Amendments to the Income Tax Act and Regulations

Draft Legislation and Explanatory Notes

Issued by
The Honourable Don Mazankowski
Minister of Fiannce

December 1992

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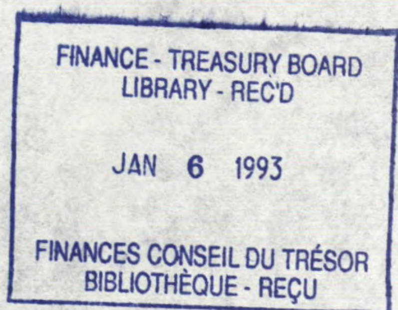

Department of Finance
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Ministère des Finances
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Draft Legislation to Amend the Income Tax Act and Regulations

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DRAFT AMENDMENTS TO THE INCOME TAX ACT, THE CANADA BUSINESS CORPORATIONS ACT, THE UNEMPLOYMENT INSURANCE ACT AND A RELATED ACT

1. (1) Subsection 4(2) of the *Income Tax Act* is repealed and the following substituted therefor: 5

Idem

(2) Subject to subsection (3), in applying subsection (1) for the purposes of this Part, no deductions permitted by sections 60 to 64 apply either wholly or in part to a particular source or to sources in a particular place. 10

(2) Subsection 4(3) of the said Act is repealed and the following substituted therefor:

Deductions applicable

(3) In applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126, 15

(*a*) subject to paragraph (*b*), all deductions permitted in computing the income of a taxpayer for a taxation year for the purposes of this Part, except any deduction permitted by any of paragraphs 60(*b*) to (*o*), (*p*), (*r*) and (*v*) to (*w*), shall apply either wholly or in part to a particular source or to sources in a particular place; and 20

(*b*) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada.

(3) Subsection (1) applies to the 1989 and subsequent taxation years. 25

(4) Subsection (2) applies to taxation years ending after November 12, 1981, except that for taxation years commencing before 1993, subsection 4(3) of the said Act, as enacted by subsection (2), shall be read as follows: 30

(3) The following rules apply for the purposes of this Act:

(*a*) in applying paragraph (1)(*b*) for the purposes of sections 115 and 126, subject to paragraph (*b*), all deductions permitted in computing the income of a taxpayer for a taxation year for the purposes of this Part shall apply either wholly or in part to a particular source or to sources in a particular place, as the case may be; and 35

(*b*) in applying subsection (1) for the purposes of subsections 104(22) and (22.1) and sections 115 and 126,

(i) any deduction permitted by any of paragraphs 60(*b*) to (*o*), (*p*), (*r*) and (*v*) to (*w*) shall not apply either wholly or in part to a particular source or to sources in a particular place, and 40

(ii) any deduction permitted by subsection 104(6) or (12) shall not apply either wholly or in part to a source in a country other than Canada. 45

2. (1) All that portion of subsection 7(1.5) of the said Act immediately preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Rules where shares exchanged

(1.5) For the purpose of this section and paragraph 110(1)(*d*.1), where 50

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

3. (1) Subsection 8(1) of the said Act is amended by adding thereto, immediately after paragraph (*o*) thereof, the following paragraph: 55

Idem

(*o*.1) an amount that is deductible in computing the taxpayer's income for the year because of subsection 144(9);

60

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

4. (1) Subsection 11(2) of the said Act is repealed and the following substituted therefor:

Reference to "taxation year" 65

(2) Where an individual's income for a taxation year includes income from a business the fiscal period of which does not coincide with the calendar year, unless the context otherwise requires, a reference in this subdivision or section 80.3 to a "taxation year" or "year" shall, in respect of the business, be read as a reference to a fiscal period of the business ending in the year. 70

(2) Subsection (1) applies to the 1988 and subsequent taxation years.

5. (1) All that portion of paragraph 12(1)(*m*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor: 75

Benefits from trusts

(*m*) any amount required by subdivision k or subsection 132.1(1) to be included in computing the taxpayer's income for the year, except

(2) Subsection 12(3) of the said Act is repealed and the following substituted therefor: 80

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, a net income stabilization account or an indexed debt obligation) 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. 85 90

(3) Paragraph 12(11)(*a*) of the said Act is amended by striking out the word "and" at the end of subparagraph (x) thereof and by repealing subparagraph (xi) thereof and substituting the following therefor: 95

(xi) an indexed debt obligation, and

(xii) a prescribed contract;

(4) Subsection (1) applies to the 1988 and subsequent taxation years. 100

(5) Subsections (2) and (3) apply to debt obligations issued after October 16, 1991.

6. (1) All that portion of subsection 13(7) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor: 105

Rules applicable

(7) Subject to subsection 70(12), for the purposes of paragraphs 8(1)(*j*) and (*p*), this section, section 20 and any regulations made for the purposes of paragraph 20(1)(*a*),

(2) All that portion of subparagraph 13(7)(*e*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor: 110

(*e*) notwithstanding any other provision of this Act except subsection 70(12), where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired (otherwise than as a consequence of the death of the transferor) a depreciable property (other than a timber resource property) of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and the property was a capital property of the transferor, 115 120

(3) Section 13 of the said Act is further amended by adding thereto the following subsection:

Consideration given for depreciable capital 125

(33) For greater certainty, where a person acquires a depreciable property for consideration that can reasonably be considered to include a transfer of property, the portion of the cost to the person of the depreciable property attributable to the transfer shall not exceed the fair market value of the property so transferred. 130

(4) Subsections (1) and (2) apply after 1992.

(5) Subsection (3) applies to property acquired after November

7. (1) Section 14 of the said Act is amended by adding thereto the following subsection:

Deemed residence in Canada 135

(8) Where an individual was resident in Canada at any time in a particular taxation year and throughout

(*a*) the immediately preceding taxation year, or

(*b*) the immediately following taxation year, 140

for the purposes of paragraph (1)(*a*), the individual shall be deemed to have been resident in Canada throughout the particular year.

(2) Subsection (1) applies to the 1988 and subsequent taxation years. 145

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

the amount by which the principal amount of the obligation exceeds the amount for which the obligation was issued shall be included in computing the income of the first owner of the obligation 150

(c) who is resident in Canada,

(d) who is not a person exempt from tax under section 149 nor a government, and

(e) of whom the obligation is a capital property, 155

for the taxation year in which the owner acquired the obligation.

(2) Subsection (1) applies to the 1990 and subsequent taxation years.

9. (1) Subsection 18(11) of the said Act is amended by striking out the word "or" at the end of paragraph (*e*) thereof, by adding the word "or" at the end of paragraph (*f*) thereof, and by adding thereto, immediately after paragraph (*f*) thereof, the following paragraph: 160

(*g*) making a contribution to any account under a provincial pension plan prescribed for the purposes of paragraph 60(*v*), 165

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

10. (1) Paragraph 20(1)(*e*) of the said Act is amended by striking out the word "or" at the end of subparagraph (i) thereof, and by repealing all that portion thereof following subparagraph (ii) and preceding subparagraph (iii) thereof and by substituting the following therefor: 170

(ii.1) in respect of an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or 175

(ii.2) in the course of a rescheduling or restructuring of a debt obligation of the taxpayer or an assumption of a debt obligation by the taxpayer, where the debt obligation is 180

(A) in respect of a borrowing described in subparagraph (ii), or

(B) in respect of an amount payable described in subparagraph (ii.1),

and, in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation, 185

(including a commission, fee or other amount paid or payable for or on account of services rendered by a person as a salesperson, agent or dealer in securities in the course of the issuance, sale or borrowing, but not including any amount that is a payment described in paragraph 18(9.1)(*c*) or (*d*) nor any amount paid or payable as or on account of the principal amount of the indebtness or as or on account of interest) that is the lesser of 190 195

(2) Subparagraph 20(1)(*e.1*) of the said Act is repealed and the following substituted therefor:

Annual fees, etc

(*e.1*) an amount payable by the taxpayer (other than a payment that is contingent or dependent on the use of, or production from, property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation) as a standby charge, guarantee fee, registrar fee, transfer agent fee, filing fee, service fee or any similar fee, that can reasonably be considered to relate solely to the year and that is incurred by the taxpayer 200 205

(i) for the purpose of borrowing money to be used by the taxpayer for the purpose of earning income from a business or property (other than borrowed money used by the taxpayer for the purpose of acquiring property the income from which would be exempt), 210

(ii) in respect of an amount payable for property acquired for the purpose of gaining or producing income therefrom or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy), or 215

(iii) for the purpose of rescheduling or restructuring a debt obligation of the taxpayer or an assumption of a debt obligation by the taxpayer, where the debt obligation is 220

(A) in respect of a borrowing described in subparagraph (i),or

(B) in respect of an amount payable described in subparagraph (ii),

and, in the case of a rescheduling or restructuring, the rescheduling or restructuring, as the case may be, provides for the modification of the terms or conditions of the debt obligation or the conversion or substitution of the debt obligation to or with a share or another debt obligation. 225

(3) All that portion of subsection 20(3) of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor: 230

the borrowed money shall, for the purposes of section 21 and paragraphs (1)(*c*), (*e*), (*e*.1) and (*k*), be deemed to have been used for the purpose for which the money previously borrowed was used or was deemed by this subsection to have been used, or to acquire the property in respect of which the said amount was so payable, as the case may be. 235

(4) Subsections (1) to (3) apply to expenses incurred after 1987.

11. (1) Paragraph 39(9)(*b*) of the said Act is amended by adding thereto the following: 240

except that, where a particular amount has been included in the taxpayer's income under subparagraph 14(1)(*a*)(v) for a taxation year ending after 1987 and before 1990, the reference in subparagraph (i.1) to "3/2" shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as "4/3". 245

(2) Paragraph 39(10)(*b*) of the said Act is amended by adding thereto the following:

except that, where a particular amount has been included in the trust's income under subparagraph 14(1)(*a*)(v) for a taxation year ending after 1987 and before 1990, the reference in subparagraph (i.1) to "3/2" shall, in respect of that portion of any amount deducted under section 110.6 in respect of the particular amount, be read as "4/3". 250 255

(3) Subsections (1) and (2) apply to the 1988 and subsequent taxation years.

12. (1) Subparagraph 40(2)(*i*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) the amount, if any, by which 260

(A) the amount of prescribed assistance that the taxpayer (or a person with whom the taxpayer was not dealing at arm's length) has received or is entitled to receive in respect of the share

exceeds 265

(B) the total of all amounts determined under subparagraph (i) in respect of any disposition of the share or of the property substituted for the share before the particular time by the taxpayer or by a person with whom the taxpayer was not dealing at arm's length. 270

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

13. (1) Paragraph 44(2)(*d*) of the said Act is repealed and the following substituted therefor: 275

(*d*) the time at which the taxpayer is deemed by section 70 or 128.1 to have disposed of the property, and

(2) All that portion of subsection 44(6) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor: 280

Deemed proceeds of disposition

(6) Where a taxpayer has disposed of property that was a former business property and was in part a building and in part the land (or an interest therein) subjacent to, or immediately contiguous to and necessary for the use of, the building, for the purposes of this subdivision, the amount if any, by which 285

(3) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 290

(4) Subsection (2) applies to dispositions occurring after ANNOUNCEMENT DATE.

14. (1) Subsection 45(2) of the said Act is repealed and the following substituted therefor: 295

Election where change of use

(2) For the purposes of this subdivision and section 13, where paragraph 13(7)(*b*) or subparagraph (1)(*a*)(i) would otherwise apply to any property of a taxpayer for a taxation year and the taxpayer so elects in the taxpayer's return of income for the year under this Part, 300 the taxpayer shall be deemed not to have commenced to use the property for the purpose of gaining or producing income except that, if in the taxpayer's return of income for a subsequent taxation year under this Part the taxpayer rescinds the election in respect of the property, the taxpayer shall be deemed to have commenced so to use 305 the property on the first day of that subsequent year.

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

15. (1) Section 48 of the said Act is repealed.

(2) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 310

16. (1) Subsection 51(1) of the said Act is repealed and the following substituted therefor: 315

Convertible property

51. (1) Where a share of the capital stock of a corporation is acquired by a taxpayer in exchange for

(*a*) a capital property of the taxpayer that is another share of the corporation (in this section referred to as a "convertible property"), or 320

(*b*) a capital property of the taxpayer that is a bond, debenture or note of the corporation the terms of which confer on the holder the right to make the exchange (in this section referred to as a "convertible property") 325

and no consideration other than the share is received by the taxpayer for the convertible property,

(*c*) except for the purposes of subsection 20(21), the exchange shall be deemed not to be a disposition of the convertible property, 330

(*d*) the cost to the taxpayer of all the shares of a particular class acquired by the taxpayer on the exchange shall be deemed to be the amount determined by the formula

$$A \times B/C$$

where 335

A is the adjusted cost base to the taxpayer of the convertible property immediately before the exchange,

B is the fair market value, immediately after the exchange, of all the shares of the particular class acquired by the taxpayer on the exchange, and 340

C is the fair market value, immediately after the exchange, of all the shares acquired by the taxpayer on the exchange,

(*e*) for the purposes of sections 74.4 and 74.5, the exchange shall be deemed to be a transfer of the convertible property by the taxpayer to the corporation, and 345

(*f*) where the convertible property is taxable Canadian property of the taxpayer, the share acquired by the taxpayer on the exchange shall be deemed to be taxable Canadian property of the taxpayer.

(2) Section 51 of the said Act is further amended by adding thereto the following subsections: 350

Computation of paid-up capital

(3) Where subsection (1) applies to the exchange of convertible property described in paragraph (1)(*a*) (referred to in this subsection as the "old shares"), in computing the paid-up capital in respect of a particular class of shares of the capital stock of the corporation at any particular time after the exchange 355

(*a*) there shall be deducted the amount determined by the formula

$$A \times B/C$$ 360

where

A is the amount, if any, by which

365

(i) the total of all amounts each of which is the amount of the increase, if any, as a result of the exchange, in the paid-up capital in respect of a class of shares of the capital stock of the corporation, computed without reference to this subsection as it applies to the exchange, 370

exceeds

(ii) the paid-up capital immediately before the exchange in respect of the old shares, 375

B is the increase, if any, as a result of the exchange, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the exchange, and 380

C is the amount, if any, determined in subparagraph (i) of the description of A in respect of the exchange; and

(*b*) there shall be added an amount equal to the lesser of

385

(i) the amount, if any, by which

(A) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the purchaser before the particular time

390

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (*a*), and

395

(ii) the total of all amounts required by paragraph (*a*) to be deducted in respect of that particular class of shares before the particular time.

400

Application

(4) Subsections (1) and (2) do not apply to any exchange to which subsection 85(1) or (2) or section 86 applies.

(3) Subsection (1) and subsection 51(4) of the said Act, as enacted by subsection (2), apply to exchanges occurring, and reorganizations commencing, after ANNOUNCEMENT DATE.

405

(4) Subsection 51(3) of the said Act, as enacted by subsection (2), applies to exchanges occurring after August 1992 other than exchanges occurring after August 1992 and before ANNOUNCEMENT DATE where the corporation issuing shares on the exchange so elects in writing and files the election with the Minister of National Revenue before the end of the sixth month after the end of the month in which this Act is assented to.

410

17. (1) Section 52 of the said Act is amended by adding thereto the following subsection:

415

Cost of shares on immigration

(8) Notwithstanding any other provision of this Act, where at any time a corporation becomes resident in Canada, the cost to any shareholder that is not at that time resident in Canada of any share of the capital stock of the corporation shall be deemed to be equal to the lesser of that cost otherwise determined and the paid-up capital in respect of the share immediately after that time.

420

(2) Subsection (1) applies to dispositions occurring after 1992.

18. (1) Clause 53(2)(*k*)(i)(C) of the said Act is repealed and the following substituted therefor:

425

(C) the amount of prescribed assistance that the taxpayer has received or is entitled to receive in respect of, or for the acquisition of, shares of the capital stock of a prescribed venture capital corporation or a prescribed labour-sponsored venture capital corporation or shares of the capital stock of a taxable Canadian corporation that are held in a prescribed stock savings plan, or 430

(2) Subsection (1) applies to the 1991 and subsequent taxation years. 435

19. (1) Subparagraph 54(*i*)(iii) of the said Act is repealed and the following substituted therefor:

(iii) was a disposition deemed by paragraph 33.1(11)(*a*), subsection 45(1), section 48, as it read in its application before 1993, section 50 or 70, subsection 104(4), section 128.1 or subsection 138(11.3), 144(4.1) or (4.2) or 149(10) to have been made, 440

(2) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 445

20. (1) Section 55 of the said Act is amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

Idem 450

(3.1) Subsection (3) does not exempt from the application of subsection (2) a dividend received by a corporation as part of a series of transactions or events in which property of a particular corporation is transferred, directly or indirectly, to one or more shareholders of the particular corporation where 455

(*a*) as part of the series of transactions or events, a person or partnership (in this subsection referred to as the "foreign vendor") disposes of shares of the capital stock of the particular corporation, or of property the fair market value of which is derived, directly or indirectly, principally from such shares; 460

(*b*) the foreign vendor's capital gain from the disposition is exempt from tax under this Act because of a provision contained in a tax convention or agreement with another country that has the force of law in Canada; 465

(*c*) the property transferred from the particular corporation to a shareholder as part of the series is such that, if the property had been the only property of a taxable Canadian corporation all the shares of the capital stock of which were owned by the foreign vendor and not listed on a stock exchange, the tax convention or 470

agreement would not have exempted from tax under this Act a capital gain of the foreign vendor from a disposition of those shares; and 475

(*d*) subsection 85(1) applies to the disposition by the particular corporation of any property referred to in paragraph (*c*).

(2) Subsection (1) applies to dividends received after ANNOUNCEMENT DATE, other than a dividend arising out of a transaction or event occurring pursuant to a written agreement entered into on or before ANNOUNCEMENT DATE. 480

21. (1) Paragraph 56(1)(*a*) of the said Act is amended by adding the word "or" at the end of subparagraph (v) thereof and by repealing subparagraphs (vi) and (vii) thereof and substituting the following therefor: 485

(vi) except to the extent otherwise required to be included in computing the taxpayer's income, a prescribed benefit under a government assistance program;

(2) Paragraph 56(1)(*d*.2) of the said Act is repealed and the following substituted therefor: 490

Idem

(*d*.2) any amount received out of or under, or as proceeds of disposition of, an annuity the payment for which was

(i) deductible in computing the taxpayer's income because of paragraph 60(*l*) or subsection 146(5.5), or 495

(ii) made in circumstances to which subsection 146(21) applied;

(3) Subsection 56(4) of the said Act is repealed and the following substituted therefor:

Transfer of rights to income 500

(4) Where a taxpayer has, at any time before the end of a taxation year, transferred or assigned to a person with whom the taxpayer was not dealing at arm's length the right to an amount (other than any portion of a retirement pension assigned by the taxpayer under section 64.1 of the *Canada Pension Plan* or a comparable provision of a provincial pension plan as defined in section 3 of that Act) that would, if the right had not been so transferred or assigned, be included in computing the taxpayer's income for the taxation year, such part of the amount that relates to the period in the year throughout which the taxpayer is resident in Canada shall be included in the taxpayer's income for the year unless the income is from property and the taxpayer has also transferred or assigned the property. 505 510

(4) Subparagraph 56(4.1)(*b*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) property that the loan or indebtedness enabled or assisted the particular individual, or the trust in which the particular individual is beneficially interested, to acquire, or 515

(5) Subsection (1) applies to benefits received after October 1991.

(6) SubsectionS (2) and (3) apply to the 1992 and subsequent taxation years. 520

(7) Subsection (4) applies with respect to income relating to periods commencing after ANNOUNCEMENT DATE.

22. (1) Clause 60(*j*.2)(ii)(C) of the said Act is repealed and the following substituted therefor: 525

(C) the total of all amounts each of which is paid by the taxpayer in the year or within 60 days after the end of the year as a premium (within the meaning assigned by subsection 146(1)) under a registered retirement savings plan under which the taxpayer's spouse (or, where the taxpayer died in the year, an individual who was the taxpayer's spouse immediately before the death), is the annuitant (within the meaning assigned by subsection 146(1)), to the extent that the amount was not deducted in computing the taxpayer's income for a preceding taxation year; 530 535

(2) All that portion of clause 60(*l*)(v)(B.1) of the said Act preceding subclause (I) thereof is repealed and the following substituted therefor:

(B.1) the least of

(3) Clause 60(*l*)(v)(B.1) of the said Act is further amended by striking out the word "and" at the end of subclause (I) thereof and by repealing subclause (II) thereof and substituting the following therefor: 540

(II) the amount (other than any portion thereof included in the amount determined under clause (B) or (B.2)) included in computing the taxpayer's income for the year as 545

1. a payment (other than a payment that is part of a series of periodic payments or that relates to an actuarial surplus) received by the taxpayer out of or under a registered pension plan, 550

2. a refund of premiums out of under a registered retirement savings plan, or

3. a designated benefit in respect of a registered retirement income fund (in this clause having the meaning assigned by paragraph 146.3(1)(*b*.01))

as a consequence of the death of an individual of whom the taxpayer is a child or grandchild, and

(III) the amount, if any, by which the amount determined under subclause (II) in respect of the taxpayer for the year exceeds the amount, if any, by which

1. the total of all designated benefits of the individual for the year in respect of registered retirement income funds

exceeds

2. the total of all amounts that would be eligible amounts of the individual for the year in respect of those funds (within the meaning that would be assigned by subsection 146.3(6.11) if the individual were described in paragraph (*b*) thereof), and

(4) Clause 60(*l*)(v)(B.2) of the said Act is repealed and the following substituted:

(B.2) all eligible amounts of the taxpayer for the year in respect of registered retirement income funds (within the meaning assigned by subsection 146.3(6.11)),

(5) Clause 60(*l*)(v)(D) of the said Act is repealed and the following substituted therefor:

(D) the amount, if any, by which

(I) the amount received by the taxpayer out of or under a registered retirement income fund under which the taxpayer is the annuitant and included in computing the taxpayer's income for the year because of subsection 146.3(5)

exceeds

(II) the amount, if any, by which the minimum amount (within the meaning assigned by paragraph 146.3(1)(*b*.1)) under the fund for the year exceeds the total of all amounts received out of or under the fund in the year by an individual who was an annuitant under the fund before the taxpayer became the annuitant under the fund and that

were included because of subsection 146.3(5) in computing that individual's income for the year, and 595

(6) Paragraph 60(*n*) of the said Act is amended by adding thereto, immediately after subparagraph (i) thereof, the following subparagraph:

(i.01) any amount described in subparagraph 56(1)(*a*)(ii),

(7) Subparagraph 60(*n*)(ii.2) of the said Act is repealed. 600

(8) Subsection (1) applies to the 1992 and subsequent taxation years.

(9) Subsections (2), (3) and (5) apply to the 1993 and subsequent taxation years.

(10) Subsection (4) applies to the 1993 and subsequent taxation years and subparagraph 60(*l*)(v) of the said Act shall apply to a taxpayer for the 1992 taxation year as if it were read without reference to clause (B.2) thereof unless the taxpayer otherwise elects by notifying the Minister of National Revenue in writing. 605

(11) Subsection (6) applies to repayments made after 1990. 610

(12) Subsection (7) applies to repayments made after October 1991.

23. (1) Subsection 63 of the said Act is amended by adding thereto, the following subsection:

Commuter's child care expense 615

(4) Where, in a taxation year, a person resides in Canada near the boundary between Canada and the United States and while so resident incurs expenses for child care services that would be child care expenses if 620

(*a*) paragraph (3)(*a*) were read without reference to the words "in Canada", and

(*b*) the reference in subparagraph (3)(*a*)(ii) to "resident of Canada" were read as a reference to "person", 625

those expenses (other than expenses paid for a child's attendance at a boarding school or camp outside Canada) shall be deemed to be child care expenses for the purposes of this section if the child care services are provided at a place that is closer to the person's principal place of residence by a reasonably accessible route, having regard to the circumstances, than any place in Canada where such child care services are available and, in respect of those expenses, subsection (1) shall be read without reference to the words "and contains, where the payee is an individual, that individual's Social Insurance Number". 630 635

(2) Section (1) applies to the 1992 and subsequent taxation years.

24. (1) All that portion of subparagraph 66.2(5)(*b*)(v) of the said Act following clause (A) thereof is repealed and the following substituted therefor: 640

exceeds

(B) <u>the amount, if any, by which</u>

(I) the total of all amounts that would be determined under paragraph 66.7(4)(*a*), immediately before the time (in this clause referred to as the "relevant time") at which such proceeds of disposition became receivable, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(4) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if 645 650

1. amounts that became receivable at or after the relevant time were not taken into account, 655

2. each designation made under subparagraph 66.7(4)(*a*)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time, and 660

3. paragraph 66.7(4)(*a*) were read without reference to "30% of"

exceeds the total of 665

(II) all amounts that would be determined under paragraph 66.7(4)(*a*) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property) if 670

1. amounts that became receivable after the relevant time were not taken into account,

2. each designation made under subparagraph 66.7(4)(*a*)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time, 675

3. paragraph 66.7(4)(*a*)were read without reference to "30% of", and 680

4. amounts described in subparagraph 66.7(4)(*a*)(iii) that became receivable at the relevant time were not taken into account, and 685

(III) such portion of the amount otherwise determined under this clause as has been otherwise applied to reduce the amount otherwise determined under this subparagraph,

(2) Subparagraph 66.2(5)(*b*)(x) of the said Act is repealed and the following substituted therefor: 690

(x) the amount by which the total of all amounts determined under subsection 66.4(1) in respect of a taxation year of the taxpayer ending at or before that time exceeds the total of all amounts each of which is the least of

(A) the amount that would be determined under paragraph 66.7(4)(*a*), at a time (hereafter in this subparagraph referred to only as the "particular time") that is the end of the latest taxation year of the taxpayer ending at or before that time, in respect of the taxpayer as successor in respect of a disposition (in this subparagraph referred to as the "original disposition") of Canadian resource property by a person who is an original owner of such property by reason of the original disposition, if 695 700

(I) that paragraph were read without reference to "30% of", 705

(II) where the taxpayer has disposed of all or part of such property in circumstances in which subsection 66.7(4) applied, that subsection continued to apply to the taxpayer in respect of the original disposition as if subsequent successors were the same person as the taxpayer, and 710

(III) each designation made under subparagraph 66.7(4)(*a*)(iii) in respect of an amount that became receivable before the particular time were made before the particular time, 715

(B) the amount, if any, by which the total of all amounts each of which became receivable at or before the particular time and before 1993 by the taxpayer and is included in computing the amount determined under subparagraph 66.7(5)(*a*)(ii) in respect of the original disposition exceeds the amount, if any, by which 720

(I) where the taxpayer has disposed of all or part of such property before the particular time in circumstances to which subsection 66.7(5) applied, the amount that would be determined at the particular time under subparagraph 66.7(5)(*a*)(i) in respect of the original disposition if that subparagraph continued to apply to the taxpayer in respect of the original disposition as if subsequent successors were the same person as the taxpayer, and 725 730

(II) in any other case, the amount determined at the particular time under subparagraph 66.7(5)(*a*)(i) in respect of the original disposition 735

exceeds

(III) the amount that would be determined at the particular time under subparagraph 66.7(5)(*a*)(ii) in respect of the original disposition if that subparagraph were read without reference to the words "or the successor", wherever they appear therein, and if amounts that became receivable after 1992 were not taken into account, and 740 745

(C) where

(I) after the original disposition and at or before the particular time, the taxpayer has disposed of all or part of such property in circumstances in which subsection 66.7(4) applied, otherwise than by way of an amalgamation or merger or by reason only of the application of paragraph 66.7(10)(*c*), and 750 755

(II) the winding-up of the taxpayer commenced at or before that time or the taxpayer's disposition referred to in subclause (I) (other than a disposition pursuant to an agreement in writing entered into before ANNOUNCEMENT DATE + 1) occurred after ANNOUNCEMENT DATE, 760

nil,

(3) Subsection (1) applies to taxation years ending after February 17, 1987. 765

(4) Subsection (2) applies to taxation years ending after ANNOUNCEMENT DATE, except that where a taxpayer so elects by notice in writing filed with the Minister of National Revenue before the end of the sixth month beginning after the end of the taxpayer's taxation year that includes the day on which this Act is assented to, subparagraph 66.2(5)(*b*)(x) of the said Act, as enacted by subsection (2), shall apply in respect of the taxpayer to taxation years ending after February 17, 1987 and, notwithstanding subsections 152(4) to (5) of the said Act, such 770

assessments of tax, interest and penalties shall be made as are necessary to give effect to the election. 775

25. (1) All that portion of subparagraph 66.4(5)(*b*)(v) of the said Act following clause (A) thereof is repealed and the following substituted therefor:

exceeds the total of 780

(B) the amount, if any, by which

(I) the total of all amounts that would be determined under paragraph 66.7(5)(*a*), immediately before the time (in this clause and clause (C) referred to as the "relevant time") 785 at which such proceeds of disposition became receivable, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(5) applied and in respect of 790 which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

1. amounts that became receivable at or after the relevant time were not taken into account, 795

2. each designation made under subparagraph 66.7(4)(*a*)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time, and 800

3. paragraph 66.7(5)(*a*) were read without reference to "10% of"

exceeds the total of 805

(II) all amounts that would be determined under paragraph 66.7(5)(*a*) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property described in subclause (I)) if 810

1. amounts that became receivable after the relevant time were not taken into account,

2. each designation made under 815 subparagraph 66.7(4)(*a*)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time, and

3. paragraph 66.7(5)(*a*) were read without reference to 820 "10% of", and

(III) such portion of the amount determined under this clause as has been otherwise applied to reduce the amount otherwise determined under this subparagraph, and

825

(C) the amount, if any, by which

(I) the total of all amounts that would be determined under paragraph 66.7(4)(*a*), immediately before the relevant time, in respect of the taxpayer and an original owner of the particular property (or of any other property acquired by the taxpayer with the particular property in circumstances in which subsection 66.7(4) applied and in respect of which the proceeds of disposition became receivable by the taxpayer at the relevant time) if

830

835

1. amounts that became receivable at or after the relevant time were not taken into account,

2. each designation made under subparagraph 66.7(4)(*a*)(iii) in respect of an amount that became receivable before the relevant time were made before the relevant time, and

840

3. paragraph 66.7(4)(*a*) were read without reference to "30% of"

845

exceeds the total of

(II) all amounts that would be determined under paragraph 66.7(4)(*a*) at the relevant time in respect of the taxpayer and an original owner of the particular property (or of that other property described in subclause (I)) if

850

1. amounts that became receivable after the relevant time were not taken into account,

855

2. each designation made under subparagraph 66.7(4)(*a*)(iii) in respect of an amount that became receivable at or before the relevant time were made before the relevant time,

860

3. paragraph 66.7(4)(*a*) were read without reference to "30% of", and

865

4. amounts described in subparagraph 66.7(4)(*a*)(ii) that became receivable at the relevant time were not taken into account, and

(III) such portion of the amount otherwise determined under this clause as has been otherwise applied to reduce the amount otherwise determined under this subparagraph,

870

(2) Subsection (1) applies to taxation years ending after February 17, 1987.

26. (1) Clause 66.7(2)(*b*)(ii)(B) of the said Act is amended by striking out the words "subparagraph (10)(*h*)(iv)" therein and substituting the words "subparagraph (10)(*h*)(vi)" therefor. 875

(2) All that portion of paragraph 66.7(4)(*a*) of the said Act following subparagraph (i) thereof is repealed and the following substituted therefor: 880

exceeds the total of

(ii) all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under this paragraph in respect of another original owner of a relevant mining property who either is not a predecessor owner of a relevant mining property or became a predecessor owner of a relevant mining property before the original owner became a predecessor owner of a relevant mining property) that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that 885 890

(A) was included by the predecessor owner or the successor in computing an amount determined under clause 66.2(5)(*b*)(v)(A) at the end of the year, and

(B) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant mining property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property, and 895 900

(iii) all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under paragraph (5)(*a*) in respect the original owner or under this paragraph or paragraph (5)(*a*) in respect of another original owner of a relevant oil and gas property who either is not a predecessor owner of a relevant oil and gas property or became a predecessor owner of a relevant oil and gas property before the original owner became a predecessor owner of a relevant oil and gas property) that became receivable by a predecessor owner of the particular property or the successor after 1992 and in the year or a preceding taxation year and that 905 910

(A) is designated in respect of the original owner by the predecessor owner or the successor, as the case may be, in prescribed form filed with the Minister within 6 months after the end of the taxation year in which the amount became receivable, 915

(B) was included by the predecessor owner or the successor in computing an amount determined under clause 66.4(5)(*b*)(v)(A) at the end of the year, and 920

(C) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant oil and gas property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property, and 925 930

(3) Subparagraph 66.7(5)(*a*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) the total of all amounts each of which is an amount (other than any portion thereof that can reasonably be considered to result in a reduction of the amount otherwise determined under this paragraph or paragraph (4)(*a*) in respect of another original owner of a relevant oil and gas property who either is not a predecessor owner of a relevant oil and gas property or became a predecessor owner of a relevant oil and gas property before the original owner became a predecessor owner of a relevant oil and gas property) that became receivable by a predecessor owner of the particular property or the successor in the year or a preceding taxation year and that 935 940

(A) was included by the predecessor owner or the successor in computing an amount determined under clause 66.4(5)(*b*)(v)(A) at the end of the year, and 945

(B) can reasonably be regarded as attributable to the disposition of a property (in this subparagraph referred to as a "relevant oil and gas property") that is the particular property or another Canadian resource property that was acquired from the original owner with the particular property by the successor or a predecessor owner of the particular property, and 950

(4) Subsections 66.7(14) and (15) of the said Act are repealed and the following substituted therefor: 955

Disposal of Canadian resource properties

(14) Where in a taxation year a predecessor owner of Canadian resource properties disposes of Canadian resource properties to a corporation in circumstances in which subsection 29(25) of the *Income Tax Application Rules, 1971* or subsection (1), (3), (4) or (5) applies, 960

(*a*) for the purposes of applying any of those subsections to the predecessor owner in respect of its acquisition of any Canadian resource property owned by it immediately before the disposition, it shall be deemed, after the disposition, never to have acquired any such properties except for the purposes of 965

(i) determining an amount deductible under subsection (1) or (3) for the year,

(ii) where the predecessor owner and the corporation dealt with each other at arm's length at the time of the disposition or the disposition was by way of an amalgamation or merger, determining an amount deductible under subsection (4) or (5) for the year, and 970

(iii) applying subparagraph 66.2(5)(*b*)(v), clauses 66.2(5)(*b*)(x)(A) and (B) and subparagraph 66.4(5)(*b*)(v); and 975

(*b*) where the corporation or another corporation acquired any of the properties on or after the disposition in circumstances in which subsection (4) or (5) applies, amounts that became receivable by the predecessor owner after the disposition in respect of Canadian resource properties retained by it at the time of the disposition shall, for the purposes of applying subsection (4) or (5) to the corporation or the other corporation in respect of such acquisition, be deemed not to have become receivable by the predecessor owner. 980

Disposal of foreign resource properties

(15) Where after June 5, 1987 a predecessor owner of foreign resource properties disposes of all or substantially all of its foreign resource properties to a corporation in circumstances in which subsection (2) applies, for the purposes of applying that subsection to the predecessor owner in respect of its acquisition of any of those properties (or other foreign resource properties retained by it at the time of the disposition which were acquired by it in circumstances in which subsection (2) applied), it shall be deemed, after the disposition, never to have acquired the properties. 985 990

(5) Subsections (1) to (3) and subsection 66.7(15) of the said Act, as enacted by subsection (4), apply to taxation years ending after February 17, 1987 except that, where a taxpayer files a form referred to in subparagraph 66.7(4)(*a*)(iii) of the said Act, as enacted by subsection (2), with the Minister of National Revenue before the end of the sixth month beginning after the end of the taxpayer's taxation year that includes the day this Act 995 1000

is assented to, the taxpayer shall be deemed to have filed the form on a timely basis.

(6) Subsection 66.7(14) of the said Act, as enacted by subsection (4), applies to dispositions occurring in taxation years ending after February 17, 1987. 1005

27. (1) Subsection 69(4) of the said Act is repealed and the following substituted therefor:

Shareholder appropriations

(4) Where at any time property of a corporation has been appropriated in any manner whatever to or for the benefit of a shareholder of the corporation for no consideration or for consideration that is less than its fair market value and a sale thereof at its fair market value would have increased the corporation's income or reduced a loss of the corporation, the corporation shall be deemed to have disposed of the property, and to have received proceeds of disposition therefor equal to the fair market value thereof, at that time. 1010 1015

(2) Subsection (1) applies to appropriations occurring after ANNOUNCEMENT DATE.

28. (1) Subsection 70(3.1) of the said Act is repealed and the following substituted therefor: 1020

Exception

(3.1) For the purposes of this section, "rights or things" do not include an interest in a life insurance policy (other than an annuity contract of a taxpayer where the payment therefor was deductible in computing the taxpayer's income because of paragraph 60(*l*) or was made in circumstances to which subsection 146(21) applied), eligible capital property, land included in the inventory of a business, a Canadian resource property or a foreign resource property. 1025

(2) Subsection 70(5) of the said Act is amended by striking out the word "and" at the end of paragraph (*b*) thereof and by repealing paragraph (*c*) thereof and substituting the following therefor: 1030

(*c*) where any depreciable property of the taxpayer of a prescribed class that is deemed by paragraph (*a*) to have been disposed of is acquired by any person as a consequence of the death (other than where the taxpayer's proceeds of disposition under paragraph (*a*) were redetermined under subsection 13(21.1)) 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 for the purposes of paragraph 20(1)(*a*), 1035 1040

(i) the capital cost to the 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 for the purposes of paragraph 20(1)(*a*) in computing income for the taxation years ending before the person acquired the property; and 1045

(*d*) where a property of the taxpayer that was deemed by paragraph (*a*) to have been disposed of is acquired by any person as a consequence of the death and the taxpayer's proceeds of disposition in respect of the property under paragraph (*a*) were redetermined under subsection 13(21.1), notwithstanding paragraph (*b*), 1050 1055

(i) where the property was depreciable property of a prescribed class and the amount that was the capital cost to the taxpayer of that property exceeds the amount so redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purposes of paragraph 20(1)(*a*), 1060

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

(B) the excess shall be deemed to have been allowed to that person in respect of the property under regulations made for the purposes of paragraph 20(1)(*a*) in computing income for taxation years ending before the person acquired the property, and 1065

(ii) where the property is land (other than land to which subparagraph (i) applies), the cost to the person of the property shall be deemed to be the amount that was the taxpayer's proceeds of disposition of the property redetermined under subsection 13(21.1). 1070

(3) Subparagraph 70(6)(*d*)(i) of the said Act is repealed and the following substituted therefor: 1075

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and

(4) All that portion of subsection 70(9) of the said Act following paragraph (*a*) thereof is repealed and the following substituted therefor: 1080

(*b*) the taxpayer shall be deemed to have disposed, immediately before the death, of the property and to have received proceeds of disposition therefor equal to,

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and 1085

(ii) where the property is land (other than land to which subparagraph (i) applies), its adjusted cost base to the taxpayer immediately before the death, 1090

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, and

(*c*) where the property was depreciable property of a prescribed class, paragraphs (5)(*c*) and (*d*) apply as if the references therein to "paragraph (*a*)" and to "paragraph (*b*)" were read as references to "paragraph (9)(*b*)" 1095

except that, where the legal representative of the taxpayer so elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, paragraph (*b*) shall be read as follows:

"(*b*) the taxpayer shall be deemed to have disposed, immediately before the death, of the property and to have received proceeds of disposition therefor equal to such amount as the legal representative elects in the taxpayer's return of income under this Part for the year in which the taxpayer died, not greater than the greater of nor less than the lesser of 1100 1105

(i) where the property was depreciable property of a prescribed class,

(A) the fair market value of the property immediately before the death, and

(B) the lesser of the capital cost and the cost amount to the taxpayer of the property immediately before the death, and 1110

(ii) where the property is land (other than land to which subparagraph (i) applies),

(A) the fair market value of the land immediately before the death, and 1115

(B) the adjusted cost base to the taxpayer of the land immediately before the death,

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraph (i) or (ii), as the case may be, it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under subparagraph (i) or (ii), as the case may be, it shall be deemed to be equal to the lesser thereof, and". 1120 1125

(5) All that portion of subsection 70(9.1) of the said Act following paragraph (*a*) thereof is repealed and the following substituted therefor:

(*b*) the trust shall be deemed to have disposed, immediately before the death, of the property and to have received proceeds of disposition therefor equal to, 1130

(i) where the property was depreciable property of a prescribed class, the lesser of the capital cost and the cost amount to the trust of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies), its adjusted cost base to the trust immediately before the death, 1135

and the child shall be deemed to have acquired the property for an amount equal to those proceeds,

(*c*) where any depreciable property of a prescribed class that is deemed by paragraph (*b*) to have been disposed of by the trust is acquired by a child of the taxpayer as a consequence of the death (other than where the trust's proceeds of disposition under paragraph (*b*) were redetermined under subsection 13(21.1)) and the amount that was the capital cost to the trust of that property exceeds the amount determined under paragraph (*b*) to be the cost to the child of that property, for the purposes of sections 13 and 20 and any regulations made for the purposes of paragraph 20(1)(*a*), 1140 1145

(i) the capital cost to the child of the property shall be deemed to be the amount that was the capital cost to the trust of the property, and 1150

(ii) the excess shall be deemed to have been allowed to the child in respect of the property under regulations made for the purposes of paragraph 20(1)(*a*) in computing income for taxation years ending before the person acquired the property, and 1155

(*d*) where the property of the trust that is deemed by paragraph (*b*) to have been disposed of is acquired by a child of the taxpayer as a consequence of the death and the trust's proceeds of disposition in respect of the property under paragraph (*b*) were redetermined under subsection 13(21.1), notwithstanding paragraph (*b*), 1160

(i) where the property was depreciable property of a prescribed class and the amount that was the capital cost to the trust of that property exceeds the amount redetermined under subsection 13(21.1), for the purposes of sections 13 and 20 and any regulations made for the purposes of paragraph 20(1)(*a*), 1165

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

1170

(B) the excess shall be deemed to have been allowed to that child in respect of the property under regulations made for the purposes of paragraph 20(1)(*a*) in computing income for taxation years ending before the child acquired the property, and 1175

(ii) where the property is land (other than land to which subparagraph (i) applies), the cost to the child of the property shall be deemed to be the amount that was the trust's proceeds of disposition redetermined under subsection 13(21.1) 1180

except that, where the trust so elects in its return of income under this Part for its taxation year in which the taxpayer's spouse died, paragraph (*b*) shall be read as follows:

"(*b*) the trust shall be deemed to have disposed, immediately before the death, of the property and to have received proceeds of disposition therefor equal to such amount as the trust elects in its return of income under this Part for the year in which the spouse died, not greater than the greater of nor less than the lesser of 1185

(i) where the property was depreciable property of a prescribed class, 1190

(A) the fair market value of the property immediately before the death, and

(B) the lesser of the capital cost and the cost amount to the trust of the property immediately before the death, and

(ii) where the property is land (other than land to which subparagraph (i) applies), 1195

(A) the fair market value of the land immediately before the death, and

(B) the adjusted cost base to the trust of the land immediately before the death, 1200

and the child shall be deemed to have acquired the property for an amount equal to those proceeds, except that for the purposes of this paragraph, where the elected amount exceeds the greater of the amounts determined under subparagraph (i) or (ii), as the case may be, it shall be deemed to be equal to the greater thereof, and where the elected amount is less than the lesser of the amounts determined under subparagraph (i) or (ii), as the case may be, it shall be deemed to be equal to the lesser thereof,". 1205

(6) Section 70 of the said Act is further amended by adding thereto the following subsections: 1210

Capital cost of certain depreciable property

(12) For the purposes of this section, and, where a provision of this section (other than this subsection) applies, for the purposes of sections 13 and 20 (but not for the purposes of any regulations made for the purposes of paragraph 20(1)(*a*)), 1215

(*a*) the capital cost to a taxpayer of depreciable property of a prescribed class disposed of immediately before the death of the taxpayer, or 1220

(*b*) the capital cost to a trust (to which subsection (9.1) applies) of depreciable property of a prescribed class disposed of immediately before the death of the spouse described in that subsection,

1225

shall, in respect of property that had not been disposed of by the taxpayer or the trust before that time, be the amount that it would be if subsection 13(7) were read without reference to

(*c*) the expression "the lesser of" in paragraph (*b*) and clause (*d*)(i)(A) thereof, and 1230

(*d*) subparagraph (*b*)(ii), subclause (*d*)(i)(A)(II), clause (*d*)(i)(B) and paragraph (*e*) thereof.

1235

Order of disposal of depreciable property

(13) Where 2 or more depreciable properties of a prescribed class are disposed of at the same time as a consequence of a taxpayer's death, this section and paragraph (*a*) of the definition "cost amount" in subsection 248(1) apply as if each property so disposed of is separately disposed of in the order designated by the taxpayer's legal representative or, in the case of a trust described in subsection (9.1), by the trust and, where the taxpayer's legal representative or the trust, as the case may be, does not designate an order, in the order designated by the Minister. 1240 1245

(7) Subsection (1) applies to the 1992 and subsequent taxation years.

(8) Subsections (2) to (6) apply to dispositions occurring after 1992. 1250

29. (1) All that portion of subsection 73(1.1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Interpretation

(1.1) For greater certainty, where, under the laws of a province or because of a decree, order or judgment of a competent tribunal made in accordance with such laws, a person referred to in subsection (1) 1255

(2) Subsection (1) applies to transfers occurring after July 13, 1990.

30. (1) Paragraph 84(1)(*c*.3) of the said Act is repealed and the following substituted therefor: 1260

(*c*.3) where the corporation is neither an insurance corporation nor a bank, any action by which it converts into paid-up capital in respect of a class of shares of its capital stock any of its contributed surplus that arose after March 31, 1977 1265

(i) on the issuance of shares of that class or shares of another class for which the shares of that class were substituted (other than an issuance to which section 51, 66.3, 84.1, 85, 85.1, 86 or 87, subsection 192(4.1) or 194(4.1) or section 212.1 applied),

(ii) on the acquisition of property by the corporation from a person who at the time of the acquisition held any of the issued shares of that class or shares of another class for which shares of that class were substituted for no consideration or for consideration that did not include shares of the capital stock of the corporation, or 1270 1275

(iii) as a result of any action by which the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted was reduced by the corporation, to the extent of the reduction in paid-up capital that resulted from such action, 1280

(2) Section 84 of the said Act is further amended by adding thereto the following subsection:

Computation of contributed surplus

(11) For purposes of subparagraph (1)(*c*.3)(ii), where the property acquired by the corporation ("in this subsection referred to as the "acquiring corporation") consists of shares (in this subsection referred 1285

to as the "subject shares") of any class of the capital stock of another corporation resident in Canada (in this subsection referred to as the "subject corporation") and, immediately after the acquisition of the subject shares the subject corporation would be connected (within the meaning that would be assigned by subsection 186(4) if the references therein to "payer corporation" and "particular corporation" were read as "subject corporation" and "acquiring corporation", respectively) with the acquiring corporation, the contributed surplus of the acquiring corporation that arose on the acquisition of the subject shares shall be deemed to be the lesser of 1290 1295

(*a*) the amount added to the contributed surplus of the acquiring corporation on the acquisition of the subject shares, and 1300

(*b*) the amount, if any, by which the paid-up capital in respect of the subject shares at the time of the acquisition exceeded the fair market value of any consideration given by the acquiring corporation for the subject shares.

(3) Subsection (1) applies to actions occurring after July 13, 1990, except that for such actions occurring before ANNOUNCEMENT DATE, subparagraph 84(1)(*c*.3)(iii) of the said Act, as enacted by subsection (1), shall be read as follows: 1305

(iii) on the reduction by the corporation of the paid-up capital in respect of that class of shares or in respect of shares of another class for which shares of that class were substituted, 1310

(4) Subsection (2) applies to actions occurring on or after ANNOUNCEMENT DATE.

31. (1) All that portion of subsection 85.1(2) of the said Act preceding subparagraph (*b*)(i) thereof is repealed and the following substituted therefor: 1315

Where rollover not to apply

(2) Subsection (1) does not apply where

(*a*) the vendor and purchaser were, immediately before the exchange, not dealing with each other at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) that is a right of the purchaser to acquire the exchanged shares); 1320

(*b*) the vendor or persons with whom the vendor did not deal at arm's length, (otherwise than because of a right referred to in paragraph 251(5)(*b*) that is a right of the purchaser to acquire the exchanged shares) or the vendor together with persons with whom the vendor did not deal at arm's length (otherwise than because of a right referred to in paragraph 251(5)(*b*) that is a right of the purchaser to acquire the exchanged shares), 1325

(2) Subsection (1) applies to exchanges occurring after ANNOUNCEMENT DATE. 1330

32. (1) Section 86 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

Computation of paid-up capital

(2.1) Where subsection (1) applies to a disposition of shares of the capital stock of a corporation (in this subsection referred to as the "exchange"), in computing the paid-up capital in respect of a particular class of shares of the capital stock of the corporation at any particular time after the exchange, 1335

1340

(*a*) there shall be deducted the amount determined by the formula

A x B/C

where 1345

A is amount, if any, by which

(i) the total of all amounts each of which is the increase, if any, as a result of the exchange, in the paid-up capital in respect of a class of shares of the capital stock of the corporation, computed without reference to this subsection as it applies to the exchange, 1350

exceeds 1355

(ii) the amount, if any, by which the paid-up capital in respect of the old shares exceeds the fair market value of the consideration (other than shares of the capital stock of the corporation) given by the corporation for the old shares on the exchange, 1360

B is the increase, if any, as a result of the exchange, in the paid-up capital in respect of the particular class of shares, computed without reference to this subsection as it applies to the exchange, and 1365

C is the amount, if any, determined in subparagraph (i) of the description of A in respect of the exchange; and

1370

(*b*) there shall be added an amount equal to the lesser of

(i) the amount, if any, by which

(A) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of that class paid by the corporation before the particular time 1375

exceeds

(B) the total that would be determined under clause (A) if this Act were read without reference to paragraph (a), and 1380

(ii) the total of all amounts required by paragraph (*a*) to be deducted in respect of that particular class of shares before the particular time. 1385

(2) Subsection 86(3) of the said Act is repealed and the following substituted therefor:

Application

(3) Subsections (1) and (2) do not apply in any case where subsection 85(1) or (2) applies. 1390

(3) Subsection (1) applies to exchanges occurring after August 1992, other than an exchange occurring after August 1992 and before ANNOUNCEMENT DATE where the corporation issuing shares on the exchange so elects in writing and files the election with the Minister of National Revenue before the end of the sixth month after the end of the month in which this Act is assented to. 1395

(4) Subsection (2) applies to reorganizations commencing after ANNOUNCEMENT DATE.

33. (1) Subsection 87(1.2) of the said Act is repealed and the following substituted therefor: 1400

New corporation continuation of a predecessor

(1.2) Where there has been an amalgamation of corporations described in paragraph (1.1)(*a*) or of 2 or more corporations each of which is a subsidiary wholly-owned corporation of the same person, the new corporation shall for the purposes of section 29 of the *Income Tax Application Rules, 1971*, subsection 59(3.3) and sections 66, 66.1, 66.2, 66.4 and 66.7, be deemed to be the same corporation as and a continuation of each predecessor corporation, except that this subsection shall not affect the determination of any predecessor corporation's fiscal period, taxable income or tax payable. 1405 1410

(2) Subsection 87(1.4) of the said Act is repealed and the following substituted therefor:

Definition of "subsidiary wholly-owned corporation"

(1.4) Notwithstanding subsection 248(1), for the purposes of subsections (1.1), (1.2) and (2.11) and this subsection, "subsidiary wholly-owned corporation" of a person (in this subsection referred to as the "parent") means a corporation all the issued and outstanding shares of the capital stock of which belong to 1415

(*a*) the parent; 1420

(*b*) a corporation that is a subsidiary wholly-owned corporation of the parent; or

(*c*) any combination of persons each of which is a person described in paragraph (*a*) or (*b*).

(3) Paragraph 87(2)(*j*.3) of the said Act is repealed and the following substituted therefor: 1425

Employee benefit plans, etc

(*j*.3) for the purposes of paragraphs 12(1)(*n*.1), (n.2) and (*n*.3) and 20(1)(*r*), (*oo*) and (*pp*), section 32.1, paragraph 104(13)(*b*) and Part XI.3, the new corporation shall be deemed to be the same corporation as, and a continuation of, each predecessor corporation; 1430

(4) Subsections (1) and (2) apply to amalgamations occurring after ANNOUNCEMENT DATE.

(5) Subsection (3) applies to taxation years ending after ANNOUNCEMENT DATE. 1435

34. (1) Subclause 88(1)(*e*.3)(ii)(C)(I) of the said Act is repealed and the following substituted therefor:

(I) where the subsidiary carried on a particular business in the course of which a property was acquired, or an expenditure was made, before that time in respect of which 1440 an amount was included in computing the subsidiary's investment tax credit for its taxation year in which it was wound up, and the parent carried on the particular business throughout the particular year, the amount, if any, by which the total of all amounts each of which is the 1445 parent's income for the particular year from the particular business, or the parent's income for the particular year from any other business substantially all the income of which was derived from the sale, leasing, rental or development of properties or the rendering of services 1450 similar to the properties sold, leased, rented or developed, or the services rendered, as the case may be, by the subsidiary in carrying on the particular business before that time, exceeds the total of the amounts, if any, deducted by the parent under paragraph 111(1)(*a*) or (*d*) 1455 for the particular year in respect of a non-capital loss or a farm loss, as the case may be, for a taxation year in respect of the particular business

(2) Subsection (1) applies to windings-up commencing after ANNOUNCEMENT DATE. 1460

35. (1) Section 88.1 of the said Act is repealed.

(2) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 1465

36. (1) Paragraph 89(1)(*a*) of the said Act is repealed and the following substituted therefor:

"Canadian corporation"
«corporation canadienne» 1470

(*a*) "Canadian corporation" at any time means a corporation that is resident in Canada at that time and was

(i) incorporated in Canada, or

(ii) resident in Canada throughout the period commencing June 18, 1971 and ending at that time, 1475

and, for greater certainty, a corporation formed at any particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations (otherwise than as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of such property by the other corporation or as a result of the distribution of such property to the other corporation on the winding-up of the corporation) is a Canadian corporation because of subparagraph (i) only if 1480 1485

(iii) that reorganization took place under the laws of Canada or a province, and

(iv) each of those corporations was, immediately before the particular time, a Canadian corporation; 1490

(2) Clause 89(1)(*c*)(ii)(C) of the said Act is repealed and the following substituted therefor:

(C) where the particular time is after March 31, 1977, an amount equal to the paid-up capital in respect of that class of shares at the particular time, computed without reference to the provisions of this Act except subsections 51(3) and 66.3(2) and (4), sections 84.1 and 84.2, subsections 85(2.1), 85.1(2.1), 86(2.1), 87(3), 87(9), 128.1(2) and (3), 138(11.7), 192(4.1) and 194(4.1) and section 212.1, 1495

(3) Subsection (2) applies to determinations of paid-up capital after August 1992, except that in applying clause 89(1)(*c*)(ii)(C) of the said Act, as enacted by subsection (2), before 1993 it shall be read without reference to "128.1(2) and (3)".

37. (1) Subparagraph 95(2)(*h*)(i) of the said Act is repealed and the following substituted therefor:

(i) the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, another foreign affiliate of the taxpayer, or

(2) Subsection (1) applies to redemptions, cancellations, acquisitions and reductions occurring after ANNOUNCEMENT DATE.

38. (1) Section 96 of the said Act is amended by adding thereto the following subsection:

Cost of assets on resident becoming partner

(8) For the purposes of this Act, where at any time a person resident in Canada becomes a member of a partnership and immediately before that time no member of the partnership was subject to tax under this Part in respect of the income of the partnership, the cost or capital cost of each property that is inventory or capital property at that time of the partnership shall be deemed to be equal to the lesser of

(*a*) its fair market value at that time, and

(*b*) its cost or capital cost otherwise determined.

(2) Subsection (1) applies to partnership interests acquired after ANNOUNCEMENT DATE.

39. (1) Paragraph 98.1(1)(*a*) of the said Act is repealed and the following substituted therefor:

(*a*) until such time as all the taxpayer's rights (other than a right to a share of the income or loss of the partnership under an agreement referred to in subsection 96(1.1)) to receive any property of or from the partnership in satisfaction of the taxpayer's interest in the partnership immediately before the time that the taxpayer ceased to be a member of the partnership are satisfied in full, such interest (in this section referred to as a "residual interest") shall, subject to sections 70 and 128.1 but notwithstanding any other section of this Act, be deemed not to have been disposed of by the taxpayer and to continue to be an interest in the partnership;

(2) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 1540

40. (1) Subsection 104(22) of the said Act is repealed and the following substituted therefor: 1545

Designation of foreign source income by trust

(22) For the purposes of this subsection, subsection (22.1) and section 126, such portion of the income of a trust for a taxation year (in this subsection referred to as "that year") throughout which it is resident in Canada from a source in a country other than Canada as 1550

(*a*) can reasonably be considered (having regard to all the circumstances including the terms and conditions of the trust arrangement) to be part of the income that, because of subsection (13) or (14), was included in computing the income for a particular taxation year of a particular beneficiary under the trust, and 1555

(*b*) is not designated by the trust in respect of any other beneficiary thereunder

shall, if so designated by the trust in respect of the particular beneficiary in its return of income for that year under this Part, be deemed to be income of the particular beneficiary for the particular year from that source. 1560

Foreign tax deemed paid by beneficiary

(22.1) Where a taxpayer is a beneficiary under a trust, for the purposes of this subsection and section 126 the taxpayer shall be deemed to have paid as business-income tax or non-business-income tax, as the case may be, for a particular taxation year in respect of a source the amount determined by the formula 1565

1570

$$A \times B/C$$

where

A is the amount that, but for subsection (22.3), would be the business-income tax or non-business income tax, as the case may be, paid by the trust in respect of the source for a taxation year (in this subsection referred to as "that year") of the trust that ends in the particular year; 1575

B is the amount deemed, because of a designation under subsection (22) for that year by the trust, to be income of the taxpayer from the source; and 1580

C is the income of the trust for that year from the source.

Recalculation of trust's foreign source income 1585

(22.2) For the purposes of section 126, there shall be deducted in computing the income of a trust from a source for a taxation year the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be income therefrom of beneficiaries under the trust. 1590

Recalculation of trust's foreign tax

(22.3) For the purposes of section 126, there shall be deducted in computing the business-income tax or non-business income tax paid by a trust for a taxation year in respect of a source, the total of all amounts deemed, because of designations under subsection (22) by the trust for the year, to be paid by beneficiaries under the trust as business-income tax or non-business-income tax, as the case may be, in respect of the source. 1595

Definitions

(22.4) For the purposes of subsections (22) to (22.3), the expressions "business-income tax" and "non-business income tax" have the meanings assigned by subsection 126(7). 1600

(2) Subsection (1) applies to taxation years ending after November 12, 1981 except that, with respect to taxation years of trusts commencing before 1988, all that portion of subsection 104(22) of the said Act preceding paragraph (*a*) thereof, as enacted by subsection (1), shall be read as follows: 1605

(22) For the purposes of this subsection, subsection (22.1) and section 126, such portion of the income of a trust for a taxation year (in this subsection referred to as "that year") from a source in a country other than Canada as 1610

41. (1) Paragraph 107(1)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) where the taxpayer is a corporation and the interest is not an interest in a prescribed trust, its capital loss from the disposition at any time of the interest or part thereof shall be deemed to be the amount, <u>if any, by which the amount</u> of its loss otherwise determined exceeds the amount, if any, by which 1615

(i) the total of all amounts received by the trust before that time (and, where the trust is a unit trust, after 1987) and designated by it in respect of the corporation under subsection 104(19) or (20) 1620

exceeds

(ii) such portion of the total referred to in subparagraph (i) as can reasonably be considered to have resulted in a reduction under this paragraph of its capital loss otherwise determined from the disposition before that time of an interest in the trust, 1625

(2) Subsection (1) applies to the 1988 and subsequent taxation years.

42. (1) Subparagraph 110(1)(*d*)(iii) of the said Act is repealed and the following substituted therefor: 1630

(iii) the amount payable by the taxpayer to acquire the share under the agreement (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the share was acquired) is not less than the amount by which 1635

(A) the fair market value of the share at the time the agreement was made

exceeds 1640

(B) the amount, if any, paid by the taxpayer to acquire the right to acquire the share,

or where the rights under the agreement were acquired by the taxpayer as a result of one or more dispositions of rights in respect of which subsection 7(1.4) applied, the amount payable by the taxpayer to acquire the old share under the original option (determined without reference to any change in the value of a currency of a country other than Canada relative to Canadian currency during the period between the time the agreement was made and the time the share was acquired) that was disposed of in consideration for a new option in the first such disposition was not less than the amount by which 1645 1650

(C) the fair market value of the old share at the time the agreement in respect of the original option was made

exceeds 1655

(D) the amount, if any, paid by the taxpayer to acquire the old share, and

(2) Subparagraph 110(1)(*f*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, disability or death, except any such compensation received by a person as the employer or former employer of the person in respect of whose injury, disability or death the compensation was paid, or 1660 1665

(3) Subsection (1) applies to the 1992 and subsequent taxation years.

(4) Subsection (2) applies to the 1991 and subsequent taxation years.

43. (1) Subsection 110.6(15) of the said Act is repealed and the following substituted therefor: 1670

Value of assets of corporations

(15) 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) and the definition "small business corporation" in subsection 248(1), 1675

(*a*) where a person (in this subsection referred to as the "insured"), whose life was insured under an insurance policy owned by a particular corporation, owned shares of the capital stock (in this subsection referred to as the "subject shares") of the particular corporation, any corporation connected with the particular corporation or with which the particular corporation is connected or any corporation connected with any such corporation or with which any such corporation is connected (within the meaning of subsection 186(4) on the assumption that the corporation referred to herein was a payer corporation within the meaning of that subsection), 1680 1685

(i) the fair market value of the life insurance policy shall, at any time before the death of the insured, be deemed to be its cash surrender value (within the meaning assigned by paragraph 148(9)(b)) at that time, and 1690

(ii) the total fair market value of assets (other than assets described in subparagraph (*c*)(i), (ii) or (iii) of the definition "qualified small business corporation share" in subsection (1), subparagraph (*b*)(i), (ii) or (iii) of the definition "share of the capital stock of a family farm corporation" in subsection (1) or 1695

paragraph (*a*), (*b*) or (*c*) of the definition "small business corporation" in subsection 248(1), as the case may be) of any of those corporations that are

(A) the proceeds, the right to receive the proceeds or attributable to the proceeds of the life insurance policy of which the particular corporation was a beneficiary, and 1700

(B) used, directly or indirectly, within the 24-month period commencing at the time of the death of the insured or, where written application therefor is made by the particular corporation within that period, within such longer period as the Minister considers reasonable in the circumstances, to redeem, acquire or cancel the subject shares owned by the insured immediately before the death of the insured, 1705

not in excess of the fair market value of the assets immediately after the death of the insured, shall, until the later of 1710

(C) such redemption, acquisition or cancellation, and

(D) the date that is 60 days after the payment of the proceeds under the policy,

be deemed not to exceed the cash surrender value (within the meaning assigned by paragraph 148(9)(*b*) of the policy immediately before the death of the insured; and 1715

(*b*) the fair market value of an asset of a particular corporation that is a share of the capital stock, or indebtedness of another corporation with which the particular corporation is connected (within the meaning of subsection 186(4) on the assumption that the particular corporation was a payer corporation within the meaning of that subsection) is nil. 1720

(2) Subsection (1) applies to the 1992 and subsequent taxation years. 1725

44. (1) The definition "exempt share" in subsection 112(2.6) of the said Act is amended by striking out the word "or" at the end of paragraph (*a*) thereof, by adding the word "or" at the end of paragraph (*b*) thereof and by adding thereto the following paragraph: 1730

(*c*) a share that was, at the time at which the dividend referred to in subsection (2.4) was received, a share described in paragraph (*e*) of the definition "term preferred share" in subsection 248(1) during the applicable time period referred to in that paragraph;

(2) Subparagraph 112(4)(*d*)(ii) of the said Act is repealed and the following substituted therefor: 1735

(ii) a dividend, other than a taxable dividend or a capital gains dividend (within the meaning assigned by subsection 131(1)),

(3) Subparagraph 112(4.1)(*d*)(ii) of the said Act is repealed and the following substituted therefor: 1740

(ii) a dividend, other than a taxable dividend or a capital gains dividend (within the meaning assigned by subsection 131(1)),

(4) Subparagraph 112(4.2)(*d*)(ii) of the said Act is repealed and the following substituted therefor:

(ii) a dividend, other than a taxable dividend or a capital gains dividend (within the meaning assigned by subsection 131(1)), 1745

(5) Paragraph 112(7)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) that proportion of the total of all amounts each of which is the amount determined in respect of an old share exchanged by the holder at the particular time equal to the lesser of 1750

(i) the total of all amounts each of which is received or designated by the holder in respect of a taxable dividend, a capital dividend or a life insurance capital dividend on the old share, and 1755

(ii) the adjusted cost base to the holder of the old share immediately before the particular time

that

(iii) the adjusted cost base to the holder of the new share immediately after the exchange 1760

is of

(iv) the adjusted cost base to the holder of all new shares immediately after the exchange

(6) Subsection (1) applies to shares issued after ANNOUNCEMENT DATE. 1765

(7) Subsections (2) and (4) apply to the determination of losses arising in the 1990 and subsequent taxation years and, where a taxpayer has elected under subsection 84(6) 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* 1770

***Implementation Act, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and certain related Acts*, being chapter 49 of the Statutes of Canada, 1991, to the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsections 152(4) to (5) of the *Income Tax Act*, such assessments of tax, interest and penalties shall be made as are necessary to give effect to those amendments.** 1775

(8) Subsection (3) applies to the 1990 and subsequent taxation years and, where a taxpayer has elected under subsection 84(7) 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*, being chapter 49 of the Statutes of Canada, 1991, to the taxpayer's 1985 to 1989 taxation years, in which case, notwithstanding subsections 152(4) to (5) of the *Income Tax Act*, such assessments of tax, interest and penalties shall be made as are necessary to give effect to that amendment. 1780 1785 1790

(9) Subsection (5) applies to losses arising in the 1992 and subsequent taxation years.

45. (1) All that portion of section 114 of the said Act preceding paragraph (*b*) thereof is repealed and the following substituted therefor: 1795

Individual resident in Canada for only part of year

114. Notwithstanding subsection 2(2), where an individual is resident in Canada during part of a taxation year, and during another part of the year is non-resident, the individual's taxable income for the year is the amount, if any, by which the total of 1800

(*a*) the individual's income for the period or periods in the year throughout which the individual is resident in Canada, computed as though the period or periods were the whole taxation year, and 1805

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

46. (1) All that portion of paragraph 118.3(2)(*a*) of the said Act following subparagraph (ii) thereof is repealed and the following substituted therefor: 1810

or, where that person is the individual's parent, grandparent, child or grandchild, could have claimed such a deduction if the individual were not married and that person had no income for the year and had attained the age of 18 years before the end of the year, and

(2) Subsection (1) applies to the 1993 and subsequent taxation years. 1815

47. (1) All that portion of section 118.91 of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Part-year residents 1820

118.91 Notwithstanding the provisions of sections 118 to 118.9, where an individual is resident in Canada during part of a taxation year and during another part of the year is non-resident, for the purpose of computing the individual's tax payable under this Part for the year, 1825

(2) All that portion of paragraph 118.91(*b*) of the said Act following subparagraph (ii) thereof is repealed and the following substituted therefor:

to the period or periods in the year throughout which the individual is resident in Canada, computed as though the period or periods were the whole taxation year, 1830

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

48. (1) All that portion of subsection 122.5(3) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor: 1835

Deemed payment on account of tax

(3) Where a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(*d*) or 128(2)(*e*) or subsection 150(4)) is filed under this Part for a taxation year in respect of an eligible individual and the individual applies therefor in writing, 1/4 of the amount, if any, by which the total of 1840

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

(*a*) where an individual is a qualified relation of another individual for a taxation year, only one of them may apply under that subsection for the year; 1845

(3) All that portion of subsection 122.5(6) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor: 1850

Qualified relation of a deceased eligible individual

(6) Notwithstanding paragraph (5)(*c*), on written application made, on or before the day on or before which a return of income (other than a return of income filed under subsection 70(2), paragraph 104(23)(*d*) or 128(2)(*e*) or subsection 150(4)) of a deceased person is required to be filed under this Part for the taxation year in which the person died (or would be so required if the person were liable to pay tax under this Part for that year), by an individual who 1855

(4) Subsections (1) to (3) apply to the 1992 and subsequent taxation years. 1860

49. (1) All that portion of subsection 126(2.2) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Non-resident's foreign tax deduction

(2.2) Where at any time in a taxation year a taxpayer who is not at that time resident in Canada disposes of property that was deemed by subsection 48(2), as it read in its application before 1993, or paragraph 128.1(4)(*e*) to be taxable Canadian property of the taxpayer, the taxpayer may deduct from the tax for the year otherwise payable under this Part by the taxpayer an amount equal to 1865 1870

(2) Paragraph 126(7)(*c*) of the said Act is amended by adding thereto immediately before subparagraph (iv) thereof, the following subparagraph:

1(iii.1) that is in respect of an amount deducted because of subsection 104(22.3) in computing the taxpayer's business-income tax, 1875

(3) Subsection (1) applies after 1992.

(4) Subsection (2) applies to taxation years ending after November 12, 1981.

50. (1) The definition "qualified property" in subsection 127(9) of the said Act is amended by striking out the word "or" at the end of paragraph (*c*) thereof and by adding thereto, immediately after paragraph (*c*) thereof, the following paragraph: 1880

(*c*.1) to be used by the taxpayer in Canada primarily for the purpose of producing or processing electrical energy or steam in a prescribed area, where 1885

(i) all or substantially all of the energy or steam

(A) is used by the taxpayer for the purpose of gaining or producing income from a business (other than the business of selling the product of the particular property), or 1890

(B) is sold directly (or indirectly by way of sale to a provincially regulated power utility operating in the prescribed area) to a person related to the taxpayer, and 1895

(ii) the energy or steam is used by the taxpayer or the person related to the taxpayer primarily for the purpose of manufacturing or processing goods in the prescribed area for sale or lease; or 1900

(2) Paragraph (*d*) of the definition "qualified property" in subsection 127(9) of the said Act is amended by striking out the word "or" at the end of subparagraph (ii) thereof, by adding the word "or" at the end of subparagraph (iii) thereof and by adding thereto, immediately after subparagraph (iii) thereof, the following subparagraph: 1905

(iv) the property is a fishing vessel, including the furniture, fittings, and equipment attached thereto, leased by an individual (other than a trust) to a corporation, controlled by the individual, that carries on a fishing business in connection with one or more commercial fishing licenses issued by the Government of Canada to the individual, 1910

(3) Subsection (1) applies to property acquired after 1991.

(4) Subsection (2) applies to the 1985 and subsequent taxation years. 1915

51. (1) The said Act is further amended by adding thereto, immediately after section 128 thereof, the following sections:

Changes in Residence

Immigration 1920

128.1 (1) For the purposes of this Act, where at any particular time a taxpayer becomes resident in Canada,

year-end 1925

(*a*) where the taxpayer is a corporation or a trust, the taxpayer's taxation year that would otherwise have included the particular time shall be deemed to have ended immediately before that time and a new taxation year of the taxpayer shall be deemed to have commenced at that time; 1930

deemed disposition

(*b*) the taxpayer shall be deemed to have disposed, at the time (in this subsection referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than 1935

(i) property that would have been taxable Canadian property if the taxpayer had been resident in Canada at no time in the taxpayer's last taxation year commencing before the particular time, 1940

(ii) property that is described in the inventory of a business carried on by the taxpayer in Canada at the time of disposition,

1945

(iii) eligible capital property in respect of a business carried on by the taxpayer in Canada at the time of disposition, and

(iv) property in respect of which the taxpayer has elected under paragraph 48(1)(*c*), as it read in its application before 1993, or subparagraph (4)(*b*)(iv) in respect of the last preceding time the taxpayer ceased to be resident in Canada, 1950

for proceeds equal to its fair market value at the time of disposition; 1955

deemed acquisition

(*c*) the taxpayer shall be deemed to have acquired at the particular time each property deemed by paragraph (*b*) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of that property; and 1960

foreign affiliate

1965

(*d*) where the taxpayer was, immediately before the particular time, a foreign affiliate of another taxpayer that is resident in Canada,

(i) the affiliate shall be deemed to have been a controlled foreign affiliate (within the meaning assigned by paragraph 95(1)(*a*)) of the other taxpayer immediately before the particular time, and 1970

(ii) such amount as is prescribed shall be included in the foreign accrual property income (within the meaning assigned by paragraph 95(1)(*b*)) of the foreign affiliate for its taxation year ending immediately before the particular time. 1975

Idem – paid-up capital

(2) For the purposes of this Act, where at any particular time a corporation becomes resident in Canada, in computing the paid-up capital at any time after the particular time in respect of any particular 1980

class of shares of the capital stock of the corporation, there shall be deducted an amount determined by the formula

1985

$$A/B \times (C - D)$$

where

A is the paid-up capital, determined without reference to this subsection, of the particular class of shares at the particular time,

1990

B is the paid-up capital, determined without reference to this subsection, in respect of all of the shares of the corporation at the particular time, and

1995

C is the total of

(*a*) the paid-up capital, determined without reference to this subsection, in respect of all of the shares of the corporation at the particular time,

2000

(*b*) all amounts, each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that is outstanding at the particular time, and

2005

(*c*) any amount claimed by the corporation under paragraph 219(1)(*h*) for its last taxation year commencing before the particular time, and

2010

D is the total of

(*d*) all amounts each of which is deemed by paragraph (1)(*c*) to be the cost to the corporation of property (other than property described in paragraph (*g*)) deemed under that paragraph to have been acquired by the corporation at the particular time,

2015

(*e*) all amounts each of which is the cost amount to the corporation, immediately after the particular time, of property (other than property described in paragraph (*d*) or (*g*) or Canadian resource property),

2020

(*f*) the total of

(i) all Canadian exploration and development expenses incurred by the corporation before the particular time, except to the extent that such expenses were deducted in computing the income of any taxpayer for a taxation year ending before the particular time,

2025

2030

(ii) the corporation's cumulative Canadian exploration expense at the particular time (within the meaning assigned by paragraph 66.1(6)(*b*)),

(iii) the corporation's cumulative Canadian development expense at the particular time (within the meaning assigned by paragraph 66.2(5)(*b*)), and 2035

(iv) the corporation's cumulative Canadian oil and gas property expense at the particular time (within the meaning assigned by paragraph 66.4(5)(*b*)), and 2040

(*g*) the total of all amounts each of which is the paid-up capital in respect of a share of the capital stock of another corporation resident in Canada and connected with the corporation (within the meaning assigned by subsection 186(4), on the assumption that the references therein to "payer corporation" and "particular corporation" were read as references to the other corporation and the corporation, respectively) immediately after the particular time, owned by the corporation at the particular time. 2045

Idem 2050

(3) In computing the paid-up capital at any time in respect of any class of shares of the capital stock of a corporation, there shall be added an amount equal to the lesser of

(*a*) the amount, if any, by which 2055

(i) the total of all amounts deemed by subsection 84(3), (4) or (4.1) to be a dividend on shares of the class paid before that time by the corporation

2060

exceeds

(ii) the total that would be determined under subparagraph (i) if this Act were read without reference to subsection (2), and

2065

(*b*) the total of all amounts required by subsection (2) to be deducted in computing the paid-up capital in respect of that class of shares before that time.

Emigration 2070

(4) For the purposes of this Act, where at any particular time a taxpayer ceases to be resident in Canada,

year-end 2075

(*a*) where the taxpayer is a corporation or a trust, its taxation year that would otherwise have included the particular time shall be deemed to have ended immediately before that time and a new taxation year of the taxpayer shall be deemed to have commenced at that time; 2080

deemed disposition

(*b*) the taxpayer shall be deemed to have disposed, at the time (in this paragraph and paragraph (*d*) referred to as the "time of disposition") that is immediately before the time that is immediately before the particular time, of each property owned by the taxpayer, other than 2085

(i) where the taxpayer is an individual, property that would have been taxable Canadian property if the taxpayer had been resident in Canada at no time in the taxpayer's last taxation year commencing before the particular time, 2090

(ii) where the taxpayer is an individual, property that is described in the inventory of a business carried on by the taxpayer in Canada at the particular time, 2095

(iii) where the taxpayer is an individual, a right to receive a payment described in any of paragraphs 212(1)(*h*) and (*j*) to (*q*) or a right to receive any payment of a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act, 2100

(iv) where the taxpayer is an individual other than a trust, each capital property not described in any of subparagraphs (i) to (iii) in respect of which the taxpayer has elected in prescribed manner, on or before the taxpayer's balance-due day for the taxation year in which the taxpayer ceased to be resident in Canada, and has furnished to the Minister security acceptable to the Minister for the payment of the additional tax that would have been payable by the taxpayer under this Part had the taxpayer not so elected, and 2105 2110

(v) where the taxpayer is an individual other than a trust and was, during the 10 years immediately preceding the particular time, resident in Canada for a period or periods totalling 60 months or less, property that was 2115

(A) owned by the taxpayer at the time the taxpayer last became resident in Canada, or 2120

(B) acquired by the taxpayer by inheritance or bequest after the taxpayer last became resident in Canada

for proceeds equal to its fair market value at the time of disposition, which proceeds shall be deemed to have become receivable and to have been received by the taxpayer at the time of disposition; 2125

reacquisition

2130

(c) the taxpayer shall be deemed to have reacquired, at the particular time, each property deemed by paragraph (*b*) to have been disposed of by the taxpayer, at a cost equal to the proceeds of disposition of that property;

2135

individual

(*d*) notwithstanding paragraphs (*b*) and (*c*), where a taxpayer who is an individual other than a trust so elects in prescribed manner, on or before the taxpayer's balance-due day for the taxation year that includes the particular time, in respect of any property described in subparagraph (*b*)(i) or (ii), the taxpayer shall be deemed to have disposed of that property at the time of disposition for proceeds equal to its fair market value at that time, and to have reacquired that property at the particular time at a cost equal to those proceeds; 2140 2145

deemed property

(*e*) any capital property in respect of which a taxpayer has elected under subparagraph (*b*)(iv) shall be deemed to be taxable Canadian property of the taxpayer from the particular time until the earlier of 2150

(i) the time at which the taxpayer disposes of the property, and

2155

(ii) the time at which the taxpayer next becomes resident in Canada; and

losses on election

(*f*) where a taxpayer has elected under subparagraph (b)(iv) or paragraph (*d*), 2160

(i) the taxpayer's income for the taxation year that includes the particular time shall be deemed to be the greater of

(A) that income otherwise determined, and 2165

(B) the lesser of

(I) that income determined without reference to this subsection, and 2170

(II) that income determined without reference to subparagraph (*b*)(iv) and paragraph (*d*), and

(ii) the amount of each of the taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for the taxation year that includes the particular time shall be deemed to be the lesser of 2175

(A) that amount otherwise determined, and

2180

(B) the greater of

(I) that amount determined without reference to this subsection, and

2185

(II) that amount determined without reference to subparagraph (*b*)(iv) and paragraph (*d*).

Cross-border mergers

2190

128.2 (1) Where a corporation formed at a particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations (each of which is referred to in this section as a "predecessor") is at the particular time resident in Canada, any predecessor that was not immediately before the particular time resident in Canada shall be deemed to have become resident in Canada immediately before the particular time.

2195

Idem

2200

(2) Where a corporation formed at a particular time by the amalgamation or merger of, or by a plan of arrangement or other corporate reorganization in respect of, 2 or more corporations is at the particular time not resident in Canada, any predecessor that was immediately before the particular time resident in Canada shall be deemed to have ceased to be resident in Canada immediately before the particular time.

2205

Windings-up excluded

2210

(3) For greater certainty, subsections (1) and (2) do not apply to reorganizations occurring solely as a result of the acquisition of property of one corporation by another corporation, pursuant to the purchase of such property by the other corporation or as a result of the distribution of such property to the other corporation on the winding-up of the corporation.

2215

(2) Subsection (1) applies after 1992 except that where a corporation has elected in accordance with subsection 87(4)), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)).

2220

52. (1) Subsections 137(4.1) and (4.2) of the said Act are repealed and the following substituted therefor:

Payments in respect of shares 2225

(4.1) Notwithstanding any other provision of this Act, any amount paid or payable by a credit union to a member thereof in respect of a share of a class of the capital stock of the credit union (other than any such amount paid or payable as or on account of a reduction of the paid-up capital, redemption, acquisition or cancellation of the share by the credit union to the extent of the paid-up capital of the share) shall, where the share is not listed on a prescribed stock exchange, be deemed to have been paid or payable, as the case may be, by the credit union as interest and, to have been received or receivable, as the case may be, by the member as interest. 2230 2235

Deemed interest not a dividend

(4.2) Notwithstanding any other provision of this Act, an amount that is deemed under subsection (4.1) to be interest shall be deemed not to be a dividend.

(2) Subsection (1) applies to transactions occurring after ANNOUNCEMENT DATE. 2240

53. (1) All that portion of subsection 137.1(5.1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Deeming provision 2245

(5.1) For the purposes of this section, other than subsection (2), paragraph (3)(*d*), subparagraph (3)(*e*)(i), subsection (9) and paragraph 11(*a*), a subsidiary wholly-owned corporation of a particular corporation described in paragraph (5)(*a*) shall be deemed to be a deposit insurance corporation, and any member institution of the particular corporation shall be deemed to be a member institution of the subsidiary, where all or substantially all of the property of the subsidiary has at all times since the subsidiary was incorporated consisted of 2250

(2) Subsection (1) applies to the 1992 and subsequent taxation years. 2255

54. (1) Subsection 143(1) of the said Act is amended by striking out the word "and" at the end of paragraph (*i*) thereof, by adding the word "and" at the end of paragraph (*j*) thereof and by adding thereto the following paragraph: 2260

(*k*) where the congregation or one of the business agencies is a corporation, section 15.1 shall, except for the purposes of paragraphs (2)(*a*) and (2)(*c*) thereof (other than subparagraphs (2)(*c*)(i) and (ii) thereof), apply as if this subsection were read without reference to paragraphs (*d*) and (*g*). 2265

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

55. (1) Subsections 144(1) and (2) of the said Act are repealed and the following substituted therefor:

"Employees profit sharing plan" defined 2270

144. (1) In this Act, an "employees profit sharing plan" at any particular time means an arrangement under which payments computed by reference to

(*a*) the profits of an employer from the employer's business,

(*b*) the profits from the business of a corporation with which the employer does not deal at arm's length, or 2275

(*c*) any combination of the amounts described in paragraphs (*a*) and (*b*)

are required to be made by the employer to a trustee under the arrangement for the benefit of employees of the employer or of a corporation with which the employer does not deal at arm's length, provided that the trustee has, since the later of the commencement of the arrangement and the end of 1949 allocated, either contingently or absolutely, to such employees 2280

(*d*) in each year ending at or before the particular time, all amounts received in the year by the trustee from the employer or from a corporation with which the employer does not deal at arm's length, 2285

(*e*) in each year ending at or before the particular time, all profits for the year from the property of the trust (determined without regard to any capital gain made by the trust or capital loss sustained by it at any time after 1955), 2290

(*f*) in each year ending after 1971 and at or before the particular time, all capital gains and capital losses of the trust for the year,

(*g*) in each year ending after 1971, before 1993 and at or before the particular time, 100/15 of the total of all amounts each of which is deemed by subsection (9) to be paid on account of tax under this Part in respect of an employee because the employee ceased to be a beneficiary under the plan in the year, and 2295

(*h*) in each year ending after 1991 and at or before the particular time, the total of all amounts each of which is an amount that an employee is entitled to deduct under subsection (9) in computing income because the employee ceased to be a beneficiary under the plan in the year. 2300

No tax while trust governed by plan

(2) No tax is payable under this Part by a trust on the taxable income of the trust for a taxation year throughout which the trust is governed by an employees profit sharing plan. 2305

(2) Subsection 144(3) of the said Act is amended by adding the word "or" at the end of paragraph (*d*) thereof, by striking out the word "or" at the end of paragraph (*e*) thereof and by repealing paragraph (*f*) thereof. 2310

(3) Subsection 144(8.2) of the said Act is repealed.

(4) Subsections 144(9) and (10) of the said Act are repealed and the following substituted therefor:

Deduction for forfeited amounts 2315

(9) Where

(*a*) an employee ceases at any time in a taxation year to be a beneficiary under an employees profit sharing plan,

(*b*) there has been included in computing the employee's income for the year or a preceding taxation year a particular amount because of any allocation made to the employee contingently by the trustee under the plan before that time, and 2320

(*c*) the employee has not, at or before that time, received the particular amount from the trustee under the plan and is not, under the plan, entitled at that time to receive the particular amount, 2325

the particular amount may be deducted in computing the employee's income for the year.

Payments out of profits

(10) Where the terms of an arrangement under which an employer makes payments to a trustee specifically provide that the payments shall be made "out of profits", such arrangement shall, if the employer has so elected in prescribed manner, be deemed, for the purposes of subsection (1), to be an arrangement under which payments computed by reference to the profits of the employer are required. 2330

(5) Subsection 144(1) of the said Act, as enacted by subsection (1), and subsection 144(10) of the said Act, as enacted by subsection (4), apply to the 1992 and subsequent taxation years and, where an amount was paid to a person before 1993 without first having been allocated to that person, it shall be deemed for the purposes of subsection 144(1) of the said Act, as enacted by subsection (1), to have been allocated to that person. 2335 2340

(6) Subsection 144(2) of the said Act, as enacted by subsection (1), applies to the 1993 and subsequent taxation years.

(7) Subsections (2) and (3) apply to the 1992 and subsequent taxation years, except that a taxpayer may elect that those subsections not apply to the taxpayer's 1992 taxation year by so notifying the Minister of National Revenue in writing before the end of the sixth month after the month in which this Act is assented to. 2345

(8) Subsection 144(9) of the said Act, as enacted by subsection (4), applies to the 1992 and subsequent taxation years, except that a taxpayer may elect that subsection 144(9) of the said Act, as enacted by subsection (4), not apply to the taxpayer's 1992 taxation year by so notifying the Minister of National Revenue in writing before the end of the sixth month after the month in which this Act is assented to. 2350 2355

56. (1) Subparagraphs 146(1)(*h*)(i) and (ii) of the said Act are repealed and the following substituted therefor:

(i) any benefit (in this paragraph having the meaning that would be assigned by paragraph (*b*) if that paragraph were read without reference to subparagraph (i) thereof) paid to a spouse of the annuitant out of or under a registered retirement savings plan of the annuitant, where the annuitant died before the maturity of the plan and that benefit was paid as a consequence of the death, or 2360

(ii) if the annuitant had no spouse at the time of the annuitant's death, any benefit paid out of or under a registered retirement savings plan of the annuitant after the death to a child or grandchild (in this paragraph referred to as a "dependant") of the annuitant, who was, at the time of the death, financially dependent on the annuitant for support, 2365 2370

(2) Paragraph 146(4)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) if the last annuitant under the plan has died, tax is payable under this Part by the trust on its taxable income for each year after the year immediately following the year in which the last annuitant died. 2375

(3) All that portion of paragraph 146(5.1)(*a*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(*a*) 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's spouse (or, where the taxpayer died in the year, an individual who was the taxpayer's spouse 2380

immediately before the death) was the annuitant at the time the premium was paid, other than the portion, if any of the premium 2385

(4) Paragraph 146(8.2)(*b*) of the said Act is amended by striking out the word "and" at the end of subparagraph (i) thereof, by adding the word "and" at the end of subparagraph (ii) thereof and by adding thereto the following subparagraph: 2390

(iii) was not paid by way of a transfer of an amount from a provincial pension plan prescribed for the purposes of paragraph 60(*v*) to a registered retirement savings plan in circumstances to which subsection (21) applied,

(5) Paragraph 146(8.8)(*b*) of the said Act is repealed and the following substituted therefor: 2395

(*b*) where the annuitant died after the maturity of the plan, the fair market value at the time of the annuitant's death of the portion of the property described in paragraph (*a*) that, as a consequence of the annuitant's death, becomes receivable by a person who was the annuitant's spouse immediately before the death, or would become so receivable should that person survive throughout all guaranteed terms contained in the plan. 2400

(6) Subsection 146(8.9) of the said Act is repealed and the following substituted therefor: 2405

Idem

(8.9) There may be deducted from the amount deemed by subsection (8.8) to have been received by an annuitant as a benefit out of or under a registered retirement savings plan the amount determined by the formula 2410

$$A \times [1 - \frac{(B + C - D)}{(B + C)}]$$

where

2415

A is the total of all refunds of premiums in respect of the plan;

B is the fair market value of the property of the plan at the particular time that is the later of

2420

(*a*) the end of the first calendar year commencing after the death of the annuitant, and

(*b*) the time immediately after the last time that any refund of premiums in respect of the plan is paid out of or under the plan; 2425

C is the total of all amounts paid out of or under the plan after the death of the annuitant and before the particular time; and

D is the lesser of

2430

(*a*) the fair market value of the property of the plan at the time of the annuitant's death, and

(*b*) the sum of the values of B and C in respect of the plan.

(7) Subsection 146(20) of the said Act is repealed and the following substituted therefor: 2435

Credited or added amount deemed not received

(20) Where

(*a*) an amount is credited or added to a deposit with a depositary referred to in clause (1)(*j*)(ii)(C) as interest or income in respect of the deposit, 2440

(*b*) the deposit is a registered retirement savings plan at the time the amount is credited or added to the deposit, and

(*c*) during the calendar year in which the amount is credited or added or during the preceding calendar year, the annuitant under the plan was alive 2445

the amount shall be deemed not to be received by the annuitant or any other person solely because of such crediting or adding.

(8) Section 146 of the said Act is further amended by adding thereto the following subsection: 2450

Prescribed provincial pension plans

(21) Where an amount (other than an amount that is part of a series of periodic payments) is transferred on behalf of a particular individual directly from a provincial pension plan prescribed for the purposes of paragraph 60(*v*) 2455

(*a*) to a registered retirement savings plan or a registered retirement income fund under which the particular individual is the annuitant,

2460

(*b*) to a registered retirement savings plan or registered retirement income fund under which the spouse or former spouse of the particular individual is the annuitant, where the particular individual and the spouse or former spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the particular individual and the spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage, 2465

2470

(*c*) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity that would be described in subparagraph 60(*l*)(ii) if the particular individual were the taxpayer referred to therein and if that subparagraph were read without reference to clause (B) thereof, or 2475

(*d*) to acquire, from a person licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business, an annuity that would be described in subparagraph 60(*l*)(ii) if the particular individual's spouse or former spouse were the taxpayer referred to therein and if that subparagraph were read without reference to clause (B) thereof, where the particular individual and the spouse or former spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individual and the spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage, 2480 2485

2490

except where the amount arose as a consequence of the death of an individual (other than the particular individual or a spouse or former spouse of the particular individual), the following rules apply:

(*e*) the amount shall not, solely because of that transfer, be included because of subparagraph 56(1)(*a*)(i) in computing the income of any taxpayer, and 2495

(*f*) no deduction may be made under any provision of this Act in respect of the transfer in computing the income of any taxpayer. 2500

(9) Subsections (1) and (5) to (7) apply to deaths occurring after 1992.

(10) Subsection (2) applies to the 1993 and subsequent taxation years.

(11) Subsections (3) and (4) apply to the 1992 and subsequent taxation years. 2505

(12) Subsection (8) applies to transfers occurring after 1991, except that

(*a*) where a taxpayer has made an election under subsection 22(10) of this Act, subsection 146(21) of the said Act, as enacted by subsection (8), does not apply in respect of transfers made on behalf of the taxpayer in 1992; and 2510

(*b*) with respect to transfers made in 1992,

(i) the word "spouse", wherever it appears in subsection 146(21) the said Act, as enacted by subsection (8), shall have the meaning assigned by subsection 146(1.1) of the said Act, and 2515

(ii) the word "marriage" in paragraphs 146(21)(*b*) and (*d*) of the said Act, as enacted by subsection (8), shall be read as "marriage or other conjugal relationship". 2520

57. (1) Paragraph (*b*) of the definition "excluded premium" in subsection 146.01(1) of the said Act is repealed and the following substituted therefor:

(*b*) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund, deferred profit sharing plan or a provincial pension plan prescribed for the purposes of paragraph 60(*v*), 2525

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

58. (1) Subsection 146.3(1) of the said Act is amended by adding thereto, immediately after paragraph (*b*) thereof, the following paragraph: 2530

"designated benefit"

(*b*.01) "designated benefit" of an individual in respect of a registered retirement income fund means the total of 2535

(i) such amounts paid out of or under the fund after the death of the last annuitant thereunder to the legal representative of that annuitant,

2540

(A) as would, had they been paid under the fund to the individual, have been refunds of premiums (in this paragraph having the meaning assigned by paragraph 146(1)(*h*)) if the fund were a registered retirement savings plan that had not matured before the death, and 2545

(B) as are designated jointly by the legal representative and the individual in prescribed form filed with the Minister, and

(ii) amounts paid out of or under the fund after the death of the last annuitant thereunder to the individual that would be refunds of premiums had the fund been a registered retirement savings plan that had not matured before the death; 2550

(2) Paragraph 146.3(2)(*f*) of the said Act is amended by striking out the word "or" at the end of subparagraph (v) thereof, by adding the word "or" at the end of subparagraph (vi) thereof and by adding thereto the following subparagraph: 2555

(vii) a provincial pension plan in circumstances to which subsection 146(21) applies;

(3) Subsection 146.3(3.1) of the said Act is repealed and the following substituted therefor: 2560

Exception

(3.1) Notwithstanding subsection (3), if the last annuitant under a registered retirement income fund has died, tax is payable under this Part by the trust governed by the fund on its taxable income for each year after the year immediately following the year in which the last annuitant under the fund died. 2565

(4) Subsections 146.3(6) to (6.2) of the said Act are repealed and the following substituted therefor:

Where last annuitant dies 2570

(6) Where the last annuitant under a registered retirement income fund dies, that annuitant shall be deemed to have received, immediately before death, an amount out of or under a registered retirement income fund equal to the fair market value of the property of the fund at the time of death. 2575

Designated benefit deemed received

(6.1) A designated benefit of an individual in respect of a registered retirement income fund that is received by the legal representative of the last annuitant under the fund shall be deemed 2580

(*a*) to be received by the individual out of or under the fund at the time it is received by the legal representative, and

(*b*) except for the purposes of paragraph (1)(*b*.01), not to be received out of or under the fund by any other person. 2585

Transfer of designated benefit

(6.11) For the purposes of subparagraph 60(*l*)(v), the eligible amount of a particular individual for a taxation year in respect of a registered retirement income fund is nil unless the particular individual was 2590

(*a*) a spouse of the last annuitant under the fund, or

2595

(*b*) the child or grandchild of that annuitant who was dependent by reason of physical or mental infirmity on that annuitant,

in which case the eligible amount shall be determined by the formula

2600

$$A \times [1 - \frac{(B - C)}{D}]$$

where

2605

A is such portion of the designated benefit of the particular individual in respect of the fund as is included because of subsection (5) in computing the income of the particular individual for the year,

B is the minimum amount under the fund for the year,

2610

C is the lesser of

(*a*) the total amounts included because of subsection (5) in computing the income of an annuitant under the fund for the year in respect of amounts received by the annuitant out of or under the fund, and

2615

(*b*) the minimum amount under the fund for the year, and

2620

D is the total of all amounts each of which is such portion of a designated benefit of an individual in respect of the fund as is included because of subsection (5) in computing the income of the individual for the year.

2625

Amount deductible

(6.2) There may be deducted from the amount deemed by subsection (6) to be received by an annuitant out of or under a registered retirement income fund the amount determined by the formula

2630

$$A - [1 - \frac{(B + C - D)}{(B + C)}]$$

2635

where

A is the total of all designated benefits of individuals in respect of the fund;

2640

B is the fair market value of the property of the fund at the particular time that is the later of

(*a*) the end of the first calendar year commencing after the death of the annuitant, and

2645

(*b*) the time immediately after the last time that any designated benefit in respect of the fund is received by an individual;

C is the total of all amounts paid out of or under the fund after the death of the last annuitant thereunder and before the particular time; and

2650

D is the lesser of

(*a*) the fair market value of the property of the fund at the time of the death of the last annuitant thereunder, and

2655

(*b*) the sum of the values of B and C in respect of the fund.

(5) Subsection 146.3(15) of the said Act is repealed and the following substituted therefor:

2660

Credited or added amount deemed not received

(15) Where

(*a*) an amount is credited or added to a deposit with a depositary referred to in subparagraph (1)(*b*)(iv) as interest or income in respect of the deposit,

2665

(*b*) the deposit is a registered retirement income fund at the time the amount is credited or added to the deposit, and

(*c*) during the calendar year in which the amount is credited or added or during the preceding calendar year, the annuitant under the fund was alive

2670

the amount shall be deemed not to be received by the annuitant or any other person solely because of such crediting or adding.

(6) Subsections (1), (4) and (5) apply to deaths occurring after 1992.

(7) Subsection (2) applies after 1991.

2675

(8) Subsection (3) applies to the 1993 and subsequent taxation years.

59. (1) Paragraph 148(1)(*e*) of the said Act is repealed and the following substituted therefor:

(*e*) an annuity contract where 2680

(i) the payment for the annuity contract was deductible in computing the income of the policyholder because of paragraph 60(*l*), or

(ii) the policyholder acquired the annuity contract in circumstances to which subsection 146(21) applied, 2685

(2) Subsection (1) applies to dispositions occurring after August 1992.

60. (1) Paragraph 149.1(1)(*e*) of the said Act is amended by adding thereto, immediately after subparagraph (i) thereof, the following subparagraph: 2690

(i.1) 80% of the total of all amounts each of which is an amount of a gift received in a preceding taxation year, to the extent that the amount of the gift

(A) was excluded from the disbursement quota of the foundation for a preceding taxation year because of clause (i)(A) or (B), and 2695

(B) is expended in the taxation year,

(2) Clause 149.1(1)(*e*)(iv)(B) of the said Act is repealed and the following substituted therefor: 2700

(B) 5/4 of the total of the amounts determined in respect of the foundation under subparagraphs (i) and (i.1) for the year,

(3) Paragraph 149.1(2)(*b*) of the said Act is repealed and the following substituted therefor: 2705

(*b*) fails to expend in any taxation year, on charitable activities carried on by itself and by way of gifts made by it to qualified donees, amounts that, in total, are at least equal to the total of the amounts that would be determined for the year under subparagraphs (1)(*e*)(i) and (i.1) in respect of the organization if it were a charitable foundation. 2710

(4) Subsection 149.1(8) of the said Act is repealed and the following substituted therefor:

Accumulation of property

(8) A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose, on terms and conditions and over such period of time, as is specified by the Minister in the approval, and any property accumulated after receipt of such an approval and in accordance therewith, including any 2715

income earned in respect of the property so accumulated, shall be deemed

(*a*) to have been expended on charitable activities carried on by the charity in the taxation year in which it was so accumulated; and

(*b*) not to have been expended in any other year.

(5) Paragraph 149.1(21)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) in the case of a charitable organization, the total of the amounts that would be determined for the year under subparagraphs (1)(*e*)(i) and (i.1) in respect of the organization if it were a charitable foundation.

(6) Subsections (1) to (5) apply to taxation years commencing after 1992.

61. (1) Paragraph 152(1)(*b*) of the said Act is repealed and the following substituted therefor:

(*b*) the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1) or 210.2(3) or (4) to be paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) to be an overpayment.

(2) Subsection 152(1.2) of the said Act is repealed and the following substituted therefor:

Provisions applicable

(1.2) Paragraphs 56(1)(*l*) and 60(*o*), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply with such modifications as the circumstances require to a determination or a redetermination of, and to determining or redetermining, an amount under this Division or an amount deemed by section 122.61 to be an overpayment of tax, except that subsections (1) and (2) do not apply to determinations made under subsections (1.1) and (1.11) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer.

(3) Paragraph 152(4.2)(*d*) of the said Act is repealed and the following substituted therefor:

(*d*) redetermine the amount of tax, if any, deemed by subsection 120(2), 120.1(4), 122.5(3), 127.1(1) or 210.2(3) or (4) to have been paid on account of the taxpayer's tax under this Part for the year or deemed by subsection 119(2) or 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

(4) Subsection (1) applies to the 1993 and subsequent taxation years.

(5) Subsection (2) applies to determinations and redeterminations made after 1992.

(6) Subsection (3) applies to redeterminations made in respect of the 1993 and subsequent taxation years. 2765

62. (1) Paragraphs 153(1)(*m*) and (*m*.1) of the said Act are repealed and the following substituted therefor:

(*m*) a prescribed benefit under a government assistance program;

(2) Subsection (1) applies to payments made after October 1991. 2770

63. (1) Subsection 159(4) of the said Act is repealed and the following substituted therefor:

Election on emigration

(4) Where an individual to whom subsection 128.1(4) applies

(*a*) so elects in prescribed manner on or before the individual's balance-due day for the taxation year in which the individual ceased to be resident in Canada, and 2775

(*b*) furnishes to the Minister security acceptable to the Minister for payment of any tax under this Act the payment of which is deferred by the election, 2780

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 would be that tax if this Act were read without reference to subsection 128.1(2) may, subject to subsection (4.1), be paid in such number of equal annual instalments as is specified by the individual in the election. 2785

Idem

(4.1) Where an individual to whom subsection 128.1(4) applies elects under subsection (4),

(*a*) the number of equal annual instalments provided in the election shall be deemed to be the lesser of 6 and such other number as is specified by the individual in the election; 2790

(*b*) the first instalment shall be paid on or before the individual's balance due day for the taxation year; and 2795

(*c*) each subsequent instalment shall be paid on or before the next following anniversary of the day described in paragraph (*b*).

(2) Subsection (1) applies after 1992.

64. All that portion of subsection 162(7) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor: 2800

Failure to comply with regulation

(7) Every person (other than a registered charity) who fails

65. Section 164 of the said Act is amended by adding thereto immediately after subsection (1.5) thereof the following subsection: 2805

Limitation of repayment on objections and appeals

(1.6) Subsection (1.1) does not apply in respect of an amount paid or security furnished under section 116 by a non-resident person.

66. (1) The definition "long-term debt" in subsection 181(1) of the said Act is repealed and the following substituted therefor: 2810

"long-term debt"
« passif à long terme »

"long-term debt" means,

(*a*) in the case of a bank, its subordinated indebtedness (within the meaning assigned by the *Bank Act*) evidenced by obligations issued for a term of not less than 5 years, 2815

(*b*) in the case of an insurance corporation, its subordinated indebtedness (within the meaning assigned by the *Insurance Companies Act*) evidenced by obligations issued for a term of not less than 5 years, and 2820

(*c*) in the case of any other corporation, its subordinated indebtedness (within the meaning that would be assigned by the *Bank Act* if that definition were applied with such modification as the circumstances require) evidenced by obligations issued for a term of not less than 5 years, 2825

but does not include, where the corporation is a prescribed federal Crown corporation for the purposes of section 27, any indebtedness evidenced by obligations issued to and held by Her Majesty in right of Canada; 2830

(2) Subsection (1) applies after May 31, 1992.

67. (1) Subsections 188(1) and (2) of the said Act are repealed and the following substituted therefor:

Revocation tax

188. (1) Where the registration of a charity is revoked, the charity shall, on or before the day (in this subsection referred to as the "payment day") in a taxation year that is one year after the day on which such revocation is effective 2835

(a) pay a tax under this Part for the year equal to the amount determined by the formula 2840

$$A + B - C - D - E - F$$

where

A is the total of all amounts each of which is the fair market value of an asset of the charity on the day (in this section referred to as the "valuation day") that is 120 days before the day on which notice of the Minister's intention to revoke its registration is mailed, 2845

B is the total of all amounts each of which is the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in the period (in this section referred to as the "winding-up period") commencing on the valuation day and ending immediately before the payment day, or an amount received by it in the winding-up period from a registered charity, 2850

C is the total of all amounts each of which is the fair market value, at the time of the transfer, of an asset transferred by it in the winding-up period to a qualified donee, 2855

D is the total of all amounts each of which is expended by it in the winding-up period on charitable activities carried on by it,

E is the total of all amounts each of which is paid by it in the winding-up period in respect of its debts that were outstanding on the valuation day and not included in determining the value of D, and 2860

F is the total of all amounts each of which is a reasonable expense incurred by it in the winding-up period and not included in determining the value of D; and 2865

(b) file with the Minister a return in prescribed form and containing prescribed information, without notice or demand therefor.

Idem

(2) A person (other than a qualified donee) who, after the valuation day of a charity, receives any amount from the charity is jointly and severally liable with the charity for the tax payable under subsection (1) by the charity in an amount not exceeding the amount by which the total of all such amounts so received by the person exceeds the total of all amounts each of which is 2870

(*a*) a portion of such an amount that is included in determining an amount in the description C, D, E or F in subsection (1) in respect of the charity, or 2875

(*b*) the consideration given by the person in respect of such an amount.

(2) Subsections (1) and (2) apply to cases where the registration of a charity is revoked pursuant to a notice of intention to revoke its registration that is mailed after 1992. 2880

68. (1) All that portion of subsection 189(6) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor: 2885

Taxpayer to file return and pay tax

(6) Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I, required to file a return of income or an information return under Part I for the year, 2890

(2) Paragraph 189(6)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year. 2895

(2) Subsections (1) and (2) apply after 1992.

69. (1) The definition "long-term debt" in subsection 190(1) of the said Act is repealed and the following substituted therefor:

2900

"long-term debt"
« passif à long terme »

"long-term debt" means,

(*a*) in the case of a bank, its subordinated indebtedness (within the meaning assigned by the *Bank Act*) evidenced by obligations issued for a term of not less than 5 years,

2905

(*b*) in the case of an insurance corporation, its subordinated indebtedness (within the meaning assigned by the *Insurance Companies Act*) evidenced by obligations issued for a term of not less than 5 years, and

(*c*) in the case of any other corporation, its subordinated indebtedness (within the meaning that would be assigned by the *Bank Act* if that definition were applied with such modification as the circumstances require) evidenced by obligations issued for a term of not less than 5 years;

2910

(2) Subsection 190(1) of the said Act is further amended by adding thereto, in alphabetical order, the following definition:

2915

"reserves"
« réserves »

"reserves", in respect of a financial institution for a taxation year, means the amount at the end of the year of all of the institution's reserves, provisions and allowances (other than allowances in respect of depreciation or depletion) and, for greater certainty, includes any provision in respect of deferred taxes.

2920

(3) Subsection 190(2) of the said Act is repealed and the following substituted therefor:

2925

Application of ss. 181(3) and (4)

(2) Subsections 181(3) and (4) apply to this Part with such modifications as the circumstances require.

(4) Subsection (1) applies after May 31, 1992.

(5) Subsections (2) and (3) apply to the 1992 and subsequent taxation years.

2930

70. (1) All that portion of paragraph 190.13(*a*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

(*a*) in the case of a financial institution other than a life insurance corporation, the amount, if any, by which the total of 2935

(2) All that portion of paragraph 190.13(*a*) of the said Act following subparagraph (ii) thereof and preceding subparagraph (iv) thereof is repealed and the following substituted therefor: 2940

(iii) the amount of its reserves, except to the extent that they were deducted in computing its income under Part I for the year,

exceeds the total of

(3) All that portion of paragraph 190.13(*b*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor: 2945

(*b*) in the case of a life insurance corporation that was resident in Canada at any time in the year, the amount, if any, by which the total of

(4) All that portion of paragraph 190.13(b) of the said Act following subparagraph (ii) thereof and preceding subparagraph (iii) thereof is repealed and the following substituted therefor: 2950

exceeds the total of

(5) All that portion of paragraph 190.13(*c*) of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor: 2955

(*c*) in the case of a life insurance corporation that was throughout the year not resident in Canada, the total of

(6) Subsections (1) to (5) apply to the 1992 and subsequent taxation years. 2960

71. (1) All that portion of subparagraph 190.14(*a*)(i) of the said Act preceding clause (B) thereof is repealed and the following substituted therefor:

(i) all amounts each of which is the carrying value of 2965

(A) any share of the capital stock of the financial institution, or

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

72. (1) Subparagraph (*a*)(iii) of the description of I in subsection 204.2(1.2) of the said Act is repealed and the following substituted therefor: 2970

(iii) an amount transferred to the plan on behalf of the individual in accordance with any of subsections 146(16), 147(19) and 147.3(1) and (4) to (7) or in circumstances to which subsection 146(21) applies, 2975

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

73. (1) Subsection 206(2.1) of the said Act is repealed and the following substituted therefor: 2980

Exemption

(2.1) Notwithstanding section 205, subsection 206(2) does not apply to a trust described in paragraph 149(1)(*o*.4) or a corporation described in paragraph 149(1)(o.2) in respect of any month that falls within a period for which the trustee or the corporation, as the case may be, has elected in accordance with subsections 259(1) and (3). 2985

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

74. (1) Subsection 209(2) of the said Act is repealed and the following substituted therefor: 2990

Tax

(2) Every person shall pay a tax under this Part for each taxation year equal to 45% of the total of the person's carved-out incomes for the year from carved-out properties.

(2) Subsection (1) applies to the 1992 and subsequent taxation years. 2995

75. (1) Clause 212(1)(*h*)(iii.1)(A) of the said Act is repealed and the following substituted therefor:

(A) because of subsection 147.3(9) or 146(21) would not, if the non-resident person had been resident in Canada throughout the taxation year in which the payment was made, be included in computing the non-resident person's income, or 3000

(2) Paragraph 212(1)(*h*) of the said Act is further amended by striking out the word "or" at the end of subparagraph (iii.2) thereof, by adding the word "or" at the end of subparagraph (iv) thereof and by adding thereto, immediately after subparagraph (iv) thereof, the following subparagraph: 3005

(iv.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 acquire an annuity contract in circumstances to which subsection 146(21) applies, 3010

(3) Subsections (1) and (2) apply to payments made after August 1992.

76. (1) Paragraph 214(3)(*c*) of the said Act is repealed and the following substituted therefor: 3015

(c) where, because of subsection 146(8.1), (8.8), (8.91), (9), (10) or (12), and amount would, 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 to the taxpayer as a payment under a registered retirement savings plan or an amended plan (within the meaning assigned by subsection 146(12)), as the case may be; 3020

(2) Paragraph 214(3)(*i*) of the said Act is repealed and the following substituted therefor:

(*i*) where, because of subsection 146.3(4), (6), (6.1), (7) or (11), an amount would, 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 to the taxpayer as a payment under a registered retirement income fund; and 3025

(3) Subsections (1) and (2) apply to payments made after 1992. 3030

77. (1) Section 219.1 of the said Act is repealed and the following substituted therefor:

Corporate emigration

219.1 Where a taxation year of a corporation is deemed by paragraph 128.1(4)(*a*) to have ended, the corporation shall, on or before the day on or before which it is required to file a return of income under Part I for the year, pay a tax under this Part for that year equal to 25% of the amount, if any, by which 3035

(*a*) the total proceeds of disposition deemed under paragraph 128.1(4)(*b*) to have been received by the corporation 3040

exceeds the total of

(*b*) the paid-up capital in respect of all the issued and outstanding shares of the capital stock of the corporation immediately before the end of the year, and

(*c*) all amounts, other than amounts payable by the corporation in respect of dividends and amounts payable under this section, each of which is the amount of any debt owing by the corporation, or any other obligation of the corporation to pay an amount, that was outstanding at the end of the year. 3045

(2) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 3050

78. (1) Paragraph 219.2(*b*) of the said Act is repealed and the following substituted therefor: 3055

(*b*) provides that where a dividend is paid by a corporation resident in Canada to a person resident in the other country who owns all of the shares of the capital stock of the corporation, the rate of tax imposed thereon shall not exceed the rate specified therein, 3060

(2) Subsection (1) applies to the 1985 and subsequent taxation years.

79. (1) The said Act is further amended by adding thereto immediately after section 219.2 thereof the following section:

Tax convention or agreement 3065

219.3 For the purpose of section 219.2 as it applies to section 219.1, where a tax convention or agreement referred to in section 219.2 does not otherwise apply to a corporation on the last day of a particular taxation year of the corporation for which it is required to pay a tax under section 219.1 but applies to the corporation on the first day of the following taxation year, that tax convention or agreement shall be deemed to apply to the corporation on the last day of the particular taxation year. 3070

(2) Subsection (1) applies to the 1985 and subsequent taxation years. 3075

80. (1) Subsection 224(1) of the said Act is repealed and the following substituted therefor:

Garnishment

224.(1) Where the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to make a payment under this Act (in this subsection and subsections (1.1) and (3) referred to as the "tax debtor"), the Minister may require the 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 3080 3085

the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act.

(2) All that portion of subsection 224(1.1) of the said Act following paragraph (*b*) thereof is repealed and the following substituted therefor: 3090

the Minister may require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the tax debtor's liability under this Act the moneys that would otherwise be so loaned, advanced or paid and any moneys so paid to the Receiver General shall be deemed to have been loaned, advanced or paid, as the case may be, to the tax debtor. 3095

(3) All that portion of subsection 224(1.2) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Idem 3100

(1.2) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province or any law, but subject to subsections 69(1) and 69.1(1) of the *Bankruptcy and Insolvency Act*, where the Minister has knowledge or suspects that a particular person is, or will become within one year, liable to make a payment 3105

(4) 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 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 the similar provision, and on receipt of that requirement by the particular person, the amount of those moneys that is so required 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. 3110 3115 3120

(5) Section 224 of the said Act is amended by adding thereto, immediately after subsection (1.3) thereof, the following subsection:

Idem 3125

(1.4) Provisions of this Act that provide that a person who has been required to do so by the Minister must pay to the Receiver General an amount which would otherwise be loaned, advanced or paid to a

taxpayer who is liable to make a payment under this Act, or to that taxpayer's secured creditor, apply to Her Majesty in right of Canada or a province. 3130

(6) Subsection 224(3) of the said Act is repealed and the following substituted therefor:

Idem

(3) Where the Minister has, under this section, required a person to pay to the Receiver General on account of a liability under this Act of a tax debtor moneys otherwise payable by the person to the tax debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the tax debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of such amount as may be stipulated by the Minister in the requirement. 3135 3140

(7) Subsections 224(5) and (6) of the said Act are repealed and the following substituted therefor: 3145

Service of garnishee

(5) Where a person carries on business under a name or style other than the person's own name, notification to the person of a requirement under subsection (1), (1.1) or (1.2) may be addressed to the name or style under which the person carries on business and, in the case of personal service, shall be deemed to have been validly served if it has been left with an adult person employed at the place of business of the addressee. 3150

Idem

(6) Where persons carry on business in partnership, notification to the persons of a requirement under subsection (1), (1.1) or (1.2) may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. 3155 3160

(8) Subsections (1), (2), (4), (6) and (7) apply to requirements and notifications made after 1992, except that, in applying subsection 224(1) of the said Act, as enacted by subsection (1), to requirements and notifications made on or before the day this Act is assented to,the reference in that subsection to "one year" shall be read as a reference to "90 days". 3165

(9) Subsection (3) applies to requirements and notifications made after the day this Act is assented to.

81. (1) Subsection 224.3(1) of the said Act is repealed and the following substituted therefor: 3170

Payment of moneys seized from tax debtor

224.3 (1) Where the Minister has knowledge or suspects that a particular person is holding moneys that were seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person (in this section referred to as the tax debtor) who is liable to make a payment under this Act or under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act and that are restorable to the tax debtor, the Minister may require the particular person to turn over the moneys otherwise restorable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability under this Act or under the Act of the province, as the case may be. 3175 3180

(2) Subsection (1) applies to requirements made after 1992.

82. (1) Subsections 227(4) and 227(5) of the said Act are repealed and the following substituted therefor: 3185

Idem

(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust, separate and apart from the person's own moneys, for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act, and Her Majesty has a lien and charge on the property and assets of the person whether or not the person has kept the amount separate and apart or is in receivership, bankruptcy, or liquidation or has made an assignment. 3190 3195

Amount in trust not part of estate

(5) Notwithstanding any provision of the *Bankruptcy and Insolvency Act*, in the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to any amount deducted or withheld under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act that is deemed under that Act to be held in trust for Her Majesty in right of the province shall be deemed to be separate from and form no part of the estate in liquidation, assignment, receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate. 3200 3205

(2) Subsection 227(6) of the said Act is repealed and the following substituted therefor:

Withholding taxes 3210

(6) Where a person on whose behalf an amount has been paid to the Receiver General under Part XIII was not liable to pay tax under that Part or where the amount so paid is in excess of the amount that that person was liable to pay, the Minister shall, upon application in writing made no later than 2 years after the end of the calendar year 3215 in which the amount was paid, pay to that person the amount so paid or such part thereof as that person was not liable to pay, unless that person is or is about to become liable to make any payment to Her Majesty in right of Canada, in which case the Minister may apply the amount otherwise payable under this subsection to that liability and 3220 notify that person of that action.

Repayment of non-resident shareholder loan

(6.1) Where, in respect of a loan from or indebtedness to a corporation, a non-resident person on whose behalf an amount was paid to the Receiver General under Part XIII because of 3225 subsection 15(2) and paragraph 214(3)(*a*) repays that loan or indebtedness or a portion thereof and it is established by subsequent events or otherwise that the repayment was not made as part of a series of loans or other transactions and repayments, the Minister shall, upon application in writing made no later than 2 years after the 3230 end of the calendar year in which that repayment is made, pay to that person the amount so paid to the Receiver General in respect of the loan or indebtedness or portion thereof, as the case may be, unless that person is or is about to become liable to make any payment to Her Majesty in right of Canada, in which case the Minister may apply 3235 the amount otherwise payable under this subsection to that liability and notify that person of that action.

(3) Section 227 of the said Act is further amended by adding thereto, immediately after subsection (7) thereof, the following subsection: 3240

Idem

(7.1) Where, upon application by or on behalf of a person to the Minister pursuant to subsection (6.1) in respect of an amount paid to the Receiver General under Part XIII, the Minister is not satisfied that the person is entitled to the amount claimed, the Minister shall, at that 3245 person's request, determine, with all due patch, the amount, if any, payable under subsection (6.1) and shall dissent a notice of determination to that person, and sections 150 to 167 (except subsections 164(1.1) to (1.3)) and Division J of Part I are applicable with such modifications as the circumstances require. 3250

(4) Subsection 227(10.1) of the said Act is repealed and the following substituted therefor:

Idem

(10.1) The Minister may at any time assess

(*a*) any person for any amount payable by that person under section 116 or subsection (9), (9.2), (9.3) or (9.4), and 3255

(*b*) any non-resident person for any amount payable by that person under Part XIII,

and, where the Minister sends a notice of assessment to that person, sections 150 to 167 (except subsections 164(1.1) to (1.3)) and Division J of Part I apply with such modifications as the circumstances require. 3260

(5) Subsections 227(6.1) and (7.1) of the said Act, as enacted by subsections (2) and (3) respectively, apply to repayments made after 1992. 3265

(6) Subsection (4) applies to the 1991 and subsequent taxation years.

83. (1) Subsection 230(2) of the said Act is repealed and the following substituted therefor:

Idem 3270

(2) Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

(*a*) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act; 3275

(*b*) a duplicate of each receipt containing prescribed information for a donation received by it; and 3280

(*c*) other information in such form as will enable the Minister to verify the donations to it that are deductible under this Act.

(2) Subsection (1) applies after ANNOUNCEMENT DATE.

84. Subsections 230.1(4) and (5) of the said Act are repealed. 3285

85. (1) The definition "minerals" in subsection 248(1) of the said Act is repealed and the following substituted therefor:

"mineral"

"mineral" means

(*a*) a naturally-occurring homogenous crystalline substance with a definite chemical composition and an ordered atomic arrangement, and — 3290

(*b*) bituminous sands, calcium chloride, coal, kaolin, oil sands, oil shale and silica;

(2) Subparagraph (*d*)(ii) of the definition "mineral resource" in subsection 248(1) of the said Act is repealed and the following substituted therefor: — 3295

(ii) the principal mineral extracted is calcium chloride, gypsum, halite, kaolin or sylvite, or

(3) All that portion of the definition "taxable Canadian property" in subsection 248(1) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor: — 3300

"taxable Canadian property" « bien canadien imposable »

"taxable Canadian property" has the meaning assigned by subsection 115(1) except that, for the purposes only of sections 2 and 128.1, the expression "taxable Canadian property" includes — 3305

(4) The definition "disclaimer" in subsection 248(9) of the said Act is repealed and the following substituted therefor:

"disclaimer"
«répudiation» — 3310

"disclaimer" includes a renunciation of a succession made under the laws of the Province of Quebec that is not made in favour of any person and that is made 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; — 3315

(5) Subsection 248(23) of the said Act is repealed and the following substituted therefor: — 3320

Dissolution of a matrimonial regime

(23) Where the owner, immediately after the dissolution of a matrimonial regime (other than a dissolution occurring as a consequence of death), of a property that was subject to that regime is not the person, or the estate of the person, who pursuant to subsection (22), was the owner of the property immediately before the — 3325

dissolution, that person shall be deemed, for the purposes of this Act, to have transferred that property to that person's spouse immediately before the dissolution.

Transfers after death 3330

(23.1) Where, as a consequence of the laws of a province relating to spouses' interests in respect of property as a result of marriage, property is transferred after the death of a taxpayer

(*a*) to the person who was the taxpayer's spouse at the time of the taxpayer's death, the property shall be deemed to have been disposed of as a consequence of the taxpayer's death; and 3335

(*b*) from the person who was the taxpayer's spouse at the time of the taxpayer's death to the taxpayer's estate, the property shall be deemed to have been so transferred immediately before the time that is immediately before the death of the taxpayer. 3340

(6) Subsections (1) and (2) apply to taxation years commencing after 1984, except that paragraph (*b*) of the definition "mineral" in subsection 248(1) of the said Act, as enacted by subsection (1), and subparagraph (*d*)(ii) of the definition "mineral resource" in subsection 248(1) of the said Act, as enacted by subsection (2), shall be read without reference to the word "kaolin" in respect of taxation years ending before 1988. 3345

(7) Subsection (3) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (3) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 3350

(8) Subsection (5) applies to dissolutions and deaths occurring after ANNOUNCEMENT DATE. 3355

86. (1) Paragraph 249(4)(*c*) of the said Act is repealed and the following substituted therefor:

(*c*) subject to paragraph 128(1)(*d*), section 128.1 and paragraph 149(10)(*a*) and notwithstanding subsections (1) and (3), where the taxation year of the corporation that would, but for this subsection, have been its last taxation year ending before that time would, but for this paragraph, have ended within the 7-day period ending immediately before that time, that taxation year shall, except where control of the corporation has been acquired by a person or group of persons within the 7-day period ending immediately before that time, be deemed to end immediately before that time where the corporation so elects in its return of income under Part I for that taxation year; and 3360 3365

(2) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 3370

87. (1) Paragraph 250(1)(*f*) of the said Act is repealed and the following substituted therefor: 3375

(*f*) at any time in the year the person was a child of, and was dependent for support on, an individual described in any of paragraphs (*b*) to (*d*.1) and the person's income for the year did not exceed the amount used under paragraph 118(1)(*c*) for the year. 3380

(2) Section 250 of the said Act is amended by adding thereto, immediately after subsection (5) thereof, the following subsection:

Continued corporation

(5.1) Where a corporation has at any time (in this subsection referred to as the "time of continuation") been granted articles of continuance (or similar constitutional documents) in a particular jurisdiction, the corporation shall, for the purposes of applying this Act in respect of all times from the time of continuation until the time, if any, of continuation in a different jurisdiction, be deemed to have been incorporated in the particular jurisdiction and not to have been incorporated in any other jurisdiction. 3385 3390

(3) Subsection (1) applies to the 1993 and subsequent taxation years.

(4) Subsection (2) applies after 1992, and, where a corporation that has at any time before 1993 been granted articles of continuance (or similar constitutional documents) in any jurisdiction so elects by notifying the Minister of National Revenue in writing before the end of the sixth month after the month in which this Act is assented to, 3395

(*a*) subsection (2) applies with respect to that corporation from the time (in this subsection referred to as the "time of continuation") at which the corporation was first granted articles of continuation (or similar constitutional documents) in any jurisdiction; and 3400

(*b*) notwithstanding subsections 152(4) to (5) of the *Income Tax Act*, such assessment or reassessment of the corporation's tax, interest and penalties under the said Act for any taxation year shall be made as is necessary to give effect to the election. 3405

88. (1) All that portion of subsection 256(7) of the said Act preceding paragraph (*b*) thereof is repealed and the following substituted therefor: 3410

Acquiring control

(7) For the purposes of subsection 13(24), section 37, subsections 66(11), (11.4) and (11.5), 66.5(3), 66.7(10) and (11), 85(1.2), 87(2.1) and (2.11), 88(1.1) and (1.2) and 89(1.1), sections 111 and 127 and subsection 249(4), 3415

(*a*) control of a particular corporation shall be deemed not to have been acquired solely because of

(i) the acquisition at any time of shares of any corporation by

(A) a particular person who acquired the shares from a person to whom the particular person was related (otherwise than because of a right referred to in paragraph 251(5)(*b*)) immediately before that time, 3420

(B) a particular person who was related to the particular corporation (otherwise than by reason of a right referred to in paragraph 251(5)(*b*)) immediately before that time, 3425

(C) an estate that acquired the shares because of the death of a person, or

(D) a particular person that acquired the shares from an estate that arose on the death of another person to whom the particular person was related, or 3430

(ii) the redemption or cancellation at any time of shares of the particular corporation or of a corporation controlling the particular corporation, where the person or each member of the group of persons that controls the corporation immediately after that time was related to the corporation (otherwise than because of a right referred to in paragraph 251(5)(*b*)) immediately before that time; and 3435 3440

(2) Subsection (1) applies to acquisitions, redemptions and cancellations occurring after 1992.

89. (1) Section 259 of the said Act is repealed and the following substituted therefor: 3445

Proportional holdings in trust property

259. (1) For the purposes of subsections 146(6), (10) and (10.1), 146.3(7), (8) and (9) and Parts X, X.2, XI and XI.1, where at any time a taxpayer described in section 205 acquires, holds or disposes of a particular unit in a qualified trust and the trust elects for any 3450

period that includes that time to have the provisions of this subsection apply,

(*a*) the taxpayer shall be deemed not to acquire, hold or dispose of at that time, as the case may be, the particular unit;

(*b*) where the taxpayer holds the particular unit at that time, the taxpayer shall be deemed to hold at that time that proportion (referred to in this subsection as the "specified portion") of each property (in this subsection referred to as a "relevant property") held by the trust at that time that one (or, where the particular unit is a fraction of a whole unit, that fraction) is of the number of units of the trust outstanding at that time; 3455 3460

(*c*) the cost amount to the taxpayer at that time of the specified portion of a relevant property shall be deemed to be equal to the specified portion of the cost amount at that time to the trust of the relevant property; 3465

(*d*) where that time is the later of

(i) the time the trust acquires the relevant property, and 3470

(ii) the time the taxpayer acquires the particular unit,

the taxpayer shall be deemed to acquire the specified portion of a relevant property at that time; 3475

(*e*) where that time is the time at which the specified portion of a relevant property is deemed by paragraph (*d*) to have been acquired, the fair market value of the specified portion of the relevant property at that time shall be deemed to be the specified portion of the fair market value of the relevant property at the time of its acquisition by the trust; 3480

(*f*) where that time is the time immediately before the time that the trust disposes of a particular relevant property, the taxpayer shall be deemed to dispose of, immediately after that time, the specified portion of the particular relevant property for proceeds equal to the specified portion of the proceeds of disposition to the trust of the particular relevant property; 3485

3490

(*g*) where that time is the time immediately before the time that the taxpayer disposes of the particular unit, the taxpayer shall be deemed to dispose of, immediately after that time, the specified portion of each relevant property for proceeds equal to the specified portion of the fair market value of that relevant property at that time; and 3495

(*h*) where the taxpayer is deemed because of this subsection

(i) to have acquired a portion of a relevant property as a consequence of the acquisition of the particular unit by the taxpayer and the acquisition of the relevant property by the trust, and 3500

(ii) subsequently to have disposed of the specified portion of the relevant property, 3505

the specified portion of the relevant property shall, for the purposes of determining the consequences under this Act of the disposition and without affecting the proceeds of disposition of the specified portion of the relevant property, be deemed to be the portion of the relevant property referred to in subparagraph (i). 3510

Proportional holdings in corporate property

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(2) Subsection (1) applies to an election by a qualified corporation as if

(*a*) the reference to "a qualified trust" were read as "the capital stock of a qualified corporation"; 3520

(*b*) the references to "unit" were read as "share"; and

(*c*) the references to "the trust" were read as "the corporation".

Election 3525

(3) The election by a trust or a corporation (in this subsection referred to as the "elector") under subsection (1) shall be made by the elector filing a prescribed form with the Minister and shall apply for the period commencing 15 months before the day of filing thereof (or such later time as the elector designates in its election) and ending at such time as the election is revoked by the elector filing with the Minister a notice of revocation (or at such earlier time within the 15 month period immediately preceding the day on which the notice of revocation is filed with the Minister as the elector designates in its notice of revocation). 3530 3535

Requirement to provide information

(4) Where a trust or a corporation has elected under subsection (1)

(*a*) it shall, not more than 30 days after making the election, notify each person who, before the election is made and during the period for which the election is made, held a unit in the trust or a share in the capital stock of the corporation, as the case may be, of the election; and 3540

(*b*) where any person who holds such a unit or share during the period for which the election is made makes a written request to the trust or the corporation for information which is necessary for the purposes of determining the consequences under this Act of the election for that person, the trust or the corporation shall, not more than 30 days after the receipt of the request, provide that person with such information. 3545 3550

Definitions

(5) In this section, 3555

"qualified corporation" « corporation admissible »

"qualified corporation" at any time means a corporation described in paragraph 149(1)(*o*.2) where at that time 3560

(*a*) all the issued and outstanding shares of the capital stock of the corporation are identical to each other, or

(*b*) all the issued and outstanding shares of the capital stock of the corporation are held by one person; 3565

"qualified trust" «fiducie admissible»

"qualified trust" at any time means a trust (other than a registered investment or a trust that is prescribed to be a small business investment trust) where at that time 3570

(*a*) each trustee thereof is a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee or a person who is a trustee of a trust governed by a registered pension plan, 3575

(*b*) all the units thereof are identical to each other,

(*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, and 3580

(*d*) it has never accepted deposits.

(2) Subsections 259(1), (3) and (5) of the said Act, as enacted by subsection (1), apply to periods occurring after 1985.

(3) Subsection 259(2) of the said Act, as enacted by subsection (1), applies to periods occurring after 1991. 3585

(4) Subsection 259(4) of the said Act, as enacted by subsection (1), applies to elections made after ANNOUNCEMENT DATE.

PART II

INCOME TAX APPLICATION RULES 1971 3590

90. (1) Subsection 26(10) of the Income Tax Application Rules, 1971 is repealed and the following substituted therefor:

Application where paragraph 128.1(1)(b) applies

(10) Where subsection 48(3) of the amended Act, as it read in its application before 1993, or paragraph 128.1(1)(*b*) of the amended Act applies for the purpose of determining the cost to a taxpayer of any property, this section does not apply for that purpose. 3595

(2) Subsection (1) applies after 1992 except that, where a corporation has elected in accordance with subsection 87(4), subsection (1) applies to the corporation from the corporation's time of continuation (within the meaning assigned by subsection 87(4)). 3600

PART III

CANADA BUSINESS CORPORATIONS ACT

91. (1) Subsection 174(1) of the *Canada Business Corporations Act* is amended by striking out the word "or" at the end of paragraph (*c*) thereof, by adding the word "or" at the end of paragraph (*d*) thereof and by adding thereto the following paragraph: 3605

(*e*) the issue, transfer or ownership of shares of any class or series to enable the corporation to be a registered labour-sponsored venture capital corporation under Part X.3 of the *Income Tax Act*. 3610

(2) Subsection (1) applies after 1988.

PART IV

UNEMPLOYMENT INSURANCE ACT 3615

92. (1) Subsection 53(1) of the *Unemployment Insurance Act* is repealed and the following substituted therefor:

Deduction and payment of premiums

53. (1) Every employer paying remuneration to a person employed by the employer in insurable employment shall deduct from that remuneration as or on account of the employee's premium payable by that insured person under section 51 for any week or weeks in respect 3620

of which that remuneration is paid such amount as is determined in accordance with prescribed rules and shall remit that amount, together with the employer's premium payable by the employer under that section for such week or weeks, to the Receiver General at such time and in such manner as is prescribed and, where at that prescribed time the employer is a prescribed person, the remittance shall be made to the account of the Receiver General at a financial institution (within the meaning that would be assigned by the definition "financial institution" in subsection 190(1) of the *Income Tax Act* if that definition were read without reference to paragraphs (*d*) and (*e*) thereof).

3625

3630

(2) Subsection (1) applies after 1993.

93. (1) Paragraph 75(1)(*p*) of the said Act is repealed. 3635

(2) Subsection 75(5) of the said Act is repealed and the following substituted therefor:

(5) A regulation made under paragraph (1)(*r*) prescribing rules referred to in subsection 53(1) shall have effect from the day it is published in the *Canada Gazette* or from such later or earlier day, if any, specified in the regulation.

3640

(3) Subsections (1) and (2) apply after 1993.

Explanatory Notes to Draft Legislation Relating to Income Tax

PREFACE

The legislation to which these explanatory notes relate contains draft technical amendments to the *Income Tax Act*, the *Income Tax Application Rules, 1971*, the *Canada Business Corporations Act* and the *Unemployment Insurance Act.* 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.

Draft amendments to the *Income Tax Regulations*, with accompanying explanatory notes, are also included in this document.

The Honourable Don Mazankowski
Minister of Finance

These explanatory notes are provided to assist in an understanding of amendments to the *Income Tax Act*, the *Income Tax Application Rules, 1971*, the *Canada Business Corporations Act* and the *Unemployment Insurance Act*. 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.

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Clause 1

Source of Income or Loss

ITA
4

Section 4 of the Act provides general rules for determining a taxpayer's income or loss from a particular source or from a source in a particular place.

Subclause 1(1)

ITA
4(2)

Subsection 4(2) of the Act provides that deductions permitted by sections 60 to 63 of the Act are not applicable to a particular source or to sources in a particular place, except as provided by subsection 4(3). This amendment to subsection 4(2) adds a reference to section 64 of the Act, under which an individual may deduct attendant care expenses. This amendment applies to 1989 (the first year for which attendant care expenses were deductible in computing income) and subsequent years.

Subclause 1(2)

ITA
4(3)

Subsection 4(3) of the Act applies to a source of income or loss of a taxpayer that is an office, employment or business carried on or performed by the taxpayer in more than one place. With a few exceptions, it provides that, for the purposes of determining the taxpayer's foreign tax credit and the taxpayer's taxable income earned in Canada, all deductions allowed in computing the income of the taxpayer are considered to be applicable to a particular source or to sources in a particular place. The exceptions are for deductions permitted by paragraphs 60(b) (alimony payments), 60(c) (maintenance payments), 60(d) (interest on death duties) and 60(i) (RRSP deductions).

Subsection 4(3) is amended so that it applies to all sources of income, whether or not the source of income relates to more than one place.

Subsection 4(3) is also amended to expand the list of deductions under section 60 which are not allocable to any source of income. The expanded list includes deductions in respect of Canadian

deferred income plans, payments from which will ultimately be taxable in Canada. This is intended to allow an individual who pays foreign tax in respect of a transfer to such a plan access to the foreign tax credit under subsection 126(1) of the Act for the year of the transfer. More specifically, all deductions permitted by section 60 are now on this list, other than deductions permitted by paragraph 60(a) (capital element of annuity payment), paragraph 60(o.1) (legal expenses), paragraph 60(q) (repayment of scholarships, bursaries and research grants), paragraph 60(s) (repayment of policy loan) and paragraphs 60(t) to (u) (retirement compensation arrangement payments).

Subsection 4(3) of the Act is also amended to ensure that it applies for the purposes of the "flow-through" of foreign source income from a trust to its beneficiaries. This is achieved by a reference to subsection 104(22) and new subsection 104(22.1) of the Act, under which the flow-through mechanism formerly contained exclusively in subsection 104(22) will now be provided.

Finally, subsection 4(3) is amended to ensure that deductions made by a trust under subsection 104(6) (amounts paid or payable to beneficiaries) and subsection 104(12) (amounts allocated to preferred beneficiaries) are not considered to be applicable to sources in a foreign country. However, if a trust designates such amounts in favour of its beneficiaries under subsection 104(22), new subsection 104(22.2) (formerly paragraph 104(22)(c)) requires that the trust's foreign source income be reduced in a corresponding manner.

These amendments apply to taxation years commencing after 1992, except that the relieving aspects of the amendments to subsection 4(3) apply to taxation years ending after November 12, 1981.

Clause 2

Employee Stock Options

ITA
7(1.5)

Subsection 7(1) of the Act provides for the inclusion of stock option benefits in employment income. The benefit is included in the employee's income at the time the employee exercises the option and is measured as the excess of the fair market value of the shares at that time over the price paid for them.
Subsection 7(1.1) of the Act provides that, in the case of shares of the capital stock of a Canadian-controlled private corporation issued under an employee stock option plan, the employment benefit determined under paragraph 7(1)(a) is, under certain conditions, to

be included in the employee's income only in the taxation year in which the employee disposes of or exchanges the shares.

Pursuant to paragraph 110(1)(d.1) of the Act, an amount equal to one quarter of the amount of the benefit deemed to have been received is deductible where the taxpayer disposed of a share acquired after May 22, 1985 as a result of exercising a stock option granted by a Canadian-controlled private corporation and the share has not been disposed or exchanged, otherwise than as a consequence of a death, within two years from the date of acquisition.

Subsection 7(1.5) of the Act provides that certain share dispositions or exchanges will not be considered dispositions or exchanges in certain circumstances for the purposes of the rules in subsection 7(1.1) and paragraph 110(1)(d.1). Subsection 7(1.5) of the Act is amended, applicable to 1992 and subsequent taxation years, to ensure that it applies in multiple share exchanges.

Clause 3

Deductions From Employment Income

ITA
8(1)(o.1)

Subsection 8(1) of the Act provides a number of deductions that may be made by an individual in computing income from an office or employment. New paragraph 8(1)(o.1) provides that amounts deductible under amended subsection 144(9) of the Act, relating to forfeitures under an employees profit sharing plan, may be deducted in computing an individual's income from an office or employment. This treatment is parallel to paragraph 6(1)(d) of the Act, under which allocations under employees profit sharing plans are included in computing an individual's income from an office or employment.

This amendment applies to 1992 and subsequent taxation years.

Clause 4

Taxation Years of Proprietorships

ITA
11(2)

Subsection 11(2) of the Act provides that, with respect to businesses of proprietors having fiscal periods that do not coincide

with the calendar year, a reference to "taxation year" or "year" shall be read as a reference to a fiscal period of the business ending in the calendar year.

Subsection 11(2) is amended to clarify that this fiscal period treatment of business income of a proprietor does not apply to capital gains or capital losses of the proprietor, even though the capital property that gave rise to the gain or loss may have been used in the proprietor's business. Accordingly, while subsection 11(2) applies to section 80.3 of the Act, which provides for a deferral to a subsequent taxation year for income received in the year from the forced destruction of livestock or drought-induced sales of breeding livestock herds, capital gains or capital losses of a proprietor are to be computed on a calendar year basis.

This amendment applies to 1988 and subsequent taxation years.

Clause 5

Income From Business or Property

ITA

Section 12 of the Act requires the inclusion of various amounts in computing the income of a taxpayer for a year from a business or property.

Subclause 5(1)

ITA
12(1)(m)

Paragraph 12(1)(m) of the Act requires a taxpayer's income from a trust or estate to be included in computing the taxpayer's income from a business or property.

Paragraph 12(1)(m) of the Act is amended to clarify that amounts included in computing a taxpayer's income under subsection 132.1(1) of the Act are to be included in computing the taxpayer's income from a business or property.

Subsection 132.1(1) provides that a mutual fund trust may designate a specified amount for its taxation year in respect of a trust unit, which generally results in a deduction of the specified amount in computing the income of the trust and a corresponding income inclusion for the taxpayer owning the unit during the year.

This amendment applies to the 1988 and subsequent taxation years.

Subclause 5(2)

ITA
12(3)

Subsection 12(3) of the Act requires corporations, partnerships and certain trusts to use the accrual method for computing interest income in respect of debt obligations. Certain debt obligations are excluded from this accrual rule. Subsection 12(3) is amended to also exclude indexed debt obligations issued after October 16, 1991. Interest in respect of indexed obligations will be included in income by paragraph 12(1)(c) or subsection 16(6) of the Act.

Subclause 5(3)

ITA
12(11)(a)

Paragraph 12(11)(a) of the Act defines the term "investment contract" for the purposes of the rule in subsection 12(4) requiring the periodic reporting of accrued interest. This definition is amended, with respect to debt obligations issued after October 16, 1991, to exclude indexed debt obligations. Interest in respect of indexed obligations will be included in income by paragraph 12(1)(c) or subsection 16(6) of the Act.

Clause 6

Depreciable Property

ITA
13

Section 13 provides a number of special rules relating to the tax treatment of depreciable property. Generally, these rules apply for the purposes of sections 13 and 20 of the Act and the capital cost allowance regulations.

Subclauses 6(1) and (2)

ITA
13(7)

Subsection 13(7) of the Act provides rules relating to capital cost that apply where there has been a change of use of depreciable property, where depreciable property is used partly for gaining or producing income and partly for some other purpose, and where

depreciable property is transferred between persons not dealing at arm's length.

The preambles to subsection 13(7) and paragraph 13(7)(e) of the Act are amended to ensure that the adjustments provided therein are subject to new subsection 70(12) of the Act. Generally, new subsection 70(12) provides that certain adjustments made to the capital cost of depreciable property of a prescribed class do not apply for the purposes of section 70, and, where a provision of section 70 (other than subsection (12)) applies, for the purposes of sections 13 and 20 (but not for the purposes of any regulations made for the purposes of paragraph 20(1)(a)).

These amendments apply after 1992.

Subclause 6(3)

ITA
13(33)

New subsection 13(33) of the Act provides that, for greater certainty, where depreciable property is acquired for consideration that includes the transfer of another property (for example, a trade-in), the portion of the cost of the depreciable property that is reflective of the transferred property shall not exceed the fair market value of the property so transferred. This new subsection applies to depreciable property acquired after November 1992.

Clause 7

Eligible Capital Property

ITA
14(8)

Subsection 14(1) of the Act provides that where, at the end of a taxation year, the amounts required to be deducted from a taxpayer's cumulative eligible capital exceed the amounts required to be added to that amount, the excess (referred to as the "negative balance" for the purposes of this commentary) must be included in the taxpayer's income for the year as business income or as a taxable capital gain.

Subparagraph 14(1)(a)(v) of the Act provides that, in the case of a taxpayer that is an individual who was resident in Canada throughout the year, the amount of the negative balance in excess of the portion that relates to the recapture of previous deductions taken under paragraph 20(l)(b) of the Act in respect of eligible capital property is deemed to be a taxable capital gain of the

individual from the disposition of property and is, therefore, eligible for the lifetime capital gains exemption.

This amendment adds new subsection 14(8) to the Act which is a special relieving provision aimed at individuals who either become, or cease to be, resident in Canada during a taxation year. New subsection 14(8) of the Act provides that, for the purposes of subsection 14(1), an individual who was resident in Canada at any time in a particular year will be treated as being resident in Canada throughout the year if the individual was a resident of Canada throughout either the immediately preceding or immediately following taxation year.

New subsection 14(8) of the Act applies to 1988 and subsequent taxation years.

Clause 8

Obligation Issued at Discount

ITA
16(3)

Subsection 16(3) of the Act provides rules relating to the taxation of deep discount debt obligations issued by persons that are not subject to tax under Part I of the Act. Under this subsection, the difference between the principal amount of such a debt obligation and its issue price (i.e., the discount) is included in the income of the first Canadian resident to acquire the obligation who is not exempt from tax under Part I. The object of this rule is to prevent taxpayers from converting amounts that are substitutes for interest into capital gains. Subsection 16(3) is amended to provide that it will apply only to the first taxpayer that acquires a particular obligation as a capital property. This amendment is applicable to 1990 and subsequent taxation years.

Clause 9

Prohibited Deductions – Business and Property Income

ITA
18(11)

Paragraphs 20(1)(c), (d), (e), (e.1) and (f) of the Act permit deductions for interest and certain other financing expenses relating to borrowed money used by a taxpayer for the purpose of earning income from a business or property. These provisions are,

however, subject to subsection 18(11) of the Act which prohibits the deduction of such expenses in respect of indebtedness incurred for the purposes of making a contribution to an RRSP or certain other deferred income plans.

Subsection 18(11) is amended to prohibit the deduction of interest in respect of indebtedness incurred for the purposes of making a contribution to any account under a prescribed provincial pension plan (i.e., the Saskatchewan Pension Plan). This amendment applies to 1993 and subsequent taxation years.

Clause 10

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 10(1)
ITA
20(1)(e)

Paragraph 20(1)(e) of the Act provides for the deduction over a five-year period of expenses incurred in issuing securities or in borrowing money. These expenses are deductible in equal portions over the five-year period starting with the year in which the expenses are incurred. If there is a short taxation year, the otherwise deductible portion is subject to a pro-rata adjustment. As well, if the borrowing for which the expenses were incurred is repaid in a year, the undeducted balance of the expenses will be deductible in that year.

Paragraph 20(1)(e) is amended to allow for the similar deduction of expenses incurred, after 1987, in respect of an amount payable by the taxpayer for property acquired for the purpose of earning business income (excluding property the income from which is exempt or a life insurance policy). The amendment also allows for the deduction of expenses incurred in the rescheduling or restructuring of a debt obligation or in the assumption of a debt obligation where the debt obligation arises from borrowings used for the purpose of earning business income or is in respect of an amount payable for property (other than property the income from which is tax exempt or a life insurance policy) acquired for the purpose of earning business income. In the case of a rescheduling or restructuring, the rescheduled or restructuring must provide for either the modification of the terms or conditions of the debt

obligation or the conversion or substitution of the debt obligation to or for a share or another debt obligation.

Subclause 10(2)
ITA
20(1)(e.1)

Paragraph 20(1)(e.1) of the Act provides that, notwithstanding paragraph 20(1)(e), certain financing expenses that relate only to the year they are incurred are deductible in that year. This paragraph is amended to provide a similar deduction for such expenses incurred, after 1987, in respect of an amount payable for property acquired to earn business income, or the rescheduling, restructuring or assumption of a debt obligation.

Subclause 10(3)

ITA
20(3)

Subsection 20(3) of the Act ensures continuity of purpose in respect of money borrowed to repay money previously borrowed. Where a taxpayer uses borrowed money to repay money previously borrowed, or to repay an amount for previously acquired property described in subparagraph 20(1)(c)(ii), the borrowed money will be treated, for the purposes of section 21 and paragraphs 20(1)(c) or (k), as having been used for the same purposes as the original borrowing, or as having been used to acquire the same property, as the case may be.

Subsection 20(3) is amended as a consequence of the introduction of the amendments to paragraphs 20(1)(e) and (e.1) of the Act dealing with the treatment of certain refinancing fees. These amendments apply to expenses incurred after 1987.

Clause 11

Capital Gains and Losses

ITA
39(9) and (10)

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.

In determining a business investment loss, a taxpayer is required to deduct from the amount of the business investment loss otherwise determined, the lesser of the amount of the business investment loss

and the taxpayer's net capital gains for which a deduction was claimed under section 110.6 of the Act, to the extent that such gains have not been used to reduce other business investment losses. In calculating the net capital gains for which a deduction was claimed under section 110.6 of the Act, deductions taken under section 110.6 for taxable capital gains are grossed up by the applicable inclusion rate. These amendments to subsections 39(9) and (10) of the Act, which apply to 1988 and subsequent taxation years, adjust the applicable inclusion rate for deemed capital gains included in income under subparagraph 14(1)(c)(v) of the Act.

Clause 12

Capital Gains – Special Rules

ITA
40(2)(i)(ii)

Paragraph 40(2)(i) of the Act requires that a capital loss on the disposition of shares of a prescribed venture capital corporation, a prescribed labour-sponsored venture capital corporation or shares of a taxable Canadian corporation that were held in a prescribed stock savings plan be reduced by the amount of any prescribed assistance received in respect of the shares. For this purpose, certain government assistance that does not cause a reduction in the adjusted cost base of such shares is prescribed in section 6702 of the *Income Tax Regulations.*

Subparagraph 40(2)(i)(ii) of the Act is amended to provide that prescribed assistance receivable in respect of a share also will result in a reduction of any capital loss on the disposition of the share. A parallel amendment to clause 53(2)(k)(i)(C) of the Act provides that such assistance does not result in a reduction of the adjusted cost base of a share.

This amendment applies to 1991 and subsequent taxation years.

Clause 13

Exchanges of Property

ITA
44

Section 44 of the Act allows a taxpayer to defer the recognition of a capital gain in respect of property under certain circumstances.

Subclause 13(1)

ITA
44(2)(d)

Subsection 44(2) of the Act provides rules for determining the time at which a taxpayer will be considered to have disposed of a property which was the subject of an involuntary disposition (e.g., theft, destruction or expropriation). This subsection is amended to replace a reference to section 48 of the Act, which deems certain property to have been disposed of where a taxpayer has ceased to be a resident of Canada, with a reference to new section 128.1 of the Act. New section 128.1 forms part of a set of amendments concerning taxpayers' residence and certain related matters. Thus where property has been involuntarily disposed of and section 128.1 subsequently applies to the taxpayer, the involuntary disposition will be considered to have occurred no later than that subsequent time.

This amendment generally applies after 1992, although it may also apply before that time to corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Subclause 13(2)

ITA
44(6)

Subsection 44(1) of the Act allows a taxpayer who incurs a capital gain on the disposition of certain property to defer tax on the gain to the extent that the taxpayer reinvests the proceeds of disposition in a replacement property within a certain period of time.

Subsection 44(6) of the Act provides a special rule for a taxpayer who has disposed of a former business property, where the property consists in part of a building and in part of related land. In such circumstances, the taxpayer may elect, for purposes of the rule provided under subsection 44(1), to treat any excess of the proceeds of disposition of such part of the property over the replacement cost of that part as proceeds of disposition of the other part. This would allow for a complete rollover where a taxpayer has moved from one location to another location and replaced the old building and land with a new building and land having a combined cost equal to the proceeds of sale of the old property, even though the new land is less expensive than the old land and the new building is more expensive than the old building.

Subsection 44(6) of the Act is amended to provide that any reallocated proceeds of disposition under that subsection apply for the purposes of subdivision c, rather than only for the purposes of subsection 44(1). For example, the reallocated proceeds of

disposition in respect of the land and building apply for the purposes of both subsection 44(1) and subsection 40(1) of the Act. Subsection 40(1) provides general rules for determining a taxpayer's capital gain or capital loss for a taxation year.

This amendment applies to dispositions occurring after ANNOUNCEMENT DATE.

Clause 14

Property with More Than One Use

ITA
45(2)

Subsection 45(1) of the Act provides for a deemed disposition and reacquisition of property where its use, or a proportion of its use, is altered from personal use to income-earning or producing use, or vice-versa.

Subparagraph 45(1)(a)(i) of the Act provides that, where there is a change of use of property acquired for some other purpose to a use that is for the purpose of gaining or producing income, a taxpayer will be deemed to have disposed of the property for proceeds of disposition equal to the fair market value of the property and to have reacquired it immediately thereafter at a cost equal to that fair market value. Paragraph 13(7)(b) of the Act provides a similar rule for determining the capital cost of property where a taxpayer, having acquired the property for some other purpose, commences to use the property for the purpose of gaining or producing income.

Subsection 45(2) of the Act provides that, for the purposes of subdivision c and section 13 of the Act, a taxpayer may file an election in respect of property to treat it as if a change of use does not occur. The election is required to be filed with the taxpayer's return of income under Part I for the year that the change of use occurs. A taxpayer may rescind the election in a return of income under Part I for a subsequent year with the changed use commencing on the first day of that subsequent year.

Subsection 45(2) of the Act is amended to clarify that an election may be made in respect of non-depreciable capital property. For example, a taxpayer may file an election in respect of non-depreciable capital property that is land, the use of which would otherwise be considered to have changed to gaining or producing income.

Subsection 45(2) is also amended to delete the words "therefrom or for the purpose of gaining or producing income from a business". This change is consistent with the amendments made to the Act by

the enactment of Bill C-139 which, among other things, changed the application of the change-of-use rules so that the rules do not apply where the change is among earning income from business, employment or property.

This amendment applies to 1992 and subsequent taxation years.

Clause 15

Changes in Residence

ITA
48

Section 48 of the Act provides rules that apply when a taxpayer becomes or ceases to be resident in Canada. In general, section 48 deems certain property to have been disposed of when a taxpayer ceases to reside in Canada, and to have been acquired when a taxpayer becomes a Canadian resident, for purposes of computing the taxpayer's capital gains and losses. New section 128.1 of the Act adopts an amended version of these rules for all purposes of the Act, and thus makes section 48 redundant.

Section 48 is repealed effective after 1992, but the repeal comes into force earlier in respect of corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Clause 16

Convertible Property

ITA
51

Section 51 of the Act generally permits a tax-deferred transfer of property where a taxpayer, pursuant to a right of conversion, exchanges capital property that is a share, bond, debenture or note of a corporation for capital property that is another share of the capital stock of the corporation.

Subsection 51(1) of the Act is amended, effective for exchanges occurring after ANNOUNCEMENT DATE, to provide that where shares of a corporation are exchanged for other shares of the same corporation, a rollover will be available even though the terms and conditions of the exchanged shares do not provide a right of exchange or conversion.

Although subsection 51(1) of the Act is intended to provide rollover treatment for certain share-for-share exchanges, a shareholder could be deemed by section 84 to have received a dividend where the stated capital of the old shares exceeds the paid-up capital of the old shares for tax purposes. Such a paid-up capital deficiency could arise, for example, where subsection 85(2.1) of the Act applies to reduce the paid-up capital of a class of shares as a consequence of a previous transfer of property to which subsection 85(1) applied. New subsection 51(3) of the Act reduces the paid-up capital of the classes of shares received on the exchange. The effect of the reduction is to permit the paid-up capital deficiency of the old shares to flow through to the new shares received on the exchange, thereby ensuring that the exchange will not result in any increase in paid-up capital to which subsection 84(1) of the Act could apply and that the amount received for the old shares for purposes of subsection 84(3), having regard to subsection 84(5), will be equal to the paid-up capital of the old shares. A similar provision is being added to section 86 of the Act in respect of share exchanges to which subsection 86(1) applies. New subsection 51(3) applies to share exchanges occurring after ANNOUNCEMENT DATE and, unless the corporation elects within a certain time limit not to have it apply, to share exchanges occurring before ANNOUNCEMENT DATE and after August 1992.

New subsection 51(4) of the Act, applicable in respect of exchanges occurring and reorganizations commencing after ANNOUNCEMENT DATE, provides that section 51 will only apply where neither section 86 nor subsection 85(1) or (2) applies. Consequential to this amendment, subsection 86(3) of the Act is amended to delete the reference to section 51.

Clause 17

Cost of Shares on Immigration

ITA
52(8)

Section 52 of the Act sets out rules for determining the cost to a taxpayer of various types of property. New subsection 52(8) provides that the cost to a non-resident taxpayer of shares of a corporation that has become resident in Canada shall be deemed to be the lesser of that cost otherwise determined and the paid-up capital in respect of the share immediately after the corporation became resident. This new provision, which forms part of a set of amendments concerning taxpayers' residence and certain related matters, ensures the appropriate measurement of any gain or loss on

the sale of a share of an immigrant corporation by a non-resident shareholder.

New subsection 52(8) applies after 1992.

Clause 18

Adjustments to Cost of Property

ITA
53(2)(k)

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.

Paragraph 53(2)(k) of the Act provides that the adjusted cost base of a property is reduced by the amount of government assistance received or receivable. However, clause 53(2)(k)(i)(C) provides that this reduction does not apply to prescribed assistance received for shares of a prescribed venture capital corporation, or a prescribed labour-sponsored venture capital corporation or to shares of a taxable Canadian corporation that are held in a prescribed stock savings plan. For this purpose, certain government assistance is prescribed in section 6702 of the *Income Tax Regulations*.

Clause 53(2)(k)(i)(C) of the Act is amended to provide that prescribed assistance receivable in respect of a share does not result in a reduction of the adjusted cost base of the share. A parallel amendment to paragraph 40(2)(i) of the Act provides that such assistance will result in a reduction of any capital loss on the disposition of such a share.

This amendment applies to 1991 and subsequent taxation years.

Clause 19

Changes in Residence

ITA
54(i)(iii)

Section 54 of the Act defines various terms for the purposes of subdivision c of Division B of the Act (Taxable Capital Gains and Allowable Capital Losses). Paragraph 54(i) defines the term "superficial loss", and is amended to add to its reference to section 48 of the Act, which deems a disposition where the

taxpayer has ceased to be a resident of Canada, a reference to new section 128.1 of the Act. New section 128.1 forms part of a set of amendments concerning taxpayers' residence and certain related matters.

This amendment generally applies after 1992, although it may also apply before that time to corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Clause 20

Divisive Reorganization – Treaty-Exempt Gain

ITA
55(3.1)

Section 55 of the Act deals with certain avoidance transactions involving capital gains and losses.

Subsection 55(2) of the Act is an anti-avoidance provision directed against certain arrangements designed to convert a capital gain on a current or future disposition of shares into a tax-free inter-corporate dividend. It treats a dividend received in these circumstances either as proceeds from the sale of the shares or as a capital gain. Subsection 55(3) of the Act provides two exemptions from this rule. The first applies to a dividend received as part of a series of transactions that does not include either an arm's length disposition of property or a significant increase in the interest of an arm's length person in a corporation. The second exemption applies to a dividend received in the course of a reorganization – commonly referred to as "butterfly" reorganization – in which property of a particular corporation is transferred on a pro-rata basis to one or more shareholder corporations.

New subsection 55(3.1) of the Act provides that the exemption in subsection 55(3) is not applicable in certain situations where a dividend is received in the course of a series of transactions that includes the realization of a gain that is exempt from income tax by virtue of a tax treaty. The provisions of new subsection 55(3.1) are intended to prevent a Canadian corporation with a non-resident shareholder from disposing of real estate and certain other assets on a tax-free basis where this is achieved by virtue of preliminary transactions that give rise to a gain that is treaty-exempt. Specifically, new subsection 55(3.1) of the Act excludes a dividend from the saving provisions of subsection 55(3) where:

- the dividend was received as part of a series of transactions that included the transfer of property from a particular corporation to a shareholder on a tax-deferred basis,

- as part of the series of transactions, a non-resident person disposed of shares of the particular corporation (or of property that derived its value principally from such shares) and realized a gain that is exempt from income tax by virtue of a treaty, and
- if the property that was transferred to the shareholder of the particular corporation had been property of a taxable Canadian corporation and if all the shares of that corporation had been owned by the non-resident person, any gain realized on a disposition of the shares by the non-resident person would not have been exempt from income tax.

EXAMPLE:

A Co is a corporation resident in a country with which Canada has a tax treaty. Under the treaty, any gain realized by A Co from the disposition of shares is exempt from tax in Canada unless the shares derive their value principally from real property situated in Canada. B Co is a taxable Canadian corporation all the shares of which are owned by A Co. Although B Co's assets include real property situated in Canada, more than 50% of B Co's value is attributable to other assets. The adjusted cost base and paid-up capital of A Co's shares of B Co is less than their fair market value, and the adjusted cost base of B Co's real property situated in Canada is also less than its fair market value.

A Co causes Newco, a taxable Canadian corporation, to be incorporated and sells Newco a proportion of its shares of B Co equal to the proportion of the value of B Co derived from real property situated in Canada. Newco pays for the shares of B Co by issuing its own shares to A Co. This transaction takes place at fair market value for tax purposes. B Co then sells its real property situated in Canada to Newco, receiving preferred shares of Newco as consideration. An election is filed under subsection 85(1) of the Act so that this transaction takes place on a tax-deferred basis. B Co and Newco each acquire their shares held by the other, paying with promissory notes that are offset against each other.

Results:

1. The gain realized by A Co on the disposition of its shares of B Co to Newco is exempt from tax by virtue of the tax treaty.

2. Since the paid-up capital of the preferred shares of Newco issued to B Co is less than the fair market value of those shares – either because of the amount of capital recognized on the issuance of the shares or because of the application of subsection 85(2.1) of the Act – the acquisition of these shares by Newco will give rise to a deemed dividend.

3. Since B Co would have realized a capital gain had it disposed of the shares of Newco immediately before their acquisition by Newco, and the gain would not have been attributable to "safe" income, subsection 55(2) of the Act will apply with respect to the deemed dividend unless subsection 55(3) provides an exemption.

4. By virtue of new subsection 55(3.1) of the Act, subsection 55(3) will not apply to exclude the deemed dividend from the application of subsection 55(2). Subsection 55(3.1) is applicable because of the following aspects of the transactions:

- On the disposition of its shares of B Co, A Co realized a gain that is exempt from tax by virtue of a treaty.

- The transfer of the real property from B Co to Newco took place on a tax-deferred basis.

- If the real property had been held in a separate corporation owned by A Co, any gain on the shares would have been taxable in Canada.

Subsection 55(3.1) of the Act is applicable to dividends received after ANNOUNCEMENT DATE, other than a dividend arising out of a transaction or event occurring pursuant to a written agreement entered into on or before ANNOUNCEMENT DATE.

Clause 21

Amounts to be Included in Income

Section 56 of the Act lists certain types of income that are required to be included in computing income for a taxation year from a source other than property, business or employment and other than from the disposition of capital properties.

Subclause 21(1)

ITA
56(1)(a)(vi) and (vii)

Under subparagraphs 56(1)(a)(vi) and (vii) of the Act, benefits received under the *Labour Adjustment Benefits Act* (which provides for the payment of benefits to laid-off workers) and income assistance payments made pursuant to an agreement under section 5 of the *Department of Labour Act* (which provides for income assistance benefits under the Program for Older Worker Adjustment) are included in income.

This amendment to paragraph 56(1)(a) of the Act replaces subparagraphs 56(1)(a)(vi) and (vii) with new subparagraph 56(1)(a)(vi). This new subparagraph provides that, except to the extent otherwise required to be included in a taxpayer's income under the Act, prescribed benefits received under government assistance programs are included in income under paragraph 56(1)(a). The *Income Tax Regulations* will be amended to prescribe benefits received under the *Labour Adjustment Benefits Act* and under section 5 of the *Department of Labour Act* for purposes of new subparagraph 56(1)(a)(vi), so that the tax treatment of such payments remains unchanged.

Payments under two additional government assistance programs will also be prescribed for purposes of new subparagraph 56(1)(a)(vi) of the Act. These are income assistance payments received under the Plant Workers Adjustment Program (as a result of an agreement under section 5 of the *Department of Fisheries and Oceans Act*) and income assistance payments under the Northern Cod Compensation and Adjustment Program. This recognizes the existing treatment of payments under these two programs, under which such payments are subject to tax.

This amendment applies to benefits received after October 1991.

Subclause 21(2)

ITA
56(1)(d.2)

Paragraph 56(1)(d.2) of the Act provides for the inclusion in income of any amount received from an annuity, where the payment for the annuity was deductible in computing income by reason of paragraph 60(l) or former subsection 146(5.5) (which dealt with the acquisition of annuities described in paragraph 60(l) by individuals who realized capital gains with respect to the disposition of farm property in 1984).

Paragraph 56(1)(d.2) is amended also to provide an inclusion in income of any amount received from an annuity, where the payment for the annuity was made in circumstances to which new subsection 146(21) applies. As further described below, this new provision allows lump sum amounts to be transferred from prescribed provincial pension plans to acquire an annuity described in paragraph 60(l).

This amendment applies to 1992 and subsequent taxation years.

Subclause 21(3)

ITA
56(4)

Subsection 56(4) of the Act provides that where a right to receive income is transferred to a person with whom the transferor does not deal at arms length, income received under that right is income of the transferor except in specified circumstances. Subsection 56(4) is amended to provide that only such income relating to a period in a taxation year throughout which the transferor is resident in Canada will be included in computing the transferor's income by reason of this subsection. In addition, subsection 56(4) is amended to delete the phrases "(whether before or after the end of 1971)" and "because the amount would have been received or receivable by him in respect of the year".

These amendments apply to 1992 and subsequent taxation years.

Subclause 21(4)

ITA
56(4.1)

Subsection 56(4.1) of the Act applies in certain cases to attribute income from one individual ("the transferee") to another individual ("the transferor") with whom the transferee does not deal at arm's length. The rules do not apply unless the transferee, or a trust in which the transferee is beneficially interested, receives a loan from,

or becomes indebted to, the transferor. In addition, the rules do not apply unless it is reasonable to consider that one of the main reasons for making the loan or incurring the indebtedness was to reduce or avoid tax by causing income from the loaned property, property that the loaned property enabled or assisted the transferee to acquire or property substituted for such property to be included in the income of the transferee.

Subsection 56(4.1) is amended so that it may also apply where one of the main purposes of making a loan or incurring indebtedness was to reduce or avoid tax by causing income from property that the loan or indebtedness enabled or assisted a trust in which a transferee is beneficially interested to acquire to be included in the income of the transferee.

This amendment applies with respect to income relating to periods commencing after ANNOUNCEMENT DATE.

Clause 22

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 22(1)

ITA
60(j.2)

Paragraph 60(j.2) of the Act allows a taxpayer a deduction for a taxation year in respect of periodic payments received out of a registered pension plan or a deferred profit sharing plan that are paid in the year or not more than 60 days after the end of the year to a registered retirement savings plan under which the taxpayer's spouse is the annuitant. The deduction is limited to a maximum of $6,000 per year and is no longer available after the 1994 taxation year.

Paragraph 60(j.2) is amended so that, where an individual dies in a taxation year, a deduction under the paragraph may be claimed on behalf of the individual for the year with respect to RRSP premiums paid on behalf of the individual to an RRSP under which the individual's widow or widower is the annuitant. This is

consistent with a similar amendment to subsection 146(5) of the Act.

This amendment applies to 1992 and subsequent taxation years.

Subclauses 22(2) and (3)

ITA
60(l)(v)(B.1)

Paragraph 60(l) of the Act provides a minor with a deduction for the cost of acquiring an annuity where the term of the annuity does not exceed 18 years minus the age of the minor at the time of the acquisition of the annuity. The cost of acquisition cannot exceed such portion of the sum (such portion referred to below as the "limit") of the total refunds of premiums under registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) and the total lump sum payments from registered pension plans paid as a consequence of the death of a parent or grandparent of the minor as is included in computing the minor's income. (An income inclusion for a minor in this respect would generally arise only from the application of the "flow-through" rules in subsection 104(27), 146(8.1) and subsection 146.3(6.1).) Where the minor was dependent by reason of physical or mental infirmity on the deceased, paragraph 60(l) also allows the minor to transfer refunds of premiums referred to above to an RRSP, RRIF, life annuity or a term annuity up to age 90.

Subclause 60(l)(v)(B.1)(II) of the Act, which restricts the deduction for a minor to the limit described above, is amended so that "designated benefits" of a minor in respect of RRIFs are also included in computing the limit. This change is consequential to amendments to subsections 146.3(6.1) and (6.2) of the Act under which amounts which were formerly treated as "refunds of premiums" under RRIFs are now "designated benefits". For further detail, see the commentary on the amendments to those subsections.

Subclause 60(l)(v)(B.1)(II) is also amended to add a reference to new clause 60(l)(v)(B.2) of the Act. This amendment ensures that a physical or mentally infirm minor is not entitled to a deduction under paragraph 60(l) of an amount in excess the minor's transfers to RRSPs, RRIFs and annuities under paragraph 60(l). This amendment is strictly consequential on the addition of new clause 60(l)(v)(B.2).

Clause 60(l)(v)(B.1) is amended so that the above limit of a minor is reduced to the extent that "designated benefits" of the minor in respect of RRIFs exceed "eligible amounts" of the minor in respect of those funds, computed on the assumption that the formula for the computation of an "eligible amount" in new subsection 146.3(6.11) of the Act applied. As discussed in the commentary to subsection 146.3(6.11), such an excess would arise

for a taxation year only to the extent that minimum amounts in respect of RRIFs for the year were not withdrawn prior to the death of the last annuitant under the RRIFs.

These amendments apply to 1993 and subsequent taxation years.

Subclause 22(4)

ITA
60(l)(v)(B.2)

Paragraph 60(l) of the Act allows a deduction to an individual who receives specified amounts of retirement income and transfers a designated portion of such income to a registered retirement savings plan, a registered retirement income fund or to acquire a specified annuity. Such income includes, under clause 60(l)(v)(B.2), amounts received by an individual out of or under a prescribed provincial pension plan (i.e. the Saskatchewan Pension Plan) as a consequence of the death of the individual's spouse. Transfers of such death benefits may be indirect (i.e. actually received by a taxpayer and subsequently transferred by the taxpayer not more than 60 days after the taxation year of receipt) or direct.

Clause 60(l)(v)(B.2) of the Act is repealed to disallow the transfer of such death benefits under paragraph 60(l). Instead, a measure allowing for the direct tax-free transfer of lump sum amounts from prescribed provincial pension plans is introduced in new subsection 146(21) of the Act. A new clause 60(l)(v)(B.2) is introduced, as discussed below.

New clause 60(l)(v)(B.2) of the Act is added to allow an individual a deduction with respect to funds transferred by the individual to RRSPs or RRIFs or to acquire life annuities described in subparagraph 60(l)(ii). The additional deduction permitted as a consequence of this clause cannot exceed the "eligible amounts" of the individual in respect of RRIFs. This amendment is necessary because amounts from RRIFs will no longer be treated as "refunds of premiums" by virtue of amended subsections 146.3(6.1) and (6.2), and thus are no longer included under clause 60(l)(v)(A) or (B). The computation of "eligible amounts" in respect of RRIFs is described in the commentary to new subsection 146.3(6.11) of the Act.

These amendments apply to the 1993 and subsequent taxation years. However, the restriction on the transfer of death benefits from the Saskatchewan Pension Plan also applies to the 1992 taxation year unless the taxpayer elects otherwise by notifying the Minister of National Revenue in writing. It is intended that a designation made under paragraph 60(l) in respect of a death benefit from a prescribed provincial pension plan may be regarded as an election for this purpose. The purpose of this transitional rule is to

facilitate the indirect transfer of such death benefits with respect to the 1992 taxation year. Where such an election is made by a taxpayer, new subsection 146(21) will not apply to transfers of such death benefits in 1992.

Subclause 22(5)

ITA
60(l)(v)(D)

Paragraph 60(l) of the Act also allows an individual a deduction with respect to funds transferred by the individual to RRSPs or RRIFs or the issuer of a qualifying annuity on the basis of payments from a RRIF to the individual in excess of the minimum amount under the RRIF. To qualify for the deduction, clause 60(l)(v)(D) requires that the transfer must be made directly.

Clause 60(l)(v)(D) is amended so that, where a taxpayer has become an annuitant under a registered retirement income fund as a consequence of the death of the taxpayer's spouse, amounts received by the deceased spouse out of or under the fund are taken into account in determining the amount which may be transferred pursuant to clause 60(l)(v)(D). For example, if an individual receives the minimum amount under a registered retirement income fund in a taxation year and dies later in that year, the surviving spouse of the individual who becomes the annuitant under the fund will be able to transfer the full balance under the fund later in that year under paragraph 60(l).

Clause 60(l)(v)(D) is also amended to ensure that an amount from a RRIF is included thereunder in respect of an individual only where the individual is the annuitant under the RRIF. However, where the individual is the spouse or a mentally or physically infirm child of the last annuitant under the RRIF, transfers under paragraph 60(l) are still allowed to the extent permitted under clause 60(l)(v)(B.2). (In addition, if the individual is under 18 years of age, a term annuity to age 18 may in some cases be acquired pursuant to clause 60(l)(v)(B.1).)

These amendments apply to 1993 and subsequent taxation years.

Subclause 22(6)

ITA
60(n)(i.01)

Paragraph 60(n) of the Act allows a deduction to an individual where the individual repays an overpayment of certain amounts received and included in the income of the individual for the year or a preceding year. New subparagraph 60(n)(i.01) adds repayments of retiring allowances included in income under subparagraph 56(1)(a)(ii) of the Act to the list of such deductible

repayments. This amendment applies to repayments of retiring allowances made after 1990.

Subclause 22(7)

ITA
60(n)(ii.2)

Subparagraph 60(n)(ii.2) of the Act provides that repayments of amounts described in subparagraph 56(1(a)(vii) of the Act (income assistance payments made pursuant to an agreement under section 5 of the *Department of Labour Act*) may be deductible from income. Subparagraph 60(n)(ii.2) is repealed as a consequence of the amendments to paragraph 56(1)(a) of the Act. Those amendments replace subparagraphs 56(1)(a)(vi) and (vii) with new subparagraph 56(1)(a)(vi), under which a prescribed benefit under a government assistance program is included in an individual's income. As a result, repayments of such prescribed benefits (which will include income assistance payments made pursuant to an agreement under section 5 of the *Department of Labour Act*) may be deducted from income under existing subparagraph 60(n)(ii.1) of the Act.

The repeal of subparagraph 60(n)(ii.2) applies to repayments made after October 1991, the same time at which the amendments to subparagraphs 56(1)(a)(vi) and (vii) take effect. For further information, reference may be made to the commentary on those subparagraphs.

Clause 23

Child Care Expenses

ITA
63(4)

Section 63 of the Act provides rules concerning the deductibility of child care expenses.

The definition of child care expense in paragraph 63(3)(a) of the Act requires that the related child care services be provided in Canada by a person resident in Canada. New subsection 63(4) provides an exception to recognize as eligible child care expenses, in certain circumstances, amounts paid for child care services provided in the U.S. to persons who reside near the Canada-U.S. boundary and commute to work in the U.S. or who must travel through the U.S. from their residences in Canada to work in other locations in Canada that can only be reached by access routes

through the U.S. This amendment applies to 1992 and subsequent taxation years.

Clause 24

Canadian Development Expense

ITA
66.2

Section 66.2 of the Act provides rules relating to the deduction of "Canadian development expense" as defined in paragraph 66.2(5)(a).

Subclause 24(1)

ITA
66.2(5)(b)(v)

Paragraph 66.2(5)(b) of the Act sets out the definition of "cumulative Canadian development expense" (CCDE). A taxpayer's CCDE includes the taxpayer's undeducted pool of Canadian development expenses. It is reduced by a number of amounts, including the total set out in subparagraph 66.2(5)(b)(v). A taxpayer is permitted a deduction under subsection 66.2(2) with respect to a positive CCDE. A "negative" CCDE is included in a taxpayer's income under subsection 66.2(1).

If a taxpayer disposes of a Canadian resource property described in subparagraph 66(15)(c)(ii), (v) or (vi) ("Canadian mining property"), the deduction in computing the taxpayer's CCDE under subparagraph 66.2(5)(b)(v) is generally equal to the taxpayer's proceeds of disposition (net of otherwise non-deductible outlays made for the purposes of making the disposition). In the event that Canadian mining property was acquired by the taxpayer in circumstances in which the successor rules under section 66.7 of the Act apply, there may be CCDE or cumulative Canadian oil and gas property expense (CCOGPE) relating to expenditures originally incurred by an original owner that are available for deduction under subsection 66.7(4) or (5) by the taxpayer. (These amounts are referred to as a taxpayer's successored CCDE balance or successored CCOGPE balance in respect of an original owner.) A taxpayer's successored CCDE balances under paragraph 66.7(4)(a) in respect of original owners of Canadian mining property are used to offset the reduction in the taxpayer's CCDE otherwise arising, by virtue of subparagraph 66.2(5)(b)(v), from the disposition of such property.

Subparagraph 66.2(5)(b)(v) is amended so that the offset referred to above in respect of a disposition of Canadian mining property by a taxpayer is not determined with reference to the current amounts of

the taxpayer's successored CCDE balances. Rather, the offset is to be determined with reference to the amounts of a taxpayer's successored CCDE balances immediately before the proceeds became receivable. In effect, the proceeds of disposition of Canadian mining property acquired on a succession are intended to be applied first to reduce any successored CCDE balances before any unapplied portion of the proceeds is applied to reduce the taxpayer's own CCDE. This amendment is consistent with the scheme of the successor rules prior to the enactment of Bill C-64 in 1987.

More specifically, amended subparagraph 66.2(5)(b)(v) provides that the total offsets referred to above that may be provided with respect to the disposition of Canadian mining property at a particular time cannot exceed a specified amount. The specified amount is equal to the total reductions in the taxpayer's successored CCDE balances by virtue of the disposition in respect of all persons who are original owners with respect to all or part of such property.

Subparagraph 66.2(5)(b)(v) is also amended to ensure that, in determining a taxpayer's successored CCDE balance as of any particular time, amounts receivable by the taxpayer after that time are not taken into account. This amendment is necessary because ordinarily amounts receivable up to the end of a taxation year are relevant in determining a taxpayer's successored CCDE balance at any time in the year.

Subparagraph 66.2(5)(b)(v) is also amended to make reference to new subparagraph 66.7(4)(a)(iii) of the Act, which is taken into account in computing a taxpayer's successored CCDE balances after 1992. This subparagraph applies only to the extent that the taxpayer designates amounts in prescribed form on a timely basis. For the purposes of computing the reduction of a taxpayer's successored CCDE balances under subparagraph 66.2(5)(b)(v), it is assumed that the reductions in successor CCDE balances ultimately arising as a consequence of the designation of proceeds under subparagraph 66.7(4)(a)(iii) occur at the time the proceeds become receivable.

Examples of the intended effect of these amendments are contained in the commentary on the amendment to subparagraph 66.7(4)(a)(ii) of the Act.

These amendments apply to taxation years ending after February 17, 1987.

Subclause 24(2)

ITA
66.2(5)(b)(x)

Paragraph 66.4(5)(b) of the Act sets out the definition of CCOGPE. A taxpayer's CCOGPE includes the taxpayer's undeducted pool of Canadian oil and gas property expenses. A taxpayer is permitted a deduction under subsection 66.4(2) of the Act with respect to a positive CCOGPE. A taxpayer's CCOGPE is reduced by virtue of the disposition of Canadian resource property referred to in subparagraph 66(15)(c)(i), (iii) or (iv) ("Canadian oil and gas property").

A "negative" CCOGPE (determined at the end of a taxation year) reduces a taxpayer's CCDE pursuant to subparagraph 66.2(5)(b)(x) of the Act. However, this reduction is offset by the lesser of two amounts. The first amount (as determined under clause 66.2(5)(b)(x)(A)) is the taxpayer's successored CCDE balance in respect of an original owner. The second amount (as determined under clause 66.2(5)(b)(x)(B)) is the proceeds of disposition that have previously become receivable by the taxpayer with respect to "successored" Canadian oil and gas property acquired by the taxpayer from that original owner (or a successor to that original owner) minus the amount that would be the taxpayer's successored CCOGPE balance in respect of the original owner if amounts that became receivable with respect to Canadian oil and gas properties were not taken into account.

Subparagraph 66.2(5)(b)(x) is amended so that amounts that become receivable after 1992 with respect to "successored" Canadian oil and gas property in respect of an original owner will no longer increase the second amount referred to above. As provided in new subparagraph 66.7(4)(a)(iii) of the Act, such proceeds can be designated by a successor to reduce a successor CCDE balance in respect of an original owner to the extent that there is no successor CCOGPE balance in respect of the original owner against which such proceeds may be applied. A designation under new subparagraph 66.7(4)(a)(iii) has the advantage of reducing, by virtue of new clause 66.4(5)(b)(v)(C), the amount required to be deducted in computing the successor's own CCOGPE.

Subparagraph 66.2(5)(b)(x) is also amended so that the offset is the least of three amounts (rather than the lesser of the two amounts described above). As provided in new clause 66.2(5)(b)(x)(C), the third amount is nil. The new clause applies only in respect of a taxpayer who has acquired property as a successor where the taxpayer subsequently disposes of property in circumstances in which the successor rules apply. However, it does not apply where the successor rules apply because of an amalgamation or merger or by reason of the change of control rules in subsection 66.7(10) of the Act. It also does not apply as a result of successor transactions

by a taxpayer before [ANNOUNCEMENT DATE + 1], or successor transactions pursuant to agreements in writing entered into before that time, unless the winding-up of the taxpayer has commenced.

The addition of new clause 66.2(5)(b)(x)(C) is appropriate because, where there has been a disposition to another corporation by a taxpayer in circumstances in which the successor rules apply, a taxpayer's successored CCDE balances (on which the first amount used in determining the offset is based) become available to the other corporation. While the first amount is required to be reduced on an on-going basis to reflect deductions claimed by successors and dispositions of successored Canadian resource property, serious practical difficulties arise if the taxpayer has wound-up before successored CCDE balances are fully deducted or where the taxpayer does not have sufficient information for the purposes of the on-going calculation of the successored CCDE balances.

The above amendments will reduce the significance of subparagraph 66.2(5)(b)(x) with respect to future transactions. The amendments described below correct minor technical deficiencies with respect to the existing wording of the provision.

Subparagraph 66.2(5)(b)(x) is amended so that the first and second amounts relevant for the computation of the offset described above are determined on a year-end basis, in order to be consistent with the inclusion of a "negative" CCOGPE balance at the end of a taxation year.

Clause 66.2(5)(b)(x)(A) is amended to clarify that the first amount relevant in computing the offset is based on the taxpayer's successored CCDE balance in respect of a particular disposition of Canadian resource property by an original owner. It is possible that the same person may have disposed of different Canadian resource properties to a taxpayer in two separate transactions in which the successor rules applied, in which case the taxpayer would have two relevant successored CCDE balances in respect of that person for the purposes of this clause.

Clause 66.2(5)(b)(x)(A) is also amended, in conjunction with an amendment to subsection 66.7(14) described below, to ensure that a taxpayer's successored CCDE balance is maintained for the purposes of computing the first amount after the taxpayer transfers property in circumstances in which the successor rules apply.

Clause 66.2(5)(b)(x)(B) is amended to modify the second amount relevant in computing the offset. As discussed above, the first amount is based on the taxpayer's successored CCDE balance in respect of the original disposition of Canadian resource property by an original owner. Clause 66.2(5)(b)(x)(B) is amended so that the second amount is not reduced by virtue of proceeds of disposition that became receivable before 1993 by a predecessor owner that reduced the successored CCOGPE balance in respect of the original owner that is available to the successor. This relieving amendment is consistent with the application of this clause prior to the enactment of Bill C-64 in 1987.

These amendments apply to taxation years ending after ANNOUNCEMENT DATE, except that a taxpayer may elect to have the amendments apply to taxation years ending after February 17, 1987 by filing a notice in writing with the Minister of National Revenue. The notice must be filed by the end of the sixth month after the end of the taxation year of the taxpayer in which Royal Assent to these amendments occurs. If the notice is given by a taxpayer, the Minister of National Revenue can reassess the taxpayer's statute-barred taxation years to take into account the election.

Clause 25

Canadian Oil and Gas Property Expense

ITA
66.4(5)(b)(v)

The amendments to subparagraph 66.4(5)(b)(v) of the Act, relating to the calculation of a taxpayer's CCOGPE are parallel to the amendments to subparagraph 66.2(5)(b)(v), relating to the calculation of a taxpayer's CCDE. Except for the introduction of new clause 66.4(5)(b)(v)(C), the only difference between the two subparagraphs is that subparagraph 66.4(5)(b)(v) deals with Canadian oil and gas properties, whereas subparagraph 66.2(5)(b)(v) deals with Canadian mining properties.

Clause 66.4(5)(b)(v)(C) is introduced so that decreases in a taxpayer's successor CCDE balances arising from the disposition of Canadian oil and gas properties correspondingly decrease the reduction in the taxpayer's CCOGPE which otherwise arises as a result of the disposition. This offset is consequential on the introduction of subparagraph 66.7(4)(a)(iii) of the Act.

These amendments apply to taxation years ending after February 17, 1987. However, the introduction of clause 66.4(5)(b)(v)(C) is relevant only with respect to amounts that

become receivable after 1992. For further detail in this respect, see the commentary on new subparagraph 66.7(4)(a)(iii).

Clause 26

Successor Rules

ITA
66.7

Section 66.7 of the Act provides rules relating to the deduction, by a "successor corporation", of unused resource expenses of another person in respect of resource properties acquired by the successor corporation.

Subclause 26(1)

ITA
66.7(2)(b)(ii)(B)

Subsection 66.7(2) of the Act provides a successor deduction for corporations in respect of foreign exploration and development expenses (FEDE) incurred by other taxpayers. This subsection is amended to correct a reference which was included when subsection 66.7(2) was extended to allow an election (similar to the election formerly provided in paragraph 66.7(10)(f)) to use specified Canadian resource income as streamed income against which FEDE could be claimed by a successor.

This amendment applies to taxation years ending after February 17, 1987.

Subclause 26(2)

ITA
66.7(4)(a)(ii) and (iii)

Subsection 66.7(4) of the Act provides a deduction for a taxpayer in respect of the taxpayer's successored CCDE balances in respect of original owners. Deductions under this subsection are determined on a property-by-property basis. A deduction with respect to a particular property may be claimed by a taxpayer equal to the total specified amounts determined with respect to original owners of that particular property. The specified amount in respect of an original owner and a particular property is, in general terms, the lesser of:

- 30% of the taxpayer's successored CCDE balance in respect of the original owner (or, more specifically, 30% of the

amount by which the undeducted CCDE in respect of the original owner exceeds, where the particular property is Canadian mining property, proceeds of disposition for the particular property that had become receivable by the taxpayer or a predecessor owner), and

- income from the production of the particular property (commonly referred to as "streamed income"), computed without reference to resource deduction provisions in the Act.

In determining the above amounts, no part of a successor CCDE balance may be deducted more than once (subclauses 66.7(4)(a)(i)(A)(I) to (II)), nor can particular amounts of streamed income be used more than once as the basis for deduction under section 66.7 (subparagraph 66.7(4)(b)(ii) and parallel provisions in subsections 66.7(1), (3) and (5)).

Subparagraph 66.7(4)(a)(ii) is amended to ensure that, in computing a successor CCDE balance of an original owner in respect of a particular property, there is deducted other proceeds of disposition with respect to other Canadian mining property owned by the original owner before being acquired with the particular property by a successor to the original owner.

Subparagraph 66.7(4)(a)(ii) is also amended so that, where there is more than one original owner of a particular Canadian mining property, the proceeds of disposition with respect to that property are applied to reduce the successored CCDE balance in respect of the first original owner before any unapplied portion of the proceeds are used to reduce the successored CCDE balances in respect of subsequent original owners. (If any portion of the proceeds still remains unapplied, such portion effectively reduces the taxpayer's own CCDE pursuant to amended subparagraph 66.2(5)(b)(v) of the Act.)

Subparagraph 66.7(4)(a)(iii) of the Act is introduced so that, in computing a taxpayer's successor CCDE balance in respect of an original owner, there is deducted a portion of designated proceeds that become receivable after 1992 from the disposition of Canadian oil and gas property formerly owned by the original owner. The amount so deducted does not include amounts deducted in computing a successor CCOGPE balance in respect of the original owner or amounts deducted in computing a successor CCOGPE or CCDE balance in respect of a prior original owner. The designation of the proceeds must be made in prescribed form by the taxpayer (or the predecessor owner who received such proceeds) within 6 months after the end of the taxation year in which the proceeds become receivable or by the end of the sixth month after the end of the taxpayer's taxation year in which Royal Assent to this amendment occurs, whichever is later. A taxpayer may find it advantageous to designate an amount under new subparagraph 66.7(4)(a)(iii) in order to avoid, by virtue of new

clause 66.4(5)(b)(v)(C), a reduction of the taxpayer's own CCOGPE.

These amendments apply to taxation years ending after February 17, 1987. The examples below illustrate the operation of the amendments to subparagraphs 66.2(5)(b)(v) and 66.7(4)(a)(ii).

EXAMPLE 1

Properties A, B, C and D are Canadian mining properties owned by S. O1 is an original owner of properties A and B which were acquired by O2 in a successor transaction. O2 is an original owner of properties A, B and C which were acquired by O3 in a successor transaction. O3 is an original owner of properties A, B, C and D which were acquired by S in a successor transaction. S disposes of properties B, C and D in a non-successor transaction. Immediately before the latest disposition, the successor CCDE balances were $1,000, $2,400 and $3,800 (Total = $7,200) in respect of O1, O2 and O3, respectively. The proceeds that became receivable by S were $4,000, $2,300 and $200 (Total = $6,500) for properties B, C and D, respectively.

Result:

1. The O1 successor CCDE balance is reduced to nil ($1,000 - $4,000). The O2 successor CCDE balance is reduced to nil ($2,400 - ($2,300 + $4,000 - $1,000)). The O3 successor CCDE balance is reduced to $700 ($3,800 - ($200 + $2,300 + $4,000 - $2,400 - $1,000)). In calculating the O2 successor CCDE balance, the portion ($1,000) of the proceeds reducing the O1 successor CCDE balance is added back. Likewise, in calculating the O3 successor CCDE balance, the portions ($1,000 and $2,400) of the proceeds reducing the O1 and O2 successor CCDE balances are also added back. The O3 successor CCDE balance of $700 after the disposition may be deducted by S against streamed income from property A.

2. S's own CCDE pool is not affected because of the offsets provided under clause 66.2(5)(b)(v)(B). For a more detailed analysis of these offsets, see Example 2.

EXAMPLE 2

Same facts as in example 1, except that the proceeds receivable by S for properties B, C and D are $6,800, $11,000 and $2,000 (Total = $19,800), respectively.

Result:

1. In this case, following the method shown in example 1, the O1, O2 and O3 successor CCDE balances are reduced to nil.

2. The total reduction in the successor CCDE balances is $7,200. Therefore, under subparagraph 66.2(5)(b)(v) the total reduction in the taxpayer's own CCDE in respect of the disposition is $12,600 ($19,800 - $7,200).

EXAMPLE 3

Same facts as in example 1, except that the proceeds receivable by S for properties B, C and D are $1,200, $800 and $12,000 (Total = $14,000), respectively.

Result:

1. The O1 successor CCDE balance is reduced to nil. ($1,000 - $1,200). The O2 successor CCDE balance is reduced to $1,400 ($2,400 - ($1,200 + $800 - $1,000)). The O3 successor CCDE balance is reduced to nil ($3,800 - ($1,200 + $800 + $12,000 - $1,000 - $1,000)). For further discussion on this calculation, see example 1.

2. The total reduction in the successor CCDE balances is $5,800 ($7,200 - $1,400). Therefore, under subparagraph 66.2(5)(b)(v) the total reduction in the taxpayer's own CCDE in respect of the disposition is $8,200 ($14,000 - $5,800).

Subclause 26(3)

ITA
66.7(5)(a)(ii)

Subsection 66.7(5) of the Act provides a deduction for a taxpayer in respect of the taxpayer's successored CCOGPE balances in respect of original owners. Deductions under this subsection are

determined on a property-by-property basis. A deduction with respect to a particular property may be claimed by a taxpayer equal to the total specified amounts determined with respect to original owners of the particular property. A specified amount determined in respect of an original owner and a particular property is, in general terms, the lesser of:

- 10% of the taxpayer's successored CCOGPE balance in respect of the original owner (or, more specifically, 10% of the amount, if any, by which the undeducted CCOGPE in respect of the original owner exceeds, where the particular property is Canadian oil and gas property, proceeds of disposition for the particular property that had become receivable by the taxpayer or a predecessor owner), and

- income from the production of the particular property, computed without reference to resource deduction provisions in the Act.

In determining the above amounts, no part of a successor CCOGPE balance may be deducted more than once (subclauses 66.7(5)(a)(i)(A) to (A.1)), nor can particular amounts of streamed income be used more than once as the basis for deduction under section 66.7 (subparagraph 66.7(5)(b)(ii) and parallel provisions in subsections 66.7(1), (3) and (4)).

Subparagraph 66.7(5)(a)(ii) is amended to ensure that, in computing a successor CCOGPE balance in respect of an original owner in respect of a particular property, there are deducted other proceeds of disposition with respect to other Canadian oil or gas property owned by the original owner before being acquired with the particular property by a successor to the original owner.

Subparagraph 66.7(5)(a)(ii) is also amended so that the proceeds of disposition with respect to successored Canadian oil and gas property are applied to reduce the successored CCOGPE balance in respect of the first original owner of that property before any unapplied portion of the proceeds are used (to the extent provided in new subparagraph 66.7(4)(b)(iii)) to reduce successor CCDE balance in respect of the first original owner. If any unapplied proceeds remain, the successor CCOGPE and CCDE balances in respect of any other original owners are likewise adjusted in the order that they become predecessor owners in respect of the successor. (If any portion of the proceeds still remains unapplied, such portion effectively reduces the taxpayer's own CCOGPE pursuant to amended subparagraph 66.4(5)(b)(v).)

These amendments apply to taxation years ending after February 17, 1987. The example below illustrates the effect of the amendments to this subparagraph and subparagraphs 66.2(5)(b)(v) and (x) and the introduction of subparagraph 66.7(4)(a)(iii).

EXAMPLE 4

Properties A, B, C and D are Canadian oil and gas properties owned by S. O1 is an original owner of properties A and B which were acquired by O2 in a successor transaction. O2 is an original owner of properties A, B and C which were acquired by O3 in a successor transaction. O3 is an original owner of properties A, B, C and D which were acquired by S in a successor transaction. S disposes of properties B, C and D in 1993 in a non-successor transaction. Immediately before the latest disposition, the successor CCOGPE balances were $1,000, $2,400 and $3,800 (Total = $7,200) in respect of O1, O2 and O3, respectively. In addition, the taxpayer has successor CCDE balances of $4,000 in respect of O1 and $20,000 in respect of O2. The proceeds that became receivable by S were $6,800, $11,000 and $7,000 (Total = $24,800) for properties B, C and D, respectively. S designates proceeds to the full extent possible under subparagraph 66.7(4)(a)(iii).

Result:

1. The O1 successor CCOGPE balance is nil (1,000 - (6,800)). The O1 successor CCDE balance is nil (4,000 - (6,800 - 1,000)). The O2 successor CCOGPE balance is nil (2,400 - (6,800 + 11,000 - 1,000 - 4,000)). The O2 successor CCDE balance is $9,600 (20,000 - (6,800 + 11,000 - 1,000 - 4,000 - 2,400)). The O3 successor CCOGPE balance is nil (3,800 - (6,800 + 11,000 + 7,000 - 1,000 - 4,000 - 2,400 - (20,000 -9,600)). These calculations are made in the same manner as the calculations made in the first example to the commentary on paragraph 66.7(4)(a).

2. The total reduction in the successor CCOGPE balances is therefore $7,200. The total reduction in the successor CCDE balances resulting from the disposition of the properties is $14,400. Therefore, under subparagraph 66.4(5)(b)(v) the total reduction in the taxpayer's own CCOGPE in respect of the disposition is $3,200 (24,800 - 7,200 - 14,400).

3. No offset to the amount determined under subparagraph 66.2(5)(b)(x) results because the proceeds became receivable by the taxpayer after 1992.

Subclause 26(4)

ITA
66.7(14)

Subsection 66.7(14) of the Act applies to a successor corporation which disposes of Canadian resource properties to a subsequent successor. For the purposes of determining the first successor's deductions under section 66.7 (or subsection 29(25) of the *Income Tax Application Rules, 1971*) with respect to its acquisition of any of those properties, it is generally deemed never to have acquired those properties. However, it is entitled to claim deductions under subsection 66.7(1) (dealing with an original owner's Canadian exploration and development expenses) and subsection 66.7(3) (dealing with an original owner's Canadian exploration expenses) for the taxation year of the disposition. In the case of arm's length dispositions or dispositions by way of amalgamation or merger, it is also allowed to claim deductions under subsections 66.7(4) and (5) (dealing with an original owner's Canadian development expenses and Canadian oil and gas property expenses, respectively) for the taxation year of the disposition.

Subsection 66.7(14) is amended to clarify that it applies for the purposes of determining successor deductions with respect to Canadian resource property retained by a successor corporation at the time of a disposition to which the successor rules apply. This ensures that no successor deductions under the above-referenced subsections may be claimed in respect of such retained property for taxation years commencing after the successor has disposed of substantially all of its Canadian resource property in circumstances to which the successor rules apply.

Subsection 66.7(14) is also amended to clarify that it does not apply for the purposes of amended subparagraph 66.2(5)(b)(v), amended clauses 66.2(5)(b)(x)(A) and (B) and amended subparagraph 66.4(5)(b)(v). These provisions require that a taxpayer's CCDE or CCOGPE be determined at specified times with reference to subsections 66.7(4) and (5). In the absence of this measure, it is arguable that the benefit provided to a taxpayer by virtue of those provisions would be automatically eliminated after a succession.

Subsection 66.7(14) is also amended to ensure that, where a successor corporation retains Canadian resource property on a disposition of other Canadian resource properties in circumstances to which the successor rules apply, the corporation which acquires the other property (or subsequent successors) will not be required to reduce its successored CCDE or CCOGPE balances by virtue of a disposition of the retained property by the first successor corporation.

These amendments apply to dispositions occurring in taxation years ending after February 17, 1987.

ITA
66.7(15)

Subsection 66.7(15) of the Act applies to a successor corporation which disposes of foreign resource properties to a subsequent successor. For the purposes of determining the first successor's deductions under subsection 66.7(2) with respect to its acquisition of any of those properties, it is deemed never to have acquired those properties.

Subsection 66.7(15) is amended to clarify that it applies for the purposes of determining successor deductions with respect to foreign resource property retained by a successor corporation at the time of a disposition to which the successor rules apply. This ensures that no successor deductions under subsection 66.7(2) may be claimed in respect of such retained property for taxation years ending after the successor has disposed of foreign resource property in circumstances to which the successor rules apply.

This amendment applies to taxation years ending after February 17, 1987.

Clause 27

Shareholder Appropriations

ITA
69(4)

Subsection 69(4) of the Act provides that, where property of a corporation has been appropriated by a shareholder for no consideration or for consideration below its fair market value and a sale of the property at fair market value would have increased the corporation's income for the year, the corporation will be considered to have sold the property during the year and received proceeds equal to the property's fair market value.

Subsection 69(4) is amended to also apply where property of a corporation is appropriated by a shareholder of the corporation for no consideration or for consideration below its fair market value and a sale of the property would have reduced a loss of the corporation. In such circumstances, the corporation will be considered to have disposed of the appropriated property and to have received proceeds of disposition equal to the fair market value of the property.

This amendment applies to appropriations occurring after ANNOUNCEMENT DATE.

Clause 28

Death of a Taxpayer

ITA
70

Section 70 of the Act provides certain rules that apply upon the death of a taxpayer.

Subclause 28(1)

ITA
70(3.1)

Under subsection 70(2) of the Act, the value of certain "rights or things" owned by a taxpayer at death is required to be included in the taxpayer's income for the year of death. Subsection 70(3) provides that this rule does not apply in connection with "rights or things" transferred to beneficiaries of the deceased within a specified time. Subsection 70(3.1) provides that certain property, including an interest in a life insurance policy (other than an annuity contract, where the payment for the contract was deductible under paragraph 60(l) of the Act) does not constitute a "right or thing" for this purpose.

Subsection 70(3.1) is amended so that a "right or thing" includes an annuity contract acquired in circumstances to which new subsection 146(21) of the Act applies. As described below, the latter subsection allows the transfer of amounts from prescribed provincial pension plans to acquire annuities described in paragraph 60(l).

This amendment applies to 1992 and subsequent taxation years.

Subclause 28(2)

ITA
70(5)

Paragraph 70(5)(c) of the Act (as amended by Bill C-92) sets out special rules that may apply to a taxpayer acquiring a depreciable property of a prescribed class as a consequence of the death of another person. In the event that the capital cost of the deceased person's property exceeds the cost (as determined under paragraph 70(5)(b)) of the property to the taxpayer acquiring it, for

the purposes of the capital cost allowance regulations and the rules concerning recapture and terminal loss, the capital cost of the property to the taxpayer is deemed to be the amount that was the capital cost to the deceased person of the property. Further, the amount by which that capital cost exceeds the cost to the taxpayer is considered to have been deducted by the taxpayer as capital allowance in respect of the property in previous taxation years.

Paragraph 70(5)(c) is amended to exclude from its application circumstances in which the deceased person's proceeds of disposition under paragraph 70(5)(a) are redetermined under subsection 13(21.1) of the Act. Subsection 13(21.1) provides that, where a building and land on which it is located are disposed of, a terminal loss on the sale of the building is reduced to the extent of any gain on the sale of the land. This is achieved by increasing the proceeds of disposition in respect of the building by the lesser of the amount of the terminal loss on the building and the gain on the sale of the land. The capital gain on the disposition of the land is then reduced by a corresponding amount. In such circumstances, new paragraph 70(5)(d) of the Act applies.

Under new paragraph 70(5)(d), separate rules apply where the amount that was a deceased person's proceeds of disposition in respect of a property are redetermined under subsection 13(21.1). Where a building had a capital cost to the deceased person that exceeds the amount determined under subsection 13(21.1) to be the deceased person's proceeds of disposition, the capital cost of the building to the taxpayer is treated as being the amount that was the capital cost of the building to the deceased person. The amount by which the deceased person's capital cost of the building exceeds the deceased person's proceeds of disposition, rather than the taxpayer's cost of the building, is deemed to have been deducted by the taxpayer as capital cost allowance on the building in computing income for previous taxation years. Finally, the cost to the taxpayer of the land is deemed to be the amount that was the deceased person's proceeds of disposition in respect of the land under subsection 13(21.1).

EXAMPLE

- A person owns, immediately before death, a building and contiguous land that is used for income earning purposes.

- The relevant values are:

	ACB/CC	UCC	FMV	CG	Term. Loss
Land	$ 20,000	N/A	$50,000	$30,000	N/A
Building	$100,000	$20,000	NIL	--	$20,000

Subsection 13(21.1) applies to reallocate the proceeds of disposition between the land and building – the land's proceeds of disposition are reduced by $20,000 (the amount of the deceased person's terminal loss otherwise determined) and the building's proceeds of disposition are increased by an equivalent amount. Thus the proceeds of disposition of the building will be $20,000 and of the land $30,000, producing a capital gain of $10,000 and a terminal loss of nil, respectively.

By reason of the application of new paragraph 70(5)(d) the taxpayer will be considered to have acquired the land from the deceased person at a cost of $30,000, rather than $50,000. Moreover, the building will be deemed to have acquired by the taxpayer at a capital cost of $100,000 and the taxpayer will be treated as having claimed capital cost allowance of $80,000, rather than $100,000, in previous years.

This amendment applies to dispositions occurring after 1992.

Subclause 28(3)

ITA
70(6)(d)(i)

Subsection 70(6) of the Act provides that, among other matters, where depreciable property is transferred or distributed as a consequence of the death of a taxpayer to certain individuals, the proceeds of disposition are treated as being equal to an amount that is intended to ensure that the property is transferred on a tax-deferred ("rollover") basis.

Previously, the deceased person's proceeds of disposition in respect of a particular depreciable property were computed under subparagraph 70(6)(d)(i) to be equal to the product of multiplying the undepreciated capital cost of the class of property by the fraction that is the fair market value of the particular property over the fair market value of all of the property in the class.

Subparagraph 70(6)(d)(i) is amended to provide that, with respect to depreciable property of a prescribed class, a deceased person's proceeds of disposition are equal to the lesser of the "capital cost" and the "cost amount" to the person of the property immediately before the person's death.

Notwithstanding an intended "rollover" treatment, the application of the former formula in subparagraph 70(6)(d)(i) to the disposition of depreciable property of a prescribed class could result in unintended capital gains and terminal losses. The use of "capital cost" in amended subparagraph 70(6)(d)(i) ensures that the proceeds of disposition in respect of a depreciable property of a prescribed class do not create a capital gain to the deceased by exceeding the "capital cost" of the transferred property. This result could otherwise occur, for example, where the undepreciated capital cost (UCC) of the class of property exceeds the capital cost of the property remaining in the class immediately before the time of death. Similarly, the recipient of a property cannot acquire the property at a "cost" that may otherwise exceed its capital cost to the deceased. Further, it should be noted that new subsection 70(12) provides that the capital cost of a deceased person's depreciable property equals the amount that would be the capital cost to the person of the property immediately before the time of death if certain limitations in subsection 13(7) of the Act did not apply to the property. Generally, these limitations lower the capital cost of certain property for capital cost allowance (CCA) purposes, rather than for capital gains or capital loss purposes. Reference should also be made to new subsection 70(13) of the Act, which contains an ordering provision that applies to the disposition of two or more properties held in the same prescribed class.

With respect to the "cost amount" of depreciable property, subsection 248(1) provides, generally, that it is to be computed by multiplying the UCC of the class by the proportion that is the capital cost of the transferred property divided by the capital cost of all of the property of the class not disposed of before the time of computation.

The effect of this amendment is that capital gains and, generally, terminal losses, are deferred where subparagraph 70(6)(d)(i) applies to property of a deceased person. However, terminal losses will arise with respect to the amount by which, immediately before the death of the person, the UCC of the class of property exceeds the capital cost of all of the property in the class at that time.

This amendment applies to dispositions occurring after 1992.

Subclause 28(4)

ITA
70(9)

Subsection 70(9) provides for a tax-deferred ("rollover") on intergenerational transfers of certain farm property from a taxpayer to a child of the taxpayer as a result of the death of the taxpayer. In this regard, the deceased taxpayer's proceeds of disposition are treated as being equal to an amount that is intended to ensure that the property is transferred on a rollover basis to a child of the deceased taxpayer. An election is, however, provided that allows the legal representative of the taxpayer to elect out of the rollover provision.

Subsection 70(9) is amended in three respects. First, the formula used in subparagraph 70(9)(b)(i) to determine a deceased taxpayer's proceeds of disposition, with respect to the rollover of depreciable property of a prescribed class, is amended to provide that the proceeds of disposition of such depreciable property will be the lesser of the "capital cost" and the "cost amount" to the taxpayer of the property immediately before the taxpayer's death. For additional details, see the commentary accompanying the amendment to subparagraph 70(6)(b)(i). Also, see related amendments to subsection 70(9.1) and new subsections 70(12) and (13).

Second, subparagraph 70(9)(b)(ii) is amended to ensure that only subparagraph 70(9)(b)(i) applies to land that is depreciable property of a prescribed class (e.g., land that is described in subsection 13(5.2) of the Act).

Third, paragraph 70(9)(c) is amended to add a reference to new paragraph 70(5)(d). This amendment ensures that the rule described in paragraph 70(5)(c) or (d) applies where the legal representative of the deceased taxpayer elects to recognize proceeds of disposition that do not provide for a rollover of property. In such circumstances, subsection 13(21.1) may apply to redetermine the proceeds of disposition. For additional details, see the commentary accompanying the amendment of subsection 70(5) of the Act.

This amendment applies to dispositions occurring after 1992.

Subclause 28(5)

ITA
70(9.1)

Subsection 70(9.1) of the Act provides rules for allowing a tax-deferred transfer ("roll-out") on intergenerational transfers of farm property from certain trusts to a child of a taxpayer as a consequence of the death of the taxpayer's spouse. The trust's proceeds of disposition are treated as being equal to an amount that is intended to ensure that the property is transferred on a rollover basis to the child. An election is, however, provided that allows the trust to elect out of the rollover provision.

Subsection 70(9.1) is amended in three respects. First, the formula in subparagraph 70(9.1)(b)(i), which determines the trust's proceeds of disposition with respect to depreciable property of a prescribed class, is amended to ensure that a rollover to a child of the taxpayer results on the death of the taxpayer's spouse unless an election is filed by the trust. In particular, that subparagraph is amended to provide that the trust's proceeds of disposition with respect to depreciable property of a prescribed class are the lesser of the "capital cost" and the "cost amount" to the trust of the property immediately before the spouse's death. A corresponding amendment is also made with respect to the replacement paragraph for paragraph 70(9.1)(b), which applies when an election is made by the trust. For additional details, see the commentary on the amendment to subsection 70(6).

Second, subparagraph 70(9.1)(b)(ii) is amended to ensure that only subparagraph 70(9.1)(b)(i) applies to land that is depreciable property of a prescribed class (e.g., land that is described in subsection 13(5.2) of the Act).

Third, paragraph 70(9.1)(c) is amended so that new paragraph 70(9.1)(d) applies where the trust's proceeds of disposition under paragraph 70(9.1)(b) are redetermined under subsection 13(21.1) of the Act. For further information, reference may be made to the commentary in subclause 28(2).

This amendment applies to dispositions occurring after 1992.

Subclause 28(6)

ITA
70(12)

New subsection 70(12) of the Act provides that certain adjustments previously made to the capital cost of depreciable property of a prescribed class under subsection 13(7) of the Act do not apply for the purposes of section 70. Therefore, the capital cost to a deceased person of such depreciable property is to be readjusted for

the purposes of determining the proceeds of disposition of that property in amended paragraphs 70(6)(d), (9)(b) and (9.1)(b). This readjusted capital cost is to used for the purposes of determining both the undepreciated capital cost (UCC) of the class and the amount by which the UCC is to be reduced as a result of a disposition, but is not to be used for the purposes of determining any claim for capital cost allowance made on behalf of a deceased person.

This amendment applies to dispositions occurring after 1992.

ITA
70(13)

New subsection 70(13) of the Act, which applies to dispositions occurring after 1992, generally provides that, where two or more depreciable properties of a prescribed class are disposed of as a consequence of the death of a taxpayer, section 70 and paragraph (a) of the definition of "cost amount" in subsection 248(1) of the Act apply as if each property were disposed of in the order designated by the taxpayer's legal representative or, in the case of a trust to which subsection (9.1) applies, by the trust. Where no such designation is filed in the appropriate tax return, the order designated by the Minister of National Revenue will apply.

Clause 29

***Inter vivos* Transfers of Property**

ITA
73(1.1)

Subsection 73(1.1) of the Act provides greater certainty that the rollover rules in subsection 73(1) of the Act apply on the transfer by a taxpayer of property to the taxpayer's spouse or former spouse or to a trust established on that person's behalf by operation of certain prescribed provincial laws or court orders made in accordance with such laws. Subsection 73(1.1) is amended to refer to transfers made under the laws of a province in order to conform with the language in subsection 73(1) of the Act. This amendment applies to transfers that occur after July 13, 1990.

Clause 30

Deemed Dividends

ITA 84

Section 84 of the Act provides that certain transactions involving the shares of a corporation will be treated as producing dividends for tax purposes.

Subclause 30(1)

ITA
84(1)(c.3)

Subsection 84(1) of the Act treats a dividend as having been paid by a corporation on the shares of a class of its capital stock where the paid-up capital of the class is increased by the corporation in circumstances other than those set out in that subsection.

Subparagraph 84(1)(c.3)(iii) of the Act enables a corporation to convert to paid-up capital, without triggering a deemed dividend, contributed surplus that arose on a previous reduction of paid-up capital. This provision is amended to clarify that the amount of contributed surplus that can be so converted cannot exceed the amount by which the paid-up capital, as defined in paragraph 89(1)(c) of the Act, was previously reduced. This amendment applies to actions taken on or after ANNOUNCEMENT DATE to convert contributed surplus to paid-up capital. In addition, subclause 30(3) clarifies the date of the coming-into-force of a previous amendment to paragraph 84(1)(c.3).

Subclause 30(2)

ITA
84(11)

Subparagraph 84(1)(c.3)(ii) of the Act enables a corporation to convert to paid-up capital, without triggering a deemed dividend, contributed surplus that arose in circumstances where a shareholder transferred property to a corporation for no consideration or for consideration that did not include shares of the corporation. New subsection 84(11) of the Act limits, for the purposes of subparagraph 84(1)(c.3)(ii), the amount of contributed surplus that can be considered to have arisen on a contribution of shares to a corporation in certain circumstances. This limitation is intended to ensure that a person cannot circumvent the anti-surplus stripping rules in sections 84.1 and 212.1 of the Act. Where shares of a corporation resident in Canada are contributed to the corporation and, immediately thereafter, the two corporations are connected within the meaning of subsection 186(4) of the Act, the contributed

surplus that, for the purposes of subparagraph 84(1)(c.3)(ii), could be considered to have arisen on the acquisition of the contributed shares will be the lesser of

- the amount actually added to contributed surplus, and
- the paid-up capital of the contributed shares less the value of any consideration given for the contributed shares.

New subsection 84(11) of the Act applies to actions after ANNOUNCEMENT DATE to convert contributed surplus into paid-up capital.

Clause 31

Share-for-Share Exchanges

ITA
85.1(2)

Section 85.1 of the Act provides 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 corporations' shares.

Paragraph 251(5)(b) of the Act provides that a taxpayer who has a right under a contract to acquire shares of a corporation will be considered to be in the same position in relation to the control of the corporation as if the taxpayer owned the shares. Because a share-for-share exchange agreement is a contract to acquire shares within the meaning of paragraph 251(5)(b), both parties to the agreement could be considered to control the acquired corporation immediately before the share exchange, and therefore would not be considered to be dealing at arm's length with each other. As a result, the tax deferred rollover provided by subsection 85.1(1) of the Act would not apply.

This amendment to subsection 85.1(2) of the Act, which applies to exchanges occurring after ANNOUNCEMENT DATE, provides that, for the purposes of the rollover provided in subsection 85.1(1), a share-for-share exchange agreement will not create a non-arm's length relationship between the parties to the agreement.

Clause 32

Reduction in Paid-Up Capital

ITA
86

Section 86 of the Act provides a deferral of tax for a shareholder who, in the course of a reorganization of the capital of a corporation, disposes of all of the shareholder's shares of a class for consideration that includes other shares of the corporation. Such an exchange of shares may, however, result in the shareholder being deemed by section 84 of the Act to have received a dividend where the stated capital of the old shares exceeds their paid-up capital for tax purposes. Such a paid-up capital deficiency could arise, for example, where subsection 85(2.1) of the Act applies to reduce the paid-up capital of a class of shares as a consequence of a previous transfer of property to which subsection 85(1) applied.

Subclause 32(1)

ITA
86(2.1)

New subsection 86(2.1) of the Act reduces the paid-up capital of the classes of shares received on an exchange described above. The effect of the reduction is to permit the paid-up capital deficiency of the old shares to flow through to the new shares received on the exchange, thereby ensuring that the exchange will not result in any increase in paid-up capital to which subsection 84(1) of the Act could apply and that the amount received for the old shares for purposes of subsection 84(3), having regard to subsection 84(5), will be equal to the paid-up capital of the old shares plus the amount of the non-share consideration received on the exchange in excess of the paid-up capital of the old shares. New subsection 86(2.1) applies to share exchanges occurring after ANNOUNCEMENT DATE and, unless the corporation elects within a certain time limit not to have it apply, to share exchanges occurring before ANNOUNCEMENT DATE and after August 1992.

Subclause 32(2)

ITA
86(3)

Subsection 86(3) of the Act is amended, as a consequence of the amendments to section 51 of the Act, to change the ordering of the application of the rollover provisions in sections 51 and 86. Under the existing rules, section 86 of the Act does not apply if section 51 could apply. Under the amended rules, section 51 will

not apply where section 86 applies. The amendment to subsection 86(3) applies to reorganizations of capital commencing after ANNOUNCEMENT DATE.

Clause 33

Amalgamations

ITA
87

Section 87 of the Act provides rules that apply on the amalgamation of two or more taxable Canadian corporations.

Subclauses 33(1) and (2)

ITA
87(1.2) and (1.4)

Where there has been an amalgamation of two or more corporations, the successor rules in section 66.7 of the Act generally provide that unclaimed resource expenditures of a predecessor corporation may be deducted by the new corporation only within the limitations of the successor rules (i.e., against "streamed income" related to the predecessor corporation's resource properties). However, under subsection 87(1.2) the successor rules do not apply where there has been an amalgamation of a corporation and one or more of its "subsidiary wholly-owned corporations" or an amalgamation of two or more corporations which are "subsidiary wholly-owned corporations" of the same corporation. Under subsection 87(1.4) of the existing Act, a "subsidiary wholly-owned corporation" of another corporation is a corporation all the issued and outstanding shares of which belong to the other corporation (or to another "subsidiary wholly-owned corporation" of the other corporation).

Subsection 87(1.2) is extended so that the amalgamation of two or more subsidiary-wholly owned corporations of the same individual also does not result in the application of the successor rules. Amended subsection 87(1.4) provides that a "subsidiary wholly-owned corporation" of an individual is a corporation all the issued and outstanding shares of which belong to the individual (or to another "subsidiary wholly-owned corporation" of that individual).

This amendment applies to amalgamations occurring after ANNOUNCEMENT DATE.

Subclause 33(3)

ITA
87(2)(j.3)

Paragraph 87(2)(j.3) of the Act provides that a corporation formed as the result of an amalgamation is considered to be a continuation of its predecessor corporations for the purposes of a number of provisions in the Act relating to employee benefit plans (EBPs), salary deferral arrangements (SDAs) and retirement compensation arrangements (RCAs). Paragraph 87(2)(j.3) is amended by adding references to paragraph 12(1)(n.1) (income inclusion for amounts received by an employer from an EBP) and paragraph 104(13)(b) (income inclusion for income distributed by a trust governed by an EBP). This amendment is applicable with respect to taxation years that end after ANNOUNCEMENT DATE.

Clause 34

Winding-Up of a Corporation

ITA
88(1)(e.3)(ii)(C)(I)

Paragraph 88(1)(e.3) of the Act provides for the flow-through of investment tax credits (ITCs) from a subsidiary corporation to a parent corporation on a winding-up of the subsidiary. Generally, clause 88(1)(e.3)(ii)(C) allows the parent corporation to reinstate ITCs that have been restricted as a result of a change of control of the subsidiary, to the extent that the parent has a tax liability under Part I of the Act in respect of income arising from the same business or a business similar to that in which the subsidiary earned the ITCs. The flow-through of ITCs on a change of control of a corporation is subject to the corporation satisfying the conditions contained in subparagraph 127(9.1)(d)(i) of the Act. Subsection 127(9.1) of the Act sets out the rules for determining the amount by which a corporation's carryforward of unused ITCs earned before a change in control is limited, under paragraph (j) of the definition "investment tax credit", for claims against taxes payable in respect of income earned after the change of control.

Subclause 88(1)(e.3)(ii)(C)(I) of the Act is amended to provide that the flow-through of otherwise restricted ITCs of a subsidiary to its parent corporation is conditional on the parent carrying on the business of the subsidiary throughout the year in which the flowed-through ITC is claimed. This change is intended to ensure that the treatment of ITCs of corporations experiencing a change of control is subject to the same limitations, regardless of whether the ITC claim is being made by the corporation or its parent (after winding-up the corporation).

This amendment applies to windings-up commencing after ANNOUNCEMENT DATE.

Clause 35

Corporate Migration

ITA
88.1

In many jurisdictions, a company incorporated elsewhere may become naturalized by submitting itself to the corporate law of its new home. Such an action is often described as a corporate "continuance" or "continuation". Section 88.1 of the Act provides certain tax consequences where a corporation incorporated in Canada has been granted articles of continuance (or similar constitutional documents) outside Canada. As part of a set of amendments concerning taxpayers' residence and certain related matters, section 88.1 is to be repealed.

For a full description of the new rules in this area, readers should consult the relevant amendments and the accompanying explanatory notes. Briefly, new subsection 250(5.1) of the Act provides that after continuing into a jurisdiction, a corporation will be treated as having been incorporated there. As a result, a corporation that has been continued abroad will no longer be treated as a Canadian resident simply because it was incorporated here. Similarly, a corporation continued into Canada may become a "Canadian corporation" within the meaning of paragraph 89(1)(a) of the Act. In both cases, the migrating corporation will, to the extent that its place of incorporation affects its status as resident or non-resident, be subject to the rules in new section 128.1 of the Act regarding changes in residence.

Existing section 88.1 also applies where a corporation has, in effect, ceased to be resident here because of a tax treaty. In light of the interaction of subsection 250(5) of the Act and new section 128.1, section 88.1 is superfluous in these cases as well.

Section 88.1 is repealed after 1992, but the repeal will come into force earlier in respect of corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Clause 36

Definitions Relating to Corporations

Section 89 of the Act defines certain terms that apply in relation to corporations and their shareholders.

Subclause 36(1)

ITA
89(1)(a)

Paragraph 89(1)(a) of the Act defines "Canadian corporation", a term which is relevant for many purposes under the Act. A corporation is a Canadian corporation at a given time if it is resident in Canada at that time and was either incorporated in Canada or has been resident here since June 18, 1971. This definition is amended to clarify the status of a corporation formed through an amalgamation, merger or other reorganization of two or more other corporations. As a result of this amendment, it will remain the case that such a reorganized corporation will be a Canadian corporation if it was resident in Canada since 1971; otherwise, the reorganized corporation will have that status only if two conditions are met. The corporation must have been formed under the laws of Canada or a province, and each of the corporation's predecessors must itself have been a Canadian corporation.

The amendment applies after Royal Assent.

Subclause 36(2)

ITA
89(1)(c)(ii)(C)

Subparagraph 89(1)(c)(ii) of the Act defines "paid-up capital" in respect of a class of shares of the capital stock of a corporation. Clause 89(1)(c)(ii)(C) provides that after March 31, 1977 paid-up capital is to be calculated without reference to the provisions of the Act other than those specified therein. This amendment to clause 89(1)(c)(ii)(C) adds references to new subsections 51(3), 86(2.1) and 128.1(2) and (3) of the Act and is consequential on the addition of those provisions. New subsections 51(3) and 86(2.1) ensure that, where shares of a class of the capital stock of a corporation in respect of which the paid-up capital for tax purposes is less than their stated capital are exchanged for shares of another class of the capital stock of the corporation and either of these subsections applies to the exchange, the paid-up capital deficiency will flow through to the class of shares received on the exchange. New subsections 128.1(2) and (3) of the Act apply in certain cases

to adjust the paid-up capital of shares of a corporation which has become resident in Canada.

The addition of the references to new subsections 51(3) and 86(2.1) applies after August, 1992, while the addition of the reference to new subsection 128.1(2) applies after 1992.

Clause 37

Foreign Affiliates

ITA
95(2)(h)(i)

Paragraph 95(2)(h) of the Act provides that any foreign exchange gains or losses realized by a foreign affiliate of a taxpayer as a result of the redemption, cancellation or acquisition of a share of the capital stock of, or the reduction of the capital of, either that affiliate or any other foreign affiliate of the taxpayer shall, for the purposes of determining the affiliate's taxable capital gains or allowable capital losses, be deemed to be nil.
Subparagraph 95(2)(h)(i) of the Act is amended to clarify that a corporation that is a foreign affiliate of a taxpayer cannot realize a foreign exchange gain or loss on the redemption, cancellation or acquisition of a share of its own capital stock, or on the reduction of its own capital.

This amendment applies to redemptions, cancellations, acquisitions and reductions occurring after ANNOUNCEMENT DATE.

Clause 38

Foreign Partnerships

ITA
96(8)

New subsection 96(8) of the Act applies where at any time a person resident in Canada becomes a member of a partnership and immediately before that time no member of the partnership was subject to tax under Part I of the Act in respect of the income of the partnership. In such cases the cost or capital cost of the inventory and capital property of the partnership is to be treated as being equal to the lesser of its fair market value at that time and its cost or capital cost otherwise determined. For example, where the historical cost of a partnership's depreciable capital property exceeds the fair market value of the property at the time a person

resident in Canada becomes a member of the partnership, the undepreciated capital cost of the property is to be computed as if its capital cost equals its fair market value at that time.

New subsection 98(8) of the Act applies to partnership interests acquired after ANNOUNCEMENT DATE.

Clause 39

Disposition of Partnership Interest

ITA
98.1(1)(a)

Section 98.1 of the Act provides rules applicable to a taxpayer who ceases to be a member of a partnership but continues to have a residual interest in the partnership. Paragraph 98.1(1)(a) is amended to replace a reference to section 48 of the Act, which deems a disposition of certain property to occur where a taxpayer has ceased to be a resident of Canada, with a reference to new section 128.1 of the Act. New section 128.1 forms part of a set of amendments concerning taxpayers' residence and certain related matters.

This amendment generally applies after 1992, although it may also apply before that time to corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Clause 40

Trusts and Their Beneficiaries

ITA
104(22)

Subsection 104(22) of the Act enables a Canadian-resident trust to designate trust income included in a beneficiary's income as foreign income of the beneficiary, to the extent that the trust income is derived from foreign sources. As a consequence of the designation, a beneficiary of a trust is treated as having paid a pro-rata share of any foreign income tax paid by the trust and is intended to qualify for a foreign tax credit under section 126 of the Act. Where such a designation is made by a trust, any amount treated by virtue of the designation as foreign source income or foreign income tax of a beneficiary is treated as not being foreign source income or foreign income tax of the trust. The existing wording of subsection 104(22) does not distinguish between "business-income

tax" and "non-business-income tax" paid by a trust. This is a technical deficiency as the rules in section 126 of the Act apply differently to the two different types of taxes.

Subsection 104(22) is amended by dividing the existing subsection into five new subsections. Former paragraphs 104(22)(a) to (d) correspond to new subsections 104(22) to (22.3). New subsection 104(22.4) defines "business-income tax" and "non-business-income tax" by reference to the definitions of those expressions in section 126.

The new subsections are structured so that a designation of foreign source income by a trust and the consequences of that designation are described on a source-by-source basis. This structure allows a distinction to be made between "business-income tax" and "non-business income tax" paid by a trust. New subsection 104(22.1) of the Act treats a beneficiary under a trust, as a consequence of the trust's designation under subsection 104(22), as having paid a pro-rata share of business-income tax or non-business-income tax paid by the trust. The pro-rata share for a beneficiary under a trust is equal to the proportion of the trust's income giving rise to such tax that was designated by the trust in favour of the beneficiary.

New subsections 104(22) and (22.1) also allow a trust to flow-out to its beneficiaries the portion of its business-income-tax paid to a foreign country in respect of a business carried on in another foreign country.

The new subsections also clarify the application of the flow-through rules where a beneficiary of a trust is another trust. In these circumstances, the lower tier trust may designate foreign source income to the beneficiary trust, which itself may designate such amounts to its own beneficiaries. The new wording in subsection 104(22.2) clarifies that the beneficiary trust's foreign source income takes into account the foreign source income designated to it. New subsection 104(22.3), dealing with the recalculation of a trust's foreign tax, has been amended in a similar manner.

These amendments apply to taxation years ending after November 12, 1981. Since subsection 104(22) applied in respect of trusts resident outside Canada for taxation years commencing before 1988, the amendments also apply with respect to those trusts for taxation years ending after November 12, 1981 and commencing before 1988.

Clause 41

Capital Interest in a Trust

ITA
107(1)(c)

Paragraph 107(1)(c) of the Act is a "stop-loss" rule which applies where a capital loss would otherwise be realized by a corporation on the disposition of the corporation's interest in a trust. The existing rule provides that the capital loss is reduced by dividends received by the trust before the disposition and flowed-through to the corporation under subsection 104(19) or (20) of the Act. The reason for this rule is that the capital loss from the disposition of an interest in a trust by a corporation is assumed to increase as a result of the payment of such dividends, without any corresponding increase in taxable income of the corporation because of the non-taxable treatment of capital dividends and the intercorporate dividend deduction for taxable dividends.

Paragraph 107(1)(c) is amended so that, where a trust is a "unit trust", dividends received by it before 1988 are disregarded for the purposes of this rule. This amendment is appropriate because, before 1988, losses with respect to the disposition of interests in units trust were not within the scope of paragraph 107(1)(c) because of the restrictive definition of "trust" in paragraph 108(1)(j).

Paragraph 107(1)(c) is also amended to ensure that a reduction in computing the taxpayer's capital loss from the disposition of a trust interest is not applied more than once. This amendment is relevant where a taxpayer makes partial dispositions of an interest in a trust at different times.

These amendments apply to the 1988 and subsequent taxation years.

Clause 42

Deductions in Computing Taxable Income

ITA
110

Section 110 of the Act provides various deductions that may be claimed in computing a taxpayer's taxable income for a year.

Subclause 42(1)

ITA
110(1)(d)(iii)

Paragraph 110(1)(d) of the Act provides a special deduction in computing an employee's income in respect of certain stock option benefits. This deduction is equal to one-quarter of the amount of the benefit included in an employee's income under subsection 7(1) of the Act.

Subparagraph 110(1)(d)(iii) of the Act requires that, in order to qualify for the deduction, the option price in respect of the shares must not be less than the excess of the fair market value of the share at the time the option was acquired over the cost of the option to the employee.

Subparagraph 110(1)(d)(iii) is amended, effective for 1992 and subsequent taxation years, to eliminate the effect of foreign exchange gains and losses when determining eligibility for the deduction.

Subclause 42(2)

ITA
110(1)(f)(ii)

Paragraph 110(1)(f) of the Act allows certain items of income to be deducted in computing a taxpayer's taxable income. Subparagraph 110(1)(f)(ii) allows the deduction of certain compensation amounts received under an employers' or workers' compensation law for injury, disability or death. This amendment merely clarifies the date on which a previous amendment to subparagraph 110((1)(f)(ii) came into force.

Clause 43

Capital Gains Exemption

ITA
110.6(15)

In order to qualify for the enhanced lifetime capital gains exemption on the disposition of a "qualified small business corporation share" or a "share of the capital stock of a family farm corporation", a number of tests relating to the fair market value of the assets of the corporation whose share is being disposed of must be met. In particular, a certain percentage of the fair market value of the corporation's assets must be attributable either to assets used

principally in an active business carried on by the corporation or a related corporation, or to shares or indebtedness of a connected corporation (within the meaning assigned by subsection 186(4) of the Act), the shares of which would themselves qualify for the enhanced exemption.

Where a corporation (Parentco) owns shares or indebtedness of a subsidiary (Subco) to which it is connected, and Subco in turn owns shares or indebtedness of Parentco, there is a potential for circularity in the existing rules relating to the determination of whether or not a particular share qualifies for the enhanced capital gains exemption. New paragraph 110.6(15)(b) of the Act eliminates this circularity by providing that, for the purposes of applying the definitions of "qualified small business corporation share", "share of the capital stock of a family farm corporation" and "small business corporation", the fair market value of any shares or indebtedness of Parentco, owned by Subco, is nil.

This amendment applies to 1992 and subsequent taxation years.

Clause 44

Taxable Dividends Received by Corporations

ITA
112

Section 112 of the Act is one of the principal provisions of the Act dealing with the treatment of dividends received by a corporation.

Subclause 44(1)

ITA
112(2.6)

Subsection 112(2.6) of the Act defines several terms, including "exempt share", for the purposes of subsection 112(2.4). The latter provision may operate to deny the intercorporate dividend deduction provided under subsection 112(1) or (2) for dividends received on shares generally referred to as collateralized preferred shares. Exempt shares are excluded from the operation of subsection 112(2.4).

The definition "exempt share" is amended, applicable to shares issues after ANNOUNCEMENT DATE, to include a share described in paragraph (e) of the definition "term preferred share" in subsection 248(1) of the Act (commonly referred to as a "distress preferred" or "financial difficulty" share). This amendment ensures that the collateralized preferred share provisions will not

operate to deny the intercorporate dividend deduction for dividends received on such shares.

Subclauses 44(2), (3) and (4)

ITA
112(4)(d)(ii), (4.1)(d)(ii), (4.2)(d)(ii)

Subsection 112(4) of the Act provides that the amount that a taxpayer may claim in respect of a loss arising on a share held as inventory is reduced by certain dividends received by the taxpayer on the share, unless the taxpayer satisfies the conditions set out in paragraphs 112(4)(a) and (b). Subsection 112(4.2) of the Act provides a similar rule for a taxpayer who is a member of a partnership that holds inventory shares. Similarly, subsection 112(4.1) of the Act may operate to increase, for the purposes of inventory valuation, the fair market value of an inventory share on which dividends have been received.

Paragraphs 112(4)(d), (4.1)(d) and (4.2)(d) of the Act apply to corporate taxpayers. Each of these provisions is amended to exclude from the operation of the stop-loss or inventory valuation rule capital gains dividends received by a corporation. Capital gains dividends are, by reason of paragraph 112(6)(a), not deductible under subsection 112(1) in computing the taxable income of the corporate taxpayer.

The amendments to subparagraphs 112(4)(d)(ii) and (4.2)(d)(ii) apply to the determination of losses arising in 1990 and subsequent taxation years, restoring the treatment in this regard of capital gains dividends received by a corporation to that which existed prior to the enactment of Bill C-18 (S.C. 1991, c. 49, s. 84). Since subsection 84(6) of that statute provided that a taxpayer could elect to have the relevant changes apply to the 1985 to 1989 taxation years, these amendments also apply to losses arising in the 1985 to 1989 taxation years if the taxpayer had so elected. Similarly, the amendment to subparagraph 112(4.1)(d)(ii) applies to 1990 and subsequent taxation years and to the 1985 to 1989 taxation years where the taxpayer has made an election under subsection 84(7) of Chapter 49 of the Statutes of Canada.

Subclause 44(5)

ITA
112(7)

Subsection 112(7) of the Act provides special rules relating to the application of the "stop-loss" rules in subsections 112(3), (3.1) and (3.2) of the Act to shares that have been exchanged in certain corporate reorganizations. For the purpose of determining the amount by which a loss on a disposition of a "new" share is to be

reduced (over and above any reduction attributable to dividends paid on the new share), subsection 112(7) provides, in general terms, that taxable dividends, capital dividends and life insurance capital dividends received or designated on all the "old" shares exchanged by the holder are to be allocated to the new shares issued on the exchange in proportion to the adjusted cost bases to the holder of the new shares immediately after the exchange.

Paragraph 112(7)(b) of the Act is amended, applicable to losses arising in the 1992 and subsequent taxation years, to limit the amount of the dividends received or credited on an old share that can be applied to reduce a loss realized on the disposition of a new share to the lesser of: the taxable dividends, capital dividends and life insurance capital dividends received or designated on the old share; and the adjusted cost base to the holder of the old share immediately before the time of the exchange. The amount that "survives" the reorganization for these purposes will continue to be allocated to the new shares in proportion to their adjusted cost bases to the holder immediately after the exchange.

Clause 45

Part-Year Residents

ITA
114

Section 114 of the Act provides rules for computing the taxable income of an individual who was resident in Canada during part of a taxation year. The section is amended, for 1992 and subsequent taxation years, to apply to individuals who, while non-residents of Canada for part of a year, were employed or carrying on business here at that time. The amendment ensures that an individual who becomes or ceases to be a resident in a year is taxable, while a non-resident, only on Canadian-source income.

Clause 46

Disability Tax Credit Transfer

ITA
118.3(2)

Subsection 118.3(2) of the Act provides criteria for determining the entitlement of a supporting individual of a disabled person to claim that person's unused disability tax credit. A parent is allowed to claim the unused portion of a child's disability tax credit for a year for which the parent has claimed a dependant tax credit or an

equivalent-to-married credit in respect of the child (or could have done so had the parent been unmarried and the child had no income for the year). As a result of the introduction of the child tax benefit which replaces, among other provisions, the dependant tax credit for dependants under 18 years of age and the fact that a supporting individual cannot claim more than one equivalent-to-married credit for a year, subsection 118.3(2) is amended to ensure that, where a parent supports two or more disabled children, the parent will be entitled to benefit from the transfer of the unused portion of the disability tax credit of those children. This amendment applies beginning in 1993.

Clause 47

Tax Credits – Part-Year Residents

ITA
118.91

Section 118.91 of the Act provides rules with respect to non-refundable tax credits allowed to individuals residing in Canada for only part of a taxation year. In keeping with the amendment to section 114 of the Act, this amendment to section 118.91 modifies the treatment of periods during which a part-year resident was not resident but was carrying on business in Canada or was employed here. For 1992 and subsequent taxation years, an individual's eligibility for the various credits listed in paragraph 118.91(b) will be determined without reference to such periods.

EXAMPLE

The effect of these amendments may be seen in the following example. N., an individual, becomes a Canadian resident on July 1, 1993. Between January 1 and June 30, 1993, while a non-resident, N. was employed in Canada. Under the existing rules in sections 114 and 118.91 of the Act (assuming no treaty provision applies), N. will be subject to Canadian tax on worldwide income for the entire year, and will be entitled to claim tax credits applicable to the same period. As a result of these amendments, N. will be taxed on worldwide income only for that part of the year N. was resident in Canada, and will be entitled to tax credits only in respect of the same period.

Clause 48

Goods and Services Tax Credit

ITA
122.5

Section 122.5 of the Act provides the rules for determining the goods and services tax (GST) credit for individuals.

Subclause 48(1)

ITA
122.5(3)

Under subsection 122.5(3) of the Act, to receive a GST credit for a taxation year, an eligible individual must complete a "prescribed form" that must be filed with the individual's income tax return for the year. This amendment, which applies beginning with the 1992 income tax return, removes the requirement that a form be filed for the GST credit with the individual's return. An individual will now simply be required to apply for the credit on the income tax return itself.

Subclause 48(2)

ITA
122.5(5)(a)

Paragraph 122.5(5)(a) of the Act provides that, where an individual is a qualified relation of another individual, only one individual may claim the GST credit. This amendment, which applies beginning with the 1992 income tax return and is strictly consequential on the amendment to subsection 122.5(3) of the Act, removes the requirement that a form be filed for the GST credit.

Subclause 48(3)

ITA
122.5(6)

Subsection 122.5(6) of the Act enables the surviving spouse of a deceased individual to file an application in "prescribed form" to receive the remaining GST credit payments that would otherwise have been made to the individual. This amendment, which applies to payments determined on the basis of an income tax return filed for 1992 or a subsequent year, removes the requirement that such an application be made in prescribed form. As well, this amendment further extends the period during which the application may be made from 60 days after the date of the individual's death to the due date of the individual's tax return for the year of death.

As in the past, applications made after the deadline may be accepted under certain circumstances.

Clause 49

Foreign Tax Credit

ITA
126

Section 126 of the Act permits a taxpayer to claim a foreign tax credit.

Subclause 49(1)

ITA
126(2.2)

Subsection 126(2.2) of the Act provides a special rule for determining the foreign tax credit of a taxpayer who disposes of property treated by subsection 48(2) of the Act as taxable Canadian property of the taxpayer – that is, property in respect of which the taxpayer chose to defer a deemed disposition on ceasing to be resident in Canada. Subsection 126(2.2) is amended to add to the reference to subsection 48(2) a reference to new paragraph 128.1(4)(e) of the Act. Paragraph 128.1(4)(e), which forms part of a set of amendments concerning taxpayers' residence and certain related matters, is generally analogous to, and replaces, subsection 48(2).

This amendment applies after 1992.

Subclause 49(2)

ITA
126(7)(c)

Paragraph 126(7)(c) of the Act defines the "non-business-income tax" paid by a taxpayer for a taxation year for the purposes of determining the taxpayer's foreign tax credit. It is defined, subject to a number of exceptions, as income or profits tax paid by a taxpayer to a foreign government. One of the exceptions is that tax included in a taxpayer's business-income tax is not included in the taxpayer's non-business-income tax.

Subparagraph 126(7)(c)(iii.1) is introduced to also except from non-business-income tax an amount that is in respect of an amount deducted under subsection 104(22.3) of the Act in computing the taxpayer's business-income tax. This amendment is relevant where

a trust pays an amount that, apart from the rule in new subsection 104(22.3), would have been its business-income tax. If the trust designates foreign source income to beneficiaries and, as a consequence, reduces its business-income tax under new subsection 104(22.3), the trust cannot rely on subparagraph 126(7)(c)(i) to re-characterize the amount as its non-business-income tax.

This amendment applies to taxation years ending after November 12, 1981.

Clause 50

Investment Tax Credits

ITA
127(9)(c.1) and (d)

The definition "qualified property" in subsection 127(9) of the Act, which applies for the purposes of investment tax credits (ITCs), includes certain prescribed buildings, machinery and equipment that is used primarily for activities that are described therein. That definition is amended in two respects.

First, new paragraph 127(9)(c.1) is added to extend the definition "qualified property" to property used in Canada primarily for the purpose of producing or processing electrical energy or steam in a prescribed area. This treatment is conditional on certain conditions being satisfied in respect of the energy or steam. In particular, all or substantially all of the energy or steam is to be: a) used by the taxpayer for the purpose of producing income from a business (other than the business of selling the product of the particular property), or b) sold directly (or indirectly by way of sale to a provincially regulated power utility operating in the prescribed area) to a related person. Further, the energy or steam is to be used by the taxpayer or a person related to the taxpayer primarily for the purpose of manufacturing or processing goods in the prescribed area for sale or lease. The areas that are to be prescribed are the provinces of Newfoundland, Nova Scotia, New Brunswick and Prince Edward Island and the Gaspé Peninsula. This amendment applies to property acquired after 1991.

Second, paragraph (d) of the definition "qualified property" describes certain property that is leased by a taxpayer to a lessee who may reasonably be expected to use the property in Canada primarily for any of the purposes referred to in subparagraphs (c)(i) to (xiii) (e.g., fishing). However, this treatment does not apply to leased property of the taxpayer unless, among other things, the property is leased in the ordinary course of carrying on a business

in Canada by a corporation whose principal business is leasing property.

Paragraph (d) of the definition "qualified property" is amended to add new subparagraph (iv). Subparagraph (iv) extends eligibility of leased property for ITC treatment to property that is a fishing vessel (including its furniture, fittings and equipment) leased by an individual (other than a trust) to a corporation controlled by the individual that carries on a fishing business in connection with one or more commercial fishing licenses issued by the Government of Canada to the individual. This amendment ensures that those fishermen who are required by government fishing policy to hold their licenses and vessels personally, but for commercial reasons carry on their fishing activities through a controlled corporation, may qualify for ITCs in respect of their fishing vessels. This amendment applies to 1985 and subsequent taxation years.

Clause 51

Changes in Residence

ITA
128.1 and 128.2

New section 128.1 of the Act sets out the income tax effects of becoming or ceasing to be resident in Canada. For the most part, section 128.1 simply consolidates and clarifies the rules in existing sections 48 and 88.1 of the Act, both of which are to be repealed with the enactment of the new section. There are, nonetheless, some respects in which section 128.1 differs from its predecessors. Both the new features of section 128.1 and its correspondence to the existing provisions are described in the detailed commentary below.

New section 128.2 of the Act ensures that appropriate tax results obtain where two or more corporations residing in different countries are merged or otherwise reorganized to form a single corporation.

Sections 128.1 and 128.2 apply after 1992, although they may also apply before that time to corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Immigration

ITA
128.1(1)

New subsection 128.1(1) of the Act provides rules that apply when a taxpayer becomes resident in Canada. The time at which residence is adopted is referred to in subsection 128.1(1) as "the particular time", and the events deemed under this subsection to take place on the acquisition of residence are timed by reference to that moment.

The first event triggered by a taxpayer's immigration is the deemed year-end described in paragraph 128.1(1)(a). The taxation year of an immigrating corporation or trust is deemed to have ended immediately before the taxpayer becomes resident in Canada (that is, immediately before the particular time), and a new year is deemed to have commenced at the particular time. No year-end is provided for individuals other than trusts.

Secondly, paragraph 128.1(1)(b) treats the taxpayer as having disposed of each property owned by the taxpayer, other than certain specified properties, for proceeds equal to the property's fair market value. This disposition is deemed to have taken place immediately before the time immediately before the taxpayer becomes resident in Canada. Corporations and trusts, whose taxation year is deemed under paragraph 128.1(1)(a) to have ended, will therefore realize any gain or loss in a year during which they were non-resident. It should be noted that subsection 128.1(1) applies for the purposes of the Act; as a result, this deemed disposition and the accompanying deemed reacquisition may later affect the valuation of the immigrating taxpayer's property for capital cost allowance and inventory purposes, as well as for purposes of computing any capital gain or loss.

The properties exempt from a deemed disposition on immigration under paragraph 128.1(1)(b) are essentially those properties which were, ignoring any relevant tax treaty, already subject to tax in this country. In this category are taxable Canadian property, Canadian business inventory, and eligible capital property in respect of a Canadian business. In addition, a taxpayer who elected on an earlier emigration not to be deemed to have disposed of a given property will not be deemed to have disposed of that property on moving back to Canada.

Third, paragraph 128.1(1)(d) provides that where the immigrating taxpayer was a foreign affiliate of a taxpayer resident in Canada, that affiliate is deemed to have been a controlled foreign affiliate of that other taxpayer immediately before the particular time, and a prescribed amount is included in the affiliate's foreign accrual property income for the year deemed to have ended at that time. This provision is comparable to the existing subsection 48(5) of the

Act, and it is intended that consequential changes be made to subsection 5907(13) of the Regulations to reflect the replacement of subsection 48(5) with paragraph 128.1(1)(d).

Finally, subsection 128.1(1) treats an immigrating taxpayer as having reacquired each of the properties deemed to have been disposed of. Paragraph 128.1(1)(c) treats each of those properties as having been acquired, at a cost equal to its proceeds of disposition, at the particular time.

Immigration – paid-up capital

ITA
128.1(2) and (3)

Subsections 128.1(2) and (3) of the Act establish certain limits on the paid-up capital in respect of any class of the shares of a corporation that has immigrated to Canada. In general, subsection 128.1(2) is designed to ensure that an immigrating corporation's paid-up capital will not exceed the difference between the cost of its assets (as determined for Canadian tax purposes) and its outstanding liabilities. Subsection 128.1(3) restores any reduction in paid-up capital under subsection 128.1(2) to the extent that that reduction has previously been recognized as a deemed dividend on the shares in question.

Subsection 128.1(2) provides for a deduction from the paid-up capital in respect of any particular class of a corporation's shares. The deduction is computed, according to a formula, as a proportion of the difference between two amounts. The first amount is the total of:

- the corporation's total paid-up capital (determined without reference to subsection 128.1(2));
- the corporation's liabilities; and
- any Part XIV investment allowance claimed by the corporation for its last taxation year.

The second amount is the total of:

- the corporation's deemed cost of properties under paragraph 128.1(1)(c);
- the cost amount of its other properties;
- the amount of what are commonly referred to as "resource pools"; and

- the paid-up capital in respect of its shares of connected Canadian corporations.

Where the first amount exceeds the second amount, a pro-rata portion of the difference is deducted from the paid-up capital in respect of any particular class of the corporation's shares.

New subsection 128.1(3) of the Act ensures that subsection 128.1(2)'s adjustments to the paid-up capital of a class of shares do not provide an inappropriate result where, because of a share redemption or reduction in paid-up capital, subsection 84(3), (4) or (4.1) of the Act subsequently treats the corporation as having paid a dividend on those shares. Where a deemed dividend arises on, for example, the redemption of some of the shares of a corporation subject to the subsection 128.1(2) adjustment, subsection 128.1(3) will provide for an addition to paid-up capital, such that the effect of the adjustment will remain constant in respect of the paid-up capital of the shares still outstanding.

Emigration

ITA
128.1(4)

New subsection 128.1(4) of the Act establishes a set of rules that apply to a taxpayer who ceases to be resident in Canada. These rules are largely symmetrical to the rules applied in new subsection 128.1(1) of the Act on becoming resident.

The time at which the taxpayer ceases to be resident in Canada is referred to, both in subsection 128.1(4) itself and in these notes, as the "particular time": the timing of other events provided for in subsection 128.1(4) is established by reference to that moment.

As is the case of one who becomes resident in Canada, a taxpayer who ceases to be resident in Canada is treated as having disposed of property at the time immediately before the time immediately before the particular time, for proceeds equal to the property's fair market value. This deemed disposition, provided for by paragraph 128.1(4)(b), parallels the existing rule in section 88.1 in that it extends to all property where the taxpayer is not an individual. Where the taxpayer is an individual, certain types of property are exempted from the deemed disposition. These are, broadly speaking, types of property in respect of which Canada can expect to tax any gain realized on a later actual disposition. More specifically, the property not subject to the paragraph 128.1(b) deemed disposition where an individual becomes non-resident includes taxable Canadian property, property used in a Canadian business, and rights to receive pension or similar payments.

Where the emigrant taxpayer is an individual other than a trust, the taxpayer may choose to vary the deemed disposition provided under

paragraph 128.1(4)(b). First, under subparagraph 128.1(1)(b)(iv) the taxpayer may elect not to be treated as having disposed of any of the taxpayer's capital property, provided the taxpayer gives the Minister of National Revenue adequate security for any tax foregone as a result. Such property is, under paragraph 128.1(4)(e), treated as taxable Canadian property until it is disposed of or the taxpayer again becomes resident in Canada. This election parallels the one in existing paragraph 48(1)(c) of the Act. Secondly, the taxpayer may elect under paragraph 128.1(4)(d) to be treated as having disposed of any property that would otherwise be exempt from the deemed disposition. This optional disposition may be compared to the result provided in existing paragraph 48(1)(a). Each of these new elections must be made in prescribed manner on or before the taxpayer's balance-due day for the taxation year that includes the particular time. It should also be noted that paragraph 128.1(4)(f), which is described more fully below, limits the extent to which losses may be created using the elections.

A further exception to the general rule that treats an emigrating taxpayer as having disposed of all the taxpayer's property is found in subparagraph 128.1(4)(b)(v). Where an individual other than a trust was resident in Canada for a total of no more than 60 months over the past 10 years, that individual is not treated as having disposed of any property owned when the individual last became resident here, or acquired by inheritance or bequest.

Immediately after the deemed disposition of the emigrating taxpayer's property –and thus immediately before the particular time – paragraph 128.1(4)(a) treats the taxpayer's taxation year as having ended, where the taxpayer is a corporation or a trust. A new year is deemed to have commenced at the particular time. This provision duplicates the result of existing section 88.1, and applies that result to trusts as well as to all corporations.

The final event deemed by new subsection 128.1(4) is the reacquisition by the taxpayer, at the particular time, of the property the taxpayer was deemed to have disposed of. Paragraph 128.1(4)(c) provides that the taxpayer will be treated as having reacquired that property at a cost equal to its proceeds of disposition.

As mentioned above, paragraph 128.1(4)(f) imposes limits on the use that may be made of the elective dispositions (and non-dispositions) of property made available to emigrant individuals other than trusts. These limits are designed to ensure that neither the optional exemption of a property under subparagraph 128.1(4)(b)(iv) nor its optional disposition under paragraph 128.1(4)(d) may be used to realize a loss exceeding any income or gain realized by the taxpayer on the disposition deemed to occur.

Where a taxpayer has elected under subparagraph 128.1(4)(b)(iv) or paragraph 128.1(4)(d), subparagraph 128.1(4)(f)(i) fixes a floor under the taxpayer's income for the taxation year in which the taxpayer ceased to be resident in Canada. The taxpayer's income is deemed to be the greater of (1) that income otherwise determined; and (2) the lesser of two amounts. The first amount is what the taxpayer's income would have been in the absence of subsection 128.1(4); the second amount is what the taxpayer's income would have been if the taxpayer had not chosen to vary the disposition by making an election. A similar rule in subparagraph 128.1(4)(f)(ii) limits the amount of the taxpayer's losses for that taxation year. Under this rule, the amount of any loss will be restricted to the lesser of: (A) the amount of the loss otherwise determined; and (B) the greater of: (I) the amount that the loss would be if subsection 128.1(4) did not apply; and (II) the amount that it would be if subsection 128.1(4) did apply, but the taxpayer had made no elections.

Cross-border mergers

ITA
128.2

Some corporate law systems allow the reorganization of corporations resident in different jurisdictions to form a single corporation. The tax consequences of such a reorganization may be uncertain, since the new corporation may be treated as a continuation of both a predecessor corporation resident in Canada, and a non-resident predecessor corporation. To clarify this situation, new section 128.2 of the Act treats all predecessor corporations as having had – or having adopted – the same residency status as the amalgamated corporation.
Subsection 128.2(1) provides that where a corporation formed by any reorganization in respect of two or more predecessors is resident in Canada, any predecessor that was not, before the reorganization, itself resident in Canada is deemed to have become resident here immediately before the reorganization. Similarly, subsection 128.2(2) provides that a Canadian-resident predecessor is deemed to have become non-resident immediately before its reorganization into a new non-resident corporation.
Subsection 128.2(3), meanwhile, ensures that these rules do not apply to reorganizations occurring solely as a result of the acquisition by one corporation of another corporation's property, whether by way of purchase or on a winding-up of that other corporation.

Clause 52

Credit Unions

ITA
137(4.1) and (4.2)

Subsections 137(4.1) and (4.2) of the Act provide rules relating to the treatment of amounts paid or payable by a credit union in respect of a share of its capital stock. Subsection 137(4.1) provides that where such an amount (or in the case of an amount paid on the redemption, acquisition or cancellation of a share, the amount in excess of the paid-up capital of the share) is paid to a member of the credit union, the amount is treated as interest, rather than a dividend. Subsection 137(4.2) provides that subsections 84(2), (3) and (4) of the Act do not apply to deem an amount paid by a corporation that is a credit union, to any of its shareholders, to be a dividend.

Subsection 137(4.1) is amended to provide that an amount paid or payable by a credit union in respect of a share of its capital stock (or in the case of an amount paid on the redemption, acquisition or cancellation of the share, the amount in excess of the paid-up capital of the share), to a member of the credit union, will be deemed to be interest only where the share is not listed on a prescribed stock exchange. Consequential to this change, subsection 137(4.2) is amended to provide that, notwithstanding any other provision of the Act, an amount that is deemed to be interest under subsection 137(4.1) is deemed not to be a dividend. Accordingly, where, for example, a credit union redeems a share from a non-member, or redeems a share that is listed on a prescribed stock exchange from a member, subsection 84(4) will now apply to the redemption. However, subsection 84(4) will not apply to a payment that is made by a credit union, to a member of the credit union, in respect of a share of its capital stock that is not listed on a prescribed stock exchange. It is proposed that those stock exchanges listed in section 3200 of the *Income Tax Regulations* be prescribed for the purposes of subsection 137(4.1) of the Act.

These amendments apply to transactions occurring after ANNOUNCEMENT DATE.

Clause 53

Subsidiary of Deposit Insurance Corporation

ITA
137.1(5.1)

Section 137.1 of the Act sets out rules relating to the taxation of deposit insurance corporations and their member institutions. Subsection 137.1(5.1) treats subsidiary wholly-owned corporations of deposit insurance corporations as being deposit insurance corporations for the purposes of that section, subject to certain enumerated exceptions, such as subsection 137.1(11). Paragraph 137.1(11)(b) provides that a member institution may deduct, in computing its income for a taxation year in which it repays to a deposit insurance corporation assistance received by it in a previous year, the amount of any such repayment, to the extent that the member institution has not chosen to exclude the repaid assistance from its income for that previous year by filing an amended return under subsection 137.1(12) of the Act.

Subsection 137.1(5.1) is amended, applicable to 1992 and subsequent taxation years, to change the reference therein to subsection (11) to a reference to paragraph (11)(a). This amendment ensures that the deduction provided under paragraph 137.1(11)(b) will be available where assistance is repaid by a member institution to a subsidiary wholly-owned corporation of a deposit insurance corporation.

Clause 54

Communal Organizations

ITA
143(1)(k)

Section 143 of the Act governs the taxation of communal organizations that do not permit members to own property in their own right. Subsection 143(1) provides that, where such a communal organization or one or more business agencies (corporations, trusts or other persons) that it manages or controls carries on business in support of its members, an *inter vivos* trust is deemed to exist. Paragraph 143(1)(d) deems the property of the communal organization and all its business agencies to be the property of the trust. Paragraph 143(1)(g) deems the communal organization and all its business agencies to act as agents for the trust in all matters relating to their business and other activities.

Paragraph 143(1)(k) of the Act is introduced to ensure that, where a communal organization (or one of its business agencies) is a corporation, the rules in paragraph 143(1)(d) and (g) will not preclude the corporation from issuing "small business development bonds" under section 15.1 of the Act. However, if the corporation is not an "eligible small business corporation" (as defined in subsection 15.1(3)) or fails to use proceeds from the issue of a bond in the manner described in subparagraph 15.1(1)(c)(ii), a trust deemed to exist pursuant to subsection 143(1) will be required to report additional amounts of income pursuant to paragraph 15.1(1)(c) and subsection 15.1(5).

This amendment applies to 1992 and subsequent taxation years.

Clause 55

Employees Profit Sharing Plans

ITA
144

Section 144 of the Act provides rules applicable to "employees profit sharing plans" (EPSPs). An EPSP is defined in subsection 144(1). Under subsection 144(2), no tax is payable by an EPSP.

Subclause 55(1)

ITA
144(1) and (2)

An EPSP is defined in subsection 144(1) of the Act as an arrangement under which payments computed by reference to an employer's profit (or the profit from the business of a corporation with which the employer does not deal at arm's length) are made by the employer to a trustee under the arrangement. In addition, subsection 144(1) requires the trustee, contingently or absolutely:

- to allocate to employees all amounts received by the trustee from the employer (or a corporation with which the employer does not deal at arm's length),
- to allocate to employees all profits from trust property (computed without reference to capital gains or losses),
- to allocate to employees all capital gains and losses of the trust, and

- to reallocate to employees all amounts previously included in a former beneficiary's income by reason of a contingent allocation to the former beneficiary, where the former beneficiary has forfeited his or her right to the amount contingently allocated and, as a consequence, is deemed by subsection 144(9) to have paid an amount on account of tax under Part I of the Act.

Subsection 144(1) is amended to clarify that such allocations and reallocations are required to be made on an ongoing annual basis.

Subsection 144(1) is also amended to clarify that an individual who ceases to be an employee of an employer is not required to forfeit any amount under the employer's EPSP by reason of ceasing to be an employee. This clarification is achieved by eliminating the present closing words to subsection 144(1).

Amended subsection 144(1) provides that the rule concerning the reallocation referred to above makes a reference to amended subsection 144(9), which provides a former beneficiary who forfeits an amount under an EPSP with a deduction rather than a deemed payment of tax.

Finally, subsection 144(1) is amended to eliminate specific references to "officers". This amendment is appropriate because "officers" are considered to be "employees" for the purposes of the Act. (See the definition of "employee" in subsection 248(1) of the Act.)

Subsection 144(2) of the Act is amended so that no tax is payable by a trust governed by an EPSP on the taxable income of the trust for a taxation year only if the trust was governed by the EPSP throughout the year.

The amendments to subsection 144(1) apply to 1992 and subsequent taxation years. However, because the existing definition might be construed so that profits and gains need not be allocated before paid out, a transitional rule will treat such amounts paid out before 1993 as having been allocated. The amendment to subsection 144(2) applies to 1993 and subsequent taxation years.

Subclauses 55(2) and (3)

ITA
144(3) and (8.2)

Under subsection 144(1) of the Act, the trustee of an EPSP is required to allocate profits from trust property (including interest) to employees. Subsection 144(8.2) (read in conjunction with paragraph 144(3)(f)) provides that interest included in computing the income of a trust governed by an EPSP for a year is treated as interest income of a beneficiary under the trust, to the extent that

the trust allocates such interest income in favour of that beneficiary. The flow-through of interest income was relevant for the purposes of the $1,000 investment income deduction, which was provided under former section 110.1 of the Act.

Subsection 144(8.2) and paragraph 144(3)(f) are repealed. As a consequence, interest income of a trust allocated to a beneficiary is included in the beneficiary's income pursuant to subsection 144(3) without any flow-through of the character of that income.

These amendments apply to 1992 and subsequent taxation years, except that a beneficiary may elect that these amendments not apply to the 1992 taxation year by notifying the Minister of National Revenue by the end of the sixth month after the month in which Royal Assent to these amendments occurs.

Subclause 55(4)

ITA
144(9) and (10)

Subsection 144(9) of the Act applies where an employee ceases to be a beneficiary under a trust governed by an EPSP and, as a consequence, forfeits his or her entitlement to amounts previously allocated by the trustee of the trust and included in computing the employee's income. In these circumstances, the employee is deemed under the existing Act to have paid 15% of the forfeited amount on account of federal income tax under Part I.

Subsection 144(9) is amended to eliminate the 15% deemed payment. Instead, amended subsection 144(9) provides that an employee is entitled to deduct in computing income the full forfeited amount in these circumstances. Under paragraph 8(1)(o.1), this deduction is taken in computing the employee's income from employment.

This amendment applies to 1992 and subsequent taxation years, except that a beneficiary may elect that the amendment not apply to the 1992 taxation year by notifying the Minister of National Revenue by the end of the sixth month after the month in which Royal Assent to this amendment occurs. (It is not anticipated that the election will be widely used, as amended subsection 144(9) will provide significantly greater relief than the existing subsection in most cases.)

Subsection 144(10) of the Act allows an employer to elect to have an arrangement under which payments are stipulated to be made "out of profits" to be treated, for the purposes of the EPSP rules, as an arrangement under which payments are computed by reference to the profits of the employer. Thus, such an arrangement may

qualify as an EPSP provided the allocation and reallocation requirements set out in subsection 144(1) are satisfied.

Subsection 144(10) is amended so that its wording corresponds to amended subsection 144(1). This amendment applies to 1992 and subsequent taxation years.

Clause 56

Registered Retirement Savings Plans

ITA
146

Section 146 of the Act provides rules governing the treatment of registered retirement savings plans (RRSPs).

Subclause 56(1)

ITA
146(1)(h)

Paragraph 146(1)(h) of the Act defines "refund of premiums", which is relevant in determining the amount that, on the death of an annuitant under an RRSP, is included in computing a qualifying individual's income rather than the annuitant's income. In certain cases, the "refund of premiums" may be transferred by the qualifying individual under paragraph 60(l) to acquire a qualifying annuity, or to an RRSP or a RRIF. A "refund of premiums" under an RRSP in respect of a qualifying individual is an amount paid to the qualifying individual out of the RRSP as a consequence of the death of the RRSP annuitant. A spouse of the deceased annuitant is a qualifying individual unless the deceased annuitant died after the maturity of the plan. Financially dependent children and grandchildren of the deceased annuitant are qualifying individuals if the deceased annuitant had no spouse at the time of death.

Paragraph 146(1)(h) is amended to ensure that a "refund of premiums" does not include an amount previously taxed as a "benefit" under an RRSP. (Paragraph 146(1)(b) defines "benefit" for this purpose.) This could occur, for example, if the payment of a "refund of premiums" under a trust governed by an RRSP is significantly delayed and, as a consequence, the trust is taxed on trust income.

Paragraph 146(1)(h) is also amended to clarify the computation of a "refund of premiums" where an annuitant under an RRSP dies prior to its maturity, but the payment under the RRSP to a spouse of the annuitant is made after the date that the RRSP would otherwise have converted into an annuity. In these circumstances, amended

paragraph 146(1)(h) ensures that such payments are not disqualified as a "refund of premiums" to the surviving spouse.

Paragraph 146(1)(h) is further amended to clarify that an amount will qualify as a "refund of premiums" in respect of an RRSP only when the amount is paid out of the RRSP after the death of an annuitant under the RRSP.

These amendments apply with respect to deaths occurring after 1992.

Subclause 56(2)

ITA
146(4)(c)

Paragraph 146(4)(c) of the Act provides that tax is payable by a trust governed by an RRSP for taxation years after the taxation year in which the last annuitant under the RRSP dies.

Paragraph 146(4)(c) is amended so that tax is no longer payable by a trust governed by an RRSP for the taxation year immediately following the taxation year in which the last annuitant dies. Instead, tax will become payable in the second following taxation year.

This amendment applies to 1993 and subsequent taxation years.

Subclause 56(3)

ITA
146(5.1)

Subsection 146(5.1) of the Act sets out the rules governing the deductibility of premiums paid by a taxpayer to an RRSP under which the taxpayer's spouse is the annuitant. The deduction permitted for a taxation year is the undeducted portion of the taxpayer's post-1990 RRSP premiums, up to the portion of the taxpayer's RRSP deduction limit for the year that has not been used as the basis for the deduction of RRSP premiums paid by the taxpayer to RRSPs under which the taxpayer is the annuitant.

Subsection 146(5.1) is amended so that, where an individual dies in a taxation year, a deduction under the subsection may be claimed on behalf of the individual for the year for RRSP premiums paid on behalf of the individual to an RRSP under which the individual's widow or widower is the annuitant.

This amendment applies to 1992 and subsequent taxation years.

Subclause 56(4)

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 an individual's income that are in respect of certain non-deducted RRSP premiums paid by the individual to the individual's own RRSP or to a spousal RRSP.

Paragraph 146(8.2)(b) is amended to ensure that such non-deducted RRSP premiums do not include RRSP premiums paid by way of a transfer from prescribed provincial pension plans (i.e. the Saskatchewan Pension Plan) in circumstances to which new subsection 146(21) applies.

This amendment applies to 1992 and subsequent taxation years.

Subclause 56(5)

ITA
146(8.8)(b)

Subsection 146(8.8) of the Act provides that, where an individual dies, there is included in computing the individual's income the fair market value of the individual's RRSP assets at the time of the death minus "the portion thereof" that becomes receivable by the individual's spouse. If the RRSP has been converted into an annuity, the latter amount is determined on the assumption that the surviving spouse lives throughout any guaranteed terms contained in the annuity. The income inclusion determined under subsection 146(8.8) may, in certain cases, be reduced by the operation of subsection 146(8.9) of the Act (discussed below).

Paragraph 146(8.8)(b) is amended so that an amount is deducted thereunder in respect of an amount receivable by an RRSP annuitant's spouse only where the annuitant dies after the RRSP has matured into an annuity. Instead, amended subsection 146(8.9) provides for a reduction of the amount determined under subsection 146(8.8) where the annuitant dies before the RRSP matures into an annuity.

Subsection 146(8.8) is also amended to clarify that, in determining the income inclusion for a deceased annuitant, the amount deducted under that subsection is equal to the fair market value at the time of the annuitant's death of the portion of the RRSP property that becomes receivable by the individual's spouse.

These amendments apply with respect to deaths occurring after 1992.

Subclause 56(6)

ITA
146(8.9)

Subsection 146(8.9) of the Act provides a reduction of the amount otherwise included in a deceased RRSP annuitant's income for the year of death under subsection 146(8.8). Subsection 146(8.9) of the Act currently applies only in two cases. The first case is where an amount is paid out of an RRSP to the annuitant's estate that is deemed to be a "refund of premiums" because of a joint election under subsection 146(8.1) by the legal representative of the deceased annuitant and a qualifying beneficiary of the estate. The second case is where a child or grandchild is paid an amount that qualifies as a "refund of premiums". In these cases, such payments are deducted in computing the annuitant's income for the year of death.

Subsection 146(8.9) is amended so that it also applies in a third case, namely where a spouse of a deceased annuitant receives an amount that qualifies as a "refund of premiums". This amendment is strictly consequential on the first amendment to subsection 146(8.8) of the Act, described above. As a consequence, it is no longer necessary to distinguish in subsection 146(8.9) between "refunds of premiums" and deemed "refunds of premiums", as they are treated in the same manner under subsection 146(8.9).

Subsection 146(8.9) is also amended in order to minimize the effect of the growth of RRSP assets after the death of an RRSP annuitant on the calculation of the RRSP annuitant's income for the year of death. This amendment effectively provides that the amount deducted under this subsection in computing such income is reduced by post-death growth attributable to refunds of premiums. For this purpose, the total growth in RRSP assets after the death of an RRSP annuitant is considered to the amount, if positive, equal to:

- the total payments (referred to below as the "relevant payments") out of or under the RRSP after the annuitant's death and before the later of the end of the first calendar year commencing after the death and the time immediately after the distribution of all refunds of premiums,

- plus the fair market value of property of the RRSP at the later of the two times described above (referred to below as the "residual value", this amount will almost always be nil),

- minus the fair market value of all the property of the RRSP at the time of the annuitant's death.

The proportion of the total growth of an RRSP attributable to refunds of premiums in respect of the RRSP is considered to be that proportion that the total of such refunds under the RRSP is of the sum of the RRSP's residual value and the relevant payments under the RRSP. The example below illustrates the operation of this amendment.

EXAMPLE

Paul dies in 1993. He has an unmatured RRSP, with assets having a fair market value of $40,000 at the time of his death. One year after his death, the RRSP assets (now having a fair market value of $50,000) are paid to Paul's estate. Paul's widow and the legal representative of the estate make an election under subsection 146(8.1) to treat $30,000 of this amount as a refund of premiums for Paul's widow.

Result:

1. The income inclusion for Paul for the taxation year of his death is $16,000 by virtue of subsection 146(8.8) and amended subsection 146(8.9)
(40,000 - (30,000(1 - (50,000 - 40,000)/50,000)).

2. Paul's widow has an income inclusion of $30,000, although this income inclusion may be offset by virtue of a transfer of funds to which paragraph 60(l) of the Act applies.

3. The estate has an income inclusion of $4,000.
(50,000 - 16,000 - 30,000).

4. If the law were not amended, the income inclusions for Paul, Paul's widow and the estate would be $10,000, $30,000 and $10,000, respectively. The amendments thus have the effect of reallocating income inclusions on death and do not increase the total amounts included in computing income.

These amendments apply with respect to deaths occurring after 1992.

Subclause 56(7)

ITA
146(20)

Subsection 146(20) of the Act applies in the case of an RRSP that is a deposit with a financial institution. It provides that the mere crediting of interest in respect of that deposit does not constitute the receipt of that interest by the RRSP annuitant, provided that the annuitant is alive in the year in which the interest is credited.

Subsection 146(20) is amended in two respects. First, it is amended so that it also applies to the year following the year in which the annuitant died. Second, amended subsection 146(20) prevents an income inclusion by such crediting for a person other than the RRSP annuitant (i.e., the RRSP annuitant's estate or heirs). The amendments to subsection 146(20) are consistent with the amendments on death with respect to trusteed RRSPs in paragraph 146(4)(c) of the Act and with amended subsection 7000(6) of the *Income Tax Regulations*.

These amendments apply with respect to deaths occurring after 1992.

Subclause 56(8)

ITA
146(21)

New subsection 146(21) of the Act allows lump sum amounts from prescribed provincial pension plans (i.e. the Saskatchewan Pension Plan) to be transferred directly from such a plan on behalf of an individual to RRSPs or RRIFs under which the individual is an annuitant. Such amounts may also be transferred to RRSPs or RRIFs under which the individual's spouse or former spouse is the annuitant, if the two individuals are living separate and apart and the payment or transfer is made under a judicial order or decree or a written separation agreement relating to a division of property between the two individuals on the breakdown of their relationship. In addition, such amounts may be transferred to acquire an annuity described in paragraph 60(l) of the Act for the benefit of the individual or, where the annuity is acquired in connection with a division of property described above, the individual's spouse or former spouse.

In these circumstances, new subsection 146(21) generally provides that the transferred amount is not included in an individual's income and no deduction in computing the individual's income may be made with respect to the transferred amount. However, new subsection 146(21) does not apply in respect of the transfer of benefits arising as a consequence of the death of any individual

(other than the individual on whose behalf the transfer is made, or the spouse or former spouse of such individual).

For the purposes of new subsection 146(21), a spouse includes a common-law spouse. After 1992, this is a result of the application of subsection 252(4) of the Act. In 1992, this is a result of the application of subsection 146(1.1) of the Act, which is being repealed as a consequence of the introduction of subsection 252(4).

This amendment applies to transfers occurring after 1991. However, where a taxpayer has elected to have existing paragraph 60(l) apply in respect of a transfer in 1992, the amendment applies in respect of transfers made on behalf of the taxpayer after 1992.

Clause 57

Home Buyers' Plan

ITA
146.01(1)

Subsection 146.01(1) of the Act sets out definitions which apply for the purposes of the Home Buyers' Plan. An "excluded premium" is a specified type of RRSP contribution. Under subsection 146.01(3), an excluded premium is not allowed to be treated as a repayment of an amount withdrawn under the Home Buyers' Plan. Under subsection 146.01(9), this type of RRSP contribution may be made by an individual without resulting in an income inclusion for an individual who has made an RRSP withdrawal under the Home Buyers' Plan.

The definition of "excluded premium" is amended so that amounts transferred directly from a prescribed provincial pension plan (i.e. the Saskatchewan Pension Plan) to an RRSP are included within the definition.

This amendment applies to 1992 and subsequent taxation years.

Clause 58

Registered Retirement Income Funds

ITA
146.3

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

Subclause 58(1)

ITA
146.3(1)(b.01)

The introduction of the new definition "designated benefit" in paragraph 146.3(1)(b) of the Act is discussed in the commentary on the amendments to subsections 146.3(6.1) and (6.11).

Subclause 58(2)

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 such a fund from receiving property, other than property transferred from sources listed in that paragraph.

Paragraph 146.3(2)(f) is amended, applicable after 1991, so that a retirement income fund of which an individual is the annuitant may receive property transferred directly from a prescribed provincial pension plan (i.e. the Saskatchewan Pension Plan) in circumstances to which new subsection 146(21) applies.

Subclause 58(3)

ITA
146.3(3.1)

Subsection 146.3(3.1) of the Act provides that the income tax exemption for trusts governed by RRIFs ends after the year in which the last annuitant under the RRIF dies.

Subsection 146.3(3.1) is amended so that the exemption is extended until the end of the year immediately following the year in which the last annuitant under the RRIF dies. This is consistent with a similar amendment to paragraph 146(4)(c), dealing with the income tax exemption for trusts governed by RRSPs.

This amendment applies to 1993 and subsequent taxation years.

Subclause 58(4)

ITA
146.3(6)

Subsection 146.3(6) of the Act provides that, where an individual who is the last annuitant under a RRIF dies, there is included in computing the individual's income the fair market value of the

individual's RRIF assets at the time of the death minus "the portion thereof" that becomes receivable by the individual's spouse. The income inclusion otherwise determined under subsection 146.3(6) may, in certain cases, be reduced by the operation of subsection 146.3(6.2) of the Act (discussed below). In addition, subsection 146.3(6) has no application should the deceased individual's spouse become the annuitant under the RRIF as contemplated in the definition of "annuitant" in subsection 146.3(1) of the Act.

Subsection 146.3(6) is amended so that no amount is deducted under that subsection in respect of an amount receivable by a spouse of the last annuitant under a RRIF. Instead, amended subsection 146.3(6.2) provides for a reduction of the amount otherwise determined under subsection 146.3(6) where an amount becomes receivable by the annuitant's spouse. These amendments are parallel to amendments to subsections 146.3(6) and (8.9) of the Act.

This amendment applies with respect to deaths occurring after 1992.

ITA
146.3(6.1) and (6.11)

Subsection 146.3(6.1) of the Act provides that an amount paid out of a RRIF to the last annuitant's legal representative after the death of the RRIF annuitant will, as a consequence of a joint election by the legal representative and the beneficiary, be treated in the hands of the beneficiary as a "benefit" that is a "refund of premiums" under an RRSP, provided that the amount so paid out would have qualified as a "refund of premiums" if the RRIF had been an RRSP. As a result, such deemed "refunds of premiums" are included under the existing rules in a beneficiary's income pursuant to subsection 146(8) and, in certain cases, may be transferred by the beneficiary pursuant to paragraph 60(l) of the Act. The reference to the "refund of premiums" rule ensures that children and grandchildren of the last annuitant will be the subject of an election under subsection 146.3(6.1) only if they were financially dependent on the last annuitant and the last annuitant had no spouse at the time of death.

Paragraph 146.3(1)(b.01) of the Act introduces the definition of "designated benefit". A "designated benefit" of an individual is one of two types of RRIF distributions. The first type of distribution is the type of distribution currently described in subsection 146.3(6.1) that is the subject of a joint election made by the individual and the legal representative of the last annuitant under a RRIF, except that the new definition ensures that such an election is available to a surviving spouse in the event that such spouse does not become an annuitant under the RRIF. The second type of distribution is a distribution from the RRIF made directly to a spouse, child or grandchild of the last annuitant that would have qualified as a

"refund of premiums" if the RRIF had been an RRSP which had not yet matured.

Subsection 146.3(6.1) is amended so that the first type of "designated benefit" of a beneficiary is treated as a RRIF distribution made directly to the beneficiary, rather than as a "refund of premiums". As a consequence, the designated benefit would generally be included in the beneficiary's income under subsection 146.3(5) of the Act rather than in the income of the deceased's estate. (However, paragraph 146.3(5)(b) prevents double taxation in the unusual case that a trust governed by a RRIF makes a distribution of already-taxed income.)

Subsection 146.3(6.11) of the Act is introduced to allow part of a designated benefit (referred to below as an "eligible amount") of an individual in respect of a RRIF to be transferred by the individual, directly or indirectly, to an RRSP, RRIF or annuity issuer under paragraph 60(l). This amendment is, in part, consequential on amendments to subsections 146.1(6.1) and (6.2) under which RRIF distributions are no longer characterized as "refunds of premiums". The amendment also ensures that the eligible amount must be determined with reference to the minimum amount under the RRIF for the year. In addition, the amendment also ensures that the spouse of the last annuitant is able to transfer RRIF distributions (whether or not such distributions are transferred directly to another RRIF, an RRSP or an annuity issuer.)

More specifically, new subsection 146.3(6.11) provides that an "eligible amount" of an individual in respect of a RRIF for the purposes of paragraph 60(l) for a taxation year is nil, unless the individual is the spouse of the last annuitant under the fund or is a child or grandchild of the last annuitant who was dependent on the annuitant by reason of physical or mental infirmity. (The infirmity requirement is consistent with existing clause 60(l)(v)(B).) In the latter two cases, the eligible amount of the individual in respect of the fund for a taxation year is the "designated benefit" of the individual in respect of the RRIF for the year minus a specified proportion of the "designated benefit". The specified proportion is equal to the minimum amount under the fund for the year (other than any portion thereof included in computing the income of an annuitant under the fund for the year) divided by the total "designated benefits" in respect of the fund for the year.

These amendments apply with respect to deaths occurring after 1992.

ITA
146.3(6.2)

Subsection 146.3(6.2) of the Act provides a reduction of the amount included in a deceased RRIF annuitant's income for the

year of death under subsection 146.3(6). The reduction provided under subsection 146.3(6.2) currently applies only in two cases. The first case is where an amount is paid out of a RRIF to the annuitant's estate that, because of a joint election by the legal representative of the deceased annuitant and a qualifying beneficiary of the estate, is deemed to be paid to the qualifying beneficiary. The second case is where a child or grandchild is paid an amount that would qualify as a "refund of premiums" if the RRIF had been an RRSP. In these cases, such payments are deducted in computing the annuitant's income for the year of death. Subsection 146.3(6.2) also currently provides that the latter amount paid to a child or grandchild is deemed to be a "refund of premiums" under an RRSP, thus allowing a transfer of such amount under paragraph 60(l) by the child or grandchild in some cases.

Subsection 146.3(6.2) is amended (in conjunction with the introduction of the definition "designated benefit" in subsection 146.3(1) of the Act) so that it applies to a RRIF annuitant in all cases where there is a "designated benefit" of an individual in respect of the RRIF. In particular, the amended subsection now also applies where a spouse of a deceased annuitant receives a RRIF distribution. This amendment is consequential on the first amendment to subsection 146.3(6), described above.

Subsection 146.3(6.2) is also amended in order to minimize the effect of the growth of RRIF assets after the death of last annuitant on the calculation of the last annuitant's income for the year of death. This amendment effectively provides that the amount deducted under this subsection in computing such income is reduced by post-death growth attributable to "designated benefits". For this purpose, the total growth in RRIF assets after the death of the last annuitant is considered to the amount, if positive, equal to:

- the total payments (referred to below as the "relevant payments") out of the RRIF after the last annuitant's death and before the later of the time immediately after the distribution of all "designated benefits" and the end of the first calendar year commencing after the last annuitant's death,

- <u>plus</u> the fair market value of property of the RRIF at the later of the two times described above (referred to below as the "residual value", this amount will almost always be nil),

- <u>minus</u> the fair market value of all the property of the RRIF at the time of the annuitant's death.

The proportion of the total growth of a RRIF attributable to designated benefit is considered to be the proportion that designated benefits in respect of the RRIF is of the sum of the RRIF's residual value and the relevant payments under the RRIF. The operation of a similar amendment to the RRSP rules is illustrated in the commentary to amended subsection 146(8.9) of the Act.

Subsection 146.3(6.2) is also amended so that RRIF distributions to children and grandchildren are not deemed to be "refunds of premiums". Such amounts will, instead, be treated as RRIF distributions which are generally included in income under subsection 146.3(5). However, new subsection 146.3(6.11) of the Act does allow all or part of such amounts to be transferred under paragraph 60(l) in cases of physical or mental infirmity.

These amendments apply in respect of deaths occurring after 1992.

Subclause 58(5)

ITA
146.3(15)

Subsection 146.3(15) of the Act applies in the case of an RRIF that is a deposit with a financial institution. It provides that the mere crediting of interest in respect of that deposit does not constitute the receipt of that interest by the RRIF annuitant, provided that the annuitant is alive in the year in which the interest is credited.

Subsection 146.3(15) is amended in two respects. First, it is amended so that it also applies to the year following the year in which the annuitant died. Second, amended subsection 146.3(15) prevents an income inclusion by such crediting for a person other than the RRSP annuitant (i.e. the RRSP annuitant's estate or heirs). The amendments to subsection 146.3(15) are consistent with the amendments on death with respect to trusteed RRSPs in subsection 146.3(3.1) of the Act and with amended subsection 7000(6) of the *Income Tax Regulations*. The amendments are also consistent with amendments to a similar rule with respect to RRSPs in subsection 146(20).

These amendments apply in respect of deaths occurring after 1992.

Clause 59

Life Insurance Policies

ITA
148(1)(e)

Subsection 148(1) of the Act requires the inclusion in income of certain amounts from the disposition of a life insurance policy (including annuities), with certain exceptions. Paragraph 148(1)(e) excepts from this rule income from the disposition of an annuity the cost of which was deductible under paragraph 60(l).

Paragraph 148(1)(e) is amended to extend this exception to annuities acquired in circumstances to which subsection 146(21) of the Act applies. This subsection allows amounts to be transferred from prescribed provincial pension plans to acquire an annuity described in paragraph 60(l) of the Act.

This amendment applies to dispositions occurring after August 1992.

Clause 60

Charities

ITA
149.1

Section 149.1 of the Income Tax Act sets out the rules relating to charities that must be registered by the Minister of National Revenue.

Subclauses 60(1), (2), (3) and (5)

ITA
149.1(1), (2) and (21)

Paragraph 149.1(1)(e) of the Act contains the definition of "disbursement quota" that applies to charitable foundations. Parts of this definition also apply to charitable organizations, as provided for in subsection 149.1(2) of the Act. The disbursement quota rules require that both charitable foundations and organizations annually spend a specified proportion of the donations for which they issue tax receipts and, in the case of foundations, a specified percentage of the value of investment assets, on charitable activities or gifts to other charities.

Certain types of donations to charities may not be available to be spent during the year in which they are donated. For this reason, gifts of capital received through bequests or inheritances, and gifts received subject to binding instructions that they not be spent for at least ten years are excluded from the disbursement quota calculation in the year of receipt. However, such gifts may ultimately be spent by a charity at a future time and it is appropriate that, at such a time, these gifts be included in the disbursement quota calculation.

New subparagraph 149.1(1)(e)(i.1) of the Act ensures that gifts that have been previously excluded from the disbursement quota are added back into the calculation when they are actually spent by a charity. This subparagraph is effective for years beginning after 1992.

Consequential amendments are also being made to clause 149.1(1)(e)(iv)(B), and paragraphs 149.1(2)(b) and (21)(c) of the Act to include references to new subparagraph 149.1(1)(e)(i.1).

Subclause 60(4)

ITA
149.1(8)

Subsection 149.1(8) of the Act allows a charity that obtains approval from the Minister of National Revenue to accumulate property for a particular purpose. Property so accumulated by a charity in any year is deemed to have been expended in that year on charitable activities carried on by the charity. This condition is necessary to ensure that a charity may still meet the disbursement quota that it is subject to under the provisions of paragraph 149.1(1)(e) of the Act while it is accumulating such property.

This amendment to subsection 149.1(8) provides that accumulated property will be deemed not to have been expended by a charity in any year other than the year in which the property is accumulated. This amendment recognizes that, because accumulated property is deemed to be expended in the year it is accumulated, it is not appropriate to provide a subsequent counting of the same property in a charity's disbursement quota calculation in the year when the accumulated property is actually expended.

This amendment applies to years beginning after 1992.

Clause 61

Assessments and Reassessments

ITA
152

Section 152 of the Act contains rules relating to assessments and reassessments of tax, interest and penalties payable by a taxpayer and to determinations and redeterminations of tax deemed to have been paid by a taxpayer.

Subclause 61(1)

ITA
152(1)(b)

Subsection 152(1) of the Act requires the Minister of National Revenue to assess a person's income tax and to determine the

amount of tax deemed to have been paid by the person under subsection 144(9) and other provisions of the Act on account of the person's income tax.

Paragraph 152(1)(b) is amended to delete the reference to subsection 144(9), strictly as a consequence of the amendment to that subsection. This amendment applies to 1993 and subsequent taxation years.

Subclause 61(2)

ITA
152(1.2)

Subsection 152(1.2) of the Act contains rules that apply where the Minister of National Revenue makes a determination of a taxpayer's non-capital loss, net capital loss or restricted farm loss pursuant to subsection 152(1.1) of the Act or a determination with respect to amounts, such as a modification to the adjusted cost base of a property and the paid-up capital of a share, as a consequence of the application of the general anti-avoidance rule in section 245 of the Act. This amendment to subsection 152(1.2), which applies to determinations and redeterminations made after 1992, is consequential on the amendments made previously to subsections 152(3.2), (3.3) and (4.2) to allow the Minister to make determinations and redeterminations of tax overpayments for the purposes of the child tax benefit.

Subclause 61(3)

ITA
152(4.2)(d)

Subsection 152(4.2) of the Act gives the Minister of National Revenue discretion to make redeterminations beyond the normal reassessment period of amounts deemed to have been paid by an individual under subsection 144(9) and other provisions of the Act, when so requested by the individual.

Subsection 152(4.2) is amended to delete the reference to subsection 144(9), strictly as a consequence of the amendment to that subsection.

This amendment applies to redeterminations made in respect of 1993 and subsequent taxation years.

Clause 62

Withholding

ITA
153(1)(m) and (m.1)

Subsection 153(1) of the Act authorizes the withholding of tax from any of the payments described in paragraphs 153(1)(a) to (r). Paragraph 153(1)(m) describes payments under the *Labour Adjustment Benefits Act* and paragraph 153(1)(m.1) describes payments made pursuant to an agreement under section 5 of the *Department of Labour Act*. The person making the payment is required to remit the tax withheld to the Receiver General on behalf of the payee.

This amendment to subsection 153(1) of the Act replaces paragraphs 153(1)(m) and (m.1) with new paragraph 153(1)(m). This amendment is consequential on the amendments to paragraph 56(1)(a) of the Act, which replace subparagraphs 56(1)(a)(vi) and (vii) with new subparagraph 56(1)(a)(vi), under which a prescribed benefit under a government assistance program is included in an individual's income.

The *Income Tax Regulations* will be amended to prescribe those benefits currently described in paragraphs 153(1)(m) and (m.1), as well as income assistance payments under the Plant Workers Adjustment Program and the Northern Cod Compensation and Adjustment Program for purposes of new subparagraph 56(1)(a)(vi) and new paragraph 153(1)(m) of the Act. This recognizes the existing treatment of such benefits, under which persons making these payments are withholding and remitting tax.

New paragraph 153(1)(m) applies to payments made after October 1991, the same time at which the amendments to subparagraphs 56(1)(a)(vi) and(vii) take effect. For further information, reference may be made to the commentary on those subparagraphs.

Clause 63

Election on Emigration

ITA
159(4) and (4.1)

Subsection 159(4) of the Act allows a taxpayer who has ceased to be resident in Canada to pay any tax resulting from the deemed disposition of property under section 48 of the Act in up to six annual instalments, provided the taxpayer gives the Minister of National Revenue adequate security. Subsection 159(4) is replaced by new subsections 159(4) and (4.1), which allow the same privilege with respect to dispositions under new subsection 128.1(4). Because existing section 88.1 excludes the operation of section 48, the election to pay instalments under existing subsection 159(4) is unavailable to most corporations; new subsection 159(4) confirms that the election is available only to individuals.

An election under new subsection 159(4) must be made in prescribed manner on or before the individual's balance-due day for the year in which the individual ceases to be resident in Canada. Subsection 159(4.1) provides that the first of the resulting instalments is due on that same day, with one subsequent instalment due on each anniversary of that day.

This amendment applies after 1992.

Clause 64

Late Filing Penalty for Charities

ITA
162(7)

Subsection 162(7) of the Act provides for penalties for failure to file an information return and for failure to comply with a duty or obligation imposed under the *Income Tax Act* or a regulation. The penalty for such a failure is the greater of $100 and $25 per day of default to a maximum of 100 days ($2,500). The penalty provided for under subsection 162(7) is only to apply in cases where no other penalty is provided for under the *Income Tax Act.*

Subsection 162(7) of the Act is amended to exclude charities that are registered under the Act from the application of this penalty. This amendment, which is effective on Royal Assent, is intended to clarify that, because such charities may be subject to revocation of their registered status and to tax as provided for under Part V of

the Act, it is not intended that they also be subject to penalties under this subsection.

Clause 65

Refund of Taxes

ITA
164(1.6)

Subsection 164(1.1) of the Act provides that where 120 days have passed since the service of a notice of objection to an assessment in respect of a taxpayer and the Minister of National Revenue has not confirmed or varied the assessment or issued a reassessment in respect of the objection, or where the taxpayer has appealed from an assessment either to the Tax Court of Canada or directly to the Federal Court of Canada, the Minister must with all due dispatch refund the amount paid that is in dispute, or release the security obtained relevant to the amount in dispute, where the taxpayer so requests in writing.

Subsection 164(1.6) is being added to provide that subsection 164(1.1) does not apply to non-resident persons in respect of security furnished or amounts paid pursuant to section 116 of the Act. Section 116 contains procedures for ensuring the collection of tax from non-resident persons on the disposition of particular types of taxable Canadian properties and Canadian resource properties. This amendment applies on Royal Assent.

Clause 66

Large Corporations Tax — Long-Term Debt

ITA
181(1)

Subsection 181(1) of the Act defines certain terms for the purposes of the Part I.3 tax on the capital of large corporations.

The definition "long-term debt" in subsection 181(1) is relevant in determining the capital of financial institutions under Part I.3 and in computing the investment allowance of other corporations. This definition is being amended as a consequence of changes introduced in the new *Bank Act* and *Insurance Companies Act*. The new definition of long-term debt under subsection 181(1) applies as of

June 1, 1992, the date on which the new *Bank Act* and *Insurance Companies Act* were proclaimed in force.

The former *Bank Act* set out a definition of bank debenture that was adopted for the purposes of the long-term debt definition in Part I.3 of the *Income Tax Act*. The new *Bank Act* does not define this term, and this amendment to subsection 181(1) adopts, in its place, the *Bank Act*'s definition of subordinated indebtedness for the purpose of determining the long-term debt of banks as well as other financial institutions that are not insurance companies. The new *Insurance Companies Act* also provides a definition of subordinated indebtedness, and this amendment incorporates that definition for the purpose of applying Part I.3 of the *Income Tax Act* to insurers.

Clause 67

Part V — Charities

ITA
188(1) and (2)

Part V of the Act provides that special taxes be paid by charities whose registration under the Act has been revoked, and by persons who engage in certain dealings with registered charities.

Subsection 188(1) of the Act imposes a tax on charities whose registration has been revoked by the Minister of National Revenue. This tax is equal to the total of the value of the assets of the charity on the day notice of the Minister's intention to revoke its registration is mailed plus the amount of receipted donations and intercharity gifts received by the charity after that date. The amount of this tax is reduced by the value of assets transferred to registered charities, amounts expended on charitable activities and amounts used to pay outstanding debts and reasonable expenses.

These amendments to subsection 188(1) of the Act change the date on which the assets of a charity whose registration has been revoked will be valued. Instead of a valuation based on fair market value at the day that the notice of intention to revoke is mailed, assets will be valued at their fair market value on the day that is 120 days before the day that such a notice is mailed. The provisions of subsection 188(1) that deal with the time frames for the calculation of amounts that reduce any revocation tax otherwise payable by a charity are also amended to reflect this new valuation date.

These amendments to subsection 188(1) also clarify that the tax payable by a charity whose registration is revoked is due on the day that is one year after the day that the revocation is effective. At that time, an information return is also to be filed by the

charity, whether or not any tax is payable by it under this subsection.

These amendments to subsection 188(1) apply to charities whose registrations are revoked pursuant to notices of intention to revoke their registrations mailed after 1992.

Subsection 188(2) of the Act imposes a tax liability, jointly with a deregistered charity, on persons, other than qualified donees, who receive property from the deregistered charity. These amendments to subsection 188(2) are consequential on the amendments to subsection 188(1) of the Act, which change the date on which such a charity's assets will be valued. Like the amendments to subsection 188(1), these amendments apply with respect to charities whose registrations are revoked pursuant to notices of intention to revoke their registrations mailed after 1992.

Clause 68

Part V — Returns

ITA
189(6)

Subsection 189(6) of the Act requires a taxpayer that is liable for any tax under Part V to file a return, without notice or demand, to estimate the tax due and, except in the case of charities liable to pay a tax on revocation, to pay the tax due. In the case of charities, the Part V return is due at the time that the charity's information return would otherwise be due. For other taxpayers, the Part V return is due at the time the taxpayer's return under Part I is due.

These amendments to subsection 189(6) are consequential on the amendments to subsection 188(1) of the Act that provide that a charity whose registration is revoked must file a return and pay any tax due under that subsection by the day that is one year after the day the revocation is effective. These amendments to subsection 189(6), which apply after 1992, therefore provide that the requirements of subsection 189(6) do not apply in the case of charities that are liable to pay tax under subsection 188(1).

Clause 69

Part VI Tax on the Capital of Financial Institutions

ITA
190(1)

Subsection 190(1) of the Act defines certain terms for the purposes of the Part VI tax on the capital of financial institutions.

The definition "long-term debt" in subsection 190(1) is relevant in determining the capital of financial institutions under Part VI and in computing the investment allowance of other financial institutions. This definition is being amended as a consequence of changes introduced in the new *Bank Act* and *Insurance Companies Act*. The new definition of long-term debt under subsection 190(1) applies as of June 1, 1992, the date on which the new *Bank Act* and *Insurance Companies Act* were proclaimed in force.

The former *Bank Act* set out a definition of "bank debenture" that was adopted for the purposes of the long-term debt definition in Part VI of the *Income Tax Act*. The new *Bank Act* does not define this term, and this amendment to subsection 190(1) adopts, in its place, the *Bank Act*'s definition of subordinated indebtedness for the purpose of determining the long-term debt of banks as well as other financial institutions that are not insurance companies. The new *Insurance Companies Act* also provides a definition of subordinated indebtedness, and this amendment incorporates that definition for the purpose of applying Part VI of the *Income Tax Act* to insurers.

Subsection 190 of the Act is also amended for the 1992 and subsequent taxation years to incorporate the definition of reserves currently found in Part I.3 of the Act, and to adopt – in subsection 190(2) – certain rules of interpretation that have applied under Part I.3 since its introduction in 1989. These amendments are not intended to affect any calculations required under Part VI, and are being made simply to confirm that, with respect to the matters they affect, Part I.3 and VI are to be interpreted in a consistent manner.

Clauses 70 and 71

Rules in Computing Part VI Tax

ITA
190.13 and 190.14

Sections 190.13 and 190.14 of the Act measure a financial institution's capital and investments in related institutions,

respectively, for the purposes of Part VI of the Act. Each of the amendments to these provisions is strictly consequential on the amendment to subsection 190(2), which, in adopting subsection 181(3) of the Act for the purposes of Part VI, provides that the consolidation method of accounting is not to be used and applies the term "carrying value" for the purposes of determining investments in related financial institutions. Accordingly, the prohibition against the consolidation method is deleted from sections 190.13 and 190.14, and the term "cost" in subparagraph 190.14(a)(i) is replaced with the term "carrying value".

Subparagraph 190.13(a)(iii) is also amended to delete the inclusion of deferred taxes as part of a corporation's reserves. This reference had been made only for greater certainty and is rendered superfluous by the new definition of reserves in subsection 190(1) of the Act.

These amendments apply to 1992 and subsequent taxation years.

Clause 72

RRSPs — Cumulative Excess Amount

ITA
204.2(1.2)

Subsection 204.1(2.1) of the Act provides a penalty tax on an individual who has made excess RRSP contributions. This tax is determined with reference to the individual's "cumulative excess amount". Subsections 204.2(1.1) to (1.4) set out the method for determining an individual's cumulative excess amount.

Subsection 204.2(1.2) is amended so that RRSP contributions by way of a transfer from a prescribed provincial pension plan in circumstances to which new subsection 146(21) applies are not included in determining an individual's cumulative excess amount.

This amendment applies to 1992 and subsequent taxation years.

Clause 73

Foreign Property Tax

ITA
206(2.1)

Under the existing law, tax is payable under subsection 206(2) of the Act by tax-exempt taxpayers referred to in section 205 with respect to their foreign property holdings in excess of a defined limit. These taxpayers include a "master trust" referred to in paragraph 149(1)(o.4) and corporations described in paragraph 149(1)(o.2) (i.e., generally certain types of corporations involved with pension fund administration the shares of which are held by registered pension plans). However, where a master trust has made an election for the "look-through" rules in section 259 of the Act to apply to its beneficiaries for a period, subsection 206(2.1) provides that no tax is payable by the trust under subsection 206(2) for the period.

Subsection 206(2.1) is amended so that likewise no tax is payable under subsection 206(2) by a corporation described in paragraph 149(1)(o.2) in respect of a period for which the corporation makes an election that the look-through rules in section 259 apply to its shareholders. This amendment is strictly consequential on the introduction of new subsection 259(2) under which these look-through rules are extended to such corporations.

This amendment applies to the 1992 and subsequent taxation years.

Clause 74

Carved-Out Property

ITA
209(2)

Subsection 209(2) of the Act imposes a special tax on a person for a taxation year equal to 50% of the person's "carved-out income" for the year from "carved-out properties". The purpose of this tax is to discourage the use of tax-exempt persons and loss corporations in holding profitable resource property in respect of which a profitable taxpayer retains a substantial economic interest. The 50% rate approximated the maximum combined federal/provincial corporate income tax rate at the time the special tax was introduced.

Subsection 209(2) is amended to reduce the 50% rate to 45%, which approximates the maximum combined federal/provincial

corporate income tax rate at the present time. The purpose of this amendment, in conjunction with existing subsection 66(14.6) which provides a taxpayer with a deduction in computing income with respect to the taxpayer's carved-out income, is to allow profitable corporations the opportunity to hold carved-out property on a tax-neutral basis.

This amendment applies to 1992 and subsequent taxation years.

Clause 75

Non-Resident Withholding Tax

ITA
212(1)(h)

Paragraph 212(1)(h) of the Act provides for withholding tax in respect of the payment of pension benefits to non-residents, including pension benefits paid from prescribed provincial pension plans (i.e., the Saskatchewan Pension Plan). This provision is amended so that lump sum transfers made, pursuant to an authorization in prescribed form in circumstances to which new subsection 146(21) applies, are exempted from the application of withholding tax.

This amendment applies to payments made after August 1992.

Clause 76

Deemed Payments — Non-Residents

ITA
214(3)(c) and (i)

Under subsections 214(3) and (3.1) of the Act, certain amounts are treated, for the purposes of the non-resident withholding tax, as payments to a non-resident person. Paragraph 214(3)(c) applies to amounts that are deemed by section 146 and subsection 146.3(6.1) of the Act to be received from an RRSP. Paragraph 214(3)(i) deals with amounts that are deemed by section 146.3 to be received from a RRIF.

Subsection 214(3) is amended to delete the reference in paragraph 214(3)(c) to subsection 146.3(6.1) and add that reference to paragraph 214(3)(i). This is strictly consequential on the amendments to subsection 146.3(6.1) which treat RRIF distributions as having been received under a RRIF rather than an RRSP.

This amendment applies to payments made after 1992.

Clause 77

Corporate Emigration

ITA
219.1

Section 219.1 of the Act imposes a tax under Part XIV of the Act where a corporation's taxation year is deemed by section 88.1 of the Act to have ended, that is, where a corporation either has been continued abroad or is treated as a non-resident by virtue of having become resident in a country whose tax treaty with Canada provides that result. This tax is computed as 25% of the amount, if any, by which the corporation's deemed proceeds of disposition on emigration exceed the total immediately before the end of the year of the paid-up capital of all its shares and all of the corporation's debts and obligations (other than dividend amounts payable).

Section 219.1 is amended, as part of a set of amendments concerning taxpayers' residence and certain related matters, to refer to the corporate year-end deemed by new paragraph 128.1(4)(a) of the Act, instead of the year-end deemed by section 88.1, which is repealed. In addition, the reference in paragraph 219.1(a) to the proceeds of disposition deemed to have been received by the corporation is amended to refer to paragraph 128.1(4)(b), rather than paragraph 88.1(e). Section 219.1 is also amended, by a change to paragraph (c), to confirm that tax payable under section 219.1 is not itself included in the amount subject to the tax.

These amendments generally apply after 1992, although they may also apply before that time to corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Clauses 78 and 79

Limitation of Branch Tax on Corporate Emigration

ITA
219.2 and 219.3

Section 219.1 imposes a special branch tax under Part XIV of the Act where a corporation becomes resident in a jurisdiction outside Canada. This additional tax is at the rate of 25% on the amount

by which the total of the fair market value of all the assets exceeds the paid-up capital of all the issued and outstanding shares and all the debts of the corporation.

Section 219.2 reduces the rate of the special branch tax in cases where a tax treaty does not provide for a special branch tax rate but does provide for a lower withholding tax rate for dividends. Some tax treaties provide a two-level rate structure under which the rate of dividend withholding tax is reduced where the non-resident holds more than a certain proportion of the shares in the dividend-paying corporation. This amendment clarifies that in such cases it is this rate of tax which is to apply under section 219.1.

New section 219.3 corrects a technical deficiency in the application of sections 219.1 and 219.2 which arises when a tax treaty with another country to which a Canadian corporation has emigrated does not apply on the last day of the year in which the special branch tax is exigible. This amendment ensures that the treaty will be taken into account in determining the appropriate rate of the tax.

These amendments apply to the 1985 and subsequent taxation years.

Clause 80

Garnishment Rules

ITA
224

Subsections 224(1) and (1.1) contain the principal garnishment provisions under the Act. These provisions empower the Minister of National Revenue to collect unpaid taxes and other amounts owing under the Act by a person (the "tax debtor") by serving a garnishment letter on any person liable to make a payment to the tax debtor or on a financial institution or certain other persons intending to loan or advance money to the tax debtor. The garnishment letter requires these amounts to be paid to the Receiver General rather than to the tax debtor.

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.

Subsection 224(3) of the Act provides for the garnishment of periodic payments such as interest, rent, remuneration, dividends or annuity payments. In the case of such periodic payments, notice served upon the garnishee regarding the taxpayer's liability under the Act automatically effects a continuing garnishment applicable against future payments to be made by the garnishee until the full liability of the taxpayer is satisfied. The garnishee must make payment to the Receiver General out of each payment in the amount specified in the Minister's notice.

The amendments in subclauses 80(1) and (3) provide that garnishment orders issued after Royal Assent under subsections 224(1) and (1.2) of the Act will be effective for one year rather than 90 days. The amendments in subclause 80(1), along with the amendments in subclauses 80(2), (4) and (6), also remove the requirement in subsections 224(1), (1.1), (1.2) and (3) of the Act that the Minister use registered mail for garnishment procedures beginning in 1993.

New subsection 224.1 is added to the Act by subclause 80(5) to ensure that both the federal and provincial Crown are bound by garnishment letters sent by the Minister of National Revenue. This new subsection is effective on Royal Assent.

Subsection 224(5) and (6) of the Act provide that garnishment requirements under subsection 224(10 or (1.2) may be addressed to the name under which a business is carried on or to the name of a partnership. The amendments in subclauses 80(7) extend these procedural rules to apply to garnishments effected under subsection 224(1.1) and also remove the references therein to service by registered mail. These amendments apply after 1992.

Clause 81

Payments of Moneys Seized From Tax Debtor

ITA
224.3(1)

Subsection 224.3(1) of the Act enables the Minister of National Revenue to issue a garnishment order in cases where moneys have been seized from a taxpayer by the police in the course of administering or enforcing the criminal law of Canada under circumstances where the moneys may be restored to the taxpayer. Such an order could not technically be made in the absence of this provision due to the absence of a debtor-creditor relationship between the police and the taxpayer. This subsection is amended, applicable to garnishment requests made after 1992, to remove the requirement that the Minister use registered mail for garnishment purposes.

Clause 82

Repayment of Non-Resident Shareholder Loans

ITA
227

Section 227 of the Act provides special rules relating to source deductions and non-resident withholding tax under sections 153 and 215, respectively, and also deals with the application of certain Parts of the Act to certain persons and entities.

Subclause 82(1)

ITA
227(4) and (5)

Subsection 227(4) of the Act provides that amounts withheld from payments made by a payer in respect of taxes payable by the recipient are deemed to be held in trust for her Majesty. Subsection 227(4) is amended, effective on Royal Assent, to clarify that the deemed trust arising in respect of taxes withheld is impressed on the funds at the time the amounts are withheld.

Subsection 227(5) of the Act provides that in the event of the liquidation, assignment, receivership or bankruptcy of or by a person, such amounts held in trust are deemed not to form part of the estate of that person notwithstanding the provisions of the *Bankruptcy Act*. Because of the amendment to subsection 227(4), the reference to that subsection in subsection 227(5) is no longer needed and therefore is deleted, effective on Royal Assent.

Subclause 82(2)

ITA
227(6)

Subsection 227(6) of the Act provides for a refund, upon application, of Part XIII tax paid to the Receiver General on behalf of a non-resident person where the non-resident was not liable to pay that tax or where the amount paid exceeded the amount that the non-resident was liable to pay. Subsection 227(6) also allows the Minister to apply the amount of that refund to any payment that the non-resident person is liable, or is about to become liable, to pay under the Income Tax Act.

Subsection 227(6) is amended, applicable on Royal Assent, to authorize the Minister to apply the amount of that refund to any

other amount that is owed, or is about to become owed, by the non-resident person to Her Majesty in right of Canada.

ITA
227(6.1)

Loans made by a corporation to a shareholder who is a resident of Canada may be included in the shareholder's income by reason of subsection 15(2) of the Act. When the loan is subsequently repaid, the shareholder may be entitled to a deduction under paragraph 20(1)(j) of the Act for the amount that had previously been included in the shareholder's income. Where the shareholder is not a resident of Canada, paragraph 214(3)(a) of the Act provides that the amount of any such loan that would have been included in the shareholder's income if Part I of the Act applied is to be treated as a dividend for the purposes of Part XIII. Non-resident withholding tax will therefore be exigible on that amount. There is no provision in Part XIII, however, that provides for tax relief on repayment of the loan.

New subsection 227(6.1) of the Act provides for a refund of Part XIII tax paid when that loan or indebtedness is repaid. In order to obtain the refund, it will be necessary to establish, by subsequent events or otherwise, that the repayment was not made as part of a series of loans or other transactions and repayments. Where only a portion of the loan has been repaid, the amount of the refund will be based on the tax that was paid on that portion of the loan or indebtedness.

In order to obtain the refund, application must be made to the Minister of National Revenue within 2 years of the end of the calendar year in which the repayment is made. Where the non-resident person is otherwise liable, or about to become liable, to make a payment to Her Majesty in Right of Canada, new subsection 227(6.1) permits the Minister to apply the amount of the refund to that payment and requires that the non-resident be notified of that action. These provisions are identical to the those of amended subsection 227(6) of the Act, which deals with refunds of overpayments of Part XIII tax.

New subsection 227(6.1) of the Act applies to repayments made after 1992.

Subclause 82(3)

ITA
227(7.1)

New subsection 227(7.1) of the Act provides that where the Minister of National Revenue is not satisfied that a person is entitled to an amount claimed under subsection 227(6.1), the Minister shall, upon request, determine the amount payable under

that subsection and send a notice of determination to that person. Division I (relating to returns, assessments, payments and appeals) and Division J (relating to appeals to the Tax Court of Canada and the Federal Court) of Part I of the Act will apply with such modifications as are necessary to enable the person to object to the determination and take advantage of the appeal procedures set out in the Act. The exception for subsections 164(1.1) to (1.3) of the Act ensures that where a non-resident objects to or appeals from the determination, Part XIII tax need not be repaid by Revenue Canada until such time as a final decision has been made on the matter.

New subsection 227(7.1) of the Act applies to repayments made after 1992.

Subclause 82(4)

ITA
227(10.1)

Subsection 227(10.1) of the Act permits the Minister of National Revenue to assess a person in respect of amounts payable under subsection 227(9) and amounts payable by a non-resident person under Part XIII of the Act. Subsection 227(10.1) is amended to provide that the Minister may also assess a person in respect of an amount payable under section 116 of the Act. Section 116 contains procedures for collecting tax from non-resident persons on the disposition of particular types of taxable Canadian properties and Canadian resource properties. This amendment applies to 1991 and subsequent taxation years.

Clause 83

Maintenance of Books and Records by Charities

ITA
230(2)

Subsection 230(2) of the Act requires that registered charities and registered Canadian amateur athletic associations keep books and records in order to enable donations that are deductible to be verified.

Subsection 230(2) is amended to enlarge the scope of this record-keeping requirement, to provide that such an organization also keep books and records containing information that will enable the Minister of National Revenue to determine whether there are grounds to revoke the registration of the organization. This

amendment to subsection 230(2) applies after ANNOUNCEMENT DATE.

Clause 84

Reports to Chief Electoral Officer

ITA
230.1(4) and (5)

Section 230.1 of the Act requires certain books and records to be kept and returns to be filed in respect of contributions to political parties and candidates.

Subsection 230.1(4) of the Act requires the Minister of National Revenue to forward reports to the Chief Electoral Officer based on information in returns received by the Minister of National Revenue from agents of registered political parties and candidates. These reports become public records. Subsection 230.1(5) ensures that such reports will not contain information that would identify a particular contributor to a political party or candidate.

Subsections 230.1(4) and (5) are repealed, effective as of the date of Royal Assent to this amendment. These reporting requirements under the Income Tax Act are redundant, in view of the extensive public reporting requirements imposed on political parties and candidates under the provisions of the *Canada Elections Act.*

Clause 85

Interpretation

ITA
248

Section 248 of the Act defines a number of terms used in the Act, and also sets out various rules relating to the interpretation and application of various provisions of the Act.

Subclause 85(1) and (2)

ITA
248(1)
"mineral resource"
"minerals"

Subsection 248(1) of the Act includes definitions of "mineral resource" and "minerals", which are used in the Act and the *Income*

Tax Regulations for the purposes of determining a taxpayer's income from mining. A "mineral resource" is defined as deposit of any one of a number of specified substances. "Minerals" is defined to exclude petroleum, natural gas or related hydrocarbons (except coal, bituminous sands, oil sands or oil shale).

Section 248(1) is amended to include as a "mineral resource" a mineral deposit in respect of which the principal mineral extracted is calcium chloride.

The definition "minerals" is replaced by a new definition "mineral". The new definition has two parts. The first part of the definition includes substances that are minerals within the generally-understood scientific meaning of the term. The second part of the definition includes additional substances. As under the previous definition of "minerals", the additional substances include bituminous sands, coal, oil sands and oil shale. The new definition adds calcium chloride, kaolin and silica to its scope.

As a consequence of these amendments, paragraphs 1104(6)(b) and (7)(a) of the *Income Tax Regulations* will be amended to make reference to wells for the extraction of calcium chloride. It is proposed that this amendment be effective for acquisitions in taxation years commencing after 1984.

These amendments apply to taxation years commencing after 1984, except that the reference to kaolin is effective only for 1988 and subsequent taxation years.

Subclause 85(3)

ITA
248(1)
"taxable Canadian property"

Subsection 248(1) of the Act includes both a narrow meaning of "taxable Canadian property", which is derived from the meaning assigned in subsection 115(1), and a broader meaning. That broader meaning, currently applied only for the purposes of section 2 of the Act, adds to the scope of the term: Canadian resource property; timber resource property; income interests in resident trusts; retiring partners' income rights under paragraph 96(1.1)(a) agreements; and life insurance policies in Canada. This amendment to the definition makes the broader meaning of "taxable Canadian property" apply for the purposes of new section 128.1 of the Act. As a result, properties of the types listed above, as well as those within the subsection 115(1) definition, are excluded from the deemed disposition rules provided in paragraphs 128.1(1)(b) and 128.1(4)(b).

This amendment applies after 1992, although it will also apply before that time to corporations electing to be subject to new

subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Subclause 85(4)

ITA
248(9)

Paragraph 248(8)(*b*) of the Act provides that the transfer, distribution or acquisition of a deceased taxpayer's property resulting from a disclaimer, release or surrender will be considered to occur as a consequence of that taxpayer's death, thereby allowing a tax-free rollover of the property in certain cases. While a deadline for filing a release or surrender for these purposes is set out in the definition of "release or surrender" in subsection 248(9) of the Act, no such deadline is set out for the filing of a disclaimer. The definition of "disclaimer" in section 248 of the Act is amended to specify the deadline for the production of a disclaimer for the purposes of subsection 248(8). This deadline, which is the same as the one contained in the definition of "release or surrender" in subsection 248(9), is 36 months from the death of the taxpayer or, where the taxpayer's legal representative has requested an extension of the deadline within that period, such later time as the Minister of National Revenue considers reasonable in the circumstances. This amendment to subsection 248 is effective on Royal Assent.

Subclause 85(5)

ITA
248(23) and (23.1)

New subsection 248(23.1) of the Act applies to certain transfers of property occurring after the death of a taxpayer and resulting from the laws of a province relating to the sharing of property as a result of a marriage. New subsection 248(23.1) deems these transfers of property to have occurred either as a consequence of the death of the taxpayer (in the case of property transferred to the deceased taxpayer's spouse) or immediately before the time that is immediately before the death of the taxpayer (in the case of property transferred to the deceased taxpayer's estate). In this way, such transfers may benefit either from the tax-free rollover of property between spouses on death provided for in subsection 70(6) of the Act or from the tax-free rollover between living spouses provided for in subsection 73(1) of the Act.

The laws of a province referred to in new subsection 248(23.1) are those that provide for the sharing of certain assets owned or acquired by a spouse during marriage. These laws include laws dealing with matrimonial regimes and those that provide for the sharing of property used by spouses during a marriage. The subsection applies to assets transferred from a deceased taxpayer to

a spouse as well as to assets transferred from a deceased taxpayer's spouse to the deceased taxpayer's estate.

Subsection 248(23) is amended as a consequence of the introduction of new subsection 248(23.1). Property transferred between spouses as a result of the dissolution of a matrimonial regime as a consequence of death will now be governed by subsection 248(23.1).

This amendment applies to dissolutions and deaths occurring after ANNOUNCEMENT DATE.

Clause 86

Year-End on Change of Control

ITA
249(4)(c)

Where control of a corporation is acquired by a person or group of persons at any time, subsection 249(4) of the Act treats the taxation year of the corporation as having ended immediately before that time and a new taxation year of the corporation as having commenced at that time. Where the taxation year deemed to have ended was not more than seven days long, paragraph 249(4)(c) allows the corporation to extend the previous year (provided it was longer than seven days) so that it ends immediately before the acquisition of control. This election to extend the previous year is not available in certain circumstances, including where that year itself ended because of the corporation's emigration. This amendment to paragraph 249(4)(c), which forms part of a set of amendments concerning taxpayers' residence and certain related matters, replaces the reference to paragraph 88.1(c) with a reference to new section 128.1.

This amendment applies after 1992, although it will also apply before that time to corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Clause 87

Residence

ITA
250

Section 250 of the Act provides an expanded definition of a resident of Canada for purposes of the Act.

Subclause 87(1)

ITA
250(1)(*f*)

Pursuant to paragraph 250(1)(*f*) of the Act, dependent children of certain persons deemed to be resident in Canada are also deemed to be Canadian residents if the children's income does not exceed the basic personal amount ($6,456 for 1993). The amendment to paragraph 250(1)(*f*), which applies beginning in 1993, ensures that only children dependent for support on persons deemed to be resident in Canada by reason of any of paragraphs 250(1)(b) to (d.1) are deemed to be resident in Canada.

Subclause 87(2)

ITA
250(5.1)

In many jurisdictions, a company incorporated elsewhere may be naturalized by submitting to the corporate law of its new home. Such an action is often described as a corporate "continuance" or "continuation". New subsection 250(5.1) of the Act, together with certain concurrent amendments concerning taxpayers' residence, fixes the tax consequences of continuation into a different jurisdiction. The basic principle of subsection 250(5.1) is that the continued corporation will be treated as having been incorporated in the jurisdiction into which it has continued. A corporation, for example, that was originally incorporated in Canada but was subsequently continued abroad will cease to be treated as having been incorporated in Canada, and will therefore no longer for that reason be deemed to be resident in Canada (although it may remain resident by keeping its central management and control in this country). Similarly, a corporation incorporated abroad – or incorporated in Canada and earlier continued abroad – will become resident in Canada on being continued here. It should be noted that the continued corporation is treated as having been incorporated in its new home jurisdiction only for the purpose of applying the Act from the time of continuation (and only until continuation into a different jurisdiction).

This amendment applies after 1992. In addition, a corporation that was continued at any time before 1993 may elect to have this amendment apply as of the time of its continuation. Such an election must be made by notifying the Minister of National Revenue in writing before the end of the sixth month following the month in which this amendment receives Royal Assent. It should be noted that because new subsection 250(5.1) forms part of a set of amendments regarding residence and certain related matters, any corporation making this election will be subject to those provisions as well. The following table lists all the relevant amendments by *Income Tax Act* section numbers. Unless otherwise noted, these changes will apply, in the case of a corporation making the election described above, as of the time of its continuation.

ITA	Subject	Notes
44(2)(d)	timing of disposition	
48	changes in residence	repealed
52(8)	cost of shares	new – applies after 1992
54(i)(iii)	"superficial loss"	
88.1	corporate migration	repealed
89(1)(a)	"Canadian corporation"	applies after Royal Assent
89(1)(c)(ii)(C)	"paid-up capital"	
98.1(1)(a)	residual partnership interest	
128.1	changes in residence	new
128.2	cross-border mergers	new
219.1	corporate emigration	
248(1)	"taxable Canadian property"	
249(4)(c)	year-end	
250(5.1)	continued corporation	
ITAR 26(10)	cost of property	

Clause 88

Acquisitions of Control

ITA
256(7)

Subsection 256(7) of the Act describes circumstances in which control of a corporation will be treated as not having been acquired for the purposes of certain provisions of the Act. The preamble to subsection 256(7) is amended to include among those provisions new subsection 87(2.11), which allows a corporation formed through a vertical amalgamation to apply its post-amalgamation losses against the pre-amalgamation income of its predecessor parent corporation.

In addition, paragraph 256(7)(a) of the Act is amended to clarify its application. Subparagraph 256(7)(a)(i), as amended, provides that the acquisition of a particular corporation's shares will not, in certain circumstances, by itself result in an acquisition of the control of that or any other corporation. Those circumstances include: the acquisition of shares by any person from a related person; the acquisition of shares, from any person, by a person related to the particular corporation; the acquisition of shares by an estate; and the acquisition of shares by any person from the estate of a related person. As a result, amended subparagraph 256(7)(a)(i) applies not only to all the share acquisitions covered by the existing paragraph 256(7)(a), but also to a number of other cases not explicitly accommodated by the existing rule, such as the acquisition of the shares of a corporation by a group of persons related to the corporation.

Amended subparagraph 256(7)(a)(ii) provides that control of a particular corporation will not be considered to have been acquired because of the redemption or cancellation of shares of that corporation or another corporation controlling it, provided the corporation is controlled, after the redemption or cancellation, by a person or group related to the corporation before that event.

These changes apply to acquisitions, redemptions and cancellations occurring after 1992.

Clause 89

Qualified Trusts

ITA
259

Section 259 of the Act provides a "look-through" rule which applies where one or more taxpayers described in section 205, including trusts governed by a registered pension plans and registered retirement savings plans, acquire interests in a "qualified trust". If the qualified trust so elects, such taxpayers will be deemed to acquire, hold and dispose of proportionate percentages of the underlying trust property for the purposes of the rules relating to the acquisition, holding and disposition of non-qualified investments and the holding of foreign property.

Section 259 is amended so that it applies to each unit of a qualified trust. As more specifically described below, this amendment recognizes that taxpayers may increase or decrease their units in a qualified trust at any time and should, accordingly, be considered to have acquired or disposed of underlying trust property at such time.

The key definition in amended section 259 is "specified portion", which under amended paragraph 259(1)(b) is determined with respect to each unit in a qualified trust. The specified portion in respect of a unit at any particular time is 1 (assuming the unit is a whole unit) divided by the number of units in the trust outstanding at that time. Where the unit is a fraction of a whole unit, the specified portion is that fraction divided by the number of outstanding units. The overall effect of the new rules for a taxpayer is determined by applying the new rules below to each unit (or fraction of a unit) held by a taxpayer.

Under amended paragraph 259(1)(b), a taxpayer is deemed to hold at any time the specified portion at that time of each property of a qualified trust. The cost amount at that time of the taxpayer's "deemed" property is, by virtue of amended paragraph 259(1)(c), the specified portion of the cost amount to the trust of its property. As paragraphs 259(1)(b) and (c) apply on a unit-by-unit basis, their overall effect is that the cost amount to such a taxpayer of the underlying trust property is based on the taxpayer's total units in the trust. These paragraphs are thus consistent with existing paragraph 259(1)(b).

As a consequence of an election by a qualified trust under subsection 259(1), a taxpayer holding a unit in the trust is deemed under amended paragraph 259(1)(d) to acquire at a particular time

the specified portion (determined at the particular time) of a trust property, provided that the particular time is the later of

- the time the trust acquired such property, and

- the time the taxpayer acquired the unit.

The fair market value of the specified portion of the underlying trust property at the time of such deemed acquisition is deemed by amended paragraph 259(1)(e) to be the specified portion at that time of the fair market value of the trust property at the time of its actual acquisition by the trust. Amended paragraphs 259(1)(d) and (e) correspond to the existing rules in paragraph 259(1)(c).

New paragraphs 259(1)(f) and (g) provide rules which deem a taxpayer to dispose of trust property, where the trust disposes of any of its property or the taxpayer disposes of a unit in the trust. More specifically,

- where the trust disposes of a property at any time, the taxpayer is deemed at that time to have disposed of the specified portion (determined immediately before that time) of that property for proceeds equal to such portion of the proceeds of disposition of that property to the trust, and

- where the taxpayer disposes of a trust unit at any time, the taxpayer is deemed at that time to have disposed of the specified portion (determined immediately before that time with respect to that unit) of the underlying trust property for proceeds equal to such portion of the fair market value of the underlying trust property.

New paragraph 259(1)(h) is introduced to ensure that property deemed to be acquired by a taxpayer under paragraph 259(1)(d) retains its character when it is deemed to be disposed of by the taxpayer under paragraph 259(1)(f) or (g), notwithstanding that the taxpayer's proportion of the units in a trust may have increased or decreased between the date of the deemed acquisition and the deemed disposition. The purpose of this rule is to ensure that RRSP and RRIF annuitants may enjoy benefits resulting from the application of subsection 146(6) or 146.3(8) or Part X of the Act to the disposition of a non-qualified investment.

Subsection 259(2) of the Act is introduced so that the look-through rule described above also applies, with all necessary changes, where a taxpayer holds shares in the capital stock of a "qualified corporation" and the corporation so elects. (Former subsection 259(2) is renumbered as subsection 259(3).) A "qualified corporation" is defined in new subsection 259(5) as a corporation described in paragraph 149(1)(o.2) if all its issued and outstanding shares are identical to each other or are owned by one person.

Subsection 259(4) of the Act is introduced to ensure that an electing trust or corporation is required to provide sufficient information to its unit holders or shareholders for them to be able to determine the consequences of an election. More specifically, the electing trust or corporation is required to notify unitholders or shareholders of the election not more than 30 days after making the election. The electing trust or corporation must also provide unitholders or shareholders with any additional requested information necessary for them to determine the consequences of the election.

Except for the introduction of subsections 259(2) and (4), these amendments apply after 1985. New subsection 259(2) applies after 1991. New subsection 259(4) applies to elections made after ANNOUNCEMENT DATE.

Clause 90

Changes in Residence

ITAR
26(10)

Subsection 26(10) of the *Income Tax Application Rules, 1971* provides that where subsection 48(3) of the *Income Tax Act* applies to deem the cost to a taxpayer of any property, the rules in section 26 do not apply to determine that cost to be any other amount. This clause, which is consequential to a set of amendments concerning taxpayers' residence and certain related matters, amends subsection 26(10) to refer to new paragraph 128.1(1)(b) of the Income Tax Act, as well as subsection 48(3).

This amendment applies after 1992, although it may also apply before that time to corporations electing to be subject to new subsection 250(5.1) of the Act. For further information, reference may be made to the commentary on that provision.

Clause 91

Labour-Sponsored Venture Capital Corporations

CBCA
174

Subsection 49(9) of the *Canadian Business Corporations Act* (CBCA) provides that a corporation that issues shares to the public is generally not permitted to have a restriction on the issue, transfer or ownership of its shares except by way of a constraint permitted under subsection 174(1) of the CBCA. Under subsection 174(1), a corporation may by special resolution amend its articles to provide for such a constraint.

Subsection 174(1) of the CBCA is amended to permit a corporation to constrain the issue, transfer or ownership of its shares in order to enable it to be a registered labour-sponsored venture capital corporation under Part X.3 of the *Income Tax Act*.

This amendment applies after 1988.

Clause 92

Remittances

UI
53(1)

Subsection 53(1) of the *Unemployment Insurance Act* authorizes employers to withhold required employee U.I. premiums. The amount withheld is currently based on tables prepared by regulation. This subsection is amended to provide that the amount to be withheld is to be determined in accordance with prescribed rules. This will allow regulations to be made on a more timely basis than is currently the case. Revenue Canada, Taxation will continue to provide source deduction tables to employers.

This amendment applies after 1993.

Clause 93

Premium Tables

UI
75

Subclause 93(1)

UI
75(1)(p)

Subsection 75(1) of the *Unemployment Insurance Act* allows the Minister of National Revenue, with the approval of the Governor in Council, to make regulations necessary for the administration of that Act. Paragraph 75(1)(p) of the Act authorizes the making of regulations to provide tables respecting the payment of premiums. As a consequence of the amendment to subsection 53(1) of the Act to provide that the premiums to be withheld are to be determined in accordance with prescribed rules, the authority to provide tables by regulation is no longer required and is therefore repealed, effective after 1993.

Subclause 93(2)

UI
75(5)

Subsection 75(5) of the *Unemployment Insurance Act* provides that tables made under the authority of paragraph 75(1)(p) of the Act may be effective retroactively. As a consequence of the amendment to subsection 53(1) of that Act to require that the amount of the premiums to be withheld be determined in accordance with prescribed rules, this retroactive power is granted to the annual amendment of the rules.

This amendment applies after 1993.

Appendix A

Draft Income Tax Regulations and Explanatory Notes

Manufacturing and Processing

DRAFT *INCOME TAX REGULATIONS* ON MANUFACTURING AND PROCESSING

1. Paragraph 1100(1)(*a*) of the *Income Tax Regulations* is amended by adding thereto, immediately after subparagraph (xxviii) thereof, the following subparagraph:

"(xxix) of Class 43, 30 per cent,"

2. (1) All that portion of subsection 1104(5) of the said Regulations preceding paragraph (*a*) thereof is revoked and the following substituted therefor:

"(5) For the purposes of paragraphs 1100(1)(*w*) to (*ya*), subsections 1101(4a) to (4d) and Classes 10, 28, 41 and 43 in Schedule II, "income from a mine", or any expression referring to income from a mine, includes income reasonably attributable to"

(2) All that portion of paragraph 1104(5)(*c*) of the said Regulations following subparagraph (iii) thereof is revoked and the following substituted therefor:

"to the extent that such transportation is effected through the use of property of the taxpayer that is included in Class 10 in Schedule II because of paragraph (*m*) thereof or that would be so included if that paragraph were read without reference to subparagraph (v) thereof and Class 41 in Schedule II were read without the reference therein to that paragraph."

(3) All that portion of subsection 1104(6) of the said Regulations preceding paragraph (*a*) thereof is revoked and the following substituted therefor:

"(6) For the purposes of Class 10, paragraph (*b*) of Class 41 and Class 43 in Schedule II"

(4) All that portion of subsection 1104(7) of the said Regulations preceding paragraph (*a*) thereof is revoked and the following substituted therefor:

"(7) For the purposes of paragraphs 1100(1)(*w*) to (*ya*), subsections 1101(4a) to (4d) and 1102(8) and (9) and Classes 12 and 28 and paragraph (*a*) of Class 41 and 43 in Schedule II,"

(5) All that portion of subsection 1104(9) of the said Regulations preceding paragraph (*a*) thereof is revoked and the following substituted therefor:

"(9) For the purposes of Classes 29, 39 and 43 in Schedule II, "manufacturing or processing" does not include"

3. Paragraph 4600(2)(*k*) of the said Regulations is revoked and the following substituted therefor:

"(*k*) a property included in any of Classes 21, 24, 27, 29, 34, 39, 40 and 43 in Schedule II."

4. Paragraph 4604(2)(*j*) of the said Regulations is revoked and the following substituted therefor:

"(*j*) a property included in any of Classes 21, 24, 27, 29, 34, 39, 40 and 43 in Schedule II;"

5. Section 5201 of the said Regulations is amended by deleting the word "and" at the end of paragraph (*c*) thereof and by adding thereto, immediately after paragraph (*c*) thereof, the following paragraphs:

"(*c*.1) the corporation was not engaged in the processing of ore (other than iron ore or tar sands) from a mineral resource located outside Canada to any stage that is not beyond the prime metal stage or its equivalent;

(*c*.2) the corporation was not engaged in the processing of iron ore from a mineral resource located outside Canada to any stage that is not beyond the pellet stage or its equivalent;

(*c*.3) the corporation was not engaged in the processing of tar sands located outside Canada to any stage that is not beyond the crude oil stage or its equivalent; and"

6. Section 5202 of the said Regulations is amended by adding thereto, in alphabetical order therein, the following definitions:

""Canadian resource profits" has the meaning that would be assigned to the expression "resource profits" by subsection 1204(1) if that subsection were read without reference to subparagraph (*b*)(iv) thereof («bénéfices relatifs à des ressources au Canada»);

"resource profits" has the meaning assigned by subsection 1204(1) («bénéfices relatifs à des ressources»);

"specified percentage" for a taxation year means

(*a*) where the year commences after 1998, 100%, and

(*b*) in any other case, the total of

(i) that proportion of 10% that the number of days in the year that are in 1990 is of the number of days in the year,

(ii) that proportion of 20% that the number of days in the year that are in 1991 is of the number of days in the year,

(iii) that proportion of 30% that the number of days in the year that are in 1992 is of the number of days in the year,

(iv) that proportion of 50% that the number of days in the year that are in 1993 is of the number of days in the year,

(v) that proportion of 64.3% that the number of days in the year that are in 1994 is of the number of days in the year,

(vi) that proportion of 71.4% that the number of days in the year that are in 1995 is of the number of days in the year,

(vii) that proportion of 78.6% that the number of days in the year that are in 1996 is of the number of days in the year,

(viii) that proportion of 85.7% that the number of days in the year that are in 1997 is of the number of days in the year,

(ix) that proportion of 92.9% that the number of days in the year that are in 1998 is of the number of days in the year, and

(x) that proportion of 100% that the number of days in the year that are in 1999 is of the number of days in the year («pourcentage désigné»)."

7. (1) Subparagraph (*b*)(i) of the definition "cost of capital" in subsection 5203(1) of the said Regulations is revoked and the following substituted therefor:

"(i) in activities engaged in for the purpose of earning Canadian resource profits of the corporation, or"

(2) Subparagraph (*b*)(i) of the definition "cost of labour" in subsection 5203(1) of the said Regulations is revoked and the following substituted therefor:

"(i) was related to the activities engaged in for the purpose of earning Canadian resource profits of the corporation, or"

(3) Paragraph 5203(2)(*b*) of the said Regulations is revoked and the following substituted therefor:

"(*b*) the corporation was at any time during the year engaged in activities for the purpose of earning resource profits of the corporation; or"

(4) Subsection 5203(3) of the said Regulations is revoked and the following substituted therefor:

"(3) In subsection (1), "net resource income" of a corporation for a taxation year means the amount, if any, by which the aggregate of

(*a*) the resource profits of the corporation for the year, and

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

(i) the aggregate of amounts included in computing the income of the corporation for the year, from an active business carried on in Canada, pursuant to section 59 of the Act (other than amounts that may reasonably be regarded as having been included in computing the resource profits of the corporation for the year),

exceeds

(ii) the aggregate of amounts deducted in computing the income of the corporation for the year pursuant to section 64 of the Act, as that section applies with respect to dispositions occurring before November 13, 1981 and to dispositions occurring after November 12, 1981 pursuant to an agreement in writing made or entered into before November 13, 1981, except those amounts that may reasonably be regarded as having been deducted in computing the resource profits of the corporation for the year,

exceeds the aggregate of

(*c*) the aggregate of amounts deducted in computing the income of the corporation for the year pursuant to section 65 of the Act (other than amounts that may reasonably be regarded as having been deducted in computing the resource profits of the corporation for the year), and

(*d*) the specified percentage for the year of the amount, if any, by which

(i) the corporation's resource profits for the year

exceeds the aggregate of

(ii) the corporation's Canadian resource profits for the year, and

(iii) the earned depletion base (within the meaning assigned by subsection 1205(1)) of the corporation at the beginning of its immediately following taxation year."

8. (1) Paragraph (*f*) of the definition "cost of capital" in section 5204 of the said Regulations is revoked and the following substituted therefor:

"(*f*) in activities engaged in for the purpose of earning Canadian resource profits of the corporation or the partnership, as the case may be, or"

(2) Paragraph (*f*) of the definition "cost of labour" in section 5204 of the said Regulations is revoked and the following substituted therefor:

"(*f*) was related to the activities engaged in for the purpose of earning Canadian resource profits of the corporation or the partnership, as the case may be, or"

9. All that portion of Class 10 in Schedule II to the said Regulations following paragraph (*f*.2) thereof and preceding paragraph (*g*) thereof is revoked and the following substituted therefor:

"and property (other than property included in Class 41 or paragraph (*b*) of Class 43) that would otherwise be included in another class in this Schedule, that is"

10. Class 39 in Schedule II to the said Regulations is revoked and the following substituted therefor:

"Class 39

Property acquired after 1987 and before February 26, 1992 that is not included in Class 29, but that would otherwise be included in that class if that class were read without reference to subparagraphs (*b*)(iii) and (v) and paragraph (*c*) thereof."

11. Subparagraph (*b*)(i) of Class 41 in Schedule II to the said Regulations is revoked and the following substituted therefor:

"(i) that would be included in paragraph (*f*.1), (*g*), (*j*), (*k*), (*l*), (*m*), (*r*), (*t*) or (*u*) of Class 10 if this Schedule were read without reference to this paragraph and paragraph (*b*) of Class 43, other than property included in paragraph (*b*) of Class 43;".

12. Schedule II to the said Regulations is further amended by adding thereto the following class:

"Class 43

Property acquired after February 25, 1992 that

(*a*) is not included in Class 29, but that would otherwise be included in that class if that class were read without reference to subparagraphs (*b*)(iii) and (v) and paragraph (*c*) thereof; or

(*b*) would be included in paragraph (*k*) of Class 10 if this Schedule were read without reference to this paragraph and paragraph (*b*) of Class 41 and that

(i) is not property in respect of which the taxpayer has filed with the Minister an election in writing, on or before the date on which the taxpayer's tax return under Part I of the Act for the taxation year in which the property was acquired was required to be filed, that the property be included in Class 41, and

(ii) at the time of its acquisition, can reasonably be expected to be used entirely in Canada and primarily for the purposes of processing ore extracted from a mineral resource located in a country other than Canada."

13. (1) Section 1, subsections 2(1), (3) and (5) and sections 3, 4 and 9 to 12 are applicable with respect to property acquired after February 25, 1992, except that an election referred to in Class 43 to Schedule II of the said Regulations, as enacted by section 12, shall be deemed to be filed on a timely basis if it filed with the Minister of National Revenue within 180 days after the publication of these Regulations in Part II of the *Canada Gazette*.

(2) Subsections 2(2) and (4) apply to the 1988 and subsequent taxation years.

(3) Sections 5 to 8 apply to the 1990 and subsequent taxation years.

EXPLANATORY NOTES ON DRAFT *INCOME TAX REGULATIONS* ON MANUFACTURING AND PROCESSING

ITR
1100(1)(*a*)(xxix)

Subsection 1100(1) of the *Income Tax Regulations* sets out the capital cost allowance rates that taxpayers may claim with respect to specified classes of depreciable property.

Subsection 1100(1) is amended to provide a 30% capital cost allowance rate for property described in new Class 43, relating to manufacturing and processing activities. As described in greater detail below, new Class 43 consists of certain manufacturing and processing assets which were included in Classes 39 and 41, for which a 25% rate is provided. The increase in the capital cost allowance rates was announced in the federal budget of February 25, 1992.

This amendment applies to property acquired after February 25, 1992.

ITR
1104(5) to (7)

Subsections 1104(5) to (7) of the Regulations contain a number of rules of interpretation which apply for the purposes of determining whether property is included in Class 41 for the purposes of the capital cost allowance rules. This class currently includes structures, machinery and equipment (referred to in paragraph (k) of Class 10) acquired for the purposes of gaining or producing income from a mine or the processing of ore to any stage that is not beyond the prime metal stage (or, in the case of iron ore and tar sands ore, the pellet stage or crude oil stage respectively) or its equivalent. As described below, to the extent this property is acquired by a taxpayer for the purposes of processing ore extracted outside Canada, new Class 43 (in conjunction with amendments to Class 41) provides that it is included in Class 43 unless the taxpayer elects otherwise.

Subsections 1104(5) and (6) are amended, strictly as a consequence of the above changes, so that the definitions contained therein also apply for the purposes of new Class 43. This amendment applies to property acquired after February 25, 1992.

Subsection 1104(5) is also amended to update a reference therein to property in paragraph (m) of Class 10 (which describes certain transportation equipment). As property of this nature acquired after 1987 is now included in Class 41, subsection 1104(5) is amended

accordingly. This relieving amendment applies to the 1988 and subsequent taxation years.

Subsection 1104(7) is amended so that it does not apply for the purpose of paragraph (b) of Class 41, in order to avoid a conflict with subsection 1104(6). This relieving amendment applies to the 1988 and subsequent taxation years.

ITR
1104(9)

Subsection 1104(9) of the Regulations provides that the expression "manufacturing and processing" does not include activities specified therein for the purposes of the capital cost allowance rules (specifically, Classes 29 and 39). The excluded activities generally correspond to the list of excluded activities contained in the definition of the same expression in section 125.1 of the *Income Tax Act* for the purposes of the manufacturing and processing tax credit for corporations. (However, for the purposes of the manufacturing and processing tax credit, the processing of foreign ore qualifies as a manufacturing and processing activity whereas this activity does not qualify as a manufacturing and processing activity for the purposes of the capital cost allowance rules.)

Subsection 1104(9) of the Regulations is amended so that the definition therein also applies for the purposes of new class 43, which includes property formerly included in class 39. This amendment is strictly consequential on the introduction of new class 43 (together with related amendments to class 39) described below.

This amendment applies with respect to property acquired after February 25, 1992.

ITR
4600(2)(k) and 4604(2)(j)

Subsections 4600(2) and 4604(2) of the Regulations prescribe machinery and equipment for the purposes of the definitions "qualified property" and "approved project property" in subsection 127(9) of the Act. Expenditures on such properties give rise to an investment tax credit under subsection 127(5) of the Act, where a number of conditions are met. The property so prescribed includes property that falls within capital cost allowance Classes 39 and 41.

Subsections 4600(2) and 4604(2) are amended so that Class 43 assets are also prescribed for these purposes. This is strictly consequential on the introduction of Class 43, which includes certain assets that formerly were included within Classes 39 and 41.

This amendment applies to property acquired after February 25, 1992.

ITR
Part 52

Section 125.1 of the Act provides for a reduction of federal corporate income tax where a corporation engages in "manufacturing or processing", as defined in paragraph 125.1(3)(b). The reduction for a taxation year may not exceed a specified percentage of a corporation's "Canadian manufacturing and processing profits" ("M & P profits") for the year. M & P profits are determined under Part 52 of the *Income Tax Regulations*. The specified percentage is 5% for taxation years ending before 1993.

Amendments to paragraph 125.1(3)(b) of the Act that were enacted in 1991 extended "manufacturing and processing" for these purposes to include the processing of foreign ore. (Domestic ore processors have the benefit of a "resource allowance" under paragraph 20(1)(v.1) of the Act, which is not available to foreign ore processors.) It was announced that the credit provided under section 125.1 for foreign ore processors would be phased-in over ten years.

The 1992 federal budget announced that the M & P tax credit rate would be increased to 6% after 1992 and to 7% after 1993.

Part 52 of the Regulations is amended, as described below, to phase-in the M & P tax credit for foreign ore processors. The ten year phase-in still applies, but has been adjusted to allow foreign ore processors immediate access to the increases in the M & P credit announced in the 1992 federal budget. (The phase-in is provided through the new definition of "specified percentage", which is described in the commentary on the amendments to section 5203.)

These amendments apply to the 1990 and subsequent taxation years.

ITR
5201

A corporation's M & P profits for a year is its "adjusted business income" (ABI) for the year multiplied by a pro-ration factor. (The pro-ration factor is discussed below in the commentary on the amendments to section 5203.) However, pursuant to section 5201 of the Regulations, where certain conditions are satisfied the M & P profits for a taxation year of a corporation is simply equal to its adjusted business income for the year (generally, its active business income). The key condition is that the business income of the corporation (together with the business income of any associated corporations) does not exceed $200,000.

Section 5201 of the Regulations is amended so that it does not apply to a corporation engaged in the processing of foreign ore. This amendment is consequential on the amendments made in 1991 to paragraph 125.1(3)(b) of the Act which included foreign ore processing as a manufacturing and processing activity.

ITR
5202

Section 5202 of the Regulations sets out a number of definitions used in Part 52 of the Regulations. It is amended to introduce the definitions "resource profits", "Canadian resource profits" and "specified percentage".

"Resource profits" is defined as the production, production and processing, and processing income described in subsection 1204(1) of the Regulations.

"Canadian resource profits" is defined in the same manner as "resource profits", except that processing income from the processing of foreign ore is disregarded.

The "specified percentage" for a taxation year is the mechanism by which the M & P credit for foreign ore processing is phased-in. The relevant percentages are set out below. The definition is relevant for the purposes of computing a corporation's adjusted business income.

ITR
5203

A corporation's M & P profits for a taxation year is its adjusted business income for the year multiplied by a pro-ration factor equal to the sum of its "cost of manufacturing and processing capital" and "cost of manufacturing and processing labour" for the year divided by the sum of its "cost of capital" and "cost of labour". A corporation's adjusted business income for a taxation year is equal to its active business income for the year minus, where the corporation has "resource activities" for the year its "net resource income" for the year.

Subsection 5203(3) currently provides that a corporation's net resource income for a taxation year is equal to:

- the corporation's resource profits for the year, as defined by section 1204 of the Regulations;

- plus amounts included in computing the corporation's income for the year under section 59 of the Act (generally resulting from the disposition of resource properties),

- minus depletion deductions for the year not taken into account in determining the corporation's resource profits.

The definitions "cost of capital" and "cost of labour" in section 5203 are amended in order to reflect costs in respect of activities engaged in for the purposes of processing foreign ore. Such costs are also reflected in the "cost of manufacturing and processing capital" and the "cost of manufacturing and processing labour" because of the indirect references in those definitions to the amended definition "manufacturing and processing" in 125.1(3)(b) of the Act. As a consequence, this amendment will result in a pro-ration factor which reflects the percentage of costs attributable to foreign ore processing.

Subsection 5203(3) is amended in order to allow a portion of a corporation's foreign ore processing income for a taxation year (net of its earned depletion base at the beginning of the next year) to qualify as its adjusted business income for the year. More specifically, in computing a corporation's net resource income for a taxation year, there is subtracted the specified percentage of the amount by which

- the corporation's "resource profits" for the year (as defined in subsection 1204(1)),

exceeds the sum of

- the corporation's "Canadian resource profits" for the year (as described above), and

- the earned depletion base of the corporation (as defined in subsection 1205(1)) at the beginning of the next year.

The specified percentage for a taxation year is 100% for taxation years commencing after 1998. For taxation years ending after 1989 and before 1999, the specified percentage for taxation years coinciding with calendar years is as follows:

Year	Percentage
1990	10.0%
1991	20.0%
1992	30.0%
1993	50.0%
1994	64.3%
1995	71.4%
1996	78.6%
1997	85.7%
1998	92.9%
1999	100.0%

Where a taxation year straddles two calendar years, the specified percentage for the year is determined by reference to the number of days in the taxation year that are in each calendar year.

ITR
5204

Section 5204 of the Regulations provides special definitions that apply where a corporation is a member of a partnership. The definitions essentially require a portion of a partnership's "cost of capital" and "cost of labour" to flow through to a corporate member of the partnership for the purpose of determining the corporation's M & P profits. (Likewise, a corporation's "cost of manufacturing and processing capital" and "cost of manufacturing and processing labour" also reflect costs at the partnership level.) The portion of such costs allocated to a corporation for this purpose for a taxation year equals the corporation's share of the income or loss of the partnership for its fiscal period ending in the year.

The definitions "cost of capital" and "cost of labour" used for this purpose are amended so costs in respect of activities engaged in for the purposes of earning income from foreign ore processing are reflected therein. These amendments are parallel to similar amendments to section 5203.

ITR
Schedule II – Class 10

Class 10 of Schedule II to the Regulations provides that property included in Class 41 is not included in Class 10.

Class 10 is amended so that property included in paragraph (b) of new Class 43 is also not included in Class 10. This amendment is consequential on amendments which include in that paragraph certain property formerly included in Class 41.

This amendment applies to property acquired after February 25, 1992.

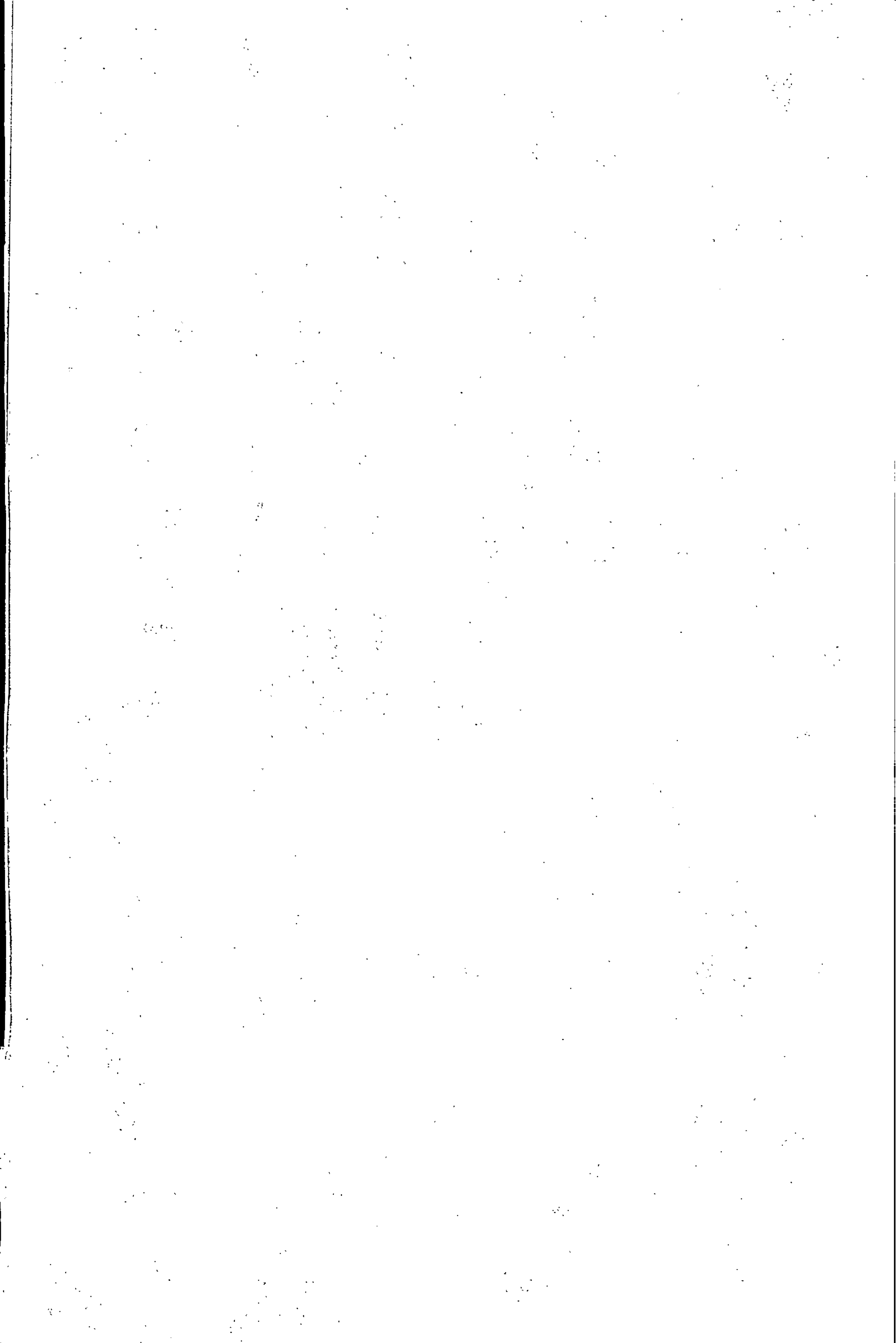
ITR
Schedule II – Classes 39, 41 and 43

Class 39 of Schedule II to the Regulations includes certain manufacturing and processing assets acquired after 1987. Class 41, when read in conjunction with subsections 1104(5) and (6) and paragraph (k) of Class 10, includes manufacturing and processing assets (referred to in paragraph (k) of Class 10) acquired after 1987 for the purposes of processing foreign ore in Canada. The capital cost allowance rate provided for both classes is 25%, although an additional allowance under paragraph 1100(1)(y) or (ya) is available for Class 41 assets in some circumstances.

Class 39 is amended so that it does not apply to property acquired after February 25, 1992. Instead, this property is included in new Class 43 for which a higher capital cost allowance rate, 30%, is provided. The increase in the rate for such property was announced as part of the 1992 federal budget.

Class 41 is amended so that it no longer applies to property included in paragraph (b) of new Class 43. This paragraph applies to the assets acquired for the purposes of processing foreign ore referred to above, provided that the taxpayer does not otherwise elect in writing before the taxpayer's tax return filing deadline for the year in which the property is acquired. The taxpayer might wish to elect, for example, if the taxpayer owned the foreign mineral deposit from which the processed ore is extracted and, as a consequence, additional capital allowance is available to the taxpayer under paragraph 1100(1)(y). This amendment is consequential on the increase in the capital cost allowance rate for manufacturing and processing property formerly included in Class 39 from 25% to 30%. As the processing of foreign ore is recognized as a manufacturing and processing activity for the purposes of the manufacturing and processing tax credit under section 125.1 of the Act, it is appropriate that the higher capital cost allowance for manufacturing and processing equipment also apply in respect of similar machinery and equipment for the purposes of processing foreign ore.

These amendments apply to property acquired after February 25, 1992. The election referred to above will be deemed to have been made on a timely basis if it is made not more than 180 days after the publication of the amendments in Part II of the *Canada Gazette*.



Appendix B

Draft Income Tax Regulations and Explanatory Notes

Interest Accrual Rules

DRAFT *INCOME TAX REGULATION*: INTEREST ACCRUAL RULES

1. Subsection 7000(6) of the said Regulations is revoked and the following substituted therefor:

(6) For the purposes of paragraph 12(11)(*a*) of the Act, a prescribed contract is, at any time in a calendar year, a registered retirement savings plan or a registered retirement income fund, other than such a plan or fund to which a trust is a party, where an annuitant thereunder (within the meaning assigned by paragraph 146(1)(*a*) or 146.3(1)(*a*) of the Act, as the case may be) is alive in that calendar year or in the preceding calendar year.

2. Section 1 applies to the 1993 and subsequent taxation years.

EXPLANATORY NOTE ON DRAFT INCOME TAX REGULATION

INTEREST ACCRUAL RULES

ITR
7000(6)

Subsection 12(4) of the Act provides for the annual reporting of interest accrued on an "investment contract", as defined in paragraph 12(11)(a). An "investment contract" is defined to exclude a "prescribed contract" described in subsection 7000(6) of the Income Tax Regulations. For this purpose, a "prescribed contract" at any time is a deposit associated with an RRSP, RRIF or registered home ownership savings plan, provided the annuitant or beneficiary thereunder was alive at that time.

Subsection 7000(6) is amended to eliminate the reference to registered home ownership plans, which were terminated in 1986.

Subsection 7000(6) is also amended so that the exemption from the accrual rule applies in respect of an RRSP or RRIF in a calendar year where any annuitant under the RRSP or RRIF was alive in that year.

Finally, subsection 7000(6) is amended to extend the exemption from the accrual rules where an annuitant under an RRSP or RRIF has died. In this case, the accrual rules will not begin to apply until the first calendar year beginning after the death of the annuitant. This is consistent with proposed amendments to subsections 146(4) and 146.3(3.1) of the Act.

These amendments apply to 1993 and subsequent taxation years.