordingly, such amount is included in paragraph 12(10.2)(a) for the purpose of determining whether it is an amount that is required to be included in the taxpayer's income. The application of new subsection 12(10.2) is discussed in the commentary on that subsection.

Paragraph 73(5)(a) provides, where certain conditions exist, for a tax-deferred disposition of an interest in a NISA Fund No. 2 to a spouse or former spouse of the taxpayer on the breakdown of a marriage or other conjugal relationship.

Paragraph 73(5)(b) provides that, where the disposition of a taxpayer's NISA Fund No. 2 is made to a taxable Canadian corporation in a transaction in which an election was made under section 85 of the Act, the transferor taxpayer is considered to have been paid out of the transferor's NISA Fund No. 2 an amount equal to the elected proceeds of disposition in respect of the transferred interest. Those elected proceeds may generally be equal to an amount between nil and the fair market value of the transferred portion of the NISA Fund No. 2. However, the commentary on the amendment to paragraph 85(1)(c.1) should be taken into account.

Example: *Where paragraph 73(5)(b) applies to pay an amount out of the transferor's NISA Fund No. 2 as proceeds of deposition under section 85 (also see commentary on the amendment to paragraph 85(1)(c.1)).*

ASSUME:

*At the end of 1995, the balance in T taxpayer's NISA Fund No. 2 is equal to **$100,000** and no previous withdrawals were made from the fund.*

In the year 1996:

- *T taxpayer is paid **$10,000** out of the fund.*

- *T taxpayer transfers the fund to Corporation A after being paid the $10,000 and elects that proceeds of disposition in respect of that NISA Fund No. 2 be equal to **$80,000** (of the total of **$102,000**). The total of **$102,000** in respect of NISA Fund No. 2 exceeds $90,000 (i.e., $100,000 -10,000) because **$12,000** of interest was credited to the fund prior to the transfer.*

*- Corporation A is paid **$30,000** out of its NISA Fund No. 2 prior to acquiring T taxpayer's NISA Fund No. 2.*

*- After the section 85 transfer, Corporation A is paid **$60,000** out of its NISA Fund No. 2.*

*In the year 1997 Corporation A is paid **$54,000** from its NISA Fund No. 2.*

Application of subsection 12(10.2) (T taxpayer)

Year
*1996: 12(10.2) = **10,000*** + **80,000**** = $90,000*

	**(a)*	*10,000*	*** (a)*	*80,000*
less	*(b)*	*N/A*	*(b)*	*N/A*
		10,000		***80,000***

Application of subsection 12(10.2) (Corporation A)

Year
*1996: 12(10.2) = **30,000*** + **Nil**** = $30,000*

	**(a)*	*30,000*	*** (a)*	*60,000*
less	*(b)*	*N/A*	*(b)*	*80,000****
		30,000		***NIL***

	*****	*(b)(i)*	*80,000*
		less (ii)	*-*
			80,000

*1997: 12(10.2) = **34,000*** = $34,000*

	**(a)*	*54,000*			
less	*(b)*	*20,000*	*** ** (b)(i)*		*80,000*
		34,000	*less*	*(ii)*	*60,000*
					20,000

In the above example, Corporation A receives credit for T taxpayer having included $80,000 in income. In effect, that amount is considered to have been paid out of the NISA Fund No. 2 at the

time of its disposition to Corporation A. Any amount paid out of Corporation A's NISA Fund No. 2 in excess of that $80,000 is included in Corporation A's income. It should also be noted that the ability of a farm producer to transfer an interest in a net income stabilization account is restricted under the NISA program, as established under the *Farm Income Protection Act.*

Clause 23

Transfers for Fair Market Consideration

ITA
74.5(10)

Subsection 74.5(10) of the Act provides that, for the purposes of the attribution rules in sections 74.1 to 74.5, a person is "beneficially interested" in a trust if that person has any right whatsoever to receive income or capital of the trust, whether directly or indirectly through one or more trusts.

This subsection is repealed as of January 1, 1991. It is replaced by new subsection 248(25), which defines the expression "beneficially interested" in the same manner for the purposes of the Act.

Clause 24

Loans to Employees

ITA
80.4(1)

Subsection 80.4(1) of the Act treats an individual as having received a benefit in a taxation year in respect of certain employment related low-interest or non-interest bearing loans. The benefit is generally computed by reference to the prescribed interest rate prevailing during the term of the loan. This subsection is amended to clarify that it applies whether the loan is made as a consequence of a prior, current or future employment.

This amendment is applicable with respect to taxation years commencing after 1991.

Clause 25

Group Control

ITA
84.1(2)(e)

Section 84.1 of the Act is an anti-avoidance rule designed to prevent the removal of taxable corporate surplus as a tax-free return of capital through a non-arm's length transfer of shares by an individual resident in Canada to a corporation.
Paragraph 84.1(2)(b) treats a taxpayer as not being at arm's length with the transferee corporation if the taxpayer was, immediately before the transfer, one of a group of less than 6 persons that controlled the acquired corporation and, immediately after the transfer, was a member of the same group that controlled the transferee corporation.

Subsection 84.1(2) is amended by adding new paragraph 84.1(2)(e) which is effective for dispositions occurring after Announcement Date. It provides that:

(1) in determining whether a corporation is controlled by a group of persons, a group in respect of that corporation means any two or more persons each of whom owns shares of the corporation,

(2) a corporation can be considered to be controlled by a person or particular group of persons notwithstanding that the corporation is also controlled by another person or group persons. As a consequence, a corporation can be considered to be controlled at the same time by several persons or groups of persons, and

(3) a group controls a corporation notwithstanding that one member of that group has control of the corporation.

Clause 26

Transfer of Property to Corporation
by Shareholders

ITA
85

Subsection 85(1) of the Act provides rules under which a taxpayer or partnership may transfer certain property on a tax-deferred or "rollover" basis to a taxable Canadian corporation in exchange for consideration that includes shares of the corporation.

Subclause 26(1)

ITA
85(1)(c.1)

Paragraph 85(1)(c.1) of the Act provides that the amount elected by a taxpayer and a taxable Canadian corporation on a section 85 rollover in respect of inventory, non-depreciable capital property and property that is a security or debt obligation used or held by the taxpayer in the business of insurance or lending money cannot be below the lesser of its fair market value and its cost amount. The expression "cost amount" is defined in subsection 248(1). Paragraph 85(1)(c.1) is amended, with respect to dispositions occurring after 1990, to extend its application to property that is a taxpayer's NISA Fund No. 2 (as defined under subsection 248(1) of the Act). Such property is not considered to be capital property (see the definition of "capital property" in paragraph 54(b) and the meaning of capital gain and capital loss in section 39).

Subclause 26(2)

ITA
85(1)(d.1)

New paragraph 85(1)(d.1) is applicable with respect to the disposition of property to a corporation occurring after the commencement of its first taxation period commencing after June 1988. It is intended to prevent an overstatement of the

amount to be included by virtue of paragraph 14(1)(b) in computing the income of the corporation in a taxation year as a result of a disposition by the corporation of eligible capital property subsequent to the transfer.

The following example illustrates the operation of new paragraph 85(1)(d.1).

Assume an individual, with a calendar fiscal period for the individual's business, purchases an eligible capital property before the individual's adjustment time (when the income inclusion rate for eligible capital property was one half) for $300,000. This is the first and only eligible capital property held in respect of the individual's business. The individual takes deductions under paragraph 20(1)(b) totalling $40,650 before adjustment time, and deductions under that paragraph totalling $11,482 subsequent to adjustment time. The individual then transfers the property to a corporation in circumstances to which subsection 85(1) apply. Immediately before the time of the transfer the individual's cumulative eligible capital is $152,543, and the fair market value of the property at that time is $500,000. The amount elected by the parties to be the individual's proceeds of disposition and the corporation's cost of the property is 4/3 of the individual's cumulative eligible capital in respect of the business immediately before the disposition, i.e., $203,391. After the disposition, this is the only eligible capital property held by the corporation in respect of the business.

The corporation disposes of the eligible capital property for $500,000, before deducting any amount under paragraph 20(1)(b). In the absence of new paragraph 85(1)(d.1), the amount to be included in computing the corporation's income under paragraph 14(1)(b) in the year in which the disposition occurred would

= the amount by which

(A) the negative balance in the corporation's cumulative eligible capital (the "excess")

exceeds

(B) 1/2 of the corporation's unrecaptured pre-adjustment time deductions under paragraph 20(1)(b)

= the amount by which

(A) 3/4 ($500,000) - $152,543 = $222,457

exceeds

(B) $0

= $222,457

Under new paragraph 85(1)(d.1), the calculation of the amount to be included in computing the corporation's income for the year in which the eligible capital property is disposed of

= the amount by which

(A) the negative balance in the corporation's cumulative eligible capital (the "excess")

exceeds

(B) 1/2 of the individual's pre-adjustment time deductions under that paragraph

= the amount by which

(A) $222,457

exceeds

(B) 1/2 ($0) + 1/2 ($40,650)

= *$202,132*

Subclauses 26(3) and (4)

ITA
85(1.1)(f) and (i)

Subsection 85(1.1) of the Act describes the various types of "eligible property" that may be transferred to a corporation under subsection 85(1). Eligible property includes inventory other than real property inventory. Paragraph 85(1.1)(f) is amended, effective for dispositions of property occurring after Announcement Date, to clarify that in addition to real property inventory, interests in and options in respect of real property are also excluded from the definition of eligible property where they form part of a taxpayer's inventory.

This definition of eligible property is also amended by adding new paragraph (i) applicable to dispositions occurring after 1990, to include a NISA Fund No. 2 as property eligible for transfer under the provisions of section 85 of the Act.

Clause 27

Share-for-Share Exchange

ITA
85.1(1)

Section 85.1 of the Act permits a tax-deferred rollover for shareholders who exchange shares of a corporation (the "acquired corporation") for shares of the purchasing Canadian corporation in the course of an arm's length sale of the acquired corporation's shares. This section applies to most arm's length share-for-share exchanges where there is no consideration given by the purchaser for the exchanged shares other than shares of its capital stock.

Subsection 85.1(1) is amended so that, for share exchanges occurring after Announcement Date, it applies only where the exchanged shares are shares of the capital stock of a taxable Canadian corporation.

Clause 28

Amalgamations

ITA
87

Section 87 of the Act provides rules which apply on the amalgamation of two or more taxable Canadian corporations.

Subclause 28(1)

ITA
87(1)(c)

Generally, the new corporation formed as a result of an amalgamation to which section 87 applies is treated as a continuation of the predecessor corporations for the purposes of the Act. Subsection 87(1), which provides a definition of an amalgamation for the purposes of these rules, sets out several conditions that must be satisfied in order for a merger to be considered an amalgamation for the purposes of section 87. Paragraph 87(1)(c) requires that, where there has been an amalgamation, all of the shareholders of the predecessor corporations immediately before the merger must receive shares of the new corporation. Paragraph 87(1)(c) is amended to clarify that any such shareholders that did not actually own shares of any predecessor corporation immediately before the amalgamation (such as a policyholder of a mutual insurance corporation) do not have to receive shares of the amalgamated corporation. This amendment is applicable in respect of amalgamations occurring after 1989.

Subclauses 28(2) & (8)

ITA
87(1.4) and (2.11)

Although section 87 treats an amalgamated corporation as a continuation of the predecessor corporations for many purposes, it does not currently permit losses incurred by the amalgamated corporation to be carried back and deducted in computing the taxable income of a predecessor for a taxation year ending before the amalgamation. New subsection 87(2.11) provides that where the predecessor corporations are a parent corporation and one or more of its subsidiary wholly-owned corporations, the amalgamated corporation is deemed to be a continuation of the predecessor parent corporation for the purposes of section 111 and Part IV of the Act. New subsection 87(2.11) thus permits losses of the amalgamated corporation to be carried back to the predecessor parent, subject to the rules in section 111, in the case of what is commonly known as a "vertical short-form amalgamation" or any other amalgamation of a corporation and one or more subsidiary wholly-owned corporations.

A consequential amendment ensures that the definition of "subsidiary wholly-owned corporation" in subsection 87(1.4) of the Act applies for the purposes of new subsection 87(2.11).

These amendments are applicable with respect to amalgamations occurring after 1989.

Subclause 28(3)

ITA
87(2)(f)

Paragraph 87(2)(f) of the Act treats the cumulative eligible capital of a predecessor corporation in respect of a business as forming part of the cumulative eligible capital of the new corporation where the new corporation carries on the business. The amendment to paragraph 87(2)(f), which is applicable with respect to amalgamations occurring after June 1988, is intended to ensure that the new corporation is placed in the same position as the predecessor corporation with regard to eligible capital property of a

business previously carried on by the predecessor corporation which is now carried on by the new corporation. Also, paragraph 87(2)(f.1) is repealed as a consequence of the amendment to paragraph 87(2)(f).

Subclause 28(4)

ITA
87(2)(j)

Paragraph 87(2)(j) provides that, for the purposes of claiming reserves available under paragraph 20(1)(m), (m.1) or (m.2) or section 32, an amalgamated corporation is considered to have included in its income by reason of paragraph 12(1)(a) amounts previously included in a predecessor's income pursuant to that latter paragraph. Paragraph 87(2)(j) does not, however, refer to subsection 20(24), which provides a deduction in respect of certain payments made to another taxpayer who assumes obligations for which amounts were previously included in the income of the predecessor corporation pursuant to paragraph 12(1)(a). As such, when an unearned payment is included in the income of a predecessor corporation pursuant to paragraph 12(1)(a), an amalgamated corporation is not eligible to claim a deduction under subsection 20(24).

This amendment, which applies to amalgamations occurring and windings-up commencing after 1990, corrects this deficiency by providing a reference to subsection 20(24). Further, for the purposes of claiming amounts under paragraph 20(1)(m), (m.1) or (m.2) or subsection 20(24), an amalgamated corporation will be treated as a continuation of its predecessor corporation. The reference to section 32 in existing paragraph 87(2)(j) is deleted as a result of an amendment made previously to paragraph 87(2)(j.6) of the Act.

Subclause 28(5)

ITA
87(2)(j.6)

Paragraph 87(2)(j.6) of the Act provides that a corporation formed as the result of an amalgamation is considered, for the purposes of a number of provisions of the Act, to be the same corporation as, and a continuation of, each predecessor corporation. The amendment to this paragraph, which is applicable after January 1990, is strictly consequential on the introduction of subsections 12(2.2) and 39(13) of the Act, and treats the new corporation as a continuation of its predecessors for the purposes of these provisions.

Subclause 28(6)

ITA
87(2)(l.3)

Paragraph 87(2)(l.3) currently applies in respect of property of a predecessor corporation that was unlawfully taken, lost, destroyed, or taken under statutory authority prior to the amalgamation or winding-up. The "replacement property rules" under sections 13 and 44 apply to the new corporation as through it had been in existence and owned the property at the time it was so lost, destroyed or taken. Further, the cost or capital cost, as the case may be, of that property to the new corporation is considered to be the same as that of the predecessor corporation. Also, where the predecessor corporation had acquired a replacement property for that property before the amalgamation, the new corporation is considered to have acquired that replacement property immediately after the amalgamation. These rules also apply, by reason of paragraph 88(1)(e.2) following the winding-up of a corporation to which subsection 88(1) applies.

Paragraph 87(2)(l.3) is amended to apply to voluntary dispositions of former business property. In addition, for the purposes of that paragraph, the new corporation will be considered to be a continuation of the predecessor corporation.

Previous amendments to the replacement property rules have restricted their application to replacement property that is taxable Canadian property. This amendment also clarifies the status of replacement property of former property disposed of under previous legislation. For example, where a predecessor corporation disposed of property before April 3, 1990, the new corporation's replacement property for that former property need not be taxable Canadian property as the new corporation is considered to be a continuation of the predecessor corporation for that purpose.

This amendment is applicable in respect of amalgamations occurring and windings-up commencing after 1989.

Subclause 28(7)

ITA
87(2)(aa)

Paragraph 87(2)(aa) of the Act provides for the flow-through of the refundable dividend tax on hand (RDTOH) of the predecessor corporations to the new corporation on an amalgamation. This provision applies to add the RDTOH of predecessor corporations to the balance of the new corporation's RDTOH for a taxation year only if the new corporation was a private corporation continuously from the time of the amalgamation until the end of that year. Pursuant to this amendment the new corporation will be required to be a private corporation only until after the beginning of the year. This amendment applies to the 1993 and subsequent taxation years.

Subclauses 28(9) and (10)

ITA 87(3) and (3.1)

Subsection 87(3) of the Act provides for the computation of the paid-up capital in respect of a class of shares of the capital stock of the new corporation formed on the amalgamation of two or more taxable Canadian corporations. The subsection requires a paid-up capital reduction when the paid-up capital of the new corporation exceeds the aggregate of the paid-up capital of the predecessor corporations with the effect that the reduction is averaged across all classes of shares of the new corporation. This averaging can give

unintended results in circumstances where a class of shares of a predecessor have impaired capital for tax purposes and the impairment is exclusive to that class. This subsection is amended, applicable to amalgamations occurring after 1990, to permit the special treatment provided for in new subsection 87(3.1).

New subsection 87(3.1) of the Act provides that in certain specified circumstances, subsection 87(3) will not apply in respect of the paid-up capital computation of a class of shares of the new corporation formed on the amalgamation. In order that subsection 87(3) not apply to the paid-up capital computation, each class of shares (other than classes cancelled on the amalgamation) of each predecessor must be exchanged for a separate class of shares of the new corporation. As well, after the amalgamation, the number of shareholders of each class, their proportionate ownership in each class, the paid-up capital of each class and the terms and conditions of each class must be identical to those that existed immediately before the amalgamation. If these conditions are met, and the new corporation elects in its first return of income to have this subsection apply, each class of shares of the new corporation issued on the amalgamation will be treated, for tax purposes, as the same class as and a continuation of each class of shares of each of the predecessors exchanged on the amalgamation. New subsection 87(3.1) is applicable to amalgamations occurring after 1990.

Subclause 28(11)

ITA
87(7)

Subsection 87(7) of the Act provides that where, as a result of an amalgamation, a debt of a predecessor corporation has become a debt of the amalgamated corporation, the provisions of the Act do not apply with respect to the transfer of the liability and the amalgamated corporation is to be treated as if it had originally issued the debt. Paragraph 87(7)(a) of the Act excludes from the application of subsection 87(7) debts owing between the amalgamating corporations. This exclusion is unnecessary since such debts are extinguished on the amalgamation and therefore this amendment deletes the exclusion for inter-predecessor indebtedness.

This amendment applies after Royal Assent to the implementing legislation.

Subclause 28(12)

ITA
87(9)(a.3) and (a.4)

Subsection 87(9) of the Act provides rules for "triangular amalgamations". A triangular amalgamation is a merger of two or more taxable Canadian corporations to form a new corporation that is immediately after the merger controlled by a taxable Canadian corporation (the "parent"), where shares of the parent were issued to shareholders of the predecessors corporations in exchange for their shares.

New paragraph 87(9)(a.3) clarifies that the rollover provisions in subsection 87(5) dealing with options to acquire shares of a predecessor also apply in respect of triangular amalgamations.

New paragraph 87(9)(a.4) provides that, for the purposes of paragraph 87(9)(c), new shares include all the shares of the new corporation acquired by the parent on the merger. This change is necessary because the term "new shares", as provided by subsection 87(4), applies only to the shares of the new corporation acquired by the parent in exchange for its shares in the predecessor corporations. As amended, the shares of the new corporation acquired by the parent as consideration for its shares issued to other shareholders of the predecessor corporations will be new shares as well.

New paragraphs 87(9)(a.3) and (a.4) are applicable to amalgamations occurring after Announcement Date.

Clause 29

Winding-up of a Corporation

ITA
88

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

Subclause 29(1)

ITA
88(1)(a)(ii)

Subsection 88(1) of the Act provides rules which apply where a subsidiary has been wound-up into its parent, provided that both corporations are taxable Canadian corporations and the parent owns not less than 90% of the issued shares of each class of the subsidiary's capital stock. The repeal of subparagraph 88(1)(a)(ii) is consequential on the amendment to the definition "cost amount" in respect of eligible capital property in subsection 248(1). This amendment is applicable with respect to distributions of property on the winding-up of a subsidiary in a taxation year of the subsidiary commencing after June 1988.

Subclause 29(2)

ITA
88(1)(c)

Paragraph 88(1)(c) of the Act provides that the cost to a parent of a property (other than an interest in a partnership) acquired on the winding-up of a subsidiary is deemed to be equal to the amount determined under paragraph 88(1)(a) to be the subsidiary's proceeds of disposition of the property. Paragraph 88(1)(c) is amended to accommodate situations in which the subsidiary's proceeds of disposition are determined under subsection 69(11), rather than under paragraph 88(1)(a). In such a case, the parent's cost of the property will be the amount that would, but for subsection 69(11),

have been the proceeds of disposition to the subsidiary under paragraph 88(1)(a).

This amendment applies to windings-up commencing after Announcement Date.

Subclause 29(3)

ITA
88(1)(c.1)

Subparagraph 88(1)(a)(iii) of the Act provides that any property of a subsidiary, other than a Canadian resource property or foreign resource property, is deemed to have been disposed of on its winding-up for proceeds of disposition equal to its cost amount to the subsidiary immediately before the winding-up. Under subparagraph 88(1)(c)(ii), the cost of such property is equal to such proceeds of disposition. New paragraph 88(1)(c.1) is intended to prevent an overstatement of the amount to be included by reason of paragraph 14(1)(b) in computing the income of the parent in a taxation year as a result of a disposition by the parent of eligible capital property subsequent to the winding-up of the subsidiary. The commentary to new paragraph 85(1)(d.1) provides an example of the operation of a similar amendment in circumstances where property is transferred to a corporation by a shareholder.

This amendment is applicable with respect to distributions of property occurring on the winding-up of a subsidiary in a taxation year of the subsidiary commencing after June 1988.

Subclause 29(4)

ITA
88(1)(d.2)

On the winding-up of a subsidiary, paragraphs 88(1)(c) and (d) of the Act permit the parent to increase the cost base of certain non-depreciable capital properties owned by the subsidiary at the time that the parent last acquired control of the subsidiary and continuously thereafter until such time as the properties were distributed to the parent. The time at which "the parent last

acquired control of the subsidiary" has an extended meaning in circumstances where control is acquired from persons not dealing at arm's length. Paragraph 88(1)(d.2) provides this extended meaning. This paragraph does not give appropriate results in certain circumstances where control is acquired through an inheritance by a non-arm's length person. Paragraph 88(1)(d.2) is therefore amended, applicable for windings-up commencing after Announcement Date, to provide that, for the purposes of paragraph 88(1)(d.2) and subsection 186(2) as it applies to that paragraph, where a taxpayer acquires control of a corporation as a result of the acquisition, of shares of the corporation through a bequest or an inheritance, the taxpayer, the person from whom the taxpayer acquired the shares and any person related to that person shall be treated, at the time of the acquisition and at any time previous to the acquisition, as dealing at arm's length with the taxpayer.

Subclause 29(5)

ITA
88(1)(e.5)

Paragraph 88(1)(e.5) of the Act provides the transfer of the refundable dividend tax on hand (RDTOH) of a subsidiary corporation to a parent corporation on a winding-up of the subsidiary. This provision applies to add the subsidiary's RDTOH to the balance of the parent's RDTOH for a taxation year only if the parent was a private corporation continuously from the time of the winding-up until the end of that year. Pursuant to this amendment, the parent would be required to be a private corporation only until after the beginning of that year. This amendment applies to the 1993 and subsequent taxation years.

Subclause 29(6)

ITA
88(1.3)(a)

Section 88(1.3) of the Act treats a parent corporation as having been in existence during the period in which its subsidiary was in existence in order to permit the parent to carry forward the

charitable donations, losses, unused foreign tax credits and investment tax credits of its subsidiary that were not deducted before it was wound up. Paragraph 88(1.3)(a) is amended, effective for windings-up commencing after 1988, to refer to the subsidiary's "expenditure year". This change ensures that a subsidiary's investment tax credit account flows through to its parent following a winding-up.

Clause 30

Beneficially Interested

ITA
94(7)

Subsection 94(7) of the Act provides that, for the purposes of the attribution rules in section 94, a person is "beneficially interested" in a trust if that person has any right whatsoever to receive income or capital of the trust, whether directly or indirectly through one or more trusts.

This subsection is repealed as of January 1, 1991. It is replaced by new subsection 248(25), which defines the expression "beneficially interested" in the same manner for the purposes of the Act.

Clause 31

Partnerships: Resource Allowance

ITA
96(1)(d)

Under subsection 96(1) of the Act, the income earned and losses incurred by a partnership are generally calculated at the partnership level and attributed to partners in accordance with their respective interests. However, paragraph 96(1)(d) provides that the income or loss of a partnership is computed without any income inclusion with respect to the disposition of certain resource properties and without any deduction for exploration, development and resource property expenses. These items are included directly in computing the income or loss of the members of the partnership.

Paragraph 96(1)(d) is amended so that resource allowance under paragraph 20(1)(v.1) may not be claimed at the partnership level. It is intended that section 1210 of the Income Tax Regulations will be amended so that a partner will be allowed to claim a proportionate share of resource allowances disallowed as a deduction at the partnership level.

This amendment applies to fiscal periods of partnerships commencing after Announcement Date.

Clause 32

Disposition of Partnership Interest

ITA
98

Section 98 of the Act provides rules relating to the taxation of partnership properties and partnership interests where the partnership has ceased to exist.

Subclause 32(1)

ITA
98(3)(b)

Subsection 98(3) of the Act is an elective provision permitting, provided certain conditions are met, property of a Canadian partnership which has ceased to exist to be distributed to its members, for proceeds to the partnership, and at a cost to the members, equal to the cost amount of the property to the partnership. This provision also allows a special increase or "bump-up" in the tax value of the distributed partnership property where the adjusted cost base of a member's partnership interest exceeds the amount of money and the cost amount to the partnership of the property that the member has received upon the dissolution of the partnership.

Paragraph 98(3)(b), which provides rules for determining the cost to each member of partnership property, is amended to include within

the cost to the proprietor of eligible capital property an amount equal to 4/3 of the unrecaptured deductions under paragraph 20(1)(b) in respect of the business of the partnership. This amendment is intended to ensure that the members of the dissolved partnership are placed in a tax position equivalent to that of the partnership with respect to the property.

Subclause 32(2)

ITA
98(3)(g)

New subparagraph 98(3)(g)(i) of the Act provides that, for the purposes of determining any amount relating to cumulative eligible capital, eligible capital amount, eligible capital expenditure or eligible capital property, a member is deemed to carry on the business of the partnership until that member's undivided interest in the eligible capital property is disposed of. New subparagraph 98(3)(g)(ii) provides rules for determining the cumulative eligible capital of the proprietor in view of the gross-up of unrecaptured deductions in new subparagraph 98(5)(b)(i.1). Finally, new subparagraph 98(3)(g)(iii) prevents an overstatement of the deemed taxable capital gain under subparagraph 14(1)(a)(iv), or an overstatement of the amount to be included in income under paragraph 14(1)(b).

The following example illustrates the operation of the amendments to paragraph 98(3)(b) and new paragraph 98(3)(g):

Assume a partnership, with two equal partners, A and B, and with a calendar year fiscal period for its business, purchases an eligible capital property for $300,000 at a time before the partnership's adjustment time (when the inclusion rate for eligible capital property was one-half). This is the first and only eligible capital property held by the partnership in respect of the partnership business. The partnership takes deductions under paragraph 20(1)(b) totalling $40,650 before its adjustment time, and deductions under that paragraph totalling $11,482 after its adjustment time.

The partnership ceases to exist, and the partners elect under subsection 98(3). Immediately before the partnership ceases to exist, the partnership's cumulative eligible capital is $152,453.

- *The cost to A of A's undivided interest in the eligible capital property immediately after the partnership ceases to exist*

  = *A's percentage of the cost amount to the partnership of the property, plus A's percentage of 4/3 of the unrecaptured paragraph 20(1)(b) deductions taken by the partnership,*

  = *50% (4/3 of $152,543) + 50% (4/3 of $52,132)*

  = *$101,695.33 + $34,754.67*

  = *$136,450*

- *A's cumulative eligible capital in respect of the business immediately after the partnership ceases to exist*

  = *3/4 of the cost to A of the property, minus 3/4 of A's percentage of 4/3 of the unrecaptured paragraph 20(1)(b) deductions taken by the partnership*

  = *3/4 of ($136,450) - 3/4 of ($34,754.67)*

  = *$102,337.50 - $26,066*

  = *$76,271.50*

Assume A disposes of A's undivided interest in the property for $250,000 before taking any deductions under paragraph 20(1)(b).

- *The amount to be included in computing A's income in the year in which the undivided interest in the property is disposed of*

  = *lesser of*

  (A)the negative balance in A's cumulative eligible capital (the "excess"), and

  (B)A's percentage of the unrecaptured paragraph 20(1)(b) deductions taken by the partnership

= *lesser of*

(A)3/4 of ($250,000) - $76,271.50

= *$111,228.50, and*

(B)1/2 of ($52,132) = $26,066

= *$26,066*

- *The amount deemed to be A's taxable capital gain*

  = *the amount by which the excess exceeds the total of the amount included in income plus 1/2 of the amount of A's percentage of the partnership's unrecaptured pre-adjustment time paragraph 20(1)(b) deductions*

  = *$111,228.50 - ($26,066 + 50%[1/2($40,650)])*

  = *$111,228.50 - $36,228.50*

  = *$75,000*

Subclause 32(3)

ITA
98(5)(b)

Subsection 98(5) of the Act sets out rules which provide a tax-deferred transfer or rollover of a Canadian partnership's property where the partnership has ceased to exist and one member continues to carry on the business of the partnership as a sole proprietorship.

Paragraph 98(5)(b), which provides rules for determining the cost to the remaining member of partnership property, is amended to include within the cost to the proprietor of eligible capital property an amount equal to 4/3 of the unrecaptured deductions under paragraph 20(1)(b) in respect of the business of the partnership. This provision which is applicable to acquisitions of property occurring as a consequence of a partnership ceasing to exist after

the commencement of its first fiscal period commencing after 1987, is intended to ensure that the remaining member is placed in the same tax position as the partnership with respect to the property.

Subclause 32(4)

ITA
98(5)(h)

New subparagraph 98(5)(h)(i) provides rules for determining the cumulative eligible capital of the proprietor in view of the gross-up of unrecaptured deductions in new subparagraph 98(5)(b)(i). New subparagraph 98(5)(h)(ii) prevents an overstatement of the deemed taxable capital gain under subparagraph 14(1)(a)(iv), or an overstatement of the amount to be included in income under paragraph 14(1)(b). The commentary to paragraph 98(3)(g) provides an illustration of the operation of a similar amendment in circumstances where a partnership ceases to exist and an election is made under that subsection.

All of the amendments to section 98 of the Act are applicable to acquisitions of property occurring as a consequence of a partnership ceasing to exist after the commencement of its first fiscal period commencing after 1987.

Clause 33

Trusts and their Beneficiaries

ITA
104

Section 104 of the Act provides rules governing the tax treatment of trusts and their beneficiaries.

Subclause 33(1)

ITA
104(4) and (5)

Subsections 104(4) to (5.2) of the Act set out what is generally referred to as the "21-year deemed realization" rule for trusts. The purpose of the rule is to prevent the use of trusts to defer indefinitely the recognition for tax purposes of gains accruing on capital properties, resource properties and land inventories. These subsections generally treat such properties as having been disposed of and reacquired by trusts every 21 years at their fair market value (or in the case of depreciable property, at the mid-point between fair market value and undepreciated capital cost). However, this rule does not apply to unit trusts and certain trusts established to provide pension and other employee benefits. In addition, the 21-year deemed realization rule is modified in the case of certain spousal trusts.

Under the existing rules, the first deemed realization for those spousal trusts described in paragraph 104(4)(a) occurs on the day on which the beneficiary spouse dies. A spousal trust described in this paragraph includes a testamentary trust created as a consequence of the death of a taxpayer after 1971 under which the surviving spouse was exclusively entitled to the income of the trust before his or her death and no other person was entitled before that time to the capital of the trust. It also includes a similar trust created by a taxpayer during the taxpayer's lifetime for the benefit of the taxpayer's spouse, provided the trust was created after June 17, 1971 or was a trust created on or before that date which does not qualify for graduated rates of personal tax because of subsection 122(1).

Subsection 104(4) is amended to clarify that a deemed realization of non-depreciable capital property or land inventory on a day determined thereunder occurs at the end of the day. Subsection 104(5) is amended so that a deemed realization of depreciable property likewise occurs at the end of a day determined under subsection 104(4).

Subsection 104(4) is also amended so that it does not result in the realization of gains with respect to "excluded property", as defined in new paragraph 108(1)(d.2). "Excluded property" is a share of

the capital stock of a non-resident-owned investment corporation (as defined in section 133) which does not constitute taxable Canadian property. This amendment is consistent with the other taxation rules with respect to such corporations in subsections 104(10) and (11), section 133 and subsection 212(9) which allow a trust holding such shares exclusively for the benefit of non-residents to be treated as a conduit for its beneficiaries.

Paragraph 104(4)(a) is amended so that a post-1971 spousal testamentary trust referred to therein includes a trust that, immediately after any capital property, Canadian or foreign resource property or land inventory vested indefeasibly in the trust on a rollover basis as a consequence of the death of a taxpayer, was a trust under which the surviving spouse of the taxpayer was exclusively entitled to the income of the trust before his or her death and no other person was entitled before such death to the capital of the trust. This amendment recognizes that subsections 70(5.2) and (6) allow beneficiaries of a trust to make disclaimers, releases and surrenders pursuant to subsection 248(8) in order for property to be transferred on a rollover basis on death of a taxpayer for the benefit of the taxpayer's spouse. It is thus appropriate that a deemed realization occurs with respect to such a trust when the beneficiary spouse dies. This amendment is applicable with respect to deaths of beneficiary spouses occurring after Announcement Date.

Paragraph 104(4)(a) is also amended so that it will no longer apply to "tainted" *inter vivos* spousal trusts created before June 18, 1971 (i.e. those trusts that have failed to meet all the conditions set out in paragraphs 122(2)(b) to (e)). Such trusts would generally fall within the new category of "pre-1972 spousal trusts", as described below.

Under the rule introduced in new paragraph 104(4)(a.1), the first deemed realization for a trust that is a pre-1972 spousal trust on January 1, 1993 occurs on the later of the day on which the beneficiary spouse dies and January 1, 1993. The expression "pre-1972 spousal trust" is discussed in the commentary on new paragraph 108(1)(f.1).

Paragraph 104(4)(b) is amended so that it causes a deemed realization with respect to a pre-1972 spousal trust only 21 years

after any deemed realization under paragraph 104(4)(a.1). This is consistent with the existing rule for post-1971 spousal trusts.

Paragraph 104(4)(c) provides for further deemed realizations 21 years after any other deemed disposition day under subsection 104(4). It is amended to avoid the determination of a deemed disposition day with respect to a spousal trust that is determined under paragraph 104(4)(b).

Subsection 104(5) is also amended so that the "mid-point" rule for deemed dispositions, under which depreciable property of a prescribed class is disposed of at the mid-point between its fair market value of the property and its undepreciated capital cost, no longer applies. Instead, depreciable property (like other capital property) is deemed to have been disposed of by a trust at its fair market value. As is the case with the similar amendments to subsections 70(5) and 107(4), this amendment is applicable after 1992.

Except as noted above, these amendments are applicable to taxation years of trusts ending after February 11, 1991.

Subclause 33(2)

ITA
104(5.1)

New paragraph 104(5.1) of the Act provides that every spousal trust that holds an interest in a NISA Fund No. 2 transferred to it in circumstances to which new paragraph 70(6.1)(b) applied will be considered to have been paid the amount, if any, by which the fund's balance at the end of the day on which the spouse dies exceeds the amount included in that spouse's income. (The expression "NISA Fund No. 2" is defined in an amendment to subsection 248(1) of the Act.) In effect, a NISA Fund No. 2 is taxed in the hands of the generation for which it was established. The commentary on new subsection 104(14.1) gives an example of the application of both subsections 104(5.1) and (14.1) on the death of a spouse.

This amendment is applicable to the 1991 and subsequent taxation years.

Subclause 33(3)

ITA
104(5.3) to (5.7)

Subsection 104(5.3) of the Act is introduced to provide a further exception to the 21-year deemed realization rule in respect of a trust which so elects in prescribed form filed with Revenue Canada within 6 months after the end of its taxation year that includes a day that, but for the election, would be its first deemed realization day (or its second deemed realization day in the case of a post-1971 spousal trust to which the rules in paragraph 104(4)(a) apply). Where the trust so elects and, at the end of such day, an individual is an exempt beneficiary under the trust, the deemed realization day is postponed to the first day of the first taxation year of the trust commencing after the first day throughout which there is no exempt beneficiary under the trust. (This deemed realization day may be advanced under new subsection 104(5.8), however, if property is transferred to the trust from another trust.) Thus, a deemed realization of a trust's property would generally be postponed to the first day of the first taxation year following the death of the last-surviving exempt beneficiary.

Where an election is made by a trust under subsection 104(5.3), a rollover of trust property to a beneficiary on a tax-free rollover basis under subsection 107(2) may, in the period commencing after the otherwise determined 21-year deemed realization date and ending on or before the newly-determined 21-year deemed realization date, be made only to an individual who is an exempt beneficiary. Any other distribution of trust property in that period would be treated as a disposition at fair market value under subsection 107(2.1).

A further consequence of an election by a trust under subsection 104(5.3) is that transfers of capital property from one trust to another, in the period described above in respect of the trust, may not be made on a tax-free basis under paragraph 54(c)(v). An exception to this rule is provided where there is merely a change in trustees with respect to transferred property. In this case, provided the transferee trust held no assets

prior to the transfer, the transferee trust will be regarded as the same trust as and a continuation of the transferor trust.

"Exempt beneficiary"

For the purpose of the rules described above, an "exempt beneficiary" under a trust is defined in new subsection 104(5.4) as a living beneficiary under the trust, where the following two conditions are satisfied:

(a) in the case of a trust created after February 11, 1991, the beneficiary was alive at the time the trust was created (or, if earlier, the creation time of all other trusts transferring land inventory, capital property or resource properties to the trust in circumstances to which new subsection 104(5.8) applies), and

(b) either

- the beneficiary or the beneficiary's spouse or former spouse is the designated contributor in respect of the trust, or

- the beneficiary or the beneficiary's spouse or former spouse is a grandparent, parent, brother, sister, child, niece or nephew of the designated contributor of the trust or of the spouse or former spouse of the designated contributor in respect of the trust.

The expressions "beneficiary" and "designated contributor", as used in subsection 104(5.4), are defined in new subsections 104(5.5) and (5.6).

"Beneficiary"

For the purposes of determining whether an individual is an "exempt beneficiary", a beneficiary under new subsections 104(5.5) and 248(25) is generally a person who has any contingent or absolute right under the trust. However, under paragraph 104(5.5)(a), where the interests of all individuals who are exempt beneficiaries (determined without reference to that paragraph) depend on the discretion of any person, no individual will be regarded as an exempt beneficiary if such discretion could

result in all such individuals not enjoying any benefit in respect of their interests. This paragraph applies only to trusts created or materially varied after February 11, 1991.

Under paragraph 104(5.5)(b), a beneficiary's right under a trust will also be disregarded for the purposes of the "exempt beneficiary" definition if it is reasonable to consider that one of the main purposes for creating the right was to defer the day determined in respect of the trust under paragraph 104(4)(a.1) or (b). This could be the case, for example, where an individual is given a nominal absolute interest under the trust or a contingent interest which is virtually certain not to vest.

"Designated contributor"

The "designated contributor" in respect of a spousal trust is the individual who created, or whose will created, the trust. Where the trust is a non-spousal testamentary trust, as of the end of a taxation year for which an election is made under subsection 104(5.3), the designated contributor is the individual as a consequence of whose death the trust was created. In any other case, the "designated contributor" in respect of a trust is an individual who is related to any beneficiary under the trust, is designated by the trust and qualifies under subparagraph 104(5.6)(c)(i), (ii) or (iii).

An individual generally qualifies as a designated contributor in respect of an *inter vivos* trust under subparagraph 104(5.6)(c)(i) where, throughout the relevant period in respect of the trust (as defined in paragraph 104(5.7)(a)), the total amount of property previously transferred or loaned by the individual to the trust was greater than the total amount so transferred or loaned by each other individual related to a trust beneficiary who was born before the individual and was greater than or equal to the total amount so transferred or loaned by each other individual related to a trust beneficiary who was born after the individual.
Paragraph 104(5.7)(a) provides that the relevant period in respect of a trust, for the purposes of subsection 104(5.6), is the period commencing one year after the day that the trust was created and ending on the day that, but for the trust's election, would be its deemed realization day under paragraph 104(4)(a) or (a.1). In addition, under paragraph 104(5.7)(b), two individuals are considered to be related to each other, for the purposes of

subsection 104(5.6), if one of them is the aunt or uncle of the other.

Where no individual qualifies under subparagraph 104(5.6)(c)(i), an individual who transferred or loaned money to the trust may nevertheless be designated under subparagraph 104(5.6)(c)(ii) if he or she was born before all other individuals who are related to the beneficiaries of the trust and who transferred or loaned property to the trust.

An individual also generally qualifies as a designated contributor under subparagraph 104(5.6)(c)(iii) where, throughout the relevant period in respect of the trust, the property of the trust consisted primarily of

(a) shares of the capital stock of a corporation controlled, at the time the trust was created or at the beginning of the relevant period in respect of the trust, by such individual or, where no single individual controlled such corporation, by such individual and one or more other individuals born after, and related to, such individual;

(b) shares of the capital stock of a corporation all or substantially all of the value of which derived, throughout the relevant period, from property transferred to the corporation by such individual or by such individual and one or more other individuals born after, and related to, such individual and property substituted therefor;

(c) shares in a holding corporation all or substantially all of the value of which derived, throughout such part of that period during which the holding corporation shares were held by the trust, from the shares described in paragraph (a) or (b) above, distributions in respect thereof, property substituted for such distributions, or any combination thereof;

(d) property substituted for the shares described above;

(e) property attributable to profits or gains with respect to the properties described above; or

(f) any combination of the properties described above.

New paragraph 104(5.7)(c) provides that an individual shall not be considered to be a designated contributor with respect to a trust where it is reasonable to consider that one of the main purposes of a series of transactions or events that includes a borrowing or an acquisition of any property by an individual was to defer the application of the 21-year deemed realization rule under paragraph 104(4)(b). This anti-avoidance rule also applies where an individual is made trustee of a trust to allow the individual to be a designated contributor under subparagraph 104(5.6)(c)(iii).

The application of the new election in subsection 104(5.3) is illustrated below.

Example 1

Trust A is a testamentary trust created on the death of Mrs. A prior to 1972. The beneficiaries of the trust are Mrs. A's children, nieces and grandchildren all of whom are alive on January 1, 1993.

Result:

1. The trust may elect under subsection 104(5.3) in its 1993 income tax return to defer the application of the 21-year rule deemed disposition rule.

2. Mrs. A is the "designated contributor" (paragraph 104(5.6)(b)) in respect of the trust. The children and nieces of Mrs. A are "exempt beneficiaries" under paragraph 104(5.4)(b).

3. The election will result in the deemed realization of the trust property being delayed until the first day of the first taxation year of the trust commencing after the death of all of Mrs. A's children and nieces or the termination of their interests in the trust.

Example 2

Trust B is an inter vivos trust created before 1972 the beneficiaries of which are the children and grandchildren of Mr. B. Mr. B sold property with a fair market value of $1,000 to the trust 6 months after it was created. Mr. B's two children each subsequently loaned (i) $600, or (ii) $1,200 to the trust in 1974 which has been

repaid. No other property was transferred or loaned to the trust in the relevant period.

Result:

1. The trust may designate Mr. B as the designated contributor under paragraph 104(5.6)(c). If $600 was subsequently loaned by the two children, Mr. B is the designated contributor under subparagraph 104(5.6)(c)(i) by reason of having transferred or loaned more than each of his sons throughout the relevant period. If $1,200 was subsequently loaned, then Mr. B is the designated contributor under subparagraph 104(5.6)(c)(ii) by reason of being the oldest individual who loaned or contributed property to the trust during the relevant period.

2. If the trust elects under subsection 104(5.3), it may elect Mr. B as the designated contributor in which case Mr. B's children will be exempt beneficiaries. The grandchildren will not be exempt beneficiaries.

3. The election will result in the deemed realization of trust property being delayed until the first day of the first taxation year of the trust commencing after the death of all of Mr. B's children or the termination of their interests in the trust.

Example 3

Opco Corporation is controlled by Mr. K. Opco undergoes a corporate freeze at the end of 1973. In March, 1974 Opco issues common shares to an inter vivos trust created on January 1, 1974. The trust beneficiaries are Mr. K's children. The common shares appreciate between 1974 and 1995. The trust's assets in that period consist primarily of those shares and public company shares acquired through dividends paid on Opco shares.

Result:

1. The trust may elect under subsection 104(5.3) in its 1995 income tax return to defer the application of the 21-year rule deemed disposition rule.

2. Mr. K is the "designated contributor" in respect of the trust under subparagraph 104(5.6)(c)(iii). Mr. K's children are "exempt beneficiaries".

3. The election will result in the deemed realization of the trust property being delayed until the first day of the first taxation year of the trust commencing after the death of all of Mr. K's children or the termination of their interests in the trust.

These amendments apply after February 11, 1991, except as noted above.

ITA
104(5.8)

New subsection 104(5.8) of the Act is a special rule designed to prevent the avoidance of the 21-year deemed realization rule through the use of trust transfers. It generally applies where a trust transfers property to which the 21-year deemed realization rule applies to another trust on a rollover basis and the first deemed realization date after the transfer in respect of the transferee trust would otherwise occur after such date determined in respect of the transferor trust.

In these circumstances, such date for the transferee trust is generally advanced to such date in respect of the transferor trust. However, the deemed realization date for the transferee trust is advanced to the day after the transfer in two cases. The first case is where the transferor trust is a pre-1972 spousal trust described in paragraph 108(1)(f.1) or a spousal trust described in paragraph (4)(a) in respect of which the beneficiary spouse is still alive at the time of the transfer from the transferor trust. The second case is where the deemed realization date of the transferee trust is determined (without reference to the transfer rule in subsection 104(5.8)) as of the time of the transfer under new subsection 104(5.3). In neither of these cases would it be possible to determine whether a deemed realization in respect of the transferee trust would occur, without reference to the transfer rule in subsection 104(5.8), before or after a deemed realization in respect of the transferor trust.

Paragraph 104(5.8)(b) applies where paragraph 104(5.8) would otherwise apply in the first case described above. In these circumstances, paragraph 104(5.8)(b) provides that paragraph 104(5.8)(a) does not apply where the transferee trust is also a spousal trust described in paragraph (4)(a) or (a.1) in respect of which the beneficiary spouse is still alive at the time of the transfer.

Paragraph 104(5.8)(c) provides that an advanced deemed realization date under subparagraph 104(5.8)(a)(i) is considered for the purposes of subsection 104(5.3) to be a day determined under paragraph 104(4)(a.1) or (b). The purpose of this rule is to allow a transferee trust to which subsection 104(5.8) applies the capacity to make a subsection 104(5.3) election. However, the election will not be available where the transferee trust has previously had a deemed realization under paragraph 104(4)(a.1) or (b) and thus previously had the opportunity to make such an election.

This amendment is applicable in respect of property transferred after February 11, 1991. However, the rules do not apply to transfers on or before Announcement Date where either the transferor trust or the transferee trust is a spousal trust in respect of which the beneficiary spouse is still alive.

Subclause 33(4)

ITA
104(6)(b)

Paragraph 104(6)(b) of the Act provides that a trust may deduct, in computing its income, amounts that become payable or are paid out of trust income to or for the benefit of beneficiaries. However, the deduction does not allow a post-1971 spousal trust described in paragraph 104(4)(a) to reduce its income below the amount included in its income by reason of the deemed disposition of properties under subsections 104(4), (5) and (5.2).

Paragraph 104(6)(b) is amended, applicable to the 1991 and subsequent taxation years, to provide that no deduction may be claimed by a trust in respect of trust income derived from a payment out a NISA Fund No. 2 (as defined in subsection 248(1)) unless the payment is made to a spousal trust described in

paragraph 70(6.1)(b) and during the lifetime of the beneficiary spouse.

Paragraph 104(6)(b) is also amended so that the restriction with respect to post-1971 spousal trusts applies only in respect of a deemed disposition that occurs on the day the beneficiary spouse dies. This amendment recognizes that there is no reason that income distributions to non-spouse beneficiaries should not be deducted under subsection 104(6) once gains accruing up to the death of the beneficiary spouse have been realized for tax purposes. It applies to the 1993 and subsequent taxation years.

Paragraph 104(6)(b) is also amended so that post-1971 spousal trusts are not allowed to deduct amounts payable in a taxation year ending after Announcement Date to anyone except the beneficiary spouse if the beneficiary spouse is still alive. The rule does not, however, apply to spousal trusts that have been varied on or before Announcement Date to allow for such distributions. This amendment is consistent with subsection 107(4) which provides for no rollover of trust property by a post-1971 spousal trust to a non-spouse beneficiary until after there has been a deemed disposition pursuant to paragraph 104(4)(a) at the time the spouse dies.

Subclause 33(5)

ITA
104(14.1)

New subsection 104(14.1) of the Act provides an election in respect of amounts paid out of a NISA Fund No. 2 to a spousal trust by reason of the application of new subsection 104(5.1) (discussed in the commentary on that subsection). In effect, on the death of the spouse the trust and the spouse's legal representative may elect in prescribed manner to treat the amount paid out of NISA Fund No. 2 as having been paid out of the spouse's NISA Fund No. 2.

Accordingly, it is the spouse, and not the trust, who includes the designated amount in income on the spouse's terminal return of income pursuant to new paragraph 12(10.2)(a). Further, while this amount is not included in new paragraph 12(10.2)(a) in respect of the trust, the trust may apply that amount in reduction of

subsequent payments made out of the NISA Fund No. 2 to the trust (see new paragraph 12(10.2)(b) which is discussed in commentary on that paragraph). The following example indicates the application of these rules.

Example: *Where subsection 104(5.1) applies to pay an amount out of a NISA Fund No. 2 on the death of the spouse and an election under subsection 104(14.1) is filed in respect of a portion of that amount.*

ASSUME:

At the end of 1995 the fair market value of spousal trust's NISA Fund No. 2 equals ***$100,000*** *and no previous payments were made out of the fund.*

In the year 1996:

- *the trust is paid* ***$10,000*** *from the fund.*

- *in the same year and after that time the spouse dies and subsection 104(5.1) applies.*

- *an election is filed in prescribed manner to include* ***$40,000*** *on the spouse's terminal return instead of in the income of the trust.*

- *there has been no growth in the fund prior to the spouse's death (i.e., on death the balance was $90,000). In effect,* ***$50,000*** *is considered to have been paid to the trust and* ***$40,000*** *to the spouse.*

- *at the end of 1996 and after the death of the spouse, the trust is paid* ***$40,000*** *out of the NISA Fund No. 2.*

In 1997 the trust is paid ***$55,000*** *out of the NISA Fund No. 2 (this payment includes $5,000 of interest credited to the fund from the date of the spouse's death).*

Application of subsection 12(10.2) - PER THE SPOUSE

Year

*1996: 12(10.2) = **$40,000**** = $40,000*

**(a) 40,000 (per subsection 104(14.1))*
less (b) N/A
40,000

Application of subsection 12(10.2) - PER THE TRUST

*1996: 12(10.2) = **$10,000*** + **$50,000** ** + **NIL***** = $60,000*

(a) 10,000 **(a) 50,000 *(a) 40,000*
*less (b) N/A (b) N/A (b) 90,000*****
10,000 ***50,000*** ***Nil***

***** (b)(i) 90,000 (50,000 + 40,000)*
less (ii) -
90,000

*1997: 12(10.2) = **5,000**** = $5,000*

**(a) 55,000*
*less (b) 50,000*****
5,000 *less* *****(b)(i) 90,000*
(ii) 40,000
50,000

This amendment is applicable to the 1991 and subsequent taxation years.

Subclause 33(6)

ITA
104(15)(a)

Subsections 104(12) and (14) of the Act provide that a trust and a preferred beneficiary under the trust may elect that an amount not exceeding the preferred beneficiary's "share" in "accumulating

income" of the trust be deducted in computing the trust's income and be included in computing the beneficiary's income. Subsection 108(1) defines the expressions "preferred beneficiary" and "accumulating income". A preferred beneficiary's "share" in the accumulating income of a trust is determined under subsection 104(15). Paragraph 104(15)(a) provides that, in the case of a post-1971 spousal trust referred to in paragraph 104(4)(a) in which the beneficiary spouse is alive at the end of the year, only the spouse is a beneficiary to whom the trust's accumulating income for the year may be allocated.

Paragraph 104(15)(a) is amended so that a preferred beneficiary's share of accumulating income for a year under a trust that is, at the end of the year, a pre-1972 spousal trust is determined on the same basis. The expression "pre-1972 spousal trust" is defined in new paragraph 108(1)(f.1).

This amendment is applicable to taxation years of trusts ending after Announcement Date.

Subclause 33(7)

ITA
104(29)(b)

Subsection 104(29) of the Act allows a trust to flow through to a beneficiary a reasonable share of "phantom income" realized at the trust level through an inclusion of provincial Crown royalties in the trust's income. The "phantom income" is calculated net of the trust's resource allowance deduction claimed under paragraph 20(1)(v.1).

Subsection 104(29) is amended so that "phantom income" of a trust will not be reduced by the trust's resource allowance deduction claimed under paragraph 20(1)(v.1) that arises by reason of the trust's membership in a partnership. This amendment is strictly consequential to the changes to subsection 96(1) under which the resource allowance may no longer be claimed at the partnership level.

This amendment is applicable to taxation years ending after Announcement Date.

Clause 34

Capital Interest in Trusts

ITA
107

Section 107 of the Act provides certain rules relating to acquisitions and dispositions of interests in, and the property of, trusts.

Subclauses 34(1) and (2)

ITA
107(2)(e) and (f)

Subsection 107(2) of the Act provides a tax-deferred transfer or rollover on the distribution of property from a personal or prescribed trust to a beneficiary in satisfaction of all or part of the beneficiary's capital interest in the trust. Paragraph 107(2)(e) permits eligible capital property of such a trust to be transferred from the trust to a beneficiary for proceeds of disposition equal to 4/3 of its cost amount. The repeal of paragraph 107(2)(e), and its replacement by new paragraph 107(2)(f), is intended to take into account, where the transfer occurs after 1987, the change in inclusion rates for eligible capital property from one half to three quarters in respect of fiscal periods commencing after that time. The repeal of paragraph 107(2)(e), which is applicable to distributions of eligible capital property occurring after July 13, 1990, is also consequential on the amendment to the definition "cost amount" in respect of eligible capital property in subsection 248(1).

New paragraph 107(2)(f), which is applicable to distributions of eligible capital property occurring after 1987, is also intended to prevent an overstatement of the deemed taxable capital gain under subparagraph 14(1)(a)(v), or of the amount to be included in computing income under paragraph 14(1)(b), on the subsequent disposition of eligible capital property by the beneficiary. Such an overstatement would occur because the calculation of the beneficiary's deemed taxable capital gain under

subparagraph 14(1)(a)(v), or the amount to be included in income under paragraph 14(1)(b), would not include any amount relating to cumulative eligible capital amounts dedicated by the trust under paragraph 20(1)(b) before the taxpayer's adjustment time (as defined in paragraph 14(5)(c)).

Subclause 34(3)

ITA
107(2.01)

As set out in Bill C-18 (1991), subsection 107(2.01) of the Act would allow a spousal trust to elect to be treated as if it had disposed of, and reacquired, a principal residence at its fair market value immediately before distributing that property to one of its beneficiaries under subsection 107(2). This would effectively allow a spousal trust to take advantage of the principal residence exemption.

Strictly as a consequence of the new rules in paragraph 54(g) that would allow a wider range of personal trusts to take advantage of the principal residence exemption, subsection 107(2.01) is amended with respect to distributions after 1990 to allow trustees of all personal trusts to take advantage of the election under that subsection.

Subclause 34(4)

ITA
107(4)

Subsection 107(4) of the Act applies where a post-1971 spousal trust distributes capital property, resource properties or land inventory during the beneficiary spouse's lifetime to a beneficiary other than the spouse. It provides for a realization of such property by the trust at fair market value or, in the case of depreciable property, at the mid-point between undepreciated capital cost and fair market value.

Subsection 107(4) is amended to ensure that the rules therein apply where property is transferred to a non-spouse beneficiary before the

end of the day on which the beneficiary spouse dies. This amendment is applicable with respect to distributions occurring after Announcement Date.

Subsection 107(4) is also amended to eliminate the "mid-point" rule described above with respect to distributions occurring after 1992, so that depreciable property is treated like other capital property. This is consistent with similar amendments to subsections 70(5) and 104(5).

Subclause 34(5)

ITA
107(5)

Subsection 107(5) of the Act provides that where trust property is distributed by a personal trust or a prescribed trust to a non-resident beneficiary in satisfaction of the beneficiary's interest in the trust, the rollover provisions of subsection 107(2) are not applicable unless the property is taxable Canadian property (as defined in subsection 115(1)) or Canadian resource property.

Subsection 107(5) is amended to extend this rollover treatment to shares in the capital stock of a non-resident-owned investment corporation that is not taxable Canadian property. This amendment, which applies to distributions made after 1991, puts the non-resident beneficiary in the same position as if the share were held directly by the non-resident beneficiary rather than through a trust.

Clause 35

Trusts: Definitions

ITA
108

Section 108 of the Act sets out certain definitions and rules that apply for the purposes of subdivision k of Division B of Part I of the Act which deals with the computation of income of trusts and their beneficiaries.

Subclause 35(1)

ITA
108(1)(a)

Paragraph 108(1)(a) of the Act defines the expression "accumulating income" for the purposes of the rules in subsections 104(12), (14) and (15) relating to the preferred beneficiary election. The preferred beneficiary election allows a trust and a specified beneficiary under the trust to jointly make an election which results in an amount of the trust's accumulating income being taxed in the beneficiary's hands and not at the trust level. Amounts subsequently paid out of such income are not taxable in the recipient's hands.

Paragraph 108(1)(a) is amended so that pre-1972 spousal trusts at the end of a taxation year are treated in the same way as post-1971 spousal trusts for the purposes of the preferred beneficiary election for the year. Thus, accrued gains with respect to trust property may not be "sprinkled" to trust beneficiaries under a pre-1972 spousal trust to the extent such gains are realized under subsections 104(4), (5) or (5.2). The expression "pre-1972 spousal trust" is defined in new paragraph 108(1)(f.1).

Paragraph 108(1)(a) is also amended so that a trust making an election to defer its deemed realization day under subsection 104(5.3) must also disregard any income arising under subsections 104(4), (5) and (5.2) in determining its accumulating income for the purpose of the preferred beneficiary election. This amendment also prevents the "sprinkling" of gains arising under subsections 104(4), (5) or (5.2) to trust beneficiaries.

Paragraph 108(1)(a) is further amended to exclude from "accumulating income" amounts that are paid to a trust from a net income stabilization account (as defined in subsection 248(1) of the Act) unless paid to a spouse trust described in paragraph 70(6.1)(b) and before the death of the beneficiary spouse.

These amendments are applicable to the 1991 and subsequent taxation years.

Subclause 35(2)

ITA
108(1)(d.1)

New paragraph 108(1)(d.1) of the Act defines the expression "excluded property" for the purposes of subsections 104(4) and (5.8) and 107(4). "Excluded property" at any time is a share in the capital stock of a non-resident-owned investment corporation (as defined in section 133) if, on the first day of the first taxation year ending at or after that time, the corporation did not own any property referred to in clauses 115(1)(b)(v)(A) to (D). The effect of this definition is that a share of a non-resident-owned investment corporation will be excluded property, unless it is taxable Canadian property described in paragraph 115(1)(b) of the Act.

This amendment is effective as of February 12, 1991.

Subclause 35(3)

ITA
108(1)(f.1)

Paragraph 108(1)(f.1) of the Act is introduced, effective as of February 12, 1991, to define a "pre-1972 spousal trust". This expression is relevant for the purposes of the amendments relating to the 21-year deemed realization rules in section 104. Pre-1972 spousal trusts fall into one of two categories: trusts created by the will of a taxpayer who died before 1972 and *inter vivos* trusts created before June 18, 1971. In either case, throughout the period commencing when it was created and ending at the earliest of January 1, 1993, the day of the beneficiary spouse's death and the time at which the definition is applied, the beneficiary spouse is required to be entitled to receive all the income of the trust that arose before the beneficiary spouse's death. In addition, a trust is no longer a pre-1972 spousal trust where a person other than the spouse received or otherwise obtained the benefit of the trust income or capital before the end of that period.

It should be noted that a trust may qualify as a pre-1972 spousal trust even where there is a condition such that beneficiaries other

than the spouse may have access to the income or capital of the trust -- for example, in the event that a beneficiary spouse re-marries. In such a case, the trust would cease to be a pre-1972 spousal trust only in the event that the beneficiary spouse actually did re-marry.

Subclauses 35(4) to (6)

ITA
108(1)(j)

Paragraph 108(1)(j) of the Act defines "trust" for the purposes of a number of the special provisions for trusts. The definition excludes unit trusts for the purposes of applying the 21-year deemed realization rules and the preferred beneficiary rules. It also excludes employee benefit trusts and certain other trusts from the same rules and the rules in subsections 104(13.1) and (13.2) and sections 105 to 107.

This definition is amended for the 1988 and subsequent taxation years so that the exclusion with respect to employee benefit trusts also applies with respect to a trust that is an "amateur athlete trust", as that expression is defined by new subsection 143.1(1).

The definition is amended for the 1993 and subsequent taxation years so that the exclusion with respect to unit trusts also applies to trusts under which all interests in which have vested indefeasibly and in which no interest may become effective in the future. Thus, for example, the 21-year deemed realization rule will not apply to a pre-1972 trust if such conditions are satisfied on January 1, 1993. However, the amendment does not apply in respect of post-1971 spousal trusts or trusts which have made an election under new subsection 104(5.3). In addition, the amendment does not apply in respect of trusts which so elect in their tax return for their first taxation year ending after 1992. This amendment is relevant primarily for those commercial trusts which do not qualify as unit trusts.

Paragraph 108(1)(j) is also amended for the 1993 and subsequent taxation years so that a trust under which all direct beneficiaries are trusts described in subparagraph 108(1)(j)(ii) (employee benefit and

amateur athlete trusts), (iii) (related segregated fund trust) or (v)(RCA trusts) will likewise not be subject to the 21-year rule.

Subclause 35(7)

ITA
108(3)

Subsection 108(3) of the Act defines the "income" of a trust for the purposes of subparagraphs 70(6)(b)(i), 73(1)(c)(i) and 104(4)(a)(iii), each of which require a beneficiary spouse to receive all "income" of a trust arising before death in order for it to qualify as a spousal trust. For these purposes, "income" is considered to be trust accounting income minus specified dividends.

Subsection 108(3) is amended so that the same definition applies for the purposes of subparagraphs 70(6)(b)(ii), 73(1)(c)(ii) and 104(4)(a)(iv), each of which require that no beneficiary of a trust (other than the beneficiary spouse) is to receive any of the "income" of the trust before the beneficiary spouse's death if the trust is to qualify as a spousal trust.

Subsection 108(3) is also amended so that "income" is defined in the same manner for the purposes of the new definition of "pre-1972 spousal trust" in paragraph 108(1)(f.1) and for the purposes of new paragraph 70(6.1)(b). The latter paragraph describes a spousal trust to which a net income stabilization account has been transferred.

These amendments are applicable to the 1991 and subsequent taxation years.

Subclause 35(8)

ITA
108(4)

Subsection 108(4) of the Act provides that a trust is not disqualified as a spousal trust under paragraph 70(6)(b), 73(1)(c) or 104(4)(a) merely because of the payment of estate, income or similar taxes. Subsection 108(4) is amended to provide that it also

applies to pre-1972 spousal trusts (as defined in new paragraph 108(1)(f.1)) and spousal trusts to which a net income stabilization account has been transferred.

This amendment is applicable to the 1991 and subsequent taxation years.

Subclause 35(9)

ITA
108(6)

New subsection 108(6) of the Act provides that, for the purposes of the 21-year deemed realization rule, a trust is not treated as a separate trust by reason of a variation of its terms. As a consequence, the amendment ensures that a trust is not considered to have been newly created for the purposes of the 21-year deemed realization rule by virtue of the variation. However, where a pre-1972 spousal trust (as defined in paragraph 108(1)(f.1)) is varied before 1993 so that the spouse beneficiary is no longer entitled to receive all the income of the trust, the first 21-year deemed realization for the trust will occur on January 1, 1993 under paragraph 104(4)(b) (rather than on the later of that date and the day on which the spouse beneficiary dies).

This amendment is applicable with respect to variations after February 11, 1991.

Clause 36

Taxable Income Deductions

ITA
110(1)(f)(iii)

Paragraph 110(1)(f) of the Act allows certain items of income to be deducted in computing a taxpayer's taxable income. New subparagraph 110(1)(f)(iii) extends this taxable income deduction to income from employment with a prescribed international organization. It is intended that the United Nations and its agencies will be prescribed for the purposes of this provision. This

deduction, which applies to the 1991 and subsequent taxation years, replaces the tax credit that was previously available under subsection 126(3) with respect to such income.

Clause 37

Gifts of Capital Property to Charity

ITA
110.1(3)

Subsection 110.1(3) of the Act provides that where a corporation donates capital property to a charity, it may elect a value between the adjusted cost base and the fair market value of the donated property to be both its proceeds of disposition (for purposes of calculating any capital gain on the disposition), and the amount of the gift (for purposes of calculating the deduction in respect of charitable donations available under subsection 110.1(1) of the Act). This amendment is consequential on changes to subsection 110.1(1) of the Act contained in Bill C-18. It applies to gifts made after December 11, 1988 to ensure that the elected value under subsection 110.1(3) will be the amount on which the charitable donation deduction is based.

Clause 38

Capital Gains Exemption

ITA
110.6

Section 110.6 of the Act contains the basic rules for calculating an individual's capital gains exemption in respect of capital gains arising from dispositions of property after 1984.

Subclause 38(1)

ITA 110.6(1)
"annual gains limit"

The "annual gains limit" of an individual for a taxation year represents the amount of the individual's taxable capital gains for the year in respect of which the individual may claim the capital gains exemption. The annual gains limit for a taxation year is calculated as the amount by which the individual's net taxable capital gains for the year from dispositions of properties after 1984 exceed the total of the individual's net capital losses from other years deducted in the year and the total amount of the individual's allowable business investment losses realized in the year.

Capital gains reserves arising from dispositions of property prior to 1985 that are included in the computation of an individual's income for a year subsequent to 1984 are not included in the calculation of the individual's annual gains limit. However, net capital losses for other taxation years deducted in computing the individual's taxable income for the year under paragraph 111(1)(b) reduce the individual's annual gains limit. This should be the case only when the net capital losses deducted exceed pre-1985 capital gains reserves included in income in that year.

Therefore paragraph (b) of the definition of "annual gains limit" is amended, applicable to the 1988 and subsequent taxation years, to ensure that net capital losses for other years deducted in computing the individual's taxable income for the year under paragraph 111(1)(b) reduce an individual's annual gains limit only where the amount of such net capital loss carryovers exceed pre-1985 capital gains reserves included in income for that year.

Subclause 38(2)

ITA 110.6(1)
"interest in a family farm partnership"

An individual's interest in a family farm partnership constitutes qualified farm property of that individual and, as such, capital gains realized on the disposition of that interest will be eligible for the

$500,000 capital gains deduction provided under subsection 110.6(2) of the Act.

A number of changes, applicable to the 1992 and subsequent taxation years, are being made to the definition "interest in a family farm partnership" in subsection 110.6(1).

The definition has been modified to clarify that the property held by the partnership is not required to be used in the course of carrying on the business of farming at the time of the disposition of the partnership interest. Provided that the other conditions of the definition have been satisfied, prior use of the property throughout any 24-month period before the time of disposition will suffice.

The types of qualifying property are extended to include property that is shares or any indebtedness of farm corporations all or substantially all of the fair market value of the property of which is attributable to property that has been used in a farming business in which the individual or his family members were engaged on a regular and continuous basis. This change is consistent with recent amendments to the definition "share of the capital stock of a family farm corporation".

In order to ensure that an interest in a family farm partnership does not qualify as such after the partnership's farming assets may have been disposed of in favour of non-farming assets, paragraph (b) of the definition imposes the requirement that, at the time of disposition of the partnership interest, all or substantially all of the fair market value of the partnership property must be attributable to property that has been used principally in the course of carrying on a farming business in Canada by the partnership, the individual or other persons referred to in paragraph (a). The scope of paragraph (b) has been broadened to include shares or any indebtedness of corporations that satisfy those property criteria. This change is consistent with the amendment to paragraph (a) of the definition.

Subclause 38(3)

ITA 110.6(1)
"share of the capital stock of a family farm corporation"

This definition has been modified to clarify that the property of a family farm corporation is not required to be used in the course of carrying on the business of farming at the time of the disposition of the share. Provided that the other conditions of the definition have been satisfied, prior use of the property in the circumstances described in paragraph (a) of the definition will suffice. A corresponding amendment is being made to the definition of an "interest in a family farm partnership" in subsection 110.6(1). This amendment applies to the 1992 and subsequent taxation years.

Subclause 38(4)

ITA
110.6(1.1)

New subsection 110.6(1.1) of the Act, which is applicable to the 1991 and subsequent taxation years, ensures that the fair market value of a net income stabilization account (NISA) is considered to be nil for the purposes of determining whether a share satisfies the definitions "qualified small business corporation share" or "share of the capital stock of a family farm corporation". In effect, the value of a NISA held by a corporation will not influence the determination of whether a particular share meets the criteria set out in those definitions.

Subclause 38(5)

ITA
110.6(2)(a)(iii)(A)

Subsection 110.6(2) of the Act provides for the deduction of the capital gains exemption of an individual (other than a trust) for a taxation year in respect of net taxable capital gains realized on a disposition of qualified farm property either in the year or in a preceding taxation year ending after 1984. The income inclusion

rate for capital gains increased from one-half to two-thirds in 1988 and to three-quarters in 1990.

Paragraph 110.6(2)(a) of the Act determines the unused portion of the individual's lifetime capital gain exemption limit in respect of capital gains realized on dispositions of qualified farm property. The unused portion is limited to $375,000 and is reduced by claims made in prior years under section 110.6. The $375,000 limit reflects $500,000 of capital gain multiplied by the three-quarters inclusion rate.

Subparagraphs 110.6(2)(a)(ii) and (iii) ensure that claims made prior to 1988 and 1990 are grossed up appropriately to reflect the increases in the inclusion rate in 1988 and 1990. After 1989, clause 110.6(2)(a)(iii)(A) provides for an increase of one-eighth of amounts deducted prior to 1990. Amounts deducted prior to 1988, grossed up to reflect a two-thirds inclusion rate for capital gains in 1988 and 1989 under subparagraph 110.6(2)(a)(ii), are further increased by a factor of one-eighth under clause 110.6(2)(iii)(B) to reflect the increases in the inclusion rate from one-half to two-thirds and subsequently to three-quarters. However, the increase provided by clause (a)(iii)(A) is inappropriate for amounts deducted in 1988 or 1989 with respect to taxable capital gains that are deemed by reason of subparagraph 14(1)(a)(v) to be taxable capital gains realized on the disposition of eligible capital property as such amounts were includable in the taxpayer's income at a rate of three-quarters for 1988 and 1989.

Clause 110.6(2)(a)(iii)(A) is amended, applicable to the 1990 and subsequent taxation years, to exclude from the one-eighth gross-up requirement any amount that has been included in the taxpayer's income for 1988 or 1989 by reason of subparagraph 14(1)(a)(v) of the Act.

This adjustment will, by an existing reference in subsection 110.6(2.1) to subparagraph 110.6(3)(a)(iii), also apply in calculating the unused portion of capital gains realized on dispositions of qualified small business corporation shares. A corresponding amendment is being made to clause 110.6(3)(a)(iii)(A) in respect of gains arising on the disposition of property other than qualified farm property or qualified small business corporation shares.

Subclause 38(6)

ITA
110.6(3)(a)

Subsection 110.6(3) of the Act provides for the capital gains exemption for individuals (other than trusts) in respect of net taxable capital gains realized in the year. The income inclusion rate for capital gains increased from one-half to two-thirds in 1988 and to three-quarters in 1990.

Paragraph 110.6(3)(a) of the Act determines a taxpayer's unused lifetime capital gains exemption limit. The unused portion of the lifetime exemption is limited to $75,000 and is reduced by claims made in prior years under subsection 110.6(3). The $75,000 limit reflects $100,000 of capital gains multiplied by the three-quarters inclusion rate. Claims in prior years, with inclusion rates of less than three-quarters, are grossed up for the purposes of calculating the taxpayer's remaining lifetime exemption limit. In this way, the exemption limit will always reflect the inclusion rate in effect for the particular year on $100,000 of capital gains.

In calculating the taxpayer's remaining lifetime exemption limit after 1989, any amount deducted prior to 1990 will be increased by one-eighth by virtue of clause 110.6(3)(a)(iii)(A). These amounts are increased by a factor of one-eighth to reflect the increase in the inclusion rate for capital gains from two-thirds to three-quarters in 1990. Where these amounts were deducted prior to 1988 they are first grossed up by one-third under subparagraph 110.6(3)(a)(ii) to reflect the increase in the inclusion rate for capital gains (for 1988 and 1989) from one-half to two-thirds. However the one-eighth increase under clause 110.6(3)(a)(iii)(A) is inappropriate for amounts deducted with respect to taxable capital gains that are deemed by reason of subparagraph 14(1)(a)(v) to be taxable capital gains realized on the disposition of eligible capital property as such amounts were includable in the taxpayer's income at a rate of three-quarters for 1988 and 1989.

Clause 110.6(3)(a)(iii)(A) is amended for the 1990 and subsequent taxation years to exclude any amount that has been included in the individual's income by reason of subparagraph 14(1)(a)(v) of the Act from the one-eighth increase.

A corresponding amendment is being made to subparagraph 110.6(2)(a)(iii) in respect of gains arising on the disposition of qualified farm property and qualified small business corporation shares.

Subclause 38(7)

ITA
110.6(12)

Subsection 110.6(12) of the Act allows those post-1971 spousal trusts described in paragraph 104(4)(a) to take advantage of any unused capital gains exemption of the beneficiary spouse after that spouse dies. The amendment to that subsection accords the same treatment to pre-1972 spousal trusts described in paragraph 104(4)(a.1), where a deemed realization occurs pursuant to that paragraph on the later of January 1, 1993 and the death of the spouse. However, to avoid administrative complexity, similar treatment is not extended to pre-1972 spousal trusts described in paragraph 104(4)(a.1) which make an election under subsection 104(5.3).

This amendment is applicable to the 1993 and subsequent taxation years.

Subclause 38(8)

ITA
110.6(17)

For taxation years ending after 1989, clauses 110.6(2)(iii)(A) and (3)(a)(iii)(A) of the Act increase by one-eighth any amount deducted prior to 1990 under subsections 110.6(2) and (3). These amounts are increased by a factor of one-eighth to reflect the increase in the inclusion rate from two-thirds to three-quarters for taxation years ending after 1989. Those clauses are being amended to provide that any amount that has been included in the individual's income for the 1988 or 1989 taxation years under subparagraph 14(1)(a)(v) of the Act, and thus included at a rate of

three-quarters for those years, is not subject to the one-eighth increase.

New subsection 110.6(17) is intended to clarify that where an individual has claimed a deduction for capital gains under subsections 110.6(2) or (3) prior to 1990, it will be assumed that, to the extent such a deduction was available, the individual claimed a deduction for capital gains realized on the disposition of eligible capital property first prior to having claimed a deduction in respect of capital gains realized on the disposition of any other capital property. This provision is intended to ensure that individuals that have not claimed the maximum capital gains deduction in 1990 and subsequent taxation years do not have their capital gains exemptions inappropriately reduced.

Clause 39

Northern Tax Benefits

ITA
110.7(1)(a)

Section 110.7 of the Act provides, in computing an individual's taxable income for a taxation year, a special deduction in respect of certain travel benefits and living costs where the individual resides in an eligible area throughout a period of at least 6 consecutive months commencing or ending in the year. The deduction allowed under paragraph 110.7(1)(a) offsets the income inclusion in respect of benefits provided by an employer to an employee or to the employee's family with respect to trips made for the purpose of obtaining necessary medical services not available locally or with respect to travelling expenses in connection with not more than two trips. This amendment, which is applicable to the 1992 and subsequent taxation years, ensures that this deduction is available only to the extent that any reimbursement or any other form of assistance with respect to the travelling expenses is included in income.

Clause 40

Loss Carryovers

ITA
111

Section 111 of the Act establishes the extent to which a taxpayer is permitted to deduct amounts in computing taxable income for the year in respect of losses of other taxation years.

Subclause 40(1)

ITA
111(8)(b)(i)(A)

Paragraph 111(8)(b) of the Act defines the "non-capital loss" of a taxpayer for a taxation year. Clause 111(8)(b)(i)(A) lists certain amounts to be included in calculating a taxpayer's non-capital loss. Effective for the 1991 and subsequent taxation years, clause 111(8)(b)(i)(A) is amended by adding a reference to net capital loss carryover deductions made by a taxpayer for the taxation year under paragraph 111(1)(b) in computing his taxable income for that year. As a result of this amendment, business losses of a taxation year that have been used to reduce the amount of a taxable capital gain for that year may be reinstated where net capital losses of other taxation years are carried over to that year.

Subclause 40(2)

ITA
111(8)(c)

In the case of non-residents, paragraph 111(8)(c) provides that only certain losses from Canadian sources will be included in determining the non-resident's loss carryovers. Paragraph 111(8)(c) is amended, applicable to the 1991 and subsequent taxation years, to include allowable business investment losses, as well as losses from duties of an office or employment performed by the non-resident in Canada, as a loss eligible for carryover.

Clause 41

Taxable Income Earned in Canada

ITA
115(1)

Section 115 of the Act provides rules for the calculation of the "taxable income earned in Canada" by a non-resident, which is subject to tax under Part I of the Act. Paragraphs 115(1)(a) to (c) provide the sources of income and losses to be included, while paragraphs 115(1)(d) to (f) provide the allowable deductions that may be taken, in computing a non-resident's taxable income earned in Canada. Paragraph (c) is amended, applicable to the 1991 and subsequent taxation years, to provide for the inclusion of both losses from the duties of an office or employment performed by the non-resident in Canada and from allowable business losses in respect of property any gain from the disposition of which would have been included in determining the non-resident's income.

Clause 42

Competent Authority Agreements

ITA
115.1

Section 115.1 of the Act permits the Minister of National Revenue to enter into an agreement to defer Canadian tax, pursuant to a prescribed tax treaty provision, that would otherwise be payable in respect of the disposition of property by a non-resident, while at the same time protecting the Canadian tax base. Section 115.1, which is designed to prevent double taxation, sets out rules applicable to both the vendor and the purchaser in such cases. To date, two tax treaty provisions have been prescribed for the purposes of section 115.1. They are paragraph 8 of Article XIII of the Canada-United States Tax Convention and paragraph 6 of Article 13 of the Canada-Netherlands Income Tax Convention. It is expected that similar provisions will be included in many of Canada's future tax treaties.

Section 115.1 is amended, applicable after 1984. New section 115.1 accommodates the situations to which the current version applies, and also extends to a broader range of transactions. New subsection 115.1(1) provides that where the Minister of National Revenue and the taxpayers enter into an agreement, pursuant to a provision in a tax convention or agreement with another country that has the force of law in Canada, to defer tax in Canada, the terms of such an agreement will govern the taxation of the persons involved.

New subsection 115.1(2) provides that where a taxpayer's rights and obligations have been assigned to another person with the concurrence of the Minister, such other person is to be bound by the terms of the original agreement. This provision will help to ensure that the tax deferral agreement will be binding on the taxpayers involved in subsequent taxation years.

Finally, new section 115.1 permits a taxpayer who may qualify for relief under this subsection to enter into a tax deferral agreement in advance of the transactions involved, thereby providing taxpayers with additional flexibility.

Clause 43

Pension Credit

ITA
118(3)

Paragraph 118(3)(b) of the Act provides a tax credit of up to $170 for qualifying individuals under age 65 years of age who are in receipt of specified pension income. Subparagraphs 118(3)(b)(ii) and (iii) provide that this credit may be claimed by an individual under 60 years of age only if the individual is in receipt of a CPP/QPP disability or survivor pension or the individual has not deducted an amount under paragraph 60(j) in computing income for the year.

Subsection 118(3) is amended so that all individuals under age 65 years of age who are in receipt of specified pension income are eligible for the pension tax credit. This is appropriate because

paragraph 60(j) may no longer be used to transfer periodic pension income to an RRSP or a registered pension plan.

This amendment is applicable to the 1992 and subsequent taxation years.

Clause 44

Gifts of Capital Property to Charity

ITA
118.1(6)

Subsection 118.1(6) of the Act provides that where an individual donates capital property to a charity, he or she may elect a value between the adjusted cost base and the fair market value of the donated property to be both proceeds of disposition (for purposes of calculating any capital gain on the disposition), and the amount of the gift (for purposes of calculating the tax credit in respect of charitable donations available under subsection 118.1(1) of the Act). The amendment is consequential on changes to subsection 118.1(1) of the Act contained in Bill C-18. It applies to gifts made after December 11, 1988 to ensure that the elected value under subsection 118.1(6) will be the amount on which the charitable donation tax credit is based.

Clause 45

Attendant Care Expenses

ITA
118.2(5)

Section 64 of the Act allows disabled individuals who are working to deduct attendant care expenses up to an annual maximum of $5,000. Furthermore, provided certain conditions are met, individuals are allowed to include, in computing their medical expense credit under section 118.2 for a taxation year, full-time or part-time attendant care expenses paid during a 12-month period ending in that year. This amendment, which is applicable to amounts paid after 1990, clarifies that no claim may be made under

section 64 or 118.2 in respect of attendant care expenses to the extent that the expenses give rise to a non-taxable reimbursement or other form of financial assistance.

Clause 46

Mental or Physical Impairment

ITA
118.3(2)(b)

Subsection 118.3(2) of the Act provides criteria for determining the entitlement of a supporting individual of a disabled person to claim the disabled person's unused disability tax credit.
Paragraph 118.3(2)(b) provides that the supporting individual's claim will be allowed only if a medical expense credit is not claimed for amounts paid to an attendant in respect of the disabled person. This amendment, which is applicable to the 1991 and subsequent taxation years, enables the supporting individual to claim the disabled person's unused disability tax credit where amounts have been paid to a part-time attendant of the disabled person and were included, by reason of paragraph 118.2(1)(b.1), in computing a medical expense tax credit.

Clause 47

Tuition Fees

ITA
118.5(1)(a)

Subsection 118.5(1) of the Act provides a tax credit in respect of tuition fees paid to certain educational institutions.
Paragraph 118.5(1)(a) is amended for the 1992 and subsequent taxation years to ensure that, except for fees paid to educational institutions certified by the Department of Employment and Immigration, only that portion of the tuition fees that relates to courses at the post-secondary school level will be eligible. Tuition fees paid to an educational institution certified by the Department of Employment and Immigration and that relate to a particular taxation year will not be eligible for the credit unless the student is

at least 16 years of age at the end of the year and the purpose of the course is to provide occupational skills.

Clause 48

Tuition Fees and
Education Credit Transfer

ITA
118.9(1)

Section 118.9 of the Act governs the transfer of the tuition fee and education credits of an individual to the individual's parent or grandparent. This amendment, which applies to the 1992 and subsequent taxation years, is consequential on the amendment to section 118.5 and ensures that, where an individual is entitled to a tuition fee credit in respect of fees paid for one or more courses, the transferability of the unused portion of the credit to the individual's spouse or parent will not depend on the nature or level of those courses.

Clause 49

Goods and Services
Tax Credit

ITA
122.5(5) and (6)

Section 122.5 of the Act provides the refundable goods and services tax credit.

Subparagraph 122.5(5)(b)(i) provides that the goods and services tax credit will not be paid for amounts less than $1. This subparagraph is repealed, effective on Royal Assent, since the provision for the non-payment of the credit in such circumstances is included in the broader administrative policy of Revenue Canada dealing with the levy and refund of small amounts.

Subparagraph 122.5(c)(ii) provides that no goods and services tax credit will be paid to an individual where the individual's return of

income for the relevant taxation year is not filed within 3 years from the end of that year. The repeal of this subparagraph is consequential on the repeal, as part of the "Fairness Package" legislation released in May 1991 by the Minister of National Revenue, of the provision requiring that, for tax refund purposes, the return of income be filed within 3 years. The repeal of this subparagraph is retroactive to 1989, which is the first taxation year for which the goods and services tax credit was provided.

The amendment to subsection 122.5(6) of the Act is strictly consequential on the amendment to subsection 122.5(5) and merely changes a reference to that provision.

Clause 50

Corporation Surtax

ITA
123.2(a)

Section 123.2 of the Act levies a 3% surtax on the federal tax payable under Part I of the Act by a corporation, other than a non-resident-owned investment corporation. The amendment to this section provides that the corporate surtax is to be based on the amount of federal income tax payable before taking into account any deduction under subsection 137(3), which provides a special tax credit to credit unions.

This amendment to section 123.2 applies to the 1992 and subsequent taxation years. However, a transitional provision allows a corporation to deduct, in computing the amount of federal tax on which its surtax will be based for a taxation year beginning before January 1, 1992, the portion of any deduction under subsection 137(3) that relates to the period in the year before that date.

Clause 51

Corporate Tax Abatement

ITA
124(3)

Section 124 of the Act provides for an abatement of federal income tax payable by corporations. It takes the form of a deduction from the tax otherwise payable by a corporation equal to 10 per cent of all of a corporation's taxable income earned in a taxation year in a province. Subsection 124(3) denies the deduction from tax payable where the corporation is a prescribed federal Crown corporation.

Various enactments of the Parliament of Canada, including section 149 of the Income Tax Act, exempt certain taxpayers from tax under Part I of the Act. Subsection 124(3) is amended, applicable for the 1992 and subsequent taxation years, to provide that for the purposes of determining the amount of federal abatement, any part of a corporation's taxable income that is exempt from tax under Part I by reason of an enactment of the Parliament of Canada is to be ignored. This limitation ensures that the abatement from federal tax otherwise payable by a corporation under Part I of the Act will not be available with respect to any part of a corporation's taxable income that is not subject to tax under Part I by reason of a statutory exemption.

Clause 52

Small Business Deduction

ITA
125

Section 125 of the Act provides for a corporate tax reduction (referred to as the "small business deduction") in respect of income of a Canadian-controlled private corporation from an active business carried on by it in Canada.

Subclause 52(1)

ITA
125(1)(b)

The small business deduction is calculated as 16% of the least of three amounts. The first is the net active business income of the corporation for the taxation year as determined under paragraph 125(1)(a) of the Act. The second amount, as determined under paragraph 125(1)(b), is the corporation's taxable income for the year reduced by amounts that represent income that may be considered to have borne foreign tax equivalent to Canadian federal tax and which, therefore, will not give rise to actual Canadian tax liability. The third amount is the corporation's business limit for the year.

Various enactments of the Parliament of Canada, including section 149 of the *Income Tax Act*, exempt certain taxpayers from tax under Part I of the Act. This amendment to paragraph 125(1)(b), which applies to the 1992 and subsequent taxation years, ensures that a corporation will not receive the small business deduction in respect of taxable income for the year that is exempt from tax under Part I by reason of a statutory exemption.

Subclause 52(2)

ITA
125(5)(a)

Paragraph 125(5)(a) of the Act provides for the calculation of a corporation's business limit where the corporation has two or more taxation years ending in a calendar year in which it is associated with another Canadian-controlled private corporation. This rule provides that, subject to the prorating rule for short taxation years in paragraph 125(5)(b), the business limit for each such taxation year of the corporation is the amount allocated to the corporation for its first such taxation year ending in the calendar year under subsection 125(3) or (4).

However, where a group of associated corporations has more than one taxation year ending in a calendar year, they may allocate $200,000 of business limit to a corporation that becomes a new

member of the group in any taxation year ending in the calendar year subsequent to the first such year while still permitting each of the old members a certain amount of business limit in such a taxation year. This arises because the allocation under subsection 125(3) in any taxation year ending in the calendar year subsequent to the first such year is overridden by paragraph 125(5)(a) which deems the business limit of each associated corporation for such a taxation year to be equal to the subsection 125(3) allocation amount for the first such taxation year.

Example:

Assume that A Co and B Co are associated corporations with taxation years that end on June 30, 1991 and A Co and B Co allocate to themselves $100,000 each of business limit for that taxation year under subsection 125(3) of the Act. Further assume that C Co, a corporation whose taxation year ends on December 31, 1991, becomes associated with A Co and B Co on November 1, 1991 and A Co and B Co both adopt December 31, 1991 year ends to coincide with C Co's year end.

For the taxation year ending December 31, 1991, the three corporations may allocate their combined $200,000 business limit entirely to C Co under subsection 125(3). Yet, notwithstanding this allocation, subsection 125(5) of the Act deems both A Co and B Co to have business limits of approximately $100,000 for that same taxation year prior to any proration required under paragraph 125(5)(b) for a short taxation year.

Paragraph 125(5)(a) is amended, for taxation years ending after Announcement Date, to provide that the business limit for each such corporation for a particular taxation year ending in the calendar year other than the first such year is, subject to the prorating rule in paragraph 125(5)(b), the lesser of the amount allocated to the corporation for its first such taxation year ending in the calendar year under subsection 125(3) or (4) and the amount allocated to the corporation for that particular taxation year under subsection (3) or (4). This amendment will ensure that the aggregate of the amounts determined as the business limit for the year for a group of Canadian-controlled private corporations that are associated with each other in any second or subsequent taxation years ending in a calendar year does not exceed $200,000 for such years.

Subclause 52(3)

ITA
125(7)(c)

Paragraph 125(7)(c) defines "income of the corporation from an active business" for the purposes of calculating a Canadian-controlled private corporation's small business deduction pursuant to subsection 125(1). Paragraph 125(7)(c) is amended for the 1991 and subsequent taxation years to include in this definition amounts received from a corporation's NISA Fund No. 2 (as defined under subsection 248(1) of the Act).

Clause 53

Foreign Tax Credit

ITA
126(3)

Subsection 126(3) of the Act provides a tax credit in respect of the tax payable on income from employment with an international organization. Paragraph 126(3)(a) is amended to eliminate this tax credit for those individuals that are employed by prescribed international organizations. This amendment is consequential on the introduction of new subparagraph 110(1)(f)(iii), which provides a taxable income deduction for an individual's employment income from such organizations.

Paragraph 126(3)(b) sets out the method by which an individual's income for the year is computed for the purposes of subsection 126(3). This paragraph is amended to reduce the amount of such income by any amounts deductible under paragraphs 110(1)(d.1), (d.2), (d.3) or (j), which provide deductions in respect of stock option benefits, prospector's or grubstaker's shares, deferred profit-sharing plans and home relocation loans. The effect of the amendment is to increase the amount of the tax credit provided under subsection 126(3) for individuals eligible for one or more of the deductions listed.

The amendments have effect with respect to the 1991 and subsequent taxation years.

Clause 54

Tax Credits

Section 127 of the Act permits a deduction from tax otherwise payable in respect of logging taxes, political contributions and investment tax credits.

ITA
127

Subclause 54(1)

ITA
127(1)

Subsection 127(1) of the Act permits a taxpayer to claim a logging tax credit equal to the lesser of 2/3 of any logging tax paid to a province and 6-2/3% of the taxpayer's income for the year from logging operations in that province. The total credit in respect of logging tax paid in all provinces may not exceed 6-2/3% of the taxpayer's taxable income for the year or taxable income earned in Canada for the year, as the case may be. Subsection 127(1) is amended to provide that, for the purposes of the overall restriction of the tax credit, taxable income or taxable income earned in Canada is to computed before the deductions under paragraphs 60(b), (c) and (c.1) (alimony and maintenance payments), 60(i) (registered retirement savings plan contributions), 60(v) (contributions to certain provincial pension plans), and sections 62 (moving expenses), 63 (child care expenses), and 64 (attendant care expenses). Thus, the amendment, which is applicable to the 1991 and subsequent taxation years, effectively increases the base for determining this credit.

Subclause 54(2)

ITA
127(9)

Subsection 127(9) of the Act provides the various definitions used in the provisions relating to investment tax credits. An investment tax credit is available for most current and capital expenditures made for research and development (R&D) carried on in Canada.

Where a Canadian taxpayer contracts to have R&D activities carried out on its behalf by another party, the amount paid under the contract is an R&D expenditure for income tax purposes. For the Canadian party performing the contract, the amount received under the contract reduces the amount of R&D expenditures eligible for the investment tax credit. In this way duplication of the investment tax credit is avoided. The definition "contract payment" in subsection 127(9) is modified, applicable to amounts that become payable after Announcement Date, to provide that an amount payable for R&D is deemed to be a contract payment to the extent that it can reasonably be considered to have been performed for, or on behalf of, a person entitled to a deduction in respect of such R&D.

Subclause 54(3)

ITA
127(10.8)

Subsection 127(11.1) of the Act requires that the base upon which an investment tax credit (ITC) is earned by a taxpayer be reduced by any assistance receivable in respect of the related expenditure. Where assistance is repaid, the ITC base is reinstated at the specified percentage in respect of the original expenditure (pursuant to paragraph (e.1) of the definition "investment tax credit" in subsection 127(9) of the Act).

Upon repayment of assistance, a taxpayer's ITC base may be eligible to be increased by two amounts. The first amount is the specified percentage of assistance which previously reduced the base. A similar adjustment is provided in paragraph 37(1)(c) for research and development (R&D) expenditures. Secondly, a

"top-up" amount is added back to the ITC base of an eligible small business corporation in respect of R&D expenditures in circumstances where the corporation would otherwise have been eligible to claim the top-up amount in respect of that expenditure, but for being eligible to receive assistance. Effectively, the ITC base of such taxpayers is increased by an amount that entitles the corporation to claim up to the 35% high rate R&D credit pursuant to subsections 127(10.7) and (10.1) and paragraph (e) of the definition "investment tax credit" in subsection 127(9).

There is, however, no existing provision to allow a taxpayer to regenerate entitlement to an ITC where entitlement to assistance expires before being claimed by the taxpayer. New subsection 127(10.8) treats expired assistance of a taxpayer as repaid assistance. As such, a taxpayer's ITC base and R&D expenditures will be increased to regenerate such entitlements in circumstances where a taxpayer may no longer be reasonably expected to receive the assistance.

This amendment is applicable to the 1991 and subsequent taxation years.

Clause 55

Minimum Tax

ITA
127.52(1)(d)

Paragraph 127.52(1)(d) of the Act provides that, in computing an individual's adjusted taxable income for minimum tax purposes, the total amount of capital gains is to be taken into account. This is achieved through an appropriate reference to sections 38 and 41. However, where a trust designates pursuant to section 104 a taxable capital gain to be a taxable capital gain of a beneficiary under the trust, sections 38 and 41 have no application. Thus, the beneficiary of the trust avoids the payment of any minimum tax on the exempt portion of the capital gain. This amendment, which is applicable to the 1991 and subsequent taxation years, corrects this anomaly.

114

Clause 56

Application of Minimum Tax Provisions

ITA
127.55(e)

Paragraph 127.55(e), as set out in Bill C-18, (1991), exempts a post-1971 spousal trust from the payment of minimum tax for the taxation year that includes the time of death of the beneficiary spouse. The amendment to that paragraph would extend this exemption to pre-1972 spousal trusts described in new paragraph 104(4)(a.1) for the 1993 taxation year or a later year in which the beneficiary spouse dies.

The amendment is applicable to the 1993 and subsequent taxation years.

Clause 57

Refundable Dividend Tax on Hand

ITA
129

Section 129 of the Act provides a mechanism under which a portion of the tax paid by a private corporation on its investment income (the portion referred to as "refundable dividend tax on hand" or "RDTOH") is refundable to the corporation when dividends are paid to its shareholders. This refundable tax mechanism provides integration of the taxation of investment income by ensuring that the total tax paid on investment income and capital gains earned through a Canadian-controlled private corporation and distributed to an individual shareholder approximates the tax that would, but for the capital gains exemption, have been payable if that income were earned directly by the individual.

Subclauses 57(1) and (3)

ITA
129(1) and (3)

Subsection 129(1) of the Act currently enables corporations to claim a dividend refund for a taxation year of $1 for each $4 of taxable dividends paid in the year. The dividend refund may not exceed a corporation's RDTOH and is available only to corporations that are private at the end of the taxation year. Under the amendments to these provisions, a corporation will be entitled to a dividend refund in respect of taxable dividends paid by it while it is private, whether or not it is private at the end of the year for which the dividend refund is claimed. Thus, for example, if a private corporation becomes a public corporation during a taxation year it will be eligible for a dividend refund for the year on taxable dividends paid by it before it became public. These amendments apply to taxable dividends paid after 1992.

Subclause 57(2)

ITA
129 (2.1) and (2.2)

The Act does not currently provide for the payment of interest on a claim made for a dividend refund under section 129. New subsection 129(2.1) provides that the Minister of National Revenue is to pay interest on dividend refunds at the prescribed rate. The period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the taxation year to which the dividend refund relates, and the day on which the corporation's income tax return for that year is filed. The period ends on the day on which the dividend refund is paid to the corporation or applied to another liability of the corporation.

Where interest has been paid to a corporation under new subsection 129(2.1) of the Act, or applied under that subsection to another liability of the corporation, and it is subsequently determined that the interest paid or applied was excessive because the dividend refund was less than the dividend refund in respect of which the interest was paid or applied, new subsection 129(2.2) of the Act allows the Minister of National Revenue to recover the

excess interest that was paid or applied, together with interest on that amount at the prescribed rate.

The prescribed rate of interest applicable under new subsections 129(2.1) and (2.2) is determined under section 4301 of the *Income Tax Regulations*. That section provides that the prescribed rate during a quarter of a calendar year is the average rate on 90-day Treasury bills sold during the first month of the preceding quarter, rounded up to the nearest percentage point, plus 2 percentage points.

A consequential amendment adds references to new subsections 129(2.1) and (2.2) in subsection 248(11) of the Act to require the interest computed under subsections 129(2.1) and (2.2) to be compounded daily.

New subsections 129(2.1) and (2.2) are applicable with respect to dividend refunds paid or applied with respect to taxation years commencing after 1991.

Subclause 57(4)

ITA
129(4)(a)(ii)

Paragraph 129(4)(a) of the Act defines a corporation's "Canadian investment income" for the purposes of calculating its refundable dividend tax on hand.

Subparagraph 129(4)(a)(ii) is amended, applicable to the 1991 and subsequent taxation years, to exclude payments under a net income stabilization account from "Canadian investment income". Rather, as discussed in the commentary to amended paragraph 125(7)(c), such payments are treated as active business income.

Clause 58

Investment Corporations

ITA
130(2)

Section 130 of the Act sets out special rules relating to the taxation of investment corporations. Subsection 130(2) allows an investment corporation that is not a mutual fund corporation to qualify for a "capital gains refund" on the payment by the investment corporation of a capital gains dividend, in the same way that it would so qualify if the corporation were a mutual fund corporation. The provisions relating to capital gains refunds to mutual fund corporations are modified by the addition of new subsections 131(3.1) and (3.2) of the Act, which provide for the payment of interest on capital gains refunds and the recovery of excessive payments of interest on capital gains refunds, as explained in the commentary on those new subsections. The amendment to subsection 130(2) of the Act, which applies to capital gains refunds paid or applied with respect to taxation years commencing after 1991, adds references to new subsections 131(3.1) and (3.2) to make those interest provisions applicable with respect to capital gains refunds to investment corporations that are not mutual fund corporations.

Clauses 59 and 60

Mutual Fund Corporations and Trusts

ITA
131 and 132

Sections 131 and 132 of the Act sets out special rules relating to the taxation of mutual fund corporations and mutual fund trusts, respectively. Although the taxable capital gains of a mutual fund are subject to the full corporate tax rate, this tax (referred to as the "refundable capital gains tax on hand") is refundable to the mutual fund when the taxable capital gains are distributed to its shareholders or unit holders in the form of "capital gains dividends". The tax that is so refunded, or that is applied to another liability of the mutual fund, is referred to as its "capital

gains refund" for the year to which the capital gains dividends relate.

The Act does not provide for the payment of interest on a capital gains refund. New subsections 131(3.1) (for mutual fund corporations) and 132(2.1) (for mutual fund trusts) provide that the Minister of National Revenue is to pay interest on capital gains refunds at the prescribed rate. The period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the year to which the capital gains refund relates and the day on which the corporation's income tax return for that year is filed. The period ends on the day on which the capital gains refund is paid to the mutual fund or applied to another of its liabilities.

Where interest has been paid to a mutual fund under new subsection 131(3.1) or 132(2.1) of the Act, or applied to another liability, and it is subsequently determined that the interest paid or applied was excessive because the capital gains refund was less than the capital gains refund in respect of which the interest was paid or applied, the Minister of National Revenue is permitted to recover the excess interest that was paid or applied, together with interest on that amount at the prescribed rate.

The prescribed rate of interest applicable under new subsections 131(3.1) and (3.2) and 132(2.1) and (2.2) is determined under section 4301 of the *Income Tax Regulations*. That section provides that the prescribed rate during a quarter of a calendar year is the average rate on 90-day Treasury bills sold during the first month of the preceding quarter, rounded up to the nearest percentage point, plus 2 percentage points.

A consequential amendment adds references to new subsections 131(3.1) and (3.2) and 132(2.1) and (2.2) in subsection 248(11) of the Act to require the interest computed under those subsections to be compounded daily.

These amendments are applicable with respect to capital gains refunds paid or applied with respect to taxation years commencing after 1991.

Clause 61

Non-Resident-Owned Investment Corporations

ITA
133(7.01) and (7.02)

Section 133 of the Act sets out special rules relating to the taxation of a non-resident-owned investment corporation (or "NRO"). An NRO is subject to a 25 per cent rate of tax which approximates that which would have been payable if its non-resident shareholders had invested in Canada directly rather than through the corporation. The portion of this tax paid on its taxable income other than capital gains (its "allowable refundable tax on hand") is, however, refundable to the corporation upon payment of taxable dividends to its shareholders. The tax that is so refunded, or that is applied to another liability of the corporation, is called the corporation's "allowable refund" for the year in which the taxable dividends were paid.

The Act does not provide for the payment of interest on an allowable refund. New subsection 133(7.01) provides that the Minister of National Revenue is to pay interest on allowable refunds at the prescribed rate. The period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the year to which the allowable refund relates and the day on which the corporation's income tax return for that year is filed. The period ends on the day on which the allowable refund is paid to the corporation or applied to another liability of the corporation.

Where interest has been paid to a corporation under new subsection 133(7.01) of the Act, or applied under that subsection to another liability of the corporation, and it is subsequently determined that the interest paid or applied was excessive because the allowable refund was less than the allowable refund in respect of which the interest was paid or applied, new subsection 133(7.02) of the Act allows the Minister of National Revenue to recover the excess interest that was paid or applied, together with interest on that amount at the prescribed rate.

The prescribed rate of interest applicable under new subsections 133(7.01) and (7.02) is determined under section 4301

of the *Income Tax Regulations*. That section provides that the prescribed rate during a quarter of a calendar year is the average rate on 90-day Treasury bills sold during the first month of the preceding quarter, rounded up to the nearest percentage point, plus 2 percentage points.

A consequential amendment adds references to new subsections 133(7.01) and (7.02) in subsection 248(11) of the Act to require the interest computed under those subsections to be compounded daily.

New subsections 133(7.01) and (7.02) are applicable with respect to allowable refunds paid or applied with respect to taxation years commencing after 1991.

Clause 62

Credit Unions

ITA
137(5.2)(c)

Subsection 137(5.1) of the Act allows a central credit union to allocate taxable dividends and taxable capital gains (in excess of allowable capital losses) to its member credit unions. Any taxable dividend so allocated reduces, pursuant to paragraph 137(5.2)(a), the amount of the deduction that would otherwise be available under section 112 to the central credit union in respect of intercorporate taxable dividends, and any taxable capital gains so allocated are added, pursuant to paragraph 137(5.2)(b), to the income of the central credit union for the year in respect of which the allocation is made. Each amount allocated to a member credit union is, pursuant to paragraph 137(5.2)(c), deductible by that member in computing its taxable income for the year is which the allocation is made.

Paragraph 137(5.2)(c) is amended, applicable to the 1991 and subsequent taxation years, to correct a technical deficiency that occurred in cases where the taxation year during which the member credit union had received such amounts (and in respect of which the allocation was made) had ended prior to the date that the allocation by the central credit union was made. In such a case, a

timing difficulty arose because such an allocation increased the income of the central credit union for a particular taxation year in respect of which the allocation was made but did not provide that member credit union with a corresponding deduction in computing its taxable income until its taxation year that included the time the amount was allocated. As a result, a mismatch of the flow-through of allocated amounts was possible.

Paragraph 137(5.2)(c) provides that each amount allocated to a member credit union under 137(5.1) is deductible by that member in computing its taxable income for the taxation year that includes the last day of the taxation year of the payer in respect of which the amount was so allocated.

Clause 63

Segregated Fund Policies Issued as RRIFs

ITA
138.1(7)

Subsection 138.1(7) of the Act is intended to ensure that where a segregated fund policy is issued as a registered retirement savings plan (RRSP) or pursuant to a registered pension plan, the policyholder will not be required to include in income those amounts which are deemed to become payable out of the income of the related segregated fund trust to the policyholder under subsection 138.1(1). The amendment to subsection 138.1(7) clarifies this intent and extends its application to segregated fund policies which are issued as registered retirement income funds (RRIFs). Segregated fund policies can be issued or effected as RRSPs or RRIFs, if they conform to the rules which govern these plans or funds. This amendment applies to the 1991 and subsequent taxation years.

Clause 64

Amateur Athletes' Reserve Funds

ITA
143.1

New section 143.1 of the Act provides for the calculation of tax payable on certain amounts received by or on behalf of individuals who are amateur athletes. Under the eligibility standards of certain international sport federations, in order to preserve the eligibility status of an athlete for international competition, certain types of income earned by the athlete must be deposited with, controlled and administered by the applicable national sport organization. Such national organizations are, or are eligible to be, registered Canadian amateur athletic associations for purposes of the Act. New section 143.1 is intended to clarify the treatment of such arrangements for the organizations and the athletes.

New subsection 143.1 applies commencing on January 1, 1992, except that a taxpayer may elect to have the provisions of the section commence to apply in any earlier year ending after 1987 throughout which the taxpayer was resident in Canada.

ITA
143.1(1)

New subsection 143.1(1) of this Act provides that any arrangement under which amounts earned by an athlete are required to be held by a national sport organization that is a registered Canadian amateur athletic association in accordance with the rules of an international sport federation, to preserve the athlete's eligibility to compete in a sporting event sanctioned by the federation, will result in the creation, for tax purposes, of an inter vivos trust (referred to as an "amateur athlete trust"). The trust is deemed to be created on the later of the day the first payment is received by the organization and January 1, 1992. Property held under the arrangement is considered to be the property of the amateur athlete trust, and the individual athlete is not taxed on amounts received by the organization during the existence of the amateur athlete trust. The organization holding the amounts is deemed to be the trustee of the trust, and the individual athlete is deemed to be the

beneficiary under the trust. No tax under Part I is payable by the trust.

ITA
143.1(2)

New subsection 143.1(2) of the Act provides that any amounts distributed to the beneficiary under an amateur athlete trust are to be included in computing the beneficiary's income. Amounts distributed by the trust, as provided in paragraph 143.1(1)(d), include all payments by the national sport organization under the arrangement to or for the benefit of the athlete. Such amounts will be included in the individual's income under the provisions of new paragraph 12(1)((z) of the Act, as income from business or property.

ITA
143.1(3)

New subsection 143.1(3) of the Act is intended to ensure that amounts held by amateur athlete trusts are included in an individual's income within a reasonable time period. It provides that where an individual has not competed in an international sporting event as a Canadian national team member for eight years, the amounts held by the amateur athlete trust at the end of the year are deemed to be distributed to the individual athlete at that time. Where the athlete is a non-resident at the time, the amount of such deemed distribution is reduced to 64% of the fair market value at that time of the property of the trust. This is intended to provide the trustee with the tax payable at a 36% rate pursuant to new subsection 210.1(1.1). The eight year period commences with the later of the last year in which the athlete so competed and the year in which the trust was created. For an arrangement entered into prior to 1992, the trust is deemed to be created on January 1, 1992, pursuant to paragraph 143.1(1)(a). At the time new subsection 143.1(3) applies in respect of an amateur athlete trust, it will cease to exist, as provided for under new paragraph 143.1(1)(a).

124

ITA
143.1(4)

New subsection 143.1(4) of the Act applies in the event that the beneficiary under an amateur athlete trust dies. In such circumstances, all amounts remaining in the amateur athlete trust are deemed to have been distributed to the beneficiary immediately before death, and as a consequence, will be included in his or her income for the year of death. Where the athlete is a non-resident at the time, the amount of such deemed distribution is reduced to 64% of the fair market value at that time of the property of the trust. This is intended to provide the trustee with the tax payable at the 36% rate provided under new subsection 210.1(1.1). At the time new subsection 143.1(4) applies in respect of the trust, it will cease to exist, as provided for under new paragraph 143.1(1)(a).

Clause 65

Registered Retirement Savings Plans

ITA
146

Section 146 of the Act provides rules governing the tax treatment of registered retirement savings plans (RRSPs).

Subclause 65(1)

ITA
146(1)(d.1)

Paragraph 146(1)(d.1) of the Act defines a taxpayer's net past service pension adjustment (net PSPA) for the purpose of computing the taxpayer's RRSP deduction limit and the taxpayer's unused RRSP deduction room. A taxpayer's net PSPA for a year is equal to the total of the taxpayer's past service pension adjustments (PSPAs) for the year minus the taxpayer's PSPA transfers and PSPA withdrawals for the year as determined by regulations.

When paragraph 146(1)(d.1) was enacted, it was intended to define PSPA transfers to be amounts transferred from registered retirement savings plans and certain other tax-deferred plans to fund past service pension benefits under the draft amendments to the *Income Tax Regulations* released on July 31, 1991. Such transferred amounts are subtracted instead in calculating past service pension adjustments (PSPAs) and thus are taken into account in the quantity P in the formula in paragraph 146(1)(d.1). Accordingly, paragraph 146(1)(d.1) is being amended to eliminate the deduction of PSPA transfers.

Paragraph 146(1)(d.1) is further amended to provide that the calculation of net PSPA may produce a negative amount. This amendment is necessary since, under the July 31, 1991 draft amendments to the *Income Tax Regulations*, the amount of a taxpayer's PSPA withdrawals for a year may exceed the taxpayer's PSPA for the year. This could occur, for example, if a taxpayer's unused RRSP deduction room is a negative amount at the time a PSPA is submitted to Revenue Canada for certification and, in order to obtain the certification, the taxpayer withdraws from a RRSP an amount equal to the PSPA plus an amount to eliminate the negative unused RRSP deduction room. (The negative unused RRSP deduction room would most likely have arisen as a consequence of a PSPA in a previous year that was not subject to certification.)

These amendments to paragraph 146(1)(d.1) are effective after 1988.

Subclause 65(2)

ITA
146(5)(a)

Subsection 146(5) of the Act provides a deduction for contributions made by an individual to RRSPs of which the individual is the annuitant. In general terms, the deduction for a taxation year is limited to the lesser of the individual's post-1990 contributions that have not been deducted and the individual's "RRSP deduction limit" for the year (as defined in paragraph 146(1)(g.1)).

Paragraph 146(5)(a) is amended so that the amount that may be deducted by an individual under subsection 146(5) is reduced by

any deductions claimed by the individual under new subsection 147.3(13.1). New subsection 147.3(13.1) provides a deduction for withdrawals of certain overcontributions to RRSPs. The amendment to subsection 146(5) is required to prevent an RRSP contribution from being deducted under that subsection if the contribution has been withdrawn from the RRSP on a tax-free basis by virtue of new subsection 147.3(13.1).

This amendment is applicable to the 1992 and subsequent taxation years.

Subclause 65(3)

ITA
146(8.2)(b)

Subsection 146(8.2) of the Act is a relieving measure which provides a deduction for RRSP or RRIF distributions included in computing a individual's income that are in respect of non-deducted RRSP premiums paid by the individual to his or her own RRSP or to a spousal RRSP. Subject to an anti-avoidance rule in paragraphs 146(8.2)(e) and (f), the subsection allows non-deducted RRSP premiums (typically RRSP overcontributions) to be withdrawn on a tax-free basis within a specified time-frame.

Subsection 146(8.2) is amended for the 1991 and subsequent taxation years to clarify that it does not apply with respect to the withdrawal of RRSP contributions that have been made by direct transfer from

- a deferred profit sharing plan in accordance with subsection 147(19), or

- a registered pension plan (RPP) in accordance with any of subsections 147.3(1) and (4) to (7).

This amendment is made for greater certainty, since subsection 147(20) and 147.3(9) can be considered to prohibit the deduction of such withdrawals.

Subsection 146(8.2) is also amended for the 1992 and subsequent taxation years to provide that it does not apply with respect to the

withdrawal of RRSP contributions made by direct transfer from an RPP, where such transfer has not been made in accordance with any of subsections 147.3(1) and (4) to (7). New subsection 147.3(13.1) contains a special rule which provides a deduction for such withdrawals.

Subclause 65(4)

ITA
146(16)

Subsection 146(16) of the Act allows a taxpayer to transfer the funds in his or her registered retirement savings plan (RRSP) to another RRSP or to a registered retirement income fund (RRIF) before maturity of the transferor RRSP.

Subsection 146(16) is amended to clarify that, where a taxpayer has made overcontributions to a transferor RRSP, the taxpayer will not be prevented from withdrawing the overcontributions on a tax-free basis under subsection 146(8.2) from another RRSP to which amounts have been transferred from the transferor RRSP under subsection 146(16). However, no part of the amount of the transfer in these circumstances will be considered to be an overcontribution to the transferee RRSP for the purposes of subsection 146(8.2).

This amendment is applicable to the 1991 and subsequent taxation years.

Clause 66

Registered Retirement Income Funds

ITA
146.3(2)(f)

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 registered retirement income fund (RRIF) from receiving property other than property transferred from sources listed in that paragraph. Paragraph 146.3(2)(f) is amended, applicable after August 29, 1990, so that an RRIF of which an

individual is the annuitant may receive property transferred directly from an RPP. The amendment also permits a transfer from an RPP of which an individual is a member to a RRIF of which the individual's spouse is the annuitant, provided the transfer is in accordance with subsection 147.3(5) or (7). Amendments are also being made to the transfer rules in section 147.3 to permit such transfers to be made.

Clause 67

Registration of Plan

ITA
147.1(2)(b) and (c)

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

Paragraphs 147.1(2)(b) and (c) are amended, applicable after 1990, to provide that the rule in paragraph (b) is applicable with respect to pension plans submitted for registration in 1991.

Clause 68

Transfers from Registered Pension Plans

ITA
147.3

Section 147.3 of the Act sets out the rules for lump sum transfers of funds from registered pension plans (RPPs) to other RPPs and to registered retirement savings plans (RRSPs).

Subclauses 68(1) to (4)

ITA
147.3(1) and (4) to (7)

Subsections 147.3(1) and (4) to (7) of the Act permit a direct transfer on behalf of an individual of a lump sum amount from a defined benefit or money purchase provision of a registered pension plan to a money purchase provision of another RPP or to a registered retirement savings plan, subject to limits set out in those subsections. These subsections are amended to allow transfers from RPPs to registered retirement income funds (RRIFs) to be made on the same basis as transfers from RPPs to RRSPs.

These amendments are applicable with respect to transfers occurring after August 29, 1990.

Subclauses 68(5) and (6)

ITA
147.3(10) and (11)

Subsections 147.3(10) and (11) of the Act contain 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 any of subsections 147.3(1) to (7). In these circumstances, the excess portion that is not transferred in accordance with those provisions 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. This ensures that the excess is included in the individual's income and that the rules with respect to the deductibility of contributions or premiums to RPPs and RRSPs will apply. In addition, the special tax under Part X.1 of the Act on excess contributions to an RRSP may be payable.

Subsections 147.3(10) and (11) are amended so that they also apply with respect to an amount transferred from an RPP to a RRIF in excess of the amount permissible by subsections 147.3(1) and (4) to (7). A further amendment to subsection 147.3(10) provides that, for the purposes of computing RRSP deductions and penalty tax under Part X.1, the excess amount so transferred is considered to have been paid by the individual as a premium to an RRSP under

which the individual is the annuitant. This amendment ensures that the excess amount will be treated in the same way as an excess transfer to an RRSP.

These amendments are applicable with respect to transfers occurring after August 29, 1990.

Subclause 68(7)

ITA
147.3(12)

Subsection 147.3(12) of the Act provides that, except in limited circumstances, an RPP 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). Subsection 147.3(12) is amended so that it also applies where an amount is transferred from an RPP to a RRIF otherwise than in accordance with any of those subsections. This amendment is strictly consequential to the amendments which allow the transfer of amounts from RPPs to RRIFs.

This amendment is applicable with respect to transfers occurring after August 29, 1990.

Subclause 68(8)

ITA
147.3(13.1)

New subsection 147.3(13.1) of the Act is introduced to provide relief from double taxation where amounts are transferred from an RPP to an RRSP or RRIF in excess of the amounts permissible by subsections 147.3(1) and (4) to (7). Such an excess amount is required to be included in the income of the individual on whose behalf it is transferred, and is considered to be a premium paid by the individual to an RRSP. Since the individual will be taxed on the amount when it is subsequently received from the RRSP or RRIF, the result is that the individual pays tax twice in respect of the same amount. At present, the individual is able to avoid double taxation on an excess transfer from an RRSP only if the

individual has sufficient unused RRSP room to deduct the premium (or has such room at some future time) or is able to withdraw the excess amount and claim a deduction under subsection 146(8.2).

Subsection 147.3(13.1) allows an individual a deduction in computing income for a taxation year equal to the lesser of two amounts. The first amount is the total amount included in the individual's income for the year by virtue of specified RRSP and RRIF rules (as described below) *minus* the total of "prescribed withdrawals" (as described below) and the deductions claimed for the year by the individual under paragraph 60(l) (deduction for qualifying payments when certain amounts received from RRSPs or RRIFs) and subsection 146(8.2) (withdrawal of excess RRSP premiums).

The specified RRSP and RRIF rules resulting in income that is included in the first amount are: subsection 146(8) (RRSP benefits included in income, including benefits deemed to be received on death), subsection 146(12) (income inclusion where plan ceases to qualify as an RRSP), subsection 146.3(5) (RRIF receipts included in income, including deemed receipts on death), subsection 146.3(11) (income inclusion where plan ceases to qualify as a RRIF) and subsections 146(8.3) and 146.3(5.1) (attribution of income from spousal RRSPs and RRIFs). "Prescribed withdrawals" referred to above are intended to be the same amounts qualifying as "prescribed withdrawals" under subsection 146(8.2). (As set out in draft subsection 8307(6) of the *Income Tax Regulations*, released on July 31, 1991, "prescribed withdrawals" are amounts withdrawn by an individual from an RRSP that result in the individual being able to acquire past service benefits for the 1990 and subsequent years.)

The second amount determined under subsection 147.3(13.1) is the amount included in the individual's income for the year and for preceding years in respect of those transfers from RPPs to RRSPs and RRIFs on behalf of the individual that are deemed, by paragraph 147.3(10)(b) or (c), to be premiums paid by the individual to RRSPs (in other words, excess transfers on behalf of the individual), minus the sum of

- deductions claimed by the individual under subsection 147.3(13.1) for preceding taxation years, and

- deductions claimed by the individual under subsection 146(5) for a preceding taxation year, to the extent that the deductions may reasonably be considered to be in respect of such premiums.

Subsection 147.3(13.1) enables an individual on whose behalf an excess transfer has been made to an RRSP or RRIF, and who withdraws the excess or another amount from an RRSP or RRIF, to claim a deduction in respect of the withdrawn amount to offset the income inclusion resulting from the withdrawal.
Subsection 147.3(13.1) is similar to, but broader than, subsection 146(8.2), which provides a deduction with respect to the withdrawal of excess contributions to RRSPs. In particular, subsection 147.3(13.1) does not contain a time limit for the withdrawal of excess premiums. Subsection 146(8.2) is being amended so that it does not apply in circumstances in which a deduction is available under subsection 147.3(13.1).

Example

Ms. B is a member of a defined benefit RPP. The relevant provincial law does not allow Ms. B to receive directly any portion of the commuted value of the pension. On January 1, 1992, $54,500 is transferred from the RPP on behalf of Ms. B to an RRIF under which Ms. B is the annuitant. Of the $54,500 so transferred, only $40,000 is in accordance with subsection 147.3(4). What are the income tax consequences for Ms. B if

- *her RRSP deduction limit for 1992 is $2,000,*

- *her "earned income" after 1991 is nil, and*

- *she withdraws $3,000 from her RRIF at the beginning of each of her 1993 to 1997 taxation years?*

Result:

1. The $40,000 amount is transferred on a tax-free basis--subsections 147.3(9) and (11).

2. The $14,500 excess is included in Ms. B's income and is considered to be an RRSP contribution of which Ms. B may deduct $2,000 by virtue of her 1992 RRSP deduction limit. For the 1992

taxation year, Part X.1 penalty tax is therefore payable on $4,500 ($14,500 - $2,000 - $8,000). (The $8,000 amount is the threshold in subsection 204.2(1.1) above which Part X.1 penalty tax is payable pursuant to subsection 204.2(1.1).)

3. Ms. B may deduct $3,000 for her 1993 taxation year under new subsection 147.3(13.1). This is the lesser of $3,000 and $12,500 - - the amounts set out in paragraphs 147.3(13.1)(a) and (b), respectively, assuming that Ms. B claimed the $2,000 RRSP deduction for the 1992 taxation year. For the 1993 taxation year, the amount on which Part X.1 penalty tax is payable would be reduced from $4,500 to $1,500.

4. Ms. B may deduct $3,000 for each of the 1994 to 1996 taxation years and $500 for the 1997 taxation year under subsection 147.3(13.1). After the 1993 taxation year, there is no amount in respect of which Part X.1 penalty tax is payable. The total deducted under subsection 147.3(13.1) is thus $12,500--the amount of the $14,500 excess minus the $2,000 deemed RRSP contribution deducted under subsection 146(5).

5. The tax consequences for Ms. B would have been the same if the $14,500 excess had been transferred by Ms. B to an RRSP rather than an RRIF.

Subsection 147.3(13.1) applies to the 1992 and subsequent taxation years. However, it is modified in its application to the 1992 taxation year so that an individual can claim an additional deduction in that year equal to the total of the deductions that the individual would have been permitted to claim in the 1989 to 1991 taxation years if the subsection had been applicable in those years.

Clause 69

Life Insurance Policies

ITA
148

Section 148 of the Act provides for the inclusion of various amounts in computing a taxpayer's income for a taxation year in respect of certain life insurance policies.

Subclause 69(1)

ITA
148(1)(b.1)

Subsection 148(1) of the Act provides for the inclusion in the income of a holder of an interest in a life insurance policy of certain amounts in respect of dispositions of such interests. The addition of new paragraph 148(1)(b.1) is consequential on the change to subsection 138.1(7) of the Act and will ensure that a life insurance policy which is effected as a registered retirement income fund (RRIF) will not be subject to subsection 148(1). Such policies are subject to the special rules which govern RRIFs. This amendment applies to the 1991 and subsequent taxation years.

Subclause 69(2)

ITA
148(2)

Subsection 148(2) of the Act treats an interest in a life insurance policy as having been disposed of in certain circumstances and for certain purposes. Paragraph 148(2)(a) provides that such a disposition will occur where a policyholder becomes entitled to receive a policy dividend. The amendment to this provision provides that where any part of such a policy dividend is automatically applied to pay a premium or repay a policy loan, as provided for under the terms and conditions of the policy, that part of the dividend will not be included in the proceeds of the disposition in respect of the policy dividend.

This amendment applies to policy dividends arising in taxation years beginning after Announcement Date.

Subclauses 69(3), (4), (6) and (7)

ITA
148(9)(a) and (e.2)

Subsection 148(9) of the Act defines certain terms for purposes of calculating the amounts to be included in computing a taxpayer's income in respect of certain life insurance policies. Paragraph 148(9)(a) defines the "adjusted cost basis" of a policy, and paragraph 148(9)(e.2) defines "proceeds of the disposition".

The amendments to paragraph 148(9)(a) ensure that where proceeds of the disposition are reduced pursuant to the amendments to subsection 148(2) or paragraph 148(9)(e.2) (described above), the adjusted cost basis of the life insurance policy will not be increased by the amount of the premium, loan repayment or policy surrender that has not been included in such proceeds of the disposition.

The amendments to paragraph 148(9)(e.2) provide that where any amount in respect of a policy surrender or policy loan is automatically applied to pay a premium under the policy, as provided for under the terms and conditions of the policy, such amount is not to be included in the proceeds of the disposition in respect of the surrender or loan.

These amendments to section 148 are applicable to transactions occurring in taxation years commencing after Announcement Date.

Subclause 69(5)

ITA
148(9)(a)(v.2)

The definition of the adjusted cost basis of a life insurance policy is contained in paragraph 148(9)(a) of the Act. This definition is relevant to the computation of income arising on policy dispositions under subsection 148(1) and (1.1), as well as under the accrual rules in section 12.2. The amendment to this provision adds new subparagraph 148(9)(a)(v.2), which applies where an interest in a life insurance policy has, as provided in subsection 148(8.2), been transferred on a rollover basis to a surviving spouse on the death of a policyholder.

In such circumstances, as provided by the new subparagraph, the adjusted cost basis of the policy to the spouse will be increased by the amount of the mortality gain, if any, that resulted from the policyholder's death. Such a mortality gain could arise where the policy provided for a waiver of premiums in the event of the death of the policyholder. New subparagraph 148(9)(a)(v.2), which applies to transfers and distributions occurring after 1989, appropriately recognizes the value of such benefits received under the policy as an addition to the adjusted cost basis of the policy to the surviving spouse.

Clause 70

Exempt Persons

ITA
149

Section 149 of the Act exempts certain persons from tax under Part I of the Act and provides special rules relating to such taxpayers.

Subclause 70(1)

ITA
149(1)(z)

New paragraph 149(1)(z) provides an exemption under Part I of the Act for amateur athlete trusts. The rules governing the taxation of these trusts and their beneficiaries are provided for in new section 143.1 of the Act. This amendment applies to the 1988 and subsequent taxation years.

Subclause 68(2)

ITA
149(2)

The tax-exempt status of certain organizations provided by subsection 149(1) of the Act is conditional on no part of the income of the organization being payable to or otherwise available for the personal benefit of any person, or on the organization expending a certain percentage of its income on specified activities. Subsection 149(2) provides that, for the purposes of applying these conditions (which are contained in paragraphs 149(1)(e), (i), (j) and (l), the amount of any taxable capital gains that would otherwise be included in the income of the organization is to be excluded. This amendment provides that, for these purposes, neither taxable capital gains nor allowable capital losses are included in the calculation of such income.

This amendment is applicable to the 1992 and subsequent taxation years.

Subclause 70(3)

ITA
149(10)

Subsection 149(10) provides special rules where a corporation becomes exempt or ceases to be exempt from tax under Part I of the Act.

The amendment to subsection 149(10) of the Act adds, applicable to the 1992 and subsequent taxation years, new paragraph 149(10)(a.1) which provides that in determining the income of a corporation for its first taxation year ending after the time of change of its tax status, the corporation will be treated as having claimed or deducted, in the year ending immediately before that time, the maximum amount which it was entitled to claim or deduct as a reserve under sections 20, 138 and 140 of the Act. Consequently, such reserves are included in determining a corporation's income for the year in which it ceases or commences to be exempt from Part I tax. This paragraph is intended to ensure that a corporation does not accumulate or "bank" certain

discretionary tax deductions in years in which it is exempt from tax on its taxable income.

Subclause 70(4)

ITA
149(12)

New subsection 149(12) requires an agricultural organization, board of trade, chamber of commerce or non-profit organization, which is exempt from tax under paragraph 149(1)(e) or (l) of the Act, to file an information return for a fiscal period ending after 1992 if the organization has received dividends, interest, rentals or royalties in excess of $10,000 in that period or if the total assets of the organization exceed $200,000 at the end of the immediately preceding fiscal period. (For these purposes, the amount of total assets of an organization is the book value of such assets as determined in accordance with generally accepted accounting principles.) New subsection 149(12) also requires that once an organization has been required to file an information return in respect of a fiscal period, it will be required to file returns for all subsequent periods. The information return is to be filed within 6 months of the end of the fiscal period.

Paragraphs 149(1)(e) and (l) of the Act encompass a wide range of organizations. These entities may take the form of corporations, trusts or other organizations. The exemption from tax provided for these organizations is conditional upon a determination that no part of the income of the organization is available for the personal benefit of the members of the organization. Under the existing provisions of the Act, the requirement to file a return of income is not uniform, as it depends upon the form that such an organization takes. For example, if a non-profit organization is incorporated, it is required to file an annual return of income under section 150. If the same organization were not incorporated, a return of income would not be required to be filed unless the organization were a trust to which subsection 149(5) applied in the year.

New subsection 149(12) provides a uniform requirement that all such organizations file information returns, in addition to any returns that may be required under the existing provisions of the Act. This new requirement to file an information return is similar

to that currently existing in respect of other organizations enjoying tax-exempt status, such as registered charities. It is intended that the information requested in this new return will include information concerning the activities of the organizations and the sources and amounts of its revenues.

Clause 71

Reassessments

ITA
152(3.1), (4.3) and (4.4)

Section 152 of the Act contains rules relating to assessments and reassessments of tax, interest and penalties payable by a taxpayer. The time within which the Minister of National Revenue may generally reassess is known as the "normal reassessment period", as defined in subsection 152(3.1). For mutual fund trusts and corporations other than Canadian-controlled private corporations, that period is the four year period beginning after the day of mailing of a notice of an original assessment for the relevant year or the day of mailing of a notification that no tax is payable for that year. For all other taxpayers, that period has a similar starting date but runs for only three years. Subsection 152(3.1) is amended to made the definition of "normal reassessment period" apply also for the purposes of new subsection 152(4.3).

New subsection 152(4.3) allows the Minister to reassess beyond the normal reassessment period for a taxation year where it is necessary to do so in order to make a recalculation of a taxpayer's "balance" for that year as a result of an adjustment to an amount deducted or included in computing a "balance" of the taxpayer for a preceding taxation year. A "balance" of a taxpayer for a taxation year is defined in new subsection 152(4.4) as the income, taxable income, taxable income earned in Canada or any loss of the taxpayer for the year, or as the tax or other amount payable by, refundable to, or deemed to have been paid by, the taxpayer for the year.

The reassessment may be made only where the adjustment of the amount deducted or included in the preceding year's balance was made in an assessment for that year or as a result of a decision on an appeal from an assessment for that year. A reassessment of the

subsequent year under new subsection 152(4.3) outside the normal reassessment period for that year may not be made after the end of one year after all rights of objection and appeal have expired or been determined with respect to the preceding year. Such a reassessment may be made only where the Act requires the inclusion, or allows the deduction, in computing a taxpayer's balance for the subsequent year of an amount relating to the deduction or inclusion that was adjusted for the preceding year.

Under the same conditions that a Minister may make a reassessment under new subsection 152(4.3), the Minister is to make a reassessment where so requested in writing by the taxpayer.

This provision might be applied, for example, where a decision on appeal has changed the amount of a reserve claimed in a taxation year, and a subsequent taxation year for which an amount relating to the reserve is required to be included, or is allowed to be deducted, in computing income has become barred from reassessment.

A consequential amendment is made to the definition of "normal reassessment period" in subsection 152(3.1) of the Act to make the definition apply for the purposes of new subsection 152(4.3).

These amendments are applicable to reassessments and redeterminations made after Royal Assent to the implementing legislation, where the reassessment or redetermination is made as a result of an adjustment to a balance for another taxation year as a consequence of an assessment made or decision on appeal rendered with respect to that year after Announcement Date.

Clause 72

Corporate Income Tax Payments

ITA
157

Section 157 of the Act sets out the required payment dates for corporate income tax instalments and for any balance of corporate income tax payable.

Subclauses 72(1) to (4)

ITA
157(1), (2) and (2.1)

Subparagraph 157(1)(a)(i) of the Act contains rules relating to the determination of a corporation's instalment liability in respect of tax payable under Parts I (Income Tax) and VI.1 (Tax on Certain Dividends). Subparagraph 157(1)(a)(i) is amended to integrate the instalment requirements for tax payable under Parts I and VI.1 with those for tax payable under Parts I.3 (Tax on Large Corporations) and VI (Tax on Financial Institutions). This amendment will ensure that a corporation will not be subject to interest or penalties on deficient instalments in respect of, for example, tax payable under Part I, where the deficiency is offset by an overpayment in respect of the instalments due under either Part I.3, VI or VI.1.

This amendment to paragraph 157(1)(b) combines the tax payable by a corporation under Part I.3 and Part VI for a taxation year with its tax payable under Part I and Part VI.1 tax for the purposes of determining the remainder of tax payable by a corporation at the final tax payment date for the year.

Subsection 157(2) of the Act sets out conditions under which a co-operative corporation or a credit union is permitted to make only one payment of the whole of its tax estimated to be payable under Part I and Part VI.1 for a taxation year, rather than having to make instalments. Subsection 157(2) is amended to provide that this relief from the obligation to make instalment payments will apply only where the co-operative corporation or credit union, as the case may be, also has no Part I.3 or Part VI tax payable for the year or the preceding year. The subsection is further amended to provide that where a corporation is so exempted from the requirement to make instalment payments, the total of the tax payable under Parts I, I.3, VI, and VI.1 for the year must be paid at the appropriate balance due date - either two or three months after the end of the year.

Subsection 157(2.1) of the Act provides that where a corporation's tax payable under Parts I and VI.1 or its first instalment base for the year is less than $1,000, the corporation is exempt from the requirement to make instalment payments. Subsection 157(2.1) is

amended to add a reference to the corporation's Part VI tax for the year.

These amendments to section 157 of the Act apply to the 1992 and subsequent taxation years.

Subclause 72(5)

ITA
157(3)(b)

Pursuant to paragraph 157(3)(b) each monthly tax instalment payment required of a private corporation in a taxation year is reduced by 1/12 of its dividend refund for the taxation year. As a consequence of the amendment to subsection 129(1) of the Act, which permits dividend refunds to be paid to non-private, as well as private, corporations, paragraph 157(3)(b) is amended to provide this relief to all corporations (other than mutual fund corporations and non-resident-owned investment corporations which are dealt with in paragraphs 157(3)(c) and (d)). This amendment applies to the 1993 and subsequent taxation years.

Clause 73

Election by Trusts

ITA
159(6.1) and (7)

New subsection 159(6.1) of the Act, in conjunction with amended subsection 159(7), allow trusts to elect to pay the income tax arising from the 21-year deemed realization rule in up to 10 annual instalments. As under the similar election currently provided to individuals with respect to the deemed realization on death, interest at the prescribed rate will apply to the unpaid tax. As a condition for this election, the taxpayer must furnish security for the unpaid instalments and interest.

This amendment is applicable to the 1993 and subsequent taxation years.

Clause 74

Interest

ITA
161

Section 161 of the Act provides that interest is payable by a taxpayer on any outstanding amount of tax payable under Part I for a taxation year, as well as any late or deficient instalments in respect of such tax.

Subclause 74(1)

ITA
161(1)

Subsection 161(1) is amended to add a reference to Parts I.3, VI, and VI.1 of the Act. This amendment is intended, in conjunction with amendments to section 157 and other amendments to section 161 to integrate Parts I, I.3, VI, and VI.1 for the purposes of determining a corporation's instalment and final tax payment obligations (as well as its entitlement to any refund or interest thereon).

Subclauses 74(2) and (3)

ITA
161(4) and (4.1)

Subsection 161(4) of the Act provides that in computing the interest to be charged on deficient tax instalments of an individual, the amount that the individual is considered to have been liable to pay by instalments is the lesser of the actual tax payable for the year and the individual's instalment base (basically, the tax payable) for the year before. For a corporation, a similar rule in subsection 161(4.1) provides that interest on deficient tax instalments is to be computed by reference to the actual tax payable under Parts I and VI.1 of the Act or the instalment bases of the

corporation, according to whichever method gives rise to the least liability.

Under sections 155, 156 and 157 of the Act, taxpayers are allowed to base their tax instalments for a year on their estimates of tax payable for the year. As a result of subsections 161(4) and (4.1), however, it is the actual tax payable for the year rather than the taxpayer's estimate of tax payable that is relevant in determining whether interest is payable on deficient instalments.

Amendments to subsections 161(4) and (4.1) add references in those subsections to section 163.1 of the Act, effective for instalments payable after Royal Assent. Section 163.1 provides a penalty for late or deficient instalment payments in addition to the interest charged under subsection 161(2) of the Act. The effect of the addition of references to section 163.1 in subsections 161(4) and (4.1) is to clarify that those subsections will apply for the purposes of section 163.1, so that the penalty under that section will be determined by reference to the actual tax payable rather the taxpayer's estimate of tax payable.

Paragraph 161(4.1)(a) is also amended to add a reference to Parts I.3 and VI. This change is one of a number of changes designed to integrate the instalment requirements for tax payable under Parts I, I.3, VI, and VI.1. This amendment applies to the 1992 and subsequent taxation years.

Subclause 74(4)

ITA
161(7)

Subsection 161(7) of the Act provides that where the tax payable for a taxation year is reduced as a consequence of the carry-back of a loss, tax credit or other amount from a subsequent year, interest on any unpaid tax for earlier years is calculated without regard to the reduction until generally the later of the day following the end of the subsequent year and the day on which the taxpayer's return for that subsequent year is filed. A reference to section 163.1 of the Act is added to subsection 161(7) so that in computing the penalty under section 163.1 for late or deficient tax instalment payments in respect of a taxation year, the tax payable for the year

is not to be reduced as a consequence of the carry-back of a loss, tax credit or other amount from a subsequent year until the same day on which it would be so reduced for purposes of computing instalment interest. This amendment is applicable with respect to instalments payable after Royal Assent.

Clause 75

Refunds

ITA
164(6.1)

Section 164 of the Act provides rules relating to income tax refunds.

New subsection 164(6.1) of the Act applies to certain employee stock options in respect of which a benefit has been included in a deceased taxpayer's income by reason of paragraph 7(1)(e) of the Act. New subsection 164(6.1) has been patterned on the rule in existing subsection 164(6) of the Act applicable with respect to capital properties.

Paragraph 7(1)(e) of the Act provides that where a taxpayer holds unexercised employee stock options at the time of his or her death, an amount is to be included in the deceased's income as an employment benefit for the year in which the taxpayer dies, if the fair market value of the options exceeds their cost to the deceased. If the value of those options subsequently declines, this benefit will be overstated when compared to the benefit, if any, actually realized by the deceased's estate on the exercise of the options. Proposed subsection 164(6.1) allows the deceased's legal representative to elect to treat an amount determined under that subsection as a loss of the deceased from employment for the year in which the taxpayer died.

Proposed subsection 164(6.1) will apply where the employee stock option is exercised or disposed of by the deceased's legal representative within the first taxation year of the deceased's estate. It will also apply where the option expires within that taxation year without being exercised since the expiry of the option is treated as a disposition by reason of clause 54(c)(ii)(D) of the Act. The

amount of the loss that the legal representative may elect to carry back to the taxation year in which the taxpayer died is equal to the amount of the benefit deemed to have been received by the deceased in that year by reason of paragraph 7(1)(e) in respect of the option, reduced by the excess, if any, of the value of the option immediately before the time it was exercised or disposed of over the amount paid by the deceased to acquire the option. Where a deduction was claimed under paragraph 110(1)(d) in respect of the amount included in the deceased's income by reason of paragraph 7(1)(e), the amount of the loss that may be carried back, as described above, will be further reduced by ¼.

The adjusted cost base to the estate of the option will be reduced by the amount of the loss that would be determined under new paragraph 164(6.1)(a) if that paragraph were read without reference to subparagraph (iii) thereof. Thus, any amount deducted under paragraph 110(1)(d) in respect of the option for the taxation year in which the taxpayer died is ignored in computing the adjusted cost base of the option to the estate, since the estate acquired the option at its fair market value at the time of death.

The election under new subsection 164(6.1) is to be made by the deceased's legal representative and, pursuant to anticipated amendments to the *Income Tax Regulations*, is to set out the computation of the amount determined under paragraph 164(6.1)(a). To give effect to the loss, the deceased's legal representative will be required to file an amended return of income for the deceased for the taxation year in which he or she died. The time period within which the election and amended return must be filed will be the same as that which currently exists for elections made under subsection 164(6) of the Act, as set out in subsection 1000(2) of the Regulations. As a transitional measure, however, in no case will filings in respect of subsection 164(6.1) elections be required before 90 days after Announcement Date.

New subsection 164(6.1) of the Act is applicable in respect of deaths occurring after July 13, 1990.

Clause 76

Child Tax Credit Prepayment

ITA
164.1(1)(c)

Section 164.1 of the Act provides for the prepayment of up to 2/3 of the refundable child tax credit (RCTC) to an individual provided certain conditions are met. One of these conditions is that the individual must be the person who received the RCTC in respect of the immediately preceding year. Subsection 164.1(1) is amended, applicable to the 1992 and subsequent taxation years, to allow that a RCTC prepayment for the year in which an eligible recipient dies be made to the surviving spouse on the basis of that spouse's net income for the preceding year.

Clause 77

Objections to Assessments

ITA
165

Section 165 of the Act provides rules governing a taxpayer's right to object to an assessment or determination by the Minister of National Revenue of tax, interest, penalties and certain other amounts under the Act.

Subclause 77(1)

ITA
165(1.1)(a)

Subsection 165(1.1) of the Act restricts the matters to which a taxpayer may object in certain cases where the Minister has issued a notice of assessment or determination to those matters which gave rise to the assessment or redetermination. The amendment to paragraph 165(1.1)(a), which is applicable after Royal Assent, adds a reference to new subsection 152(4.3) of the Act to the list of those provisions under which assessments may be issued that will

prompt the application of subsection 165(1.1). New subsection 152(4.3) allows reassessments in limited circumstances after the normal reassessment period for a year where the reassessment is made to conform the deduction or inclusion of an amount in the year with a related deduction or inclusion that has been the subject of an assessment or court decision in another year.

Subclause 77(2)

ITA
165(1.2)

Subsection 165(1.2) of the Act provides that there is no right to object to an assessment made under subsection 152(4.2) of the Act. Subsection 152(4.2) allows the Minister of National Revenue to reassess beyond the normal reassessment period at the request of certain taxpayers in order to give refunds or to reduce tax payable. The amendment to subsection 165(1.2) adds a reference to new subsection 169(3) of the Act so that there will be no right to object to a reassessment made by the Minister under new subsection 169(3). New subsection 169(3) allows a reassessment at any time, with the consent of a taxpayer, for the purpose of disposing of an appeal. The amendment to subsection 165(1.2) is applicable after Royal Assent.

Subclause 77(3)

ITA
165(3) and (4)

Paragraph 165(3)(a) of the Act provides that upon receiving from a taxpayer a notice of objection to an assessment, the Minister of National Revenue is to reconsider the assessment and either vacate, confirm or vary it or reassess, and to notify the taxpayer of that action by registered mail. One of the amendments to subsection 165(3) deletes the requirement for the mailed notice to be by registered mail. Instead, the notice given will only have to be in writing. The other amendment to subsection 165(3) repeals paragraph 165(3)(b). That paragraph allowed the taxpayer to waive reconsideration by the Minister. In such cases, if the Minister consented, an appeal to the Tax Court of Canada would then

commence by the filing of a copy of the notice of objection with the Registrar of the Court. Paragraph 165(3)(b) has very seldom been used. The repeal of the paragraph is in the interest of avoiding unnecessary appeals, since in many cases where objections are filed, the objections are resolved when the assessment is reconsidered by the Minister. As a consequence of the repeal of paragraph 165(3)(b), subsection 165(4) is also repealed. Subsection 165(4) provided the effect of filing a notice of objection with the Court under paragraph 165(3)(b). These amendments are effective on Royal Assent.

Clause 78

Extension of Time

ITA
166.1(5)

Section 166.1 of the Act allows a taxpayer to apply to the Minister of National Revenue for an extension of time to object to an assessment or make a request under subsection 245(6) of the Act. Subsection 166.1(5) provides that, after considering such an application and either granting or refusing it, the Minister is to notify the taxpayer of the decision by registered mail. The amendment to this subsection, which applies after Royal Assent to the implementing legislation, removes the requirement for that notice to be by registered mail. Instead, the requirement will simply be that the Minister notify the taxpayer in writing.

Clause 79

Appeals to Tax Court of Canada

ITA
169

Section 169 of the Act provides that a taxpayer may, after having served a notice of objection, appeal to the Tax Court of Canada after either the Minister has confirmed the assessment or reassessed or 90 days have elapsed since the service of the notice of objection and the Minister has not notified the taxpayer that the assessment

has been vacated or confirmed or that there has been a reassessment.

Subclause 79(1)

ITA
169(2)(a)

Subsection 169(2) of the Act restricts the matters with respect to which a taxpayer may appeal in certain cases to those matters which gave rise to the assessment or determination that is under appeal. The amendment to the subsection adds a reference to new subsection 152(4.3) of the Act to the list of those provisions under which assessments may be made that are subject to the restrictions on appeals. New subsection 152(4.3) allows reassessments in limited circumstances after the normal reassessment period for a year where the reassessment is made to conform the deduction or inclusion of an amount in the year with a related deduction or inclusion that has been the subject of an assessment or court decision in another year. As a result of this amendment to subsection 169(2), an appeal with respect to a reassessment under new subsection 152(4.3) may not raise issues other than those raised in the reassessment. This amendment to subsection 169(2) is applicable after Royal Assent.

Subclause 79(2)

ITA
169(3) and (4)

New subsection 169(3) of the Act allows the Minister of National Revenue to reassess tax, interest, penalties or other amounts payable by a taxpayer under the Act at any time, even if the normal reassessment period has expired, if the taxpayer consents in writing to the reassessment and the reassessment is made for the purpose of disposing of an appeal under the Act. This provision is applicable after Royal Assent.

New subsection 169(4) of the Act provides that the provisions of Division I of Part I of the Act are applicable, with such modifications as the circumstances require, in respect of a

reassessment made under new subsection 169(3) as though the reassessment had been made under the normal reassessment provision in section 152 of the Act. Division I sets out rules relating to reassessments. New subsection 169(4) is applicable after Royal Assent.

Clause 80

Institution of Appeals

ITA
175

Section 175 of the Act provides rules governing the institution of an appeal to the Tax Court of Canada. In a case where a taxpayer has chosen under paragraph 165(3)(b) of the Act to appeal to the Court with respect to an assessment without having the assessment reconsidered by the Minister of National Revenue, paragraph 175(1)(b) and subsections 175(2) and (3) describe how the appeal is to be instituted, including rules relating to the service of documents. Paragraph 175(1)(b) and subsections 175(2) and (3) are repealed, effective after Royal Assent, as a consequence of the repeal of paragraph 165(3)(b). The repeal of paragraph 165(3)(b) is explained in the commentary on that paragraph.

Clause 81

Individual Surtax

ITA
180.1(1.1)

Section 180.1 of the Act imposes a surtax on individuals at a rate of 5% of tax payable under Part I of the Act. An additional 5% surtax is imposed on that portion of an individual's Part I tax in excess of $12,500. Subsections 180.1(1.1) and (1.2) allow two deductions in computing the individual's surtax. However, the amount of the deduction allowed under each of these subsections can only be determined by knowing the deduction, where applicable, that is permitted by the other subsection. This

amendment, which is applicable to the 1988 and subsequent taxation years, corrects this circularity.

Clause 82

Part I.3: Definitions

ITA
181(1)

Subsection 181(1) of the Act provides the definition of "long-term debt" for the purposes of Part I.3. This definition is relevant in determining the capital of, and consequent tax payable under Part I.3 by, financial institutions. Paragraph (b) of this definition relates to financial institutions other than banks, and the amendment to this paragraph provides that the long-term debt of a prescribed federal Crown corporation is not to include any debt issued to and held by the federal government. The effect of this amendment, which applies to the 1991 and the subsequent taxation years, is to exclude such debt from the determination of the capital on which Part I.3 tax is levied.

Clause 83

Part I.3: Exempt Corporations

ITA
181.1(3)(f)

Subsection 181.1(3) of the Act exempts certain corporations from tax under Part I.3. New paragraph 181.1(3)(f) extends the Part I.3 tax exemption to co-operative corporations, as defined in subsection 136(2) of the Act, that have as their principal business the marketing or processing of natural products of their members or customers. The exemption provided under this amendment applies to taxation years ending after June 1989.

Clause 84

Part I.3: Calculation

ITA
181.2

Section 181.2 of the Act provides rules for determining the capital, taxable capital, taxable capital employed in Canada and investment allowance of corporations (other than financial institutions) resident in Canada for the purposes of Part I.3.

Subclause 84(1)

ITA
181.2(3)(d)

Subsection 181.2(3) of the Act defines the capital of a corporation (other than a financial institution or corporation not resident in Canada) for the purposes of Part I.3. Included, under paragraph 181.2(3)(d), in the capital of a corporation is the amount of its indebtedness at the end of the year represented by bonds, debentures, notes, mortgages or similar obligations.
Paragraph 181.2(3)(d) is amended to include in the capital of a corporation the amount of its indebtedness at the end of the year evidenced by bankers' acceptances drawn by the corporation. This amendment has effect with respect to taxation years ending after Announcement Date.

Subclauses 84(2) and (3)

ITA
181.2(4) and (6)

Subsection 181.2(4) of the Act defines the "investment allowance" of a corporation (other than a financial institution), which represents the value of certain investments in other corporations and which may be deducted in computing its taxable capital for the purposes of Part I.3. New paragraph 181.2(4)(d.1) provides that a corporation will also be entitled to an investment allowance for certain debts owed to the corporation by a partnership, where all of

the members of the partnership are corporations as well. No allowance is available, however, where any of the members of the partnership are either financial institutions or corporations (other than non-resident corporations that at no time in the year carried on business in Canada through a permanent establishment) that are exempt from tax under Part I.3. This amendment applies to the 1991 and subsequent taxation years.

New subsection 181.2(6) provides that where, in certain circumstances, a trust is used as a conduit for loaning money from a corporation to another related corporation (other than a financial institution), the loan will, for the purposes of determining the first corporation's investment allowance under subsection 181.2(4), be considered to have been made directly from the lending corporation to the borrowing corporation. This new subsection will apply as of June 1989.

Clause 85

Part I.3: Financial Institutions

ITA
181.3(1)(a)

Section 181.3 of the Act provides rules for determining several amounts relevant in computing the tax payable under Part I.3 of the Act by a financial institution. Subsection 181.3(1) applies in determining an institution's taxable capital employed in Canada and, by virtue of paragraph 181.3(1)(a), includes the carrying value at the end of the year of the institution's tangible property used in Canada. This amendment to paragraph 181.3(1)(a) provides that a financial institution's tangible property used in Canada will not include any property acquired by the institution, in the year or the preceding taxation year, through foreclosure or otherwise as a result of the default on a debt owed to the institution and held primarily for the purpose of resale.

This amendment applies to taxation years ending after June 1989.

Clause 86

Part I.3: Administration

ITA
181.7

Sections 181.7 to 181.9 of the Act are repealed as a consequence of the integration of the provisions relating to interest, instalments, and the remainder of tax payable for Parts I, I.3, VI, VI.1. New section 181.7 replaces section 181.9 and provides that certain provisions of Part I of the Act relating to assessments, interest, penalties, objections and appeals apply equally to Part I.3.

This amendment applies to the 1992 and subsequent taxation years.

Clause 87

Part IV Tax

ITA
186

The purpose of the tax levied under Part IV of the Act is to prevent individuals from benefitting from the deferral of tax that would otherwise be possible if, instead of receiving dividends directly, they arranged to have their investments in shares held by a corporation. Because dividends are generally received tax-free by corporations, the interposition of a holding company would, in the absence of Part IV tax, provide a significant deferral of tax for these individuals. Section 186, therefore, imposes a tax of 25% on dividends received by a corporation that is a private or a subject corporation at any time in the year in which the dividends are received. This tax is fully refunded to the corporation, as a dividend refund under section 129, upon the payment of taxable dividends to its shareholders.

Subclause 87(1)

ITA
186(1)(a)

Paragraph 186(1)(a) of the Act includes in the Part IV tax base dividends from corporations with which the recipient corporation is not connected (i.e., generally from corporations in which the shareholder corporation has no more than a 10% interest). This paragraph is amended to subject to Part IV tax only such dividends that are received at a time when the shareholder is a private or subject corporation.

Subclause 87(2)

ITA
186(1)(b)

Where a corporation that has paid tax under Part IV on dividends received by it or that has paid refundable taxes on other investment income subsequently pays taxable dividends it is entitled to a refund of tax. Where such dividends are received by a connected corporation, paragraph 186(1)(b) of the Act levies Part IV tax on the recipient of the dividend in an amount calculated by reference to the dividend refund in respect thereof obtained by the corporation that paid the dividend. Like paragraph 186(1)(a), paragraph 186(1)(b) is amended to exact Part IV tax only on dividends received when the shareholder is a private or subject corporation.

Subclause 87(3)

ITA
186(1)(b)(iii)

Subparagraph 186(1)(b)(iii) of the Act is amended as a consequence of the amendment to subsection 129(1), which permits a dividend refund to be paid to a corporation only for dividends paid by it while it is a private corporation or a subject corporation. Accordingly, since the amount of Part IV tax levied under paragraph 186(1)(b) on a dividend received by a corporation that is

connected to the dividend-paying corporation is intended to equal the portion of the payer's dividend refund that was received by it by virtue of the payment of that dividend, subparagraph 186(1)(b)(iii) is amended to refer to dividends paid by the payer corporation at a time when it was a private corporation or a subject corporation.

Subclause 87(4)

ITA
186(5)

Subsection 186(5) of the Act provides that a subject corporation (as defined in subsection 186(1)) is considered to be a private corporation for the purposes of section 129 and certain other provisions in order that the corporation may claim a dividend refund under section 129 of Part IV tax paid in respect of its dividend income. This rule applies only if the corporation was a subject corporation at the end of the taxation year for which the dividend refund is claimed. This amendment deletes this requirement as a consequence of the amendment to subsection 129(1) which permits the payment of dividend refunds to all corporations, rather than only those corporations which are private corporations at the end of the taxation year for which the refund is claimed.

The amendments described in subclauses (1) to (3) apply to dividends received after 1992. The amendment described in subclause (4) applies to the 1993 and subsequent taxation years.

Clause 88

Part VI Tax on Financial Institutions

ITA
190.15(6)

Section 190.14 of the Act provides, for the purposes of the tax on financial institutions under Part VI, an investment allowance in respect of shares and certain debts of a financial institution that are held by a related institution. Under section 190.15 of the Act, a

financial institution is entitled to a deduction of between $200 and $220 million in determining the base capital on which Part VI tax is levied. Where the institution is a member of a related group of financial institutions, this capital deduction must be shared among the members of the related group.

New subsection 190.15(6) provides that, for the purpose of sections 190.14 and 190.15, financial institutions will not be considered to be related merely because of the existence of a right to acquire control of a corporation or as a result of control of the corporations by Her Majesty in right of Canada or a province. This new subsection is to apply with respect to the 1989 and subsequent taxation years.

Clause 89

Part VI: Administration

ITA
190.21

Sections 190.21 to 190.24 of the Act are repealed as a consequence of the integration of the provisions relating to interest, instalments and the remainder of tax payable for Parts I, I.3, VI and VI.1. New section 190.21 replaces section 190.24 and that provides certain provisions of Part I of the Act relating to assessments, interest, penalties, objections and appeals apply equally to Part VI.

Clause 90

Part VI.1 Tax

ITA
191(3)

Part VI.1 of the Act provides for a special tax to be paid by a corporation with respect to dividends, other than excluded dividends, paid by it on taxable preferred shares. Under subsection 191(1), excluded dividends include dividends paid by the corporation to a shareholder that had a "substantial interest" in the corporation at the time the dividend was paid. The definition of

substantial interest is contained in subsection 191(2), but is subject to certain limitations set out in subsection 191(3).

Paragraphs 191(3)(a) and (b) of the Act provide that an interest acquired in a corporation will be deemed not to be a substantial interest where the principal purpose of the acquisition was to avoid the application of Part IV.1 (a tax on the recipients of certain dividends) or Part VI.1. These paragraphs are amended with respect to dividends paid or received after Announcement Date, to extend the application of paragraphs 191(3)(a) and (b) to situations in which an interest is acquired to avoid the application of Part I of the Act.

Where a shareholder of a corporation is a trust, it is generally deemed by paragraph 191(3)(d) not to have a substantial interest in the corporation except where it is a trust in which only one person is "beneficially interested" or in which all persons who are "beneficially interested" in the trust are related to each other. The definition of "beneficially interested" is provided through a cross reference to subsection 94(7). This paragraph is amended, effective January 1, 1991, to eliminate this cross reference. The cross reference is no longer necessary because new subsection 248(25) provides the same definition of "beneficially interested" for the purposes of the Act.

Clause 91

Part VI.1: Administration

ITA
191.4(2)

Subsection 191.4(2) of the Act provides that certain provisions of Part I of the Act relating to assessments, interest, penalties, objections and appeals apply equally to Part VI.1.
Subsection 191.4(2) is amended to delete the reference therein to subsection 161(1) and (2). This change is consequential on the integration, in section 161 of the Act, of the provisions relating to interest payable on overdue taxes and late or deficient instalments for Parts I, I.3, VI and VI.1.

Clause 92

Net Past Service Pension Adjustment

ITA
204.2

Part X.1 of the Act imposes a tax on excess contributions to registered retirement savings plans (RRSPs). Excess contributions made by a taxpayer after 1990 are measured by the cumulative excess amount of the taxpayer in respect of RRSPs, as computed pursuant to subsection 204.(1.1). Subsection 204.2(1.3) defines, for the purpose of this computation, a taxpayer's net past service pension adjustment. This definition is similar to the definition of net PSPA set out in paragraph 146(1)(d.1) of the Act.

The amendments to subsection 204.2(1.3), which are effective after 1988, are the same as those to paragraph 146(1)(d.1). For a description of the amendments, reference may be made to the commentary on paragraph 146(1)(d.1).

Clause 93

Foreign Property Tax

ITA
206

Section 206 of the Act imposes a tax on the amount of "foreign property" (as defined in subsection 206(1)) held by pension funds and certain other tax exempt entities in excess of defined limits.

Paragraph 206(2)(a) is amended so that this tax will not be imposed in respect of property that was not foreign property when it was acquired, but that subsequently becomes foreign property. This may be the case, for example, in respect of the shares of a Canadian corporation the value of which, at any time, becomes primarily derived from portfolio investments in foreign property. Under the amendment, the shares in such a case would not be subject to the foreign property limits until two years after such time.

New subsection 206(3.1) extends the relief provided by the amendment to paragraph 206(2)(a). It applies to two cases. The first case is where a corporate security that is foreign property to a taxpayer is exchanged for another corporate security that is foreign property to the taxpayer in the course of a corporate merger or reorganization of capital. In these circumstances, where the other security was not subject to the foreign property limits for a two year period described in paragraph 206(2)(a), the new security will likewise not be subject to the limits for the same period.

The second case to which subsection 206(3.1) applies is where a corporate security that is not foreign property is exchanged in the course of a merger of two or more corporations for another security that is foreign property. In these circumstances, the new security will not be subject to the foreign property limits for two years after the merger.

These amendments are applicable to months ending after Announcement Date.

Clause 94

RCA Rules

ITA
207.6(6)

New subsection 207.6(6) of the Act sets out a number of new rules that apply to plans and arrangements that are prescribed for the purposes of the provisions of the Act relating to retirement compensation arrangements (RCAs). It is proposed that a new section 6803 be added to the Income Tax Regulations to prescribe specific plans and arrangements for this purpose. The purpose of subsection 207.6(6) is to extend the RCA rules to certain plans and arrangements maintained by the provincial and federal governments. However, it is proposed that subsection 103(7) of the Regulations be amended so that there is no withholding requirement with respect to amounts credited under these plans and arrangements.

It is proposed that a particular plan or arrangement be prescribed for the purposes of subsection 207.6(6) (and new

clause 8(1)(m.2)(iii)(C)) only where all of the following conditions are satisfied:

- the plan or arrangement is established to provide retirement benefits for employees in respect of years after 1991 and is not a registered pension plan,

- the government responsible for the plan or arrangement applies for it to be prescribed,

- a single account is established in the accounts of the government of Canada or of a province in respect of the plan or arrangement to which are credited actual employee and employer contributions, refunds under subsection 207.7(2) and any other amounts required by the plan or arrangement to be credited to the account and to which are debited distributions under the plan or arrangement, and

- the balance in the account can, at all times, reasonably be expected to approximate or exceed the actuarial liabilities for benefits payable under the plan or arrangement.

Under paragraph 207.6(6)(a), a prescribed plan or arrangement is treated as a retirement compensation arrangement. Under paragraph 207.6(6)(b), any amount credited to the account established in connection with the plan in the accounts of Canada or a province is, with the exception of a refund of RCA tax determined under subsection 207.7(2), treated as a contribution to the plan or arrangement. As a consequence, such credited amounts are subject to the RCA tax. (However, any actual payment of benefits under the plan or arrangement to employees or former employees would result in a refund of RCA tax or a reduction in the amount of RCA tax payable.) Under paragraph 207.6(6)(c), the custodian of the plan or arrangement is Her Majesty, either in right of Canada or a particular province, depending on which government establishes the plan or arrangement. Finally, paragraph 207.6(6)(d) provides that the balance in the account is considered to be cash. This results in the plan or arrangement being able to take advantage of the election in subsection 207.5(2) should the plan or arrangement terminate.

This amendment is applicable after 1991.

Clause 95

Tax on Designated Income of Certain Trusts

ITA
Part XII.2

Part XII.2 of the Act imposes a special tax on the designated income of certain trusts with regard to distributions to non-resident beneficiaries.

New subsection 210.2(1.1) of the Act extends the tax under Part XII.2 to amateur athlete trusts, which are provided for in new section 143.1, in circumstances where amounts are distributed by such trusts to non-resident beneficiaries. This amendment is applicable after December 31, 1991.

Clause 96

Non-Resident Withholding Tax

ITA
212

Section 212 of the Act imposes a withholding tax on certain payments to non-residents.

Subclause 96(1)

ITA
212(1)(b)(iv)

Subparagraph 212(1)(b)(iv) of the Act provides an exemption from non-resident withholding tax for interest payable on certain obligations to persons holding a valid certificate of exemption issued under subsection 212(14). New subparagraph 212(1)(b)(iv), which applies with respect to amounts paid or credited after 1991, provides that this exemption is to be available only where the payer and the recipient of the interest deal at arm's length.

Subclause 96(2)

ITA
212(1)(b)(vii)(F)

Subparagraph 212(1)(b)(vii) of the Act provides an exemption from non-resident withholding tax for interest paid to an arm's length lender on a corporate debt obligation under which the issuer cannot be required to repay more than 25% of the principal within five years of the date of issue. New clause 212(1)(b)(vii)(F) provides that interest paid on a corporate debt obligation will not be disqualified from this exemption merely because the borrower may be required to make an early repayment of the debt as a consequence of the death of the lender. This amendment applies to interest paid or credited after 1991.

Subclause 96(3)

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. The exemptions are extended to include pension benefits that are transferred, pursuant to an authorization in prescribed form, to a registered retirement income fund (RRIF) where subsection 147.3(9) would exclude the pension benefits from the non-resident person's income if the person were a Canadian resident. This amendment, which is applicable for payments made after August 29, 1990, is consequential to the amendments to section 147.3 permitting the direct transfer of amounts from registered pension plans to RRIFs.

Subclause 96(4)

ITA
212(1)(t) and (u)

New paragraph 212(1)(t) provides for the application withholding tax under Part XIII in respect of amounts paid to a non-resident

taxpayer out of the taxpayer's NISA Fund No. 2 (as defined in subsection 248(1)). This new paragraph applies with respect to payments made after 1990.

New paragraph 212(1)(u) of the Act extends the application of the Part XIII withholding tax to any amount that is paid by an amateur athlete trust (which is described in new section 143.1) to a non-resident beneficiary, that would have been included in the beneficiary's income for a year if Part I were applicable. This tax will apply in respect of such payments made after 1991.

Clause 97

Group Control

ITA
212.1(3)(d)

Subsection 212.1 of the Act is an anti-avoidance rule designed to prevent the removal of taxable corporate surplus as a tax-free return of capital through a non-arm's length transfer by a non-resident of shares from one Canadian corporation to another Canadian corporation. Paragraph 212.1(3)(a) treats a non-resident as not being at arm's length with the transferee corporation if the non-resident was, immediately before the transfer, one of a group of less than 6 persons that controlled the acquired corporation and, immediately after the transfer, was a member of the same group that controlled the transferee corporation.

Subsection 212.1(3) is amended by adding new paragraph 212.1(3)(d), effective for dispositions occurring after Announcement Date. It provides that:

(1) in determining whether a corporation is controlled by a group of persons, a group in respect of that corporation means any two or more persons each of whom owns shares of the corporation,

(2) a corporation can be considered to be controlled by a person or particular group of persons notwithstanding that the corporation is also controlled by another person or group persons. As a consequence, a corporation can be considered to be

controlled at the same time by several persons or groups of persons, and

(3) a group controls a corporation notwithstanding that one member of that group has control of the corporation.

Clause 98

Deemed Payments

ITA
214(3)(k) and (l)

Subsection 214(3) of the Act deems certain income amounts to be payments for the purposes of Part XIII. New paragraph 214(3)(k) is consequential on new section 143.1 of the Act, which provides special rules for amateur athlete trusts. This new paragraph, which applies to amounts distributed by such trusts after 1991, ensures that distributions under such arrangements which would be included in the income of the beneficiary if Part I applied, will be treated as amounts paid for the purposes of Part XIII.

New paragraph 214(3)(l) of the Act is consequential to new subsection 12(10.2), which concerns the inclusion in income of amounts paid out of a taxpayer's NISA Fund No. 2 (as defined in subsection 248(1) of the Act). This paragraph applies after 1990.

Clause 99

Branch Tax

ITA
219

Part XIV of the Act levies a tax, generally referred to as the "branch tax", on corporations (other than Canadian corporations), carrying on business in Canada. In computing the amount on which this tax for a corporation is based, paragraph 219(1)(a.3) adds the amount of any resource allowance claimed by the corporation and paragraph 219(1)(e) subtracts tax payable by the corporation under Part I.

Paragraph 219(1)(a.3) is amended so that, where a corporation claims a deduction under paragraph 20(1)(v.1) by reason of being a member of a partnership, the amount on which Part XIV tax is levied is not affected. This amendment is strictly consequential to the changes to subsection 96(1) under which resource allowance may no longer be claimed at the partnership level. It is applicable after Announcement Date.

Paragraph 219(1)(e) is amended, effective for taxation years ending after June 1989, so that any taxes payable under Part I.3 and VI of the Act may also be deducted in computing the amount on which a corporation's branch tax liability is based.

Clause 100

Certification of an Amount Payable

ITA
223(3)

Section 223 of the Act allows the Minister of National Revenue to register with the Federal Court a certificate specifying an amount payable by a taxpayer under the Act, the *Unemployment Insurance Act*, the *Canada Pension Plan* or the income tax law of a province with which the federal government has a tax collection agreement. When registered, the certificate has the same effect as if it were a judgment of the Court for the amount specified plus interest. Subsection 223(3) is amended, effective after Royal Assent, to clarify that the interest that is applicable is the rate provided for by the statute under which the amount certified is payable (for example, the *Income Tax Act* or the *Canada Pension Plan*), rather than interest as provided under the *Federal Court Act.*

Clause 101

Garnishment

ITA
224(1.2)

Subsection 224(1.2) of the Act provides the Minister of National Revenue with an enhanced garnishment power to intercept payments that are owed to a tax debtor or to a secured creditor of the tax debtor who has a security interest such as an assignment of trade receivables. Upon receipt of an enhanced garnishment letter by a person who owes money to another person who has failed to remit source deductions, the garnished amount becomes the property of Her Majesty and must be paid to the Receiver General in priority over any security interest in that money.

This amendment to subsection 224(1.2), which applies on Royal Assent, clarifies that the money that is the subject of an enhanced garnishment letter becomes property of Her Majesty only to the extent of the tax debtor's liability for unremitted source deductions as assessed by the Minister.

Clause 102

Filing Requirements for Non-Profit Organizations

ITA
227.2

New section 227.2 of the Act is intended to determine who is responsible to fulfil various obligations imposed under the Act, in cases where the form of an organization is not a corporation, trust or estate. This determination is relevant to the requirement in new subsection 149(12) for certain non-profit organizations to file information returns. As well, there may be other requirements imposed on such organizations, which are now included in the definition of "person" by virtue of an amendment to section 248 of the Act. For example, where such an organization pays salary or wages, it is responsible for withholding and remitting income tax on these amounts.

New section 227.2 provides that, where the form of an organization is not a corporation, trust or estate, the responsibility to pay or remit any amount or perform any other requirement imposed under the Act or regulations falls upon the officers of the organization, or where there are no officers, upon a management committee of the organization. Where there are neither officers nor a management committee, joint and several liability for such compliance will be assumed by every member of the organization.

New subsection 227.2 is applicable after Royal Assent.

Clause 103

Receipts for Political Contributions

ITA
230.1

Section 230.1 of the Act requires certain books and records to be kept and returns of information to be filed in respect of contributions to political parties and candidates. The amendments to this section are intended to provide for the retention of more specific information in order to verify the accuracy of claims for income tax credits arising from such contributions and to eliminate requirements for information that may be redundant.

The amendment to subsection 230.1(1) ensures that the duplicate receipts, which registered agents of political parties and official agents of candidates are required to keep, contain the same prescribed information as the receipts which are issued to individuals making the contributions. The amendment to subsection 230.1(2) eliminates the requirement that duplicate receipts be filed with the Minister of National Revenue, consequential on the amendment to subsection 230.1(1). This amendment also updates a reference to a section of the *Canada Elections Act*. Subsection 230.1(4) is amended as a consequence of the amendment to subsection 230.1(2).

These amendments are applicable to the 1992 and subsequent taxation years.

Clause 104

Filing Requirements for Non-Profit Organizations

ITA
233

Section 233 of the Act authorizes the Minister of National Revenue to demand information from persons who are required to file information returns by virtue of a regulation made under paragraph 221(1)(d). The amendments to this section broaden that authority, so that the Minister may make such a demand in any case where an information return is required to be filed under the Act or the Income Tax Regulations. Thus, for example, such a demand may be made where an information return is required to be filed by virtue of new subsection 149(12), or under existing section 233.1. This amendment is applicable after Royal Assent.

Clause 105

Offences

ITA
239(2.2), (2.21) and (2.22)

Section 239 of the Act establishes various offences. Existing subsection 239(2.2) provides that the unauthorized use or communication of tax information by any person constitutes an offence punishable on summary conviction by a fine of up to $5,000 and imprisonment for up to 12 months. That subsection is replaced by new subsections 239(2.2) and (2.21), each of which establishes an offence, and new subsection 239(2.22), which defines several terms used in subsections 239(2.2) and (2.21).

Subsection 241(1) of the Act prohibits disclosure of information obtained for the purposes of the Act where the disclosure is made knowingly by an official or authorized person, except as authorized by that section. Subsection 241(4) allows information to be provided to certain persons for specific purposes. Existing subsection 239(2.2) makes it an offence for any person to contravene subsection 241(1) or to use or communicate information

provided to that person under subsection 241(4) for any purpose other than the purpose for which it was provided.

The amendments leave the offence for contravening subsection 241(1) in subsection 239(2.2) and move the offence relating to subsection 241(4) to new subsection 239(2.21). The penalty is the same for both subsections, but new subsection 239(2.21) applies only to officials and authorized persons, in the case of information provided under paragraph 241(4)(a), whereas subsection 239(2.2) applies to any person. "Official" and "authorized person" are defined for that purpose in new subsection 239(2.22) as having the same meaning as provided in subsection 241(10) of the Act. Basically, officials and authorized persons are federal and provincial government employees. In the case of information provided under paragraphs 241(4)(b), (c), (e), (g) or (j), new paragraph 239(2.21)(a) provides that the offence for misuse or unauthorized communication of the information will apply to any person to whom the information has been provided under one of those paragraphs. Paragraphs 241(4)(d) and (h) only allow information to be given to officials or authorized persons, so the offence for misuse or unauthorized disclosure of information provided under those paragraphs will be confined to officials or authorized persons, in new paragraph 239(2.21)(b).

These amendments are consequential on new paragraph 241(4)(a), which allows taxpayer information to be provided by an official or authorized person to any person for the purpose of administering or enforcing the Act, the *Canada Pension Plan* or the *Unemployment Insurance Act*. This authority to disclose information for administrative purposes clarifies that taxpayer information may be used, for example, to locate tax debtors or to determine if an amount that could be garnished is owing to a tax debtor. In such cases, it may be necessary that some information about a tax debtor be disclosed to persons who are not government employees in order to obtain information from those persons.

Section 239 is also amended as a consequence of other amendments to subsection 241. One of these amendments is the addition of new paragraph 241(4)(g) and subsection 241(4.1). Paragraph 241(4)(g) allows taxpayer information to be provided to any person for the purpose of supervision, evaluation or discipline of an employee of Revenue Canada, Taxation. New

subsection 241(4.1) allows the person presiding at a legal proceeding relating to the supervision, evaluation or discipline of a Revenue Canada, Taxation employee to order such measures as the person may deem necessary to ensure that taxpayer information disclosed in the course of that proceeding is not used or provided to any person for any purpose not relating to that proceeding. The contravention of new subsection 241(4.1) or of an order made under that subsection is made an offence under subsection 239(2.2). New subsection 239(2.21) also makes it an offence for any person to whom information has been provided under paragraph 241(4)(g) in relation to the supervision or discipline of a Revenue Canada, Taxation employee to misuse or make an unauthorized disclosure of that information.

New subsection 239(2.21) applies with respect to "taxpayer information". The term "taxpayer information" is defined in new subsection 239(2.22) as having the same meaning as provided in its new definition in subsection 241(10). The definition excludes information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

The amendments to section 239 are applicable after Royal Assent.

Clause 106

Communication of Information

ITA
241

Section 241 of the Act prohibits the use or communication by an official or an authorized person of information obtained under the Act unless specifically authorized by one of the exceptions found in that section.

The amendments to section 241:

- adopt a new definition of "taxpayer information" for the purpose of describing the kind of information that is subject to the rules against unauthorized use or disclosure: taxpayer information does not include information that does not reveal the identity of the taxpayer to whom it relates;

- adopt terminology that is more consistent with the offence provisions in subsections 239(2.2) and (2.21); in particular, the new wording uses the expression "provide information" rather than "communicate or allow to communicate information";

- delete references to the *Petroleum and Gas Revenue Tax Act* by providing in new subsection 241(11) that references in subsections 241(1), (3), (4) and (10) to "this Act" include references to the *Petroleum and Gas Revenue Tax Act*;

- add references, in paragraph 241(1)(c), 3(b) and (4)(a) and the definitions "authorized individual" and "authorized person" in subsection 241(10), to the *Canada Pension Plan* and the *Unemployment Insurance Act*; these new references reflect the fact that officials of Revenue Canada, Taxation use taxpayer information for the purpose of administering parts of those statutes;

- add new subsection 241(3.1), which allows the Minister of National Revenue to disclose taxpayer information to alert appropriate persons of situations involving imminent danger of death or physical injury to any individual;

- add new paragraph 241(4)(g) and subsection 241(4.1) and the definition "authorized individual" in subsection 241(10), which relate to the disclosure of taxpayer information for the purposes of the supervision and discipline of employees of Revenue Canada, Taxation;

- clarify that taxpayer information may be disclosed to provincial governments for the purpose of the evaluation or formulation of fiscal policy;

- provide, in new paragraph 241(4)(f), that taxpayer information may be used to compile statistical information or other information that does not reveal the identity of the taxpayers to whom it relates;

- provide, in amended subsection 241(5), that taxpayer information can be disclosed to anyone with the consent of the taxpayer to whom it relates;

- delete existing paragraph 241(4)(e), subparagraphs 241(4)(f)(iv) and (vi) and paragraphs 241(4)(h.1) and (h.2) because the authority provided by those paragraphs is provided by new paragraph 241(4)(b), which corresponds to existing paragraph 241(4)(d) and allows taxpayer information to be disclosed to a taxpayer who needs it for the purpose of determining tax or other amounts payable by or to the taxpayer under the Act;

- clarify in paragraph 241(4)(a) that taxpayer information may be provided to any person for the purposes of administering or enforcing the Act, the *Canada Pension Plan* or the *Unemployment Insurance Act*;

- allow taxpayer information (such as an address) relating to a particular taxpayer to be used for the purpose of providing that taxpayer with information;

- eliminate the need for regulations made for the purposes of existing subparagraph 241(4)(g)(iii) and paragraph 241(4)(h) to describe programs referred to in the corresponding provisions in new subparagraphs 241(4)(f)(iii) and (ix);

- regroup a number of the paragraphs and subparagraphs of subsection 241(4) into new paragraph 241(4)(d), which lists government officials to whom taxpayer information may be given for specific purposes; and

- list, in new paragraph 241(4)(e), a number of federal statutes which relate to the disclosure of taxpayer information.

The amendments to section 241 are applicable on Royal Assent.

The concordance between the provisions of existing section 241 and new section 241 is as follow:

Existing Section 241		New Section 241
241(1)		241(1)
(2)		(2)
(3)		(3)
(4)(a)		(4)(a)
(b)		(d)(iv)
(c)		(j)
(d)		(b)
(e)	deleted because covered by	(b)
(e.1)		(c)
(f)(i)		(d)(i)
(ii)		(ii)
(iii)		(iii)
(iv)	deleted because covered by	(a)
(v)		(d)(v)
(vi)	deleted because covered by	(a)
(f.1)		(d)(vii)
(g)		(viii)
(h)		(ix)
(h.1)	deleted because covered by	(b)
(h.2)	deleted because covered by	(b)
(i)		(e)(v)
(j)		(d)(vi)
(k)		(x)
(l)		(xi)
(m)		(xii)
(5)		(5)
(6)		(6)
(7)	(not amended)	(7)
(8)	(not amended)	(8)
(10)		(10)

New Section 241		Existing Section 241
241(1)		241(1)
(2)		(2)
(3)		(3)
(3.1)	(new)	
(4)(a)		(4)(a)
(b)		(d)
(c)		(e.1)
(d)(i)		(f)(i)
(ii)		(ii)
(iii)		(iii)
(iv)		(b)
(v)		(f)(v)
(vi)		(j)
(vii)		(f.1)
(viii)		(g)
(ix)		(h)
(x)		(k)
(xi)		(l)
(xii)		(m)
(e)(i)	(new)	
(ii)	(new)	
(iii)	(new)	
(iv)	(new)	
(v)		(i)
(vi)	(new)	
(vii)	(new)	
(viii)	(new)	
(ix)	(new)	
(x)	(new)	

New Section 241		Existing Section 241
(xi)	(new)	
(f)	(new)	
(g)	(new)	
(h)	(new)	
(i)	(new)	
(j)		(c)
(4.1)	(new)	
(5)		(5)
(6)		(6)
(7)	(not amended)	(7)
(8)	(not amended)	(8)
(10)		(10)

Clause 107

Interpretation

ITA
248

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

Subclause 107(1)

ITA
248(1)

"cost amount"

Subsection 248(1) defines "cost amount" which is used throughout the Act, particularly in provisions relating to the transfer of properties to or from corporations, trusts and partnerships.

The definition of "cost amount" with respect to eligible capital property in paragraph 248(1)(d) of the Act is amended to multiply by 4/3 the prorated cumulative eligible capital to take account the 3/4 inclusion rate with respect to eligible capital property. The

amendment to this definition is intended to provide consistent treatment with respect to those provisions of the Act providing for the transfer of eligible capital property between taxpayers and in which the term "cost amount" is used. This amendment is applicable, in the case of corporations, to taxation years commencing after June 1987, and in any other case, to fiscal periods commencing after 1987.

Paragraph (e) of that definition defines that amount, in respect of property that is a debt owing to the taxpayer or any other right of the taxpayer to receive an amount, as being the amortized cost of the property or, where the property does not have an amortized cost to the taxpayer, as being the amount of the debt or right that was outstanding at that time. Paragraph (e) is amended, applicable to 1991 and subsequent taxation years, to exclude from its application a "net income stabilization account" (see below for the commentary concerning the definition of this account).

The cost amount of a NISA Fund No. 1 is determined under paragraph (b) of the definition "cost amount" as being the taxpayer's adjusted cost base in respect of the non-depreciable property. In this latter regard, paragraph 54(a) defines the adjusted cost base of non-depreciable capital property to be the "capital cost" of the property to the taxpayer. Generally, the capital cost of a NISA Fund No. 1 is the amount contributed to the fund by the taxpayer less any withdrawals.

With respect to the "cost amount" of a taxpayer's NISA Fund No. 2, paragraph (f) of the definition "cost amount" provides that the taxpayer's cost amount is the "cost" of the property to the taxpayer except to the extent that such cost has been deducted from income. In this regard, a NISA Fund No. 2 does not include contributions made to the NISA by the respective farm producers. Accordingly, a taxpayer's cost and cost amount in respect of the taxpayer's NISA Fund No. 2 is nil.

"person"

The amendment in subsection 248(1) to the definition of "person" broadens its application to include any tax-exempt entity described in subsection 149(1) of the Act. Where such entities do not take the form of corporations or trusts, it is intended that they be subject

to the obligations imposed upon persons under the Act or regulations, including, where applicable, the requirement to file information returns contained in new subsection 149(12). This amendment applies after Royal Assent.

"small business corporation"

The definition of "small business corporation" in subsection 248(1) is amended to treat the fair market value of a corporation's net income stabilization account (NISA) as being nil for the purposes of that definition. In effect, whether or not a particular corporation is a small business corporation will be determined without reference to the existence of a NISA. This amendment is applicable to the 1991 and subsequent taxation years.

"specified shareholder"

The amendment to the definition of "specified shareholder" in subsection 248(1) provides a rule for determining whether a beneficiary of discretionary trust is a specified shareholder. This definition is relevant to a number of provisions of the Act, including the attribution rules in sections 74.4 and 74.5.

Paragraph (b) of the definition "specified shareholder" provides that for the purposes of the definition, each beneficiary of a trust is deemed to own a proportion of the shares of a corporation owned by the trust. New paragraph (e) of the definition, which is applicable after 1991, provides that, notwithstanding paragraph (b), where a discretionary trust owns shares in a corporation, any beneficiary capable of benefitting under that trust will be considered to own each share of the corporation held by the trust.

"amateur athlete trust"

Subsection 248(1) of the Act is amended to provide that the term "amateur athlete trust" has the meaning described in new subsection 143.1(1) for all purposes of the Act. This amendment applies to the 1988 and subsequent taxation years.

"net income stabilization account"
"NISA Fund No. 2"

For the purposes of the Act, a "net income stabilization account" ("NISA") means an account of a taxpayer under the "net income stabilization program" under the *Farm Income Protection Act.*

A taxpayer's NISA is made up of two separate funds. Fund No. 1 of a NISA represents amounts contributed on an after-tax basis by a farm producer to a NISA. Fund No. 2 is discussed below. Further details in respect of both funds are provided in the *Farm Income Protection Act.*

"NISA Fund No. 2" means the portion of a taxpayer's NISA described in paragraph 8(2)(b) of the *Farm Income Protection Act.* This paragraph provides that Fund No. 2 includes all amounts paid to a NISA in respect of a farm producer other than producer contributions. In effect, a taxpayer's NISA Fund No. 2 is the portion of the NISA that includes all third party contributions, interest and bonuses credited to the producer's NISA. These amendments are applicable to the 1991 and subsequent taxation years.

Subclause 107(6)

ITA
248(9.1) and (9.2)

New subsection 248(9.1) of the Act provides that a trust is considered to have been created by a taxpayer's will if it was created under the terms of the will or by a court order in relation to the taxpayer's estate that provides for support or relief of the taxpayer's dependants pursuant to provincial law. This provision replaces a narrower rule that was found in subsection 70(6.1) of the Act, and is applicable to the 1990 and subsequent taxation years.

New subsection 248(9.2) applies to a number of rollover provisions in the Act which allow for the deferral of accrued gains on property of a deceased taxpayer transferred to a spouse, child or grandchild of the taxpayer, or to a trust for the spouse of the taxpayer. These rollover provisions apply in respect of eligible property "vested indefeasibly" in a qualifying individual or trust

within a 36-month or longer period following the death of the transferor.

Subsection 248(9.2) clarifies that, for the purposes of the Act, eligible property will be considered to have become "vested indefeasibly" in a qualifying individual only before the death of the qualifying individual and, in a trust for a spouse, only before the death of the spouse. This amendment ensures that a rollover of property on the death of an individual to a qualifying individual or spousal trust is permitted only in circumstances where appropriate gains will be recognized on the death of the beneficiary spouse under the spousal trust or the qualifying individual. It is applicable in respect of deaths occurring after Announcement Date.

Subclause 107(7)

ITA
248(11)

Subsection 248(11) of the Act provides that interest computed at a prescribed rate under certain provisions of the Act is to be compounded on a daily basis. References are added in this subsection to new subsections 129(2.1) and (2.2), 131(3.1) and (3.2), 132(2.1) and (2.2) and 133(7.01) and (7.02) of the Act so that interest required to be computed at the prescribed rate under those provisions is also required to be compounded daily. Those new provisions generally relate to interest on various kinds of refunds, as explained in the commentary on those provisions.

Subsection 248(11) is also amended to refer to interest being "applied", since some provisions of the Act allow interest payable by the Minister of National Revenue to a taxpayer to be applied to a liability of the taxpayer rather than paid to the taxpayer. The amendments to subsection 248(11) are applicable with respect to refunds paid or applied for taxation years commencing after 1991.

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Subclause 107(8)

ITA
248(25)

New subsection 248(25) of the Act provides that a person or partnership is "beneficially interested" in a trust if that person or partnership has any right whatsoever to receive income or capital of the trust, whether directly or indirectly through one or more trusts. This subsection applies for the purposes of the Act as a whole and, as a result, replaces subsections 74.5(10) and 94(7).

This amendment is applicable as of January 1, 1991.

Clause 108

Extended Meaning of "Spouse" and
"Former Spouse"

ITA
252(3)

Subsection 252(3) of the Act provides that, for a number of purposes, "spouse" and "former spouse" include a party to a void or voidable marriage. Subsection 252(3) is amended so that this rule also applies for the purposes of subsections 70(6) and 104(4) and paragraph 108(1)(f.1), each of which relates to spousal trusts, as well as for the purposes of the definition of "exempt beneficiary" in subsection 104(5.4). The amendment also provides that this rule applies to new subsections 70(6.1), 73(5) and 104(5.1), relating to transfers of a taxpayer's NISA Fund No. 2 to the taxpayer's spouse.

This amendment is applicable to the 1991 and subsequent taxation years.

Clause 109

Guaranteed Shares

ITA
258(3)

Clause 247 of Bill C-18 (1991) amended the coming-into-force provision of an amendment in S.C. 1988, c. 55 to subsection 258(3) of the *Income Tax Act*, which treats certain dividends as having been received in the form of interest. The purpose of clause 247 was to clarify the application of three provisions: paragraph 258(3)(b) of the Act, as it existed prior to its amendment in 1988; the current version of the same provision; and subsection 258(5) of the Act. As it is expressed, clause 247 of Bill C-18 may be construed as providing that the pre-1988 version of subsection 258(3) is applicable in respect of shares issued after June 18, 1987. To avoid this unintended result, this amendment modifies subsection 258(3) itself, rather that its coming into force, and will ensure that the three provisions in question apply as follows:

- former (pre-June 18, 1987) paragraph 258(3)(b) applies to shares last acquired before 8:00 p.m., June 18, 1987;

- amended (post-June 18, 1987) paragraph 258(3)(b) generally applies to shares issued before, but last acquired after, 8:00 p.m., June 18, 1987; and

- subsection 258(5) applies to shares (other than grandfathered shares) issued or deemed to have been issued after 8:00 p.m., June 18, 1987.

As a result of this amendment, which takes effect on the same basis as the amendment to subsection 258(3) in S.C. 1988, c. 55, clause 247 of Bill C-18 is to be repealed.

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Clause 110

Qualified Trusts

ITA
259(3)(c)

Section 259 of the Act permits a "qualified trust" to make an election so that its beneficiaries will be considered to hold a proportionate interest in the underlying assets of the trust for the purposes of the qualified investment and foreign property provisions of the Act. The expression "qualified trust" is defined in subsection 259(3) and excludes a trust which has, at any time, borrowed money.

Paragraph 259(3)(c) is amended so that "qualified trusts" are permitted to borrow money after 1990 for a term of not more than 90 days, provided that the borrowing is not part of a series of loans or other transactions and repayments. This is consistent with the short-term borrowing privileges permitted for "master trusts" that are prescribed, pursuant to paragraph 149(1)(o.4), in section 5001 of the *Income Tax Regulations.*

Clause 111

Applications and Appeals

CPP
27(4)

Section 27 of the *Canada Pension Plan* (CPP) provides for applications to the Minister of National Revenue for the determination of questions concerning liability to make CPP contributions. It also provides for appeals to the Minister for the reconsideration of assessments made by the Minister as to amounts payable under the CPP. Subsection 27(4) provides that applications and appeals under section 27 are to be in prescribed form and sent by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa. Subsection 27(4) is amended, with respect to applications and appeals made after Royal Assent, to remove the requirement that the application or appeal be made in prescribed form and by registered mail and to provide, instead, that the

application or appeal is to be addressed to the Chief of Appeals in a District Office of the Department of National Revenue, Taxation and delivered or mailed to that office.

Clause 112

Definitions

ITCIA
5

The *Income Tax Conventions Interpretation Act* contains rules that govern the interpretation of certain provisions of the tax treaties concluded by Canada. Section 5 defines a number of terms, both for the purposes of the treaties and for the purposes of that section. The amendment to section 5 adds definitions of the terms "annuity", "pension" and "periodic pension payment". These new definitions are applicable with respect to amounts paid after Announcement Date.

"annuity"

The new definition of "annuity" restricts the meaning that that term would otherwise have in the tax treaties by excluding any payments that are pension payments arising in Canada. As a consequence of this definition, pension payments from a source in Canada (and in particular, those payments declared by the new definition of "pension" to be pension payments) will not be eligible for the reduced rate of withholding tax applicable under various tax treaties to annuity payments.

"pension"

The new definition of "pension" provides that that term includes payments arising in Canada under any of the following plans or arrangements:

- registered pension plans (RPPs),
- registered retirement savings plans (RRSPs),

- registered retirement income funds (RRIFs),

- retirement compensation arrangements (RCAs),

- deferred profit sharing plans (DPSPs), profit sharing plans for which the registration has been revoked, and annuity contracts purchased pursuant to such plans,

- annuity contracts for which the premium was deductible under paragraph 60(l) of the *Income Tax Act*, or would have been deductible if the annuitant had been resident in Canada (paragraph 60(l) provides a deduction where a refund of premiums under an RRSP, a payment under an RRIF in excess of the minimum required payments or certain other amounts are used to acquire an eligible annuity), and

- any superannuation, pension or retirement plan not referred to above.

"periodic pension payment"

The new definition of "periodic pension payment" provides that certain pension payments arising in Canada are considered not to be periodic pension payments. Consequently, such payments will not qualify for the reduced withholding rate applicable under various tax treaties to periodic pension payments. It should be noted that payments may fail to be periodic pension payments even though they are not specifically excluded by this definition.

A payment under an RPP will not be a periodic pension payment if it is a lump sum payment, or an instalment of a lump sum amount. The exclusion of instalment payments ensures, for example, that where a plan member receives the commuted value of accrued benefits in several payments, the payments will not be regarded as periodic. In general, a lump sum payment would not be considered to be a periodic pension payment even in the absence of this new definition.

The definition of "periodic" excludes payments made under an RRSP before the maturity of the plan, as well as any payment

made in full or partial commutation of the retirement income under such a plan.

Payments under a RRIF in any year that would otherwise be periodic are not periodic pension payment to the extent that total payments under the RRIF in the year exceed twice the minimum amount under the fund for the year or, if greater, 10% of the fair market value of the property held in connection with the fund at the beginning of the year. Where property has been transferred to a RRIF in the year, the minimum amount and the fair market value of the RRIF's property are to be determined on the assumption that the transfer took place immediately before the year. Certain payments are to be ignored in determining the total payments made under a RRIF in a year: (i) payments that are neither required to be included in computing income nor subject to non-resident withholding tax, and (ii) payments in respect of which a deduction is available under paragraph 60(l) of the *Income Tax Act.*

Payments under any arrangement other than an RPP, RRSP or RRIF will fail to qualify as periodic pension payments if they are not (i) part of a series of payments to be made annually or more frequently over the lifetime of the recipient or over a period of at least 10 years, (ii) payments made to a recipient by reason of a disability of the recipient, or (iii) the continuation of payments to a beneficiary of a deceased individual who was receiving periodic pension payments and whose pension payments were guaranteed for a minimum number of years. A pension payment which satisfies this requirement will nonetheless not be periodic if, at the time the payment is made, it is reasonable to conclude that

- the total payments to the recipient in the year will exceed twice the total payments made in the preceding year (unless this requirement is not satisfied because payments commenced to be made in the preceding year), or

- the total payments to the recipient in the year will exceed twice the total payments to be made in any future year (except where the reason for the excess is the termination of payments in that future year, or the reduction in the level of payments is as a consequence of the death of another person).

In determining total payments to a recipient, non-periodic payments and payments that are not periodic pension payments because of the first requirement described above are to be ignored.

Clause 113

Refund to Discounter

TRDA
2.1

Where a taxpayer has assigned his or her right to a tax refund to a discounter under the *Tax Rebate Discounting Act*, Revenue Canada, Taxation still makes the refund cheque payable to the taxpayer but mails the cheque to the discounter. New section 2.1 of the Act allows the refund cheque to be payable to the discounter. This will increase administrative efficiency by allowing one cheque to be sent to each discounter for the refunds that the discounter has acquired the right to receive.

Where a taxpayer's refund that a discounter has acquired the right to receive has been made to the discounter, the refund will be treated as having been made to the taxpayer in order to discharge the Revenue Canada's liability to the taxpayer. However, where the refund (not including interest) exceeds by $10 or more the amount estimated to be the refund at the time the discounter acquired the right to receive the refund, the excess will be considered to be held in trust for the taxpayer by the discounter -- whether or not the discounter does in fact hold the excess separate from his or her own money -- so that in the event of the liquidation, assignment or bankruptcy of the discounter, the excess will not form part of the estate in liquidation, assignment or bankruptcy.

New section 2.1 is applicable with respect to refunds of tax for the 1992 and subsequent taxation years.

Clause 114

Applications and Appeals

UI
61(5)

Section 61 of the *Unemployment Insurance Act* (UI Act) provides for applications to the Minister of National Revenue for the determination of questions concerning liability to pay unemployment insurance premiums. It also provides for appeals to the Minister for the reconsideration of assessments made by the Minister as to amounts payable under the UI Act. Subsection 61(5) provides that applications and appeals made to the Minister under section 61 are to be in a form authorized by the Minister and sent by registered mail to the Deputy Minister of National Revenue for Taxation at Ottawa. Subsection 61(5) is amended, with respect to applications and appeals made after Royal Assent, to remove the requirement that the application or appeal be made in the form authorized by the Minister and by registered mail and to provide, instead, that the application or appeal is to be addressed to the Chief of Appeals in a District Office of the Department of National Revenue, Taxation and delivered or mailed to that office.

Clause 115

Priority
S.C. 1986, c.6, Subsections 118(2) and (4)

ITA
227(10.2) to (10.8)

Subsections 227(10.2) to (10.8) of the *Income Tax Act* were intended to create a priority in favour of Her Majesty in Right of Canada in respect of amounts owing under the Act by a person as unremitted source deductions as against the claims of most other creditors. These subsections were to be applicable to assessments in respect of amounts deducted or withheld after a date to be fixed by proclamation. No such date has ever been fixed, so the provisions have never been effective. Subsequent to the enactment of subsections 227(10.2) to (10.8), the "enhanced" garnishment

provisions in subsections 224(1.2) and (1.3) of the Act were enacted.

The details for implementing subsections 227(10.2) to (10.8) were never fully resolved, and enhanced garnishment has proven to be a satisfactory alternate means for the collection of unremitted source deductions. Accordingly, subsections 227(10.2) to (10.8) are being repealed, effective as of February 13, 1986, which was the date of Royal Assent to the Act by which those subsections were introduced.

Clauses 116 and 117

Priority
R.S. 1985 (2nd Supp.), c.5,
Subsections 1(3) and (5) and 4(2) and (3)

Subsections 1(3) and (5) of R.S. 1985 (2nd Supp.), c.5 would have added subsections 23(7) to (13) to the *Canada Pension Plan.* Subsections 4(2) and (3) of R.S. 1985 (2nd Supp.), c.5 would have added subsections 57(7) to (13) to the *Unemployment Insurance Act.* Those provisions of the *Canada Pension Plan* and the *Unemployment Insurance Act* were intended to create a priority in favour of Her Majesty in Right of Canada in respect of amounts owing under those Acts by a person as unremitted source deductions as against the claims of most other creditors. Those subsections were to be applicable to assessments in respect of amounts deducted after a day to be fixed by proclamation. No such date has ever been fixed, so the provisions have never been effective. The enhanced garnishment provisions under subsections 224(1.2) and (1.3) of the *Income Tax Act* are now used for the collection of unremitted source deductions. Accordingly, subsections 23(7) to (13) of the *Canada Pension Plan* and subsections 57(7) to (13) of the *Unemployment Insurance Act* are being repealed, effective as of February 13, 1986, which was the date of Royal Assent to the Act by which those subsections were introduced.

Clause 118

Bill C-18: Guaranteed Shares

ITA
258(3)

Clause 247 of Bill C-18 (1991) altered the coming-into-force of a previous amendment to subsection 258(3) of the *Income Tax Act*, and was intended to clarify the application of that subsection. An amendment to subsection 258(3) of the Act, described in the commentary concerning that provision, has been made to ensure that this subsection applies correctly; accordingly, clause 247 of Bill C-18 is no longer required and is being repealed.

INCOME TAX REGULATIONS

1. (1) Paragraphs 6201(4)(a) and (b) of the *Income Tax Regulations* are revoked and the following substituted therefor:

"(a) 10 per cent of the shares of that class that were issued and outstanding at the last time before the particular time at which the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length acquired a share of that class, where no dividend is received at the particular time by any such corporation in respect of a share (other than a share prescribed under subsection (5)) of that class acquired after December 15, 1987 and before the particular time; or

(b) 5 per cent of the shares of that class that were issued and outstanding at the last time before the particular time at which the other corporation or a restricted financial institution with which the other corporation does not deal at arm's length acquired a share of that class, where a dividend is received at the particular time by any such corporation in respect of a share (other than a share prescribed under subsection (5)) of that class acquired after December 15, 1987 and before the particular time."

(2) Subparagraph 6201(5)(b)(i) and all that portion of subparagraph 6201(5)(b)(ii) preceding clause (c) thereof is revoked and the following substituted therefor:

"(i) dividends are received at the particular time by the other corporation or by the other corporation and corporations controlled by the other corporation in respect of more than 10 per cent of the shares of that class issued and outstanding at the particular time (or, for the purposes of the definition "taxable RFI share", shares of that class that were issued and outstanding at the last time before the particular time at which any such corporation acquired a share of that class),

(ii) the other corporation is a restricted financial institution and

(A) the share is not a taxable preferred share,

(B) dividends are received at the particular time by the other corporation or by the other corporation and corporations controlled by the other corporation in respect of more than 5 per cent of the shares of that class issued and outstanding at the particular time (or, for the purposes of the definition "taxable RFI share", shares of that class that were issued and outstanding at the last time before the particular time at which any such corporation acquired a share of that class), and"

2. Section 1 is applicable with respect to dividends received after Announcement Date.

EXPLANATORY NOTE

Income Tax Regulations
6201(4) and (5)

Section 6201 of the *Income Tax Regulations* lists certain types of shares, and identifies a limited number of particular shares, as "prescribed shares" for the purposes of subsection 112(2.2) of the *Income Tax Act* (dealing with guaranteed shares) and the definitions of "short-term preferred share", "taxable preferred share", taxable RFI share" and "term preferred share" in subsection 248(1) of the Act.

These amendments to subsections 6201(4) and (5) of the Regulations relate to "taxable RFI shares", which may be generally described as shares issued before June 18, 1987 that would have met the definition of "taxable preferred share" if issued after that date. (A taxable preferred share may, in turn, generally be described as a share in respect of which either the dividends payable thereon, or the amount to which the shareholder may be entitled on a liquidation, is fixed or limited.) Dividends paid after 1987 on taxable RFI shares acquired after June 18, 1987 are, subject to certain exceptions, taxable under Part IV.1 of the Act - at a rate of 10% - where the recipient is a restricted financial institution.

Subsections 6201(4) and (5) provide that shareholdings not exceeding a stipulated percentage - either 5 or 10%, depending upon the date that any such shares were last acquired - are to be excluded from the taxable RFI share definition. However, a financial institution's percentage ownership of a particular class of shares is assessed as of the date on which a dividend is received on those shares, rather than on the date on which any such shares were last acquired. As a result, an institution's shareholding may be adversely affected by, for example, the redemption of other persons' shares of the same class, despite the fact that the institution was within the prescribed limits at the time that the institution acquired its shares.

It is intended, as a general matter, that a reduction in the size of an outstanding share issue cause a corresponding reduction in the number of shares that any particular person may hold (for the purposes of determining, for example, the availability of an

exemption from the term preferred share rules). However, this objective was not intended to be a feature of the taxable RFI share rules, which, as noted above, are limited to shares issued before June 18, 1987. Accordingly, these amendments to subsection 6201(4) and (5) are designed to provide that, for the purposes of the definition of taxable RFI share, a financial institution's percentage holding of a particular class of shares is to be measured in relation to the number of those shares that were outstanding at the time that that institution (or another member of the same corporate group) last acquired any such shares.

These amendments apply to dividends received after Announcement Date.